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THE REST OF THE WORK

BY THOMAS CHITTY, ESQ.,

OF THE INNER TEMPLE.

IN SIX VOLUMES.

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PREFACE TO THE FOURTH VOLUME.

THIS Volume has been considerably enlarged, and its size increased, perhaps to an inconvenient extent; but the object which the Editors have in view, is to furnish the Magistrates and the Bar with the decided Cases at full length, being satisfied that no compendious abstract would supply a satisfactory Manual for those who attend the Quarter Sessions. The Editors, however, have endeavoured to render the Marginal Notes, and the Index, abridgments of the Cases, so that the general principles of the law may be ascertained without reading the Cases at length. The great utility of the work, in presenting the Cases in detail, is thereby preserved, and the necessity of reading the whole obviated by the fulness of the Marginal Note.

ERRATA.

PAGE

6. Frewer Lewis, *lege* Frewer *v.* Lewis.
19. In note, for "included," *lege* "concluded."
29. Stoke *v.* Golding, *lege* Rex *v.* Stoke Golding.
77. S. 8, 9, of 55 Geo. III., *not* 4 & 5 W. IV.
131. l. 7, for 867, *lege* 129.
133. Rex *v.* J. Kent, *add* S. C. 2 Q. B. 686.
259. N. & M. *add Vol.*
277. 16 l. from bottom, for "ordered," *read* "altered."
346. l. 6, *dele* Rex *v.* J. Monmouthshire, 1 B. & Ad. 895.
387. *Dele* marg. note to the third paragraph.
439. l. 21, *dele* "J. Bayley."
l. 30, *insert* "J: Bayley" *before* "The cases."
532. l. 5, *dele* full stop, and place it after "frost."
568. *Dele* 560.
652. for 3 T. R. 378, *lege* 5 T. R. 153.
814. Marg. note, for "decreed" *lege* "demised."
870. After Okeford Fitzpaine, *insert* 1 B. & Ad. 254.
989. St. Mary Newington, p. 773, *not* 954.
1157. l. 8 from bottom, for "*now*," read "*not*."
1193. for "Ely," *read* "Eliz."
1195. l. 8, for "*in*," read "*is*."
1358. l. 11, *dele* "*Speen*."

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THE

JUSTICE OF THE PEACE

AND

PARISH OFFICER.

Poor.

CHAPTER I.

OF THE ORIGIN AND PROGRESS OF THE POOR LAWS, AND OF THE PERSONS CONCERNED IN THEIR ADMINISTRATION; AND OF WORKHOUSES, AND THE RELIEF OF THE POOR IN GENERAL.

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THE

JUSTICE OF THE PEACE,

AND

PARISH OFFICER.

Poor.

I. Of the Origin and Progress of the Poor Laws, and the recent Alterations.

ACCORDING to the early writers upon the subject of the *poor*, and *their relief*, one of the first consequences of the establishment of the Christian religion in this kingdom, was a provision for the maintenance of the poor. It is stated that a fourth part of the tithes of every parish was devoted to this purpose under the direction of the minister, assisted by the churchwardens and other principal inhabitants; and as it was regarded as a matter of *ecclesiastical concern*, the whole was under the supervision and control of the bishop whenever his interference became necessary.

Relief of the poor anciently an ecclesiastical concern.

Blackstone upon this subject says, "The poor of England till the time of Henry VIII. *subsisted entirely upon private benevolence and the charity of well disposed Christians.* For though it appears by the Mirrour, that by the common law the poor were to be 'sustained by *parsons, rectors of the church, and the parishioners*, so that none of them die for default of sustenance;' and though by the statute 12 R. II. c. 7, and 19 Hen. VII. c. 12, the poor were directed to abide in the cities or towns wherein they were born, or such wherein they had dwelt for three years (which seem to be the first rudiments of *parish settlements*), yet till the statute 27 Hen. VIII. c. 25, I find no compulsory method chalked out for this purpose; but the poor seem to have been left to such relief as the *humanity* of their neighbours would afford them." (1 *Bla. Com.* 359.) Still, however, if the contributions were voluntary, the method was, in the course of time, so far reduced to a system, as to be sanctioned and upheld by acts of parliament, for by the statute last cited, the *churchwardens* or *two others* of every parish were to make *collections* for the poor on Sundays. By 5 & 6 Ed. VI. c. 2, the minister and churchwardens were annually to appoint two able persons or more to be *gatherers* and *collectors of alms* for the poor. By 5 Eliz. c. 3, the *parishioners* were to choose these collectors, and by 14 Eliz. c. 5, the appointment was to be made by the *justices*, who were also to appoint *overseers*. And the 18 Eliz. c. 3, is to the like effect. By 39 Eliz. c. 3, the churchwardens of every parish, and four substantial householders, were to be nominated yearly in Easter week by two justices, and called *overseers of the poor*. Next followed the important statute 43 Eliz. c. 2, out of which, Dr. Burn observes, more litigation, and a greater amount of revenue have arisen, with consequences more extensive and more serious in their aspect, than ever were identified with any other act of parliament or system of legislation whatever. By these and other acts, as observed by Sir *John*

Funds were collected from voluntary contributions;

But are now matter of *temporal* concern.

I. *Of the Origin and Progress of the Poor Laws.*

Nicholl, in *Wilson* v. *M'Math*, 3 *Phillimore's Rep.* 88, the maintenance of the poor has now become much more matter of *temporal* than of *spiritual* concern.

Poor Law Commission. Report of the commissioners.

The consequences of which Dr. Burn here speaks, became so serious, that after several ineffectual attempts to remedy them, a commission was issued in 1831 "to make diligent and full inquiry into the practical operation of the laws for the relief of the poor in England and Wales, and into the manner in which those laws were administered, and to report their opinion *as to what beneficial alterations could be made.*" The result of this inquiry was laid before the Houses of Parliament in 1834, and the commissioners reported, "that the fund which the 43 of Eliz. directed to be employed in setting to work children and persons capable of labour, but using no daily trade, and in the necessary relief of the *impotent, had been applied to purposes opposed to the letter, and still more to the spirit of the law, and destructive to the morals of the most numerous class, and to the welfare of all.* That the great source of abuse was the *out-door relief* afforded to the able-bodied on their account, or on that of their families, given either in kind or in money." They also reported, that "great mal-administration existed in the workhouses." *To remedy* the evils, they proposed considerable alterations in the law; and the principal portion of their suggestions was embodied into the 4 & 5 Will. IV. c. 76, which received the royal assent on the 14th August, 1834 (*a*). The important alterations in the *relief* and *management* of the poor, which have been introduced by this statute, will be noticed in their proper place, and *the whole statute given in the Appendix.* This statute has been continued by 5 & 6 Vic. c. 57, with few alterations. This last statute incorporates within it for certain purposes, the provisions of 4 & 5 Will. IV. c. 76, 5 & 6 Will. IV. c. 69, 6 & 7 Will. IV. c. 96, and part of the Irish act. It is necessary to premise generally, that one great object of these statutes is to produce an *uniform* system of relief and management of the poor throughout England and Wales; and for this purpose a *Central Board of Commissioners* has been appointed.

II. Of the Persons concerned in Administration of Poor Laws.

1. Of Justices of the Peace, their Jurisdiction, Powers, and Duties relating to the Poor.

1. *Justices.*

Their authority *before* 4 & 5 W. 4, c. 76.

Before the 4 & 5 Will. IV. c. 76, the justices of the peace had the *general superintendence* over all persons entrusted with the care and management of the poor, and they entirely directed the mode and amount of relief which should be given. This latter part of their duties has been almost, if not altogether, transferred to the Poor Law Commissioners (*b*). Still, however, by various legislative enactments, it will be found that the justices out of sessions have many important duties to perform. They are authorized to appoint overseers (*c*); to supply a vacancy caused by the death, removal, or insolvency of an overseer (*d*); to allow their accounts, and to cause books to be delivered to their successors (*e*); to compel the overseer to perform every order made under 17 Geo. II. c. 38 (*f*); and to pay the required rates to the guardians (*g*). Before the Poor Law Act, the overseers were required to take order for the relief and employment of the poor, "by and with the consent of *two or more justices of the peace*," 43 Eliz. c. 2; and by 3 W. & M. c. 11, s. 11, the overseers were required to keep a register of all persons who were admitted to receive relief, and no other

43 Eliz. c. 2. Two justices.

3 W. & M. c. 11. One justice.

(*a*) A statute of similar import was passed for Ireland, 1 Vic. c. 56.

(*b*) The Poor Law Commissioners have declared, that since the 4 & 5 Will. IV. c. 76, s. 27, justices of the peace cannot specify in their order what *kind* or *quantity* of relief shall be given.

(*c*) 43 Eliz. c. 2.

(*d*) 17 Geo. II. c. 38, s. 3.

(*e*) *Ib.*

(*f*) *Ib.*

(*g*) 41 Geo. III. c. 9.

person was to be allowed "to receive collections at the charge of the parish but, by the authority of *one justice* of the peace." This authority was limited by 9 Geo. I. c. 7, s. 1, until oath had been made before such justice of the peace of some matter which he shall judge to be reasonable cause for having such relief; and that the person had applied for relief to the parishioners, or to two of the overseers, and was by them refused to be relieved; and until such justice hath summoned two of the overseers to show cause why such relief should not be given; and the person so summoned hath been heard or made default to appear before such justice.

9 G. 1, c. 7.

By the 36 Geo. III. c. 23, the enactments of which were extended and modified by the 55 Geo. III. c. 137, s. 3, and the 59 Geo. III. c. 12, s. 2 and 5, magistrates were empowered to order relief to poor persons at their homes, notwithstanding a workhouse had been provided and contracts entered into for lodging, keeping, maintaining, and employing the poor. But this statute (36 Geo. III. c. 23), as well as the above-mentioned sections, by which it was so extended and modified, have been repealed by the Poor Law Amendment Act, and consequently the powers which the justices derived therefrom have terminated.

36 G. 3, c. 23. 55 G. 3, c. 137, s. 3. 59 G. 3, c. 12, s. 5, repealed by 4 & 5 W. 4, c. 53, s. 53.

Where there is a *select vestry*, justices may order relief after a refusal by the vestry; 59 Geo. III. c. 12.

The acts of 3 W. & M. c. 11, and 9 Geo. I. c. 7, are not expressly repealed by 4 & 5 Will. IV. c. 76. Those acts authorized justices to exercise a *control over the overseers in the administration of relief to the poor*. This control, however, can now be exercised only in parishes in which there is no board of guardians, no select vestry, or other similar body constituted under some local or general act.

Their authority under 4 & 5 W. 4, c. 76.

By the 4 & 5 Will. IV. c. 76, s. 52, it is enacted, that it shall not be lawful for any justice to order relief to any person from the poor-rates, except as therein-before provided; and though this clause refers to the poor in unions, and under select vestries, the limitation of this power of the justices is not confined to such cases only; and where they can exercise a control, no relief can be ordered for any person out of the workhouse, unless the rules of the commissioners direct it. Even when there is a board of guardians, *one justice is authorized*, in cases of *sudden and urgent necessity*, to order *temporary relief* in articles of absolute necessity, but not in money; and in cases of *sudden* and *dangerous illness*, to give a similar order for *medical relief* only; and in any union, *two justices* may order relief to be given to any adult person who, from old age or infirmity, shall be wholly unable to work, without requiring such persons to reside in the workhouse. (S. 27.) They are empowered also to enforce the repayment of loans made by the guardians or overseers, and for this purpose may order the master of the pauper to pay the wages to the guardians, &c. (S. 59.)

One justice may relieve in emergency.

Two justices, out of the workhouse.

Loans.

The wages.

The *proper* relief to be given by the guardians under 22 Geo. III. c. 83, is to be determined by the justices, although the visitor alone must decide whether that relief shall be given in or out of the workhouse (*a*). In their petty sessions the justices may make an order upon the grandfather, father, &c., to maintain their grandchildren or children (*b*); but no such power is given to enforce the extended liability of those who marry women having children (*c*); other statutes authorize justices to seize the goods and rents of persons deserting their families (*d*), and on complaint of guardians, to punish such as neglect them (*e*). When Chelsea or Greenwich pensioners desert their families (*f*), the justices may attach their pensions, and may direct the owners of merchant ships to pay the wages of the seamen employed by them to the relief of their families (*g*). They may also order the wages of those who have been convicted of smuggling, and are serving in the king's ships, to be applied to the relief of their families (*h*). They

Gilbert's Act.

(*a*) Sect. 36.
(*b*) 59 Geo. III. c. 12, s. 36.
(*c*) 4 & 5 Will. IV. c. 76, s. 57.
(*d*) 5 Geo. I. c. 8.
(*e*) 22 Geo. III. c. 83, s. 31.
(*f*) 59 Geo. III. c. 12, s. 29.
(*g*) *Ib.* s. 32.
(*h*) 11 Geo. IV. c. 10, s. 2.

II. *Of the Persons concerned in Administration of the Poor Laws.*

formerly possessed a similar authority in providing relief for the families of militiamen (*i*), but this is now repealed (*k*). A power is given to them to order relief to prisoners for debt in gaols (not being county gaols) under mesne process (*l*).

Poor rate. Apprentices.

The *poor-rate* must be *allowed* by them (*m*), and its *payment enforced* by distress (*n*). *Parish apprentices* are still to be bound out under their order and direction; and they are further required (in addition to their consent and allowance) to ascertain if the rules of the commissioners for binding out apprentices have been complied with, and to certify the same at the foot of the contract or indenture (*o*). A select vestry receives its appointment from the justices (*p*), who also consents to and approves of the guardians (*q*), visitor (*r*), treasurer (*s*), and governor (*t*), and appoints the keeper of such workhouse to be such governor (*u*). Upon the neglect of any guardian to pay the money in his hands, the justices might enforce it (*v*), and they may punish them for enticing persons to remove without an order (*w*). Their assent to contracts for the maintenance of the poor is repealed (*x*).

Select vestry.

It is an essential part of the duty of justices to visit and examine the workhouse; and where the commissioners have issued any rules for the government thereof, to see that they have been obeyed (*a*); and if no rules have been directed, their original jurisdiction continues (*b*).

In the unions under 4 & 5 Will. IV. c. 76, the justices are guardians *ex officio* (*c*), and in all parishes they are exempt from serving the office of overseer. Their consent was required for the sale of old poor-houses (*d*), and they are empowered to deliver possession of parish houses to the overseer (*e*).

Their jurisdiction over the *contractors* for the maintenance of the poor is, by 50 Geo. III. c. 50, co-ordinate with that which they have over *overseers* (*f*).

They have power to punish persons injuring the parish books (*g*); persons buying or receiving into pawn, or absconding with goods provided for the maintenance and employment of the poor (*h*); orders of removal must still be made by them.

Their jurisdiction in boroughs.

By the 5 & 6 Will. IV. c. 76, jurisdiction is given to county justices in all boroughs which have not a separate court of quarter sessions under that act.

Where justices may act, though guardians.

Justice may act at any petty, special, or quarter sessions, in matters in which the board of which he is an *ex officio* member, is interested. 5 & 6 Vic. c. 57, s. 15.

2. *Commissioners.* Three commissioners under 4 & 5 W. 4, c. 76, s. 1 (*i*).

II. The Poor Law Commissioners, their Powers and Duties.

The 4 & 5 Will. IV. c. 76, s. 1, enabled his majesty to appoint *three commissioners* for five years, to carry the statute into execution; and the administration of the relief of the poor, according to the existing law, or such laws as shall be in force for the time being, are subject to their direction and control. They have great power and authority as will appear by s. 15, which enacts, that the administration of the relief to the poor throughout England and Wales, according to the existing laws, or such laws as shall be in force for the time being, shall be subject *to the direction*

Administration of relief to the poor to be under control of the commissioners,

(*i*) 43 Geo. III. c. 47.
(*k*) 4 & 5 Will. IV. c. 76, s. 60.
(*l*) 52 Geo. III. c. 160.
(*m*) 43 Eliz. c. 2.
(*n*) *Ib.*; and 17 Geo. II. c. 38, s. 7.
(*o*) 4 & 5 Will. IV. c. 76, s. 61.
(*p*) 59 Geo. III. c. 12.
(*q*) 22 Geo. III. c. 83, s. 3.
(*r*) Sect. 10.
(*s*) Sect. 12.
(*t*) Sect. 9.
(*u*) 50 Geo. III. c. 50, s. 3.
(*v*) 22 Geo. III. c. 83, s. 24.
(*w*) Sect. 41.
(*x*) 4 & 5 Will. IV. c. 76.
(*a*) 4 & 5 Will. IV. c. 76, s. 43.
(*b*) 30 Geo. III. c. 49, s. 3.
(*c*) Sect. 38.
(*d*) 1 & 2 Geo. IV. c. 86, s. 1.
(*e*) 59 Geo. III. c. 12, s. 24.
(*f*) Sect. 2.
(*g*) 58 Geo. III. c. 69, s. 6.
(*h*) 55 Geo. III c. 137, s. 2.
(*i*) See the statute, Appendix.

and control of the commissioners; and they are authorised to make rules for the management of the poor, the government of workhouses, and the education of the children therein, and the management of parish poor children under the 7 G. III. c. 39, and the superintending, inspecting, and regulating of the houses wherein such poor children are kept and maintained, and the apprenticing the children of poor persons, and for the guidance and control of all guardians, vestries, and parish officers, so far as relates to the management or relief of the poor, and the keeping, examining, auditing, and allowing of accounts, and making and entering into contracts in all matters relating to such management or relief, or to any expenditure for the relief of the poor, and for carrying the act into execution in all other respects; and the commissioners may suspend, alter, or rescind such rules: provided always, that no commissioner shall interfere in any individual case for the purpose of ordering relief."

2. *The Poor Law Commissioners, their Powers and Duties.*

who are to make rules and regulations for the management of the poor and administration of the laws for their relief, &c.

Commissioners may suspend or alter rules, &c.

These general rules must be submitted to one of the secretaries of state forty days before they come into operation, and the queen, by the advice of her privy council, may disallow them within that time, or afterwards, and upon such disallowance they are to cease to operate, s. 16. And all general rules in force at the sitting of parliament, shall, within one week after the commencement of each session, be laid before both houses, s. 17. Before the same can have any operation in any union or parish, a copy of them must be sent to the overseers, the guardians of the union or clerk, and the clerk of the justices of the petty sessions, who are required to give publicity to them, to allow inspection, and give copies of them, s. 18.

The commissioners are also empowered to make rules for present or future workhouses, and vary bye-laws already in force or to be made hereafter, and no addition to the schedule of 22 Geo. II. c. 38, is valid till confirmed by them.

General and particular rules.

A rule which affects more than one union is a *general* rule, (s. 42,) and is to be distinguished from the rules, &c. issued for the government of a *particular* union or parish; and when a general rule is in force, the commissioners cannot issue a particular rule unless approved by the secretary of state, 5 & 6 Vic. c. 57, s. 3. The validity of any rule may be determined by removing it into the Court of Queen's Bench by certiorari, s. 105 of 5 & 6 Will. 4.

Certiorari.

Rules not judicially noticed.

The courts of law will not take judicial notice of the rules made by the commissioners. *Reg.* v. *Dolgelly*, 8 *A. & E.* 561.

Particular order need not be laid before the secretary of state.

It is not essential to the validity of any but general orders of Poor Law Commissioners to the guardians of an union, that they should be submitted to the secretary of state. *Reg.* v. *Braintree*, 1 *Q. B.* 130.

What is not a general order.

If an order is directed to one union only, it is not a general order, though an order in the same terms is simultaneously directed to another union. *Ib.*

Commissioners may rescind an order.

Under the stat. 4 & 5 Will. 4, c. 76, s. 15, the commissioners have power to rescind or alter any order made by them, and an order, inconsistent to some extent with a former one, will have the effect of altering that former order, and will be valid itself. *Ib.*

Union.

Before this statute, much benefit had been derived from the union of parishes for the relief of the poor and the use of a common workhouse; and the commissioners are empowered to effect this object, and even if necessary without the consent of the parishioners.

Workhouses.

The commissioners may, with the consent of the majority of guardians of any union, or a majority of the rate-payers and owners of property in any parish, order a workhouse to be built, purchased, or enlarged, s. 23. They may, *without consent*, direct any parish or union, having a workhouse or a building convertible into a workhouse, to be enlarged, but the principal sum to be raised in any parish must not exceed 50*l.*, nor one-tenth of the average annual amount of the rates for three years, s. 25.

Commissioners may attend boards and vestries, but not vote.

The commissioners are entitled to attend every parochial and other local board and vestry, and take part in the discussions, but not to vote. Besides the great power which is given to them by the second section, of requiring the attendance of persons, and the production of papers, they are expressly

2. *The Poor Law Commissioners, their Powers and Duties.*

empowered to require, from any person holding a trust property belonging to the parish, or which may be applicable to the relief of the poor, an account of such property and its application; and by sect. 90, service of summons on the party's last place of abode is sufficient. Sect 98 imposes a penalty on the disobedience of their orders, or contempt of the board.

Account of property in trust for the parish.

They cannot appoint collectors of rates, nor any paid officers. (*Reg.* v. *Hunt*, *post*, 37; *Reg.* v. *P. L. C.* (*Cambridge Union*), *post*, 38.)

The chancellor will interfere if the commissioners exceed their authority.

With regard to the authority of the Court of Chancery over these commissioners, Lord Cottenham said, "I apprehend that the limits within which this court interferes with the acts of a body of public functionaries, constituted like the Poor Law Commissioners, are perfectly clear and unambiguous. So long as those functionaries strictly confine themselves within the exercise of those duties which are confided to them by law, the court will not interfere. The court will not interfere to see whether any alteration or regulation which they may direct is good or bad: but if they are departing from that power which the law has vested in them; if they are assuming to themselves a power over property which the law does not give them, this court considers them as no longer acting under the authority of their commission, it treats them, whether they be a corporation or individuals, merely as persons dealing with property without legal authority." (*Frewer Lewis*, 4 *M. & C.* 249.

III. Assistant Commissioners.

3. *Assistant Commissioners.*

The principal commissioners are empowered by 4 & 5 Will. 4, c. 76, s. 7 (*a*), to appoint *nine assistant commissioners*, (and no more, 5 & 6 Vic. c. 57, s. 2), and to delegate their authority to them, and with the exception of making a general rule, the assistants may exercise all the power of the principal commissioners. The duties are specified in ss. 12, 13, 14, 20, and 21.

For special purposes.

The commissioners may appoint assistants for special inquiries under particular circumstances. 5 & 6 Vic. c. 57, s. 3.

IV. Guardians.

4. *Guardians.*

All the power and authority given by any statute to overseers (with the exception of making and *collecting rates*), was transferred by Gilbert's Act (*b*), the 22 Geo. III. c. 83, to *guardians* in every parish or united parishes, which adopted the provisions of that act; and the same powers are given to the guardians appointed under 4 & 5 Will. IV. c. 76.

1. Appointment of Guardians under 4 & 5 Will. IV. c. 76.

Guardians in a single parish.

The commissioners are empowered to direct that the administration of the laws for the relief of the poor of any *single* parish shall be governed by a board of *guardians*, sect. 39; and where a union of parishes has been formed, a board of guardians shall be chosen, the workhouse shall be governed, and the relief of the poor administered by them, sect. 38.

In unions.

Election, and number of.

The guardians are to be elected by the rate-payers and owners of property. The commissioners are to determine the whole number, as well as the number for each parish; each parish, however, to have a guardian.

Qualification.

The persons must be qualified by being rated at a sum to be fixed by the commissioners, in respect of property, the annual *rental* of which does not exceed 40*l*.

Duration of office.

They are to continue till 25th of March in each year, or appointment of successors, and may be re-elected. The election to be held within fourteen days of the 25th of March.

Justices ex officio members.

Justices of peace residing in the parish, and acting for the county, are ex officio members of the board. None of the guardians are *paid* officers.

Right of voting for guardians.

In the election of guardians, the owner, whose name has been duly

(*a*) Sect. 9 also enables them to appoint a *secretary*, *assistant secretaries*, *clerks*, *messengers*, and other *officers*. See *Appendix*.

(*b*) This act was popularly known as Gilbert's Act, from the name of the member who introduced it.

entered in the book, is entitled to the same number of votes as persons are entitled to by the 58 Geo. III. c. 69 (*a*), and for the purpose of ascertaining that number, the assessment of the property in the rate shall be deemed the *annual* value. When the owner is also the occupier, he may vote in each character; and in case of property belonging to a corporation or joint stock company, no member can vote as owner but the registered officer. Rate-payers rated under 200*l.* shall have a single vote; at 200*l.* and under 400*l.* two votes; and at 400*l.* or more, three votes; such person must have been rated to the poor for the whole year preceding his voting, and paid the parochial rates assessed on him for one whole year, except such as were due within six months preceding his voting. The owner may vote by proxy, but whether he votes in person or by proxy, he must give a previous statement of his property, &c. Persons not complying with the directions of the commissioners considered to have *no* vote.

Scale of voting for owners and occupiers.

Rated for a year, and paid.

Voting by proxy.

The validity of the election of a guardian cannot be tried on an information in the nature of a quo warranto. (*Re Aston Union*, 6 *A. & E.* 784; and see *Reg.* v. *Ramsden*, 3 *A. & E.* 784). And where a majority of the guardians de facto did not concur in an appointment, the court will not enforce it by mandamus. (*Reg.* v. *Dolgelly*, 8 *A. & E.* 561. See *Reg.* v. *Vestry of Holborn*, 10 *A. & E.* 730.) But the right of an elective guardian may be determined by the commissioners, and their order may be removed into the court in the term next after the issuing of such order. 5 & 6 Vic. c. 57, s. 8.

Quo warranto will not lie for a guardian, but the commissioners may try the title of an elective guardian.

A person put in nomination as guardian may tender to the officer conducting the election his refusal, in writing, to serve the office; and his election then shall not be further proceeded with. s. 9.

A person may decline the office of guardian.

If no person be elected for a parish at the annual election, the guardian of that parish for the previous year may continue to act. s. 10.

If no guardian be elected, his predecessor may act.

Mandamus to the overseers of Todmorden to pay their contribution to the union. The return admitted a proper order of the commissioners to constitute a union, and that guardians had been elected by all the townships, except Langfield; and contended, that the omission and refusal of that township to elect any guardian prevented a competent board of guardians from being formed. The order of the commissioners required that there should be in all eighteen guardians for six townships, four from some and two from others, amongst which was Langfield; there had been two annual elections of guardians in 1837 and 1838, but on no occasion had Langfield elected any guardian. The Attorney-General contended that it was not a condition precedent that there should be one guardian elected by each parish, the only condition was that three should constitute a board. Lord *Denman*.—The 38th section of the statute is very obscurely expressed; but I think that the meaning of the legislature is that contended for by the Attorney-General. The direction in the proviso, that one or more guardians shall be elected, must mean that one or more shall be made eligible by the order of the commissioners. I say this rather as a matter of opinion, because by the subsequent enactment the defect, if it be one, is cured. Supposing the first election altogether bad, still the statute provides that, "in case the full number of guardians shall not be fully elected at such subsequent election of guardians for the time being, the other or remaining members of the said board shall continue to act until the completion of the said board" "as if the numbers of such board were complete." There have been elections for several years, and the defect is therefore cured, unless we are to say "subsequent elections" mean elections after a first complete election; but there is nothing to authorize such an interpretation. *Littledale*, J.—I also am of opinion that in this case there was a "subsequent election" within the meaning of the act, and a deficiency in the election is by it expressly provided for. *Patteson*, J.—I think the pro-

To constitute a board there should be an order directing each parish to elect a guardian, but it is not essential to the existence of the board that every parish should elect a guardian.

(*a*) By that statute (see *post*) an inhabitant assessed at an annual rent or profit not amounting to 50*l.* is entitled to one vote; amounting to 50*l.* and upwards, to one vote for every 25*l.*, but none entitled to more than six votes.

Guardians.

viso, as to the number of guardians to be elected for each parish, coming after the regulations of the powers of the commissioners, must be referred to them; but at all events this is a case of a subsequent election. *Coleridge*, J.—The commissioners are to "determine the number of guardians to be elected in each union:" that must mean the number that shall be directed to be elected. I cannot resist the inference that the proviso that one or more shall be elected for each parish must have the construction that the commissioners shall direct one or more to be elected for each parish. I agree too with the rest of the court, that, if that be not so, this is the case of a subsequent election, to which the objection does not apply. *Reg.* v. *Todmorden*, 1 *Q. B.* 185; 4 *P. & D.* 553.

Churchwarden may be a guardian.

According to the opinion of the Attorney-General, Sir *J. Campbell*, taken by the commissioners, a churchwarden or overseer may be elected guardian for his parish.

Borough justices are not ex officio guardians.

A corporation justice is not a guardian ex officio. (See *Evans* v. *Stevens*, 4 T. R. 224, 459). The words of the act, "justices acting for the *division*," apply to Lincolnshire, &c. and not to towns, &c. of exclusive jurisdiction.

The commissioners may accept a resignation and order a new election.

The commissioners may accept the resignation of a guardian for any reasonable cause, and on an omission to elect, or on the death, resignation, or disqualification of a guardian, they may order a new election. 5 & 6 Vic. c. 57, s. 11.

Board to act as if full.

As long as there are three guardians the board, though not full, may act. s. 12.

Defects in guardian's title not to vitiate proceedings.

No defect in the qualification or election of a guardian acting at a board, shall vitiate the proceedings, if a majority of the persons assembled shall be entitled to act. s. 13.

Paid officers ineligible.

No assistant-overseer or paid officer engaged in the relief of the poor, nor any person receiving a salary from the poor rates, is capable of serving as a guardian, nor any person who has been a paid officer and discharged within five years previous. s. 14.

Sheriff cannot be a guardian.

The sheriff of a county cannot act as a guardian ex officio in such county during his office, as, by 1 Mary, s. 2, c. 8, he is incompetent to act as a justice for the county.

2. The Powers and Duties of such Guardians.

The relief of the poor.

The workhouses.

Employment of the poor under their control.

Reservation of power of commissioners, justices, and overseers.

To the guardians belong exclusively the ordering and directing of all relief to the poor of the several parishes and places comprised in the union, and the building, hiring, and providing of any workhouse, poorhouse, or other premises, for the reception and maintenance of paupers therein, and the altering, improving, or enlarging the same, or any other existing workhouse or poorhouse within the said union, and the regulation and management thereof, and the hiring or purchasing of land for such workhouse or workhouses, or for the employment of paupers therein, subject to the directions of the poor law commissioners, and excepting such powers as in the act are given to justices of the peace and overseers of the poor.

They are the proper parties to apply for an order of bastardy. *Reg.* v. *Willshere*, 12 *A. & E.* 793.

To act at a board. Three to concur.

No guardian can act except at a meeting of the board, and no act there is valid unless three guardians are present and concur.

Meetings.

The meeting of the guardians is regulated by the rules of the commissioners, but in general they meet weekly, and extraordinary meetings may be held on giving certain notices prescribed by the rules, or without notice in cases of emergency.

Relief.

Application of paupers.

Work.

At the board they must direct the nature and amount of relief to be given, subject however to the rules relating to relief, and hear the application of paupers, who have previously applied to the relieving officer. They must determine the kind of work to be done by paupers in or out of the workhouse, and give directions to the overseers for raising the money payable by their parish.

The duty of giving relief and employment, and making inquiries relating

to the poor, is entrusted to the "relieving officer," who is to be appointed and paid by the board. s. 46. 4. *Guardians.*

Expenses. Relieving officer.

The relief of lunatic paupers is also intrusted to the guardians. 5 & 6 Vic. c. 57, s. 6. See *Appendix.* Lunatics.

3. Appointment of Guardians under 22 Geo. III. c. 83, commonly called Gilbert's Act.

The principle of Gilbert's Act has been much followed in the recent enactments; but the option of appointing guardians and directing the union of parishes, is transferred from the rate-payers to the commissioners.

By the 3rd sect. of 22 Geo. III. c. 83, a single parish might avail itself of the provisions of the act, and appoint guardians, upon complying with certain regulations prescribed in that section and some later statutes (*c*), and also adopting the forms in the schedule. The same power was given to *two* or more parishes to unite, and the guardians were directed to execute an agreement for that purpose, according to a form prescribed.

Notice of meetings.

Sect. 6 requires "that the notice for every public meeting directed by this act shall be given in the church or chapel of every such parish, township, or place, on three successive *Sundays* before the time of such meeting, immediately after divine service, or on such of the said *Sundays* as service shall be performed there, and also fixed in writing on such church or chapel door, or if no church or chapel, at some public place within any such parish, township, or place, where notices of parish business have been usually given, fifteen days at least before the day to be appointed for such meeting, in the form or to the effect mentioned in the said schedule, No. VI." (*d*)

Qualification and election.

The qualification of voters was declared to be an assessment to the poor-rate, after the rate of 5*l.* at least, and payment of the rates; if there were not ten qualified persons in the parish, then every person assessed and paying rates might vote; but all elections under this act or any local act must now be governed by 4 & 5 Will. IV. c. 76, ss. 38, 41.

4. Powers and Duties of such Guardians.

Guardians are to be overseers.

By sect. 7 of Gilbert's Act, "every such guardian shall attend the monthly meetings thereby directed to be holden, and execute the several powers and authorities given to guardians by that act, and shall have and is hereby invested with all the powers and authorities given to overseers

(*c*) As the practical utility of these statutes is much diminished, the substance of them only is given here. Whenever *two-third parts* in number and value, according to the poor rate, of the owners or occupiers of land, &c., within any parish, qualified as therein mentioned, should, at a meeting holden pursuant to the act, signify their desire to adopt its provisions, and should recommend to the justices *three* persons qualified for guardians of the poor, and *three* persons qualified to be governors of the poorhouse, and fix the salaries to be paid to such guardian and governor, and should procure the consent of two justices, such parish was entitled to all the benefits and powers of the act. The two-third parts were by 33 Geo. III. c. 35, s. 1, to be two-third parts in number and value of such qualified persons only, actually attending such public meeting; and by sect. 2, if such meeting signified their opinion to the justices, that on account of the extent and population of such parish, more than one guardian of the poor was necessary, and shall desire that two may be appointed guardians, the justices might appoint two guardians. This power was further enlarged by 41 Geo. III. c. 9, s. 1, which enacted, if it shall be the opinion of two-thirds in number and value of the owners or occupiers of land, &c., that one guardian is insufficient for carrying into due execution the provisions of the said act, and the same shall be certified by two of the persons present at such meeting to two justices, together with the names of four persons qualified for the office of guardian, the justices might appoint so many of them to be guardians of the poor as they in their discretion thought necessary for duly carrying the act into execution. The first part of the 7th sect. of 22 Geo. III. c. 83, made similar provisions for the appointment of a guardian for each parish in a union.

(*d*) See 7 W. 4 & 1 V. c. 45.

4. *Guardians.* of the poor by any other act or acts of parliament, and shall to all intents and purposes (*a*) (except with regard to *making* and *collecting rates*) be an overseer of the poor for the parish or township for which he shall be so appointed guardian, and shall be liable to such forfeitures and penalties for neglect of duty as overseers of the poor are made liable to by this or any other act of parliament, and all notices or applications directed by this or any other act of parliament to be given or made to the overseers of the poor with respect to the care and management or removal of the poor, where any such guardian shall be appointed under the authority of this act; but in case any orders of removal or notices shall happen by mistake to be given or sent to the churchwarden or overseer, the same shall be as valid and effectual as if given to the guardian; and such churchwarden or overseer shall, and is hereby required forthwith to deliver the same to the guardian, or shall forfeit forty shillings for his neglect."

Orders and notices, &c. to be delivered to guardians.

Overseers not to interfere.

"Where such guardian of the poor shall be appointed as aforesaid, neither the churchwardens nor overseers of the poor shall interfere or intermeddle in the care and management of the poor, but shall continue to have and be invested with the same powers of making and collecting poor's rates as they have at present, and shall be subject to the like penalties for neglect or misbehaviour in making and collecting such rates as they were at the time of passing this act."

Penalty for absence from monthly meetings.

By sect. 26, "If the guardian for any parish, township, or place, which shall adopt the said provision as aforesaid, shall not attend each monthly meeting hereby directed to be holden, or send some substantial inhabitant of such parish, township, or place, to attend and answer the payments for him, in case he shall be prevented by sickness or other unavoidable accident from attending in person, the guardian for every such parish, township, and place, making such default, shall, for every such neglect, forfeit a sum not exceeding five pounds, nor less than forty shillings."

Officers, how long to continue.

By sect. 14, "The offices of guardian, governor, visitor, or treasurer, to which any person shall be appointed under the authority of this act, shall determine in *Easter* week next after the respective persons shall be appointed thereto, on the day upon which the public meeting for such parish, township, or place, shall be held there, when the persons who, according to this act, are qualified and have a right to recommend another person to the justices, to be appointed to such office, shall either agree with the persons who held the same to continue in such office, or shall proceed to recommend others, in the manner hereinbefore directed, as if such person had died."

Vacancies, how to be filled up.

Sect. 13. "That when and as often as any vacancy shall happen in any of the offices aforesaid by death, resignation, or removal, meetings shall be called, and recommendations offered to the justices in manner aforesaid; and they shall proceed, so soon as conveniently may be, in the manner before directed, to appoint a fit and proper successor to the person so dying, declining to act, or so removed as aforesaid."

Corporate body.

The visitor and guardian are, for certain purposes, incorporated. s. 21.

5. Overseers of the Poor.

5. *Overseers.*

The more ancient acts.

One of the earliest enactments requiring any public officer to collect moneys for the use of the poor was the 27 Hen. VIII. c. 25. By 5 & 6 Ed. VI. c. 2, the minister and churchwardens were annually to appoint *two able persons or more* to be *gatherers* and *collectors* of *alms* for the poor. By 5 Eliz. c. 3, the *parishioners* were to choose these collectors, and by 14 Eliz. c. 5, the appointment was to be made by the *justices*, who were also to appoint *overseers*. And the 18 Eliz. c. 3, is to the like effect. By 39 Eliz. c. 3, the *churchwardens* of every parish, and *four substantial householders*, were to be nominated yearly in Easter week by two justices,

(*a*) The overseers and not the guardians are the proper persons to bind out apprentices. *R.* v. *Lutterworth*, *post*, 36.

5. *Overseers.*

and called *overseers of the poor*. Next followed the important statute of 43 Eliz. c. 2, which enacts, s. 1, "That the churchwardens of every parish and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same parish and parishes, to be nominated yearly in Easter week, or (*a*) within one month after Easter, (now by 54 Geo. III. c. 91, on 25th March, or within fourteen days after) under the hand and seal of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the same parish or division where the same parish doth lie, *shall be called overseers of the poor of the same parish;* and they, or the greater part of them, shall take order, from time to time, by and with the consent of two or more such justices of peace as is aforesaid, for setting to work the children of all such whose parents shall not, by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children; and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary or daily trade of life to get their living by."

43 Eliz. c. 2.

Who shall be overseers.

(*a*) 59 G. III. c. 12.

Duties.

In some parishes, however, there is no churchwarden, and by 17 Geo. II. c. 18, s. 15, the overseers are empowered to execute all the authorities given to the churchwardens and overseers.

Where no churchwarden.

1. The Place for which Overseers are to be appointed.

1st. As to place for which overseers are to be appointed.

The statute merely related in terms to *parishes* only, but the system was extended to *townships* and *vills* parochial and extra-parochial, by the 13 & 14 Car. II. c. 12, s. 21, which *recites* that "whereas the inhabitants of the counties of *Lancashire*, *Cheshire*, *Derbyshire*, *Yorkshire*, *Northumberland*, the Bishopric of *Durham*, *Cumberland*, *Westmoreland*, and many other counties in *England* and *Wales*, by reason of the largeness of the parishes within the same, have not nor cannot reap the benefit of the act of parliament made in the three-and-fortieth year of the reign of the late Queen *Elizabeth* for relief of the poor;" and enacts, "That all and every the poor, needy, impotent, and lame person or persons within every township or village within the several counties aforesaid, shall, from and after the passing of this act, be maintained, kept, provided for and set on work, within the several and respective *townships* and *villages* wherein he, she, or they shall inhabit, or wherein he, she, or they was or were last lawfully settled, according to the intent and meaning of this act; and that there shall be yearly chosen and appointed, according to the rules and directions in the said act of the three-and-fortieth year of Queen *Elizabeth* mentioned, two or more overseers of the poor within every of the said *townships* or *villages*, who shall from time to time do, perform, and execute all and every the acts, powers, and authorities for the necessary relief of the poor within said township or village, and shall lose, forfeit, and suffer all such pains and penalties for non-performance thereof, as is limited, mentioned, and appointed in and by the said in part recited act."

What is a Parish, Township, or Vill.

There may be parish by reputation.

"A *parish* is that circuit of ground which is committed to the charge of one parson or vicar, or other minister having cure of souls therein." (1 *Bla. Com.* 3.) This, though not a very popular definition, may suffice for the present purpose. However, if a district were a parish by reputation at the passing of the 43 Eliz., and has so continued ever since, it is sufficient under this act, although it may not be a parish in the precise sense of the above definition, but the assumption of that character at any period subsequent to that time, unless it be by express act of parliament, will not constitute it a parish within the meaning of the poor laws. (See the cases last cited, and *Dean* v. *Linton*, 2 *Salk.* 487.) A special verdict found that the parish of H. was an ancient rectory and parish, that the village of S. is an ancient village and parcel of the rectory of H., that from the time of Henry the Sixth, there had been a church in the village of S. which during all the said time had been used and reputed as a parish; that the inhabit-

A parish may be such by reputation.

5. *Overseers. What is a Parish, Township, or Vill.*

ants of S. had all parochial rates and churchwardens. The Court were of opinion that S. was a parish, for being found that it was a church in the time of Henry the Sixth, and that it then was, and ever since had been, reputed a parish, and not in the negative that it was not a parish before, it may be intended to be a parish before; and although not so intended, yet being found that it was a church then and churchwardens there, it is a parish within the statute, though only a reputative parish, and no churchwardens of H. are churchwardens of S. (*Hinton* v. *Pawle*, *Cro. Car.* 92. 2 *Bl. Rep.* 246.) In *Nicholas* v. *Walker*, *Cro. Car.* 394, 4 *Mod.* 185, the Court came to a similar conclusion as to the village of T. parcel of the parish of H. The verdict found that there was not any legal act to sever the vill from the parish, that the tithes were paid to the parson of H. who used to find a curate for T., and there is no parson at T., yet, as before and at the time of 43 Eliz., the vill was reputed to be a parish, and had its own constables, churchwardens, "et supravisores pauperum," and distinct rates, never contributing to the parish church, that was held to be a parish. But the immemorial exercise of some of the rights of a parish, as making rates and having a chapel of its own, will not make a distinct parish without all other parochial rites. (*Rudd* v. *Foster*, 4 *Mod.* 157; 1 *Bott*, 45.)

Overseers cannot be appointed for a *Precinct.*

In *Rex* v. *Severn & Arnold*, *Say.* 278; 1 *Bott*, 6, two persons were appointed overseers of the poor within the *precincts* of the *Tower, otherwise called the parish of St. Peter ad vincula. Denison* J., delivered the resolution of the Court. This is not a good appointment under the 43 Eliz. c. 2, which requires them to be appointed within a *parish;* neither is it good within the 13 and 14 Car. II. c. 12, which says, that there shall be yearly appointed two or more overseers within every *township* and *village* respectively. *Precinct* is a word of ambiguous signification; it is not a boundary of any parish or vill; it may be more than a parish, or may be less. If it were a parish or vill by *reputation*, it might have been good (*Cro. Car.* 92, 394); but the Court cannot intend this precinct to be a vill, and the words of the statute ought to be pursued. Neither will the words *otherwise called the parish of St. Peter ad vincula* aid the want of this in the appointment; for in all constructions of *alias dict.* the words that go before the *alias dict.* must be presumed to be true; as in an indictment, the addition of the party not coming till after the *alias dict.* will vitiate the indictment, for what precedes the *alias dict.* is the true and proper appellation. (3 *Bulst.* 296.) If in this case the *alias dict.* had come after the parish of *St. Peter*, it would have done. And the appointment was quashed.

Parish or vill by reputation may be good.

But the township or vill may be extra-parochial.

Rex v. *Rufford*, 1 *Stra.* 512; 1 *Bott*, 47. In the vill of *Rufford* there are divers substantial freeholders able to contribute to the maintenance of the poor, and there are no churchwardens or overseers to make a rate, and the poor are unprovided for. The vill is part of no parish, but time out of mind has been extra-parochial, without church, chapel, or parochial rights, and there never have been any overseers of the poor. By the Court: "The powers given by the 43 Eliz., to be executed in *parishes*, were, by the 13 and 14 Car. II. c. 12, extended to all *townships and villages*, whether parochial or extra-parochial, and consequently overseers might be appointed in this case."

Island of Fowlness.

The island of Fowlness in the county of Essex, which is no parish, but the lands are situate in divers parishes, is made a parish for this purpose by 18 sect. of 43 Eliz. c. 2.

Whatever may be the distinction generally between a *town* and a *village*, the words vill, village, and township, are considered as denoting the same topographical division for the purposes of the poor laws; and a place so called may be such either in strictness or by reputation; but it must have been a vill in one or other of these modes, at least as early as the 13 and 14 Car. II. which, as the 43 Eliz. c. 2, has been decided to embrace only parishes *in esse* when that statute was passed, must be taken to embrace only such vills as had an existence in the year 1662, the date of the 13 and 14 Car. II. (*Vide Jacob's Law Dictionary*, tit. "*Parish;*" 1 *Bla. Com.* 114.)

Rex v. *Denham*, *Burr.* 37; *Bott*, 48, *S. C.* Lord *Hardwicke*, C. J., observes, "It is certainly very hard to define exactly *what* is a township or a village; it must be left to the judgment of the Court upon the circumstances of the case stated." Lord *Coke* says, "*Villa est ex pluribus mansionibus vicinata, et collata ex pluribus vicinis.*" (1 *Inst.* 115 *b.*) But in this case, as there were only two houses, that cannot amount to the notion of a town or village, and that if it had been formerly a town or village, if the houses were in fact decayed and gone, it would cease to be a town or village. *Lee*, J., observed, "that the notion of a village, according to the ancient law, is a tithing consisting of ten families; that, according to the modern notion, *it is a place that has a constable;* that it ought to have at least the reputation of a town or vill; and that a vill must at least mean more than two houses."

5. *Overseers. What is a Parish, Township, or Vill.*

What is or is not a township or vill.

Rex v. *Standard Hill*, 4 *Maule & Sel.* 378. Overseers were appointed for the township of Standard Hill, which was a piece of ground within the precincts of the castle of Nottingham. It was sold in 1807, and several dwelling-houses built upon it. The castle and precincts were extra-parochial, and "no part of it ever reputed to be a township or vill, or assessed to the poor, or had a constable," except some who were appointed in 1808, without the steward's knowledge, and who in 1814 gave orders that the practice should be discontinued, which was done. On a motion to quash the appointment, it was urged that as there were seventeen houses, and some in progress, and 140 inhabitants, the Court should draw the conclusion that this was a vill. Lord *Ellenborough:* "The immediate consequence of holding this to be a vill, for which overseers ought to be appointed, would be that overseers must be appointed for all the inns of court, and every collegiate or ecclesiastical establishment, which would work a great alteration in the laws relating to this subject. This consideration makes me unwilling to pass the ancient limits, unless warranted by positive affidavit, and therefore, until I find it stated that this is a vill, I shall defer coming to such a conclusion which may lead to so extensive a consequence." Order quashed.

Houses recently built within the precincts of a castle not a vill.

Wherever there is a constable, there is a township; there may be a constable for a larger district than a township, but not for a smaller. (*Rex* v. *Horton*, *per Buller*, J.; 1 *Term Rep.* 376.) "It is true one parish may contain three vills; the parish of *A.* may contain the vills of *A. B.* and *C.* that is, when there are district constables in every one of them; but if the constable of *A.* run through the whole, then is the whole but one vill in law; or where there is a tithingman, there may be a vill; but if the constable run through the tithing, then it is all one vill." *Per Hale*, C. J., in a case where it was held that a fine of lands in *A.* would pass lands in *B.*, a tithingman being appointed for *B.*, but the constable exercising authority in *B.* (*Waldron* v. *Roscarrior*, 1 *Mod.* 78.)

Where there is a *constable*, it is a vill.

Rex v. *Grafton* (*Burr. S. C.* 101; 2 *Str.* 1071; 1 *Bott*, 49) the manor of *Grafton* is an extra-parochial place, once consisting of a capital mansion-house and three keepers' lodges in the park, now disparked, and converted into five dwelling-houses and farms, occupied by five several tenants, but never having had any overseers of the poor or other officers, till the overseer now appointed for the purpose of the present removal, was adjudged by the justices to be a township or village within the statute into which a removal might be made. A rule to quash the order was granted, and afterwards made absolute without defence.

Five dwelling-houses and farm held not a township or vill.

Rex v. *Showler*, 3 *Burr.* 1391; 1 *Bl. Rep.* 419. *Showler* and *Atter* were appointed overseers of the township or village of *Haugh*. The sessions adjudge *Haugh* to be a village or township, and confirm the appointment, and state specially that *Haugh* consists of a capital messuage, in which *Showler* and his family dwells; and of two small ancient cottages; and of one other small cottage lately built (all the cottages are let, with the said messuage and the farm thereunto belonging, to *Showler*); and of another tenement, part of the said messuage; and all of them inhabited by families; and that one of the cottages is inhabited by *Atter*, who is a day-labourer,

One capital messuage and labourer's cottages not a vill.

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and his family; and another of the said cottages is inhabited by another day-labourer; and another of the said cottages is inhabited by a shepherd; and the tenement, part of the capital messuage, is inhabited by a poor widow and her children; all which occupiers of the said cottages, and of the said tenement, part of the capital messuage, are under-tenants to *Showler*. The Court were unanimously of opinion that the appointment ought to be discharged. Lord *Mansfield*, C. J., observed, "that by this method a place might be made into a village, which in fact was not so; and the inhabitants of it might, by this contrivance, withdraw themselves from contributing towards the support of the poor of their parish."

The site of a cathedral and its area, do not constitute a vill, though there be many houses, &c., upon it.

In *Rex* v. *Justices of Peterborough*, (*Cald.* 238; 1 *Bott*, 59;) a rule for a *mandamus* to appoint overseers for the minster in *Peterborough*, it appeared that it was an extra-parochial place, and always had a number of houses belonging to it; it contained upwards of sixty acres, upon which were twenty-five dwelling-houses at least, besides poor houses; that these houses were inhabited, except in the instance of the bishop and three of the prebendal houses, altogether by laymen or strangers to the cathedral, and mostly persons of fortune; many poor persons had acquired settlements therein; that they had a distinct place for burials, marriages, and divine worship; that the poor had been supported by the Chapter out of some fund belonging to them; "that it was not a township or vill, or ever reputed so to be;" that there never was any constable or other civil officer appointed for the said precinct, or any overseer of the poor, or churchwarden; nor had the inhabitants ever contributed to the relief of the poor within the precinct, or been called upon so to do. Lord *Mansfield*, "This space comprehends no more than the site of the cathedral and the area round it, and consequently was, in former times, within the sanctuary, and, as such, sacred and inviolable as the church itself. In modern times, to be sure, there is no such thing as sanctuary, but these places have throughout all ages, without interruption, enjoyed those immunities, as *Westminster Abbey* now does, and other places of the like nature. The ancient inns of court, though not exactly upon this principle, have also, at all times, been privileged; and a similar exemption was not questioned in *Rex* v. *Gardner*, *Cowp.* 79, with respect to that part of the court and garden ground of *Catherine Hall* in the university of *Cambridge*, which lay within the old and extra-parochial part of that foundation. Would you say that *Christchurch*, in *Oxford*, is a vill? (*See* 8 *Mod.* 40.) I am not satisfied that this place is a vill, and the party applying do not even call it so." *Buller*, J., "As the party applying for a *mandamus* does not state, as a fact, that this place ever had a civil officer, or was ever reputed a vill (which, where the facts of the case do not, upon some clear principle of law, show the place to be of that denomination, the court has holden to be indispensably necessary for the purpose of founding an application for a *mandamus*), this case falls within the case cited." Rule discharged.

But vill by reputation is sufficient.

A vill by reputation is sufficient; and if so returned by the sessions, it is decisive (*Rex* v. *Eyford*, 1 *Bott*, 60); but without such finding, an acknowledgment by the tenant of the lands of his liability to maintain the poor by granting a certificate, and his returns *as constable* are not sufficient. *Ib.*

Vill and hamlet are synonymous terms.

An order, appointing overseers of the "*hamlet*" of *B.*, in the parish of *C.*, is good; for it shall be intended that the place was a vill, unless it be stated to be otherwise; for "vill" and "hamlet" are, in common acceptation, used as synonymous terms. (*Rex* v. *Morris*, 4 *T. R.* 550.)

If the sessions find as a fact that the place is a vill, it is conclusive.

Rex v. *Ronton Abbey*, 2 *T. R.* 207. This was a case sent up by the sessions; there were only three houses, and no constable or tithing-man, nor, it seems, any church or chapel, and this passed as a vill; but there had been orders of removal to it executed, and some evidence was given of overseers and other officers having formerly been appointed; upon which it was expressly found by the sessions to be a vill by reputation, which precluded all question before the Court above whether it were so or not; so that this case proves not that three houses alone will make a vill, but

only that if a place be *found by the sessions*, upon the evidence there produced, to be a vill by reputation, it may be taken to be such, though there be but three houses remaining, and no other characterising circumstances.

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An extra-parochial district may become a township by act of parliament, but in that case it cannot be treated for the purposes of settlement, &c., as having been of that denomination before the date of its creation under the act, up to which period it must be regarded as if it had been wholly uninhabited. *Rex* v. *Oakmere*, 5 *B. & A.* 775; 1 *D. & R.* 427.

Extra-parochial places become a township.

Construction of Stat. 13 & 14 *Car. II. c.* 12.

Construction of 13 & 14 Car. 2, c. 12.

In *Dolting* v. *Stokelane* (*Fol.* 98; *Fort.* 219; 1 *Bott*, 46), it was held by the whole Court, that by reason of the words "*and many other counties in* England *and* Wales," the act is general, and extends to other counties than those named in the act, otherwise it would not extend to one county in *Wales*. And in *Clifton* v. *Churcham*, 1 *Nol. P. L.* 10, *Lee*, C. J., said, "that so it was determined, upon great debate and consideration, in *Dolting* v. *Stokelane*, which case hath been ever since adhered to." (*Andr.* 314).

This statute extends to all counties. (*a*)

The *largeness* of the parishes is expressly put forward as the ground on which, in particular parishes, the benefit of the statute of Elizabeth cannot be enjoyed. A parish cannot be legally divided for the relief of the poor, unless it *cannot* otherwise have the *full benefit* of that act. *Bastock* v. *Ridgway*, 6 *B. & C.* 496; 9 *D. & R.* 585, S. C.

Dividing parishes to secure the benefit of 43 Eliz.

The question may be properly tried in a feigned issue before a jury. *Lane* v. *Cobham*, 7 *East*, 1; *Rex* v. *Newell*, 4 *T. R.* 266. Where the question is raised before the sessions, they must find the fact of the inability, and not state the circumstances for the Court to form a judgment. *R.* v. *Watson*, 7 *East*, 214.

Question, how tried.

Speaking of the words in the statute of Charles, *Buller*, J., says, "The phrase, that a parish *cannot* reap the benefit of that statute, does not mean that it is *absolutely impossible* for them to maintain their own poor as a parish, for that would not be the case, even if the parish were 100 miles in circumference; but that it is *inconvenient* for them so to do." *Rex* v. *Leigh*, 3 *T. R.* 748. But the inconvenience must be real, and a mere trifling advantage which it is supposed may arise from a subdivision, will not warrant that proceeding. But where districts have maintained their poor respectively from distinct funds, even from a period subsequent to the 13 & 14 Car. II., either on account of the increase of population, or other changes having made it positively and really inconvenient to continue the union, the court of *King's Bench*, upon a knowledge of the facts, has directed a separation; there it is taken as decided that the parish is incapable of reaping the benefit of the 43 Eliz., and the townships or districts become entitled to separate overseers; thus

Extent of the benefit.

In *Rex* v. *Newell* 4 *T. R.* 266, the hamlet was situated without the borough, had a separate constable and churchwarden, but no other church but the one common to the parish at large. The people of the hamlet attended the parish meetings, but not *vice versâ*. From 1648 the hamlet had separate overseers, with separate accounts. The parish had one churchwarden and three overseers. Since 1709 certificates have been granted by the hamlet, but not to the parish. Orders of removal have been made to the hamlet. Each made a separate rate, but the money when raised was blended together in one joint fund, though applied in certain proportions, and the sessions did not find it as a fact that the parish could not reap the benefit of the 43 Eliz.; it was held that the districts were not entitled to maintain their own poor separately and distinctly, though, since the year 1648, they have constantly had, in the whole, more than four overseers, and though the hamlet part has immemorially had a constable of its own. Lord *Kenyon* in the course of his judgment said,

More than four overseers not decisive of the inability.

(*a*) The contrary had been previously held. *Skellington* v. *Norton*, 2 *Lev.* 142.

5. *Overseers.*

"The only circumstance that can bear the semblance of an argument against this decision is, that these districts have had more than four overseers; but that appeared to be the case in several other parishes, on an inquiry directed to be made by Lord *Mansfield*, in *Rex* v. *Loxdale*, 1 *Burr.* 445. So that though it may be a very material ingredient in these cases, it is not a decisive one."

Proof of this inability is furnished generally by the fact of separate overseers, separate rates, and separate maintenance of the poor. *R.* v. *Justices of Middlesex*, *Sayer* 148; 1 *Bott*, 51.

Inability of a parish to have the benefit of 43 Eliz the foundation of the right to a division.

Peart v. *Westgarth*, 3 *Burr.* 1610. The parish of Stanhope from 43 Eliz. to 9 Geo. I., (1723), had one joint appointment of overseers, and during all that time the poor of the parish were jointly relieved and maintained by entire and general rates upon the whole parish. During that time, there were four churchwardens and four overseers, which four overseers were nominated one out of each of the four quarters in the parish, called *F.* quarter, *N.* quarter, *P.* quarter, and *S.* quarter; and in each quarter there was one churchwarden and one of the overseers who collected the poor's rates in the quarter wherein they respectively resided; but the money was levied under one entire assessment upon the whole parish, and carried to one general fund, and applied to the joint relief of all the poor of the parish. The parish is twenty miles in length, and eight miles in breadth. The *P.* quarter is one distinct *constablery*, the *F.* quarter one, and the *S.* quarter one, and the *N.* quarter consists of three constableries, but these three constableries compose one quarter only. In the 9 Geo. I., at the quarter sessions it was ordered "that the several townships and constableries of *S.*, *F.*, *N.*, *E.*, and *W.*, should separately maintain their own poor." From that time there have been separate appointments of overseers for each of the four quarters, and each has maintained its own poor separately, excepting that, about twelve years ago, two townships, called *B.* and *F.*, within *N.* quarter, separated themselves from the rest of that quarter, and have ever since had separate overseers and maintained their own poor separately. Orders of removal had from time to time been made since 1729 to 1761, for the removal of poor persons from one of the quarters to another, and appeals made by one quarter against another.—Lord *Mansfield* said he had no doubt upon the first argument. The policy of 13 & 14 Car. II. was mistaken; it went upon a wrong principle. The divisions ought rather to be enlarged than diminished (*a*). As to the question itself, consider, 1st, what was done; 2dly, upon what foundation. It ought to appear "that there was an inability in the parish to have the benefit of the act of 43 Eliz." Now here no such inability appears, but quite the contrary for a great number of years (*b*), so that there is no foundation for the division. The acquiescence under it was upon a false notion, "that the sessions had such a power," which they had not. And there is no inconvenience in setting right this wrong usage, which has obtained for forty years. In the case of *Kentish Town*, all the judges held "that the foundation of such a division of a parish must be an inability of having the benefit of 43 Eliz." Here the foundation is wanting. *Wilmot*, J., also thought the larger the circle the better: therefore it would be more proper to enlarge than to lessen the divisions (*a*). The sessions do not seem to have had any sort of power to make such an order, therefore their order is a mere nullity. It was not made upon an appeal; but upon a motion made on behalf of some of the quarters and opposed by another. The subsequent usage for forty years cannot vary the right. For we cannot *presume* "that *omnia ritè acta sunt;*" because we *see* that it was founded

Long practice even with an order of sessions insufficient.

(*a*) "I know that different opinions have at different times prevailed as to the better policy of providing for the poor in larger or smaller districts; but I had rather guide myself by the words of the act of parliament, and by the fact, than by any fluctuating policy that sometimes leans one way and sometimes another." Lord *Ellenborough*. *R.* v. *Watson*, 7 *East*, 214.

(*b*) See also on same point, *R.* v. *Watson*, *supra*, n.

upon this order of sessions, and it does not appear that the parish is so large that it cannot have the benefit of 43 Eliz. Therefore they ought to appoint running overseers over the whole parish.

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The same principle was upheld in *Rex* v. *Uttoxeter*, *Doug.* 246, where there had been separate overseers from 1643 to 1703, but the townships had jointly relieved their poor. The separate appointments had been confirmed by the sessions.

Nor is a parish entitled to a separation, merely because its different districts lie each in different jurisdictions, or even counties. See *Lane* v. *Cobham*, *infra*.

Situate in two counties

Though it appears to be the policy of the law to discourage the division of parishes into separate districts, and even to promote their reunion, yet where the district is extra-parochial, or being part of a parish, it has maintained its own poor on a distinct account, "time out of mind," or from a more modern date, if change of circumstances required the separation, it has a clear right to a distinct set of overseers.

Agreement by districts at the passing 13 & 14 Car. II to separate, held proof that the parish could not reap full benefit of 43 Eliz.

Rex v. *Walsall*, 2 *B. & A.* 157. The two districts of which a parish consisted, had, from the 43 Eliz. down to the 13 & 14 Car. II., maintained their poor jointly, and, at the time of the passing of the latter act, agreed to separate in the maintenance of their poor, and that separate overseers should be appointed, upon condition that the rateable property in the parish, whether situated in the one or the other district, should be rated where the occupiers resided. In consequence of that agreement, they had ever since uniformly maintained their own poor separately, and had had separate overseers, constables, &c. The Court held, that this clearly showed that the parish, at the time of the agreement, could not reap the full benefit of the statute of Eliz., and that therefore the separation of the two districts was valid, and that an appointment of overseers for the whole parish was now bad. It was held also, that the agreement consisted of two distinct parts, and that the invalidity of the latter part, as to rating property not situated within the district rated, did not affect the question on the former part. *Bayley*, J., observed, that *Rex* v. *Palmer*, 8 *East*, 416, only decided that where a parish has, with the consent of all its districts, re-united itself, that re-union is valid in law; but that an agreement to alter a part would not affect the other. The Court ought not, unless on the plainest grounds, to disturb a practice which had prevailed so long.

Secus, an agreement having no reference to the benefit of the statute of Eliz.

In *Bastock* v. *Ridgway*, 6 *B. & Cres.* 494; 9 *D. & R.* 585, S. C., Lord *Tenterden* remarked, "that in *R.* v. *Walsall* the separation took place very soon after 13 & 14 Car. II. Now there could be no legal separation between 43 Eliz. and 13 & 14 Car. II. But when we find that (as soon as an act of parliament makes a separation legal, in a case where the parish cannot have the benefit of the statute of Eliz.) such a separation actually takes place, that is abundant evidence that at and even before that time the parish could not have the benefit of the statute. But this inference by no means arises where (as in this case) the agreement was made in 1753." His lordship also observed, "that he did not mean to say, because the largeness of the parish is expressly mentioned in the statute, that it is the only ground by which the benefit of the statute of Eliz. is not to be had, for that benefit might be lost by the superabundant population in a district not exceedingly large." *Bayley*, J. "It does not appear by that agreement that it was in consequence of the largeness of the parish that they could not receive the benefit of that statute. In 1690 the poor rate was an entire fund, and the agreement shows that the reason for separation was private disputes, and the principal one about some donations." The Court held that the townships were not legally divided.

Largeness of parish not the only criterion

Districts separated at the time of 13 & 14 Car. II. may re unite, though in two counties.

Lane v. *Cobham*, 7 *East*, 1; and *R.* v. *Palmer*, 8 *East*, 416. The parish of *Wokingham* is situated in two counties, part called the liberty of *Wilts*, and part the liberty of *Berks*. It appeared that at the time of the 13 & 14 Car. II. and down to the year 1773, separate overseers had been appointed for each liberty, and separate rates. That in 1773, the liberties agreed to unite, and had been united ever since. Upon this evidence, the jury found

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that the parish could have the benefit of the statute of Eliz. And on a mandamus to review this decision, it was held that the districts might legally re-unite, and that in the exercise of their discretion they would not interfere with the management of the poor which had certainly prevailed for thirty-two years.

Of re-union of districts.

The re-union by agreement of districts or townships to the collective system of 43 Eliz. is equally valid, whether the townships at the date of the statute of Car. II., maintained their poor jointly, continued so united until more than a century afterwards, and then divided; or whether from the date of the statute Car. II. until their agreement to re-unite, they have been constantly separate. The Court, therefore, will not disturb by appointment of separate overseers, a re-union thus effected, after a duration of thirty years. Nor probably, though much more recent. On the other hand, though there should be affidavits on behalf of one or more townships, that the parish might now, by re-union, reap the benefit of 43 Eliz., it does not seem likely that the Court would grant a mandamus against the wish of any other of the townships, to appoint overseers for the whole parish collectively. *Rex* v. *Leigh*, 3 *T. R.* 746; 1 *Bott*, 58.

Separate appointments of overseers, with separate funds, evidence of such inability.

Rex v. *Sir Watts Horton*, 1 *T. R.* 374. Where one or more, but not all, of eight several and distinct townships composing a parish, have obtained a separate appointment by mandamus, or have been accustomed to maintain their poor from separate funds, under circumstances authorising such separation, and the remaining townships have maintained their poor jointly, every one of them has a right to a separate appointment also, and the Court of King's Bench will grant a mandamus for the purpose; for the circumstances prove the inability of the parish to maintain its poor as a parish; that is, collectively out of one fund.

A parish is not within 8 of Charles, because parts of it are in different counties.

R. v. *Salop*, 3 *B. & Ad.* 910. The parish of Hales Owen consisted of three townships in the county of Worcester, and certain townships and districts in the county of Salop. The townships in Worcester had always had their own overseers and relieved their own poor, but four overseers had been appointed for the division of the parish lying in Salop, and rates collected and applied for the relief of the poor of that division indiscriminately. On application by a township in the latter division for a mandamus to the justices of Salop to appoint overseers for that township, pursuant to 13 & 14 Car. II. c. 12, s. 21, on the ground that the parish had not enjoyed and could not enjoy the benefit of the statute 43 Eliz. c. 2, facts being also stated to show the expediency of a separate appointment: held, that the division of the parish in Worcestershire and Salop could not be considered as distinct parishes. Lord *Tenterden*, C. J.—Looking at the parish of Hales Owen as a whole, it is clear there never, within memory, has been one set of overseers for the parish. There has been one set for the townships in Worcestershire, and one for the part in Shropshire. Then the parties applying for the rule relied upon *Rex* v. *Sir Watts Horton*, which has been followed up in principle by several other cases. On the other hand, a case in *Sir T. Raymond*, p. 476, was referred to in the course of the argument, where a parish was situate partly in London and partly in Middlesex, each part having distinct officers, making distinct rates, and passing distinct accounts before the justices of the respective counties, and the question being as to the liability to maintain children who were left chargeable to one of the divisions, it was held that each division must be looked upon as a several parish. We have looked into that case, and we think it is no authority to show that in every case in which a parish lies in two counties, each part may be considered as a separate parish. The case happened after the statute of Charles, and probably was no more than an application of the provisions of that statute to each part as a distinct township; at all events there is nothing in it calculated to raise any reasonable doubt on the application of *Rex* v. *Horton* to the case now before the Court. Rule absolute (*a*).

(*a*) Before this decision, some paupers had been removed to the parish of Hales Owen, and afterwards they were removed to the township of Oldham; but the Court

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Reg. v. *Justices of Worcestershire*, 3 *P.* & *D.* 465 ; 12 *A.* & *E.* 28, S. P. On a rule for a mandamus to appoint overseers for the township of Bentley Pauncefoot, it appeared that the parish of Tardebigg contained four townships, one called Tutnall, in the county of Warwick, the other three, viz. Redditch, Webheath, and Bentley Pauncefoot, in the county of Worcester. Two churchwardens act for the whole parish, and the parish church stands partly in Warwickshire, partly in Worcestershire. Tutnall had from time immemorial been considered a separate township from the other parts of the parish, and had its own overseers, collector of taxes, surveyors of highways, and constables. It maintained its own poor, had its own workhouse, and orders of removal have been made to the Worcestershire part of the parish. Up to 1832 the other three hamlets had each an overseer, who collected the rates in his own district, but the accounts were afterwards entered in one book, and passed jointly, and the poor of the three hamlets were maintained jointly at a workhouse in Webheath. Since 1834, four overseers had been appointed, viz. two for Redditch, and one for each of the other hamlets. A constable has always been appointed for Bentley Pauncefoot. For all other purposes, except contributing jointly to the relief of the poor and the repairs of the church, the hamlet of Bentley Pauncefoot is perfectly distinct from and independent of the other parts of the parish. The affidavits in answer stated that Tutnall and the parish of Tardebigg, in the county of Worcester, joined part of the union of Bromsgrove, and were respectively assessed at a certain quota, ascertained to be the annual average expense of the poor in each place. They denied that any overseer had been appointed for Bentley Pauncefoot since 1830, and stated that the overseers for Redditch and Webheath had done the overseers' duty in Bentley since that year. Lord *Denman*, C. J.—The cases of *Rex* v. *Horton* (p. 18), and *Rex* v. *Salop* (p. 18), are so expressly in point with the present, that we are bound by their authority. The only ground on which we should feel ourselves at liberty to disregard their authority is, that the two decisions in *Cro. Car.* (*b*), in which a contrary conclusion is supposed to have been arrived at, were not then brought before the Court. But these two cases are not in fact contradictory to the later ones, for they turn upon the fact of the jury having found the districts in question to have been reputed parishes at the time of the passing the 43 Eliz. But here it is unquestioned that Tutnall is only a township of the parish of Tardebigg. It is then contended that the policy of the legislature has changed since the 13 & 14 Car. II., and that now it is inexpedient to establish small districts for the relief and maintenance of the poor. But the Court has long emancipated itself from the notion that it is to be guided in the construction of a statute by any view of supposed policy. We are bound to expound the law as we find it, and any change to be made in it must proceed from the legislature. No doubt, under the statute of Charles, it may be sometimes a matter of discretion for the Court to enforce its provision by mandamus or not. But as two cases have been decided putting a clear construction upon that statute, under circumstances similar to the present, we must act upon them. *Littledale*, J.—This case comes so near *Rex* v. *Horton*, and *Rex* v. *Salop*, that I am unable to distinguish it. It is true that the cases in *Cro. Car.* establish that the districts maintaining their own poor at the time of passing the 43 Eliz. were to be considered as reputed parishes ; but *Rudd* v. *Martin*, 2 *Salk.* 501, shows, that to be a reputed parish within that statute, it must have had a parochial chapel at the time that Act passed. *Patteson*, J.—I am unable to distinguish this case from *Rex* v. *Salop*. With regard to the New Poor Law Act, there is no doubt that it is utterly at variance with the 13 & 14 Car. II. as to the relief of the poor in small districts ; but it does not in any way alter the character of an overseer as to several of the functions he has to discharge. *Williams*, J.—No case has been oftener

Policy as to large and small districts for maintenance of poor.

thought that the township was not included by the order.—*Rex* v. *Oldbury*, 4 *A.* & *E.*, and see *Rex* v. *Tipton*, *post*.

(*b*) *Nicholls* v. *Walker*, Cro. Car. 394 ; *Hilton* v. *Pawle*, Cro. Car. 92.

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cited and acted on in parish law than *Rex* v. *Horton*, and it binds us now.

Pensham not distinct from S. Andrews, Pershore.

Price v. *Quarrell*, 12 *A. & E.* 784. Two neighbouring divisions of the parish of St. Andrew's, Pershore, used the same parish church, situate in one of the divisions; but each had its own overseers, collectors of poor and county rates, surveyors of highways, and constable. Poor rates were made for the whole district, consisting of the two divisions, but were raised by each division separately; and one division (the hamlet of Pensham) always contributed in the proportion of two-thirds, and the other (St. Andrew's) of one-third. The two divisions had, as far back as could be traced, relieved their poor jointly and indiscriminately; and they had for forty years had a joint workhouse. The residue of the parish consisted of five chapelries, each having its own chapel and parish officers, and maintaining its own poor. The Court held, that the five chapelries were independent districts for the maintenance of the poor; but that Pensham was not within s. 21 of stat. 13 & 14 Car. II. c. 12, the use of a joint workhouse and the raising a joint fund (though in different proportions) for the relief of the poor being decisive on this point.

59 Geo 3, c 95, "for confirming ancient separation of towns corporate from parishes, in regard to the maintenance of the poor."

The principle of these determinations accords with the 59 Geo. III. c. 95, respecting *towns corporate or franchises*, which, after reciting that various towns corporate or franchises situate within one or more parish or parishes, and not co-extensive with the said parish or parishes, have heretofore and for a long time past been separately assessed from the parish or parishes in which they are situate, for the relief of the poor, and overseers of the poor for such town or franchise have been appointed distinct and apart from the overseers of the poor appointed for such parish or parishes, and whereas such separate and distinct assessments and appointments of overseers have, in many cases, been made without sufficient authority, and yet, by reason of the long continuance of the said separation, the towns corporate or franchise cannot now be re-united to the parish or parishes in which they are situate, without manifest inconvenience and hardship. enacts, "That from and after the passing of this Act, all such separation of towns corporate or franchise, from the parish or parishes in which they are situate, together with the separate and distinct appointment of overseers of the poor, shall be deemed and taken to be lawful to all intents and purposes whatsoever, in the same manner as if the said separation or division had taken place under the authority of an Act made in the forty-third year of the reign of Queen Elizabeth, intituled 'An Act for the relief of the Poor:' provided always nevertheless, that nothing in this Act contained shall render legal or confirm any separation of a town corporate or franchise from the parish or parishes in which such town corporate or franchise is situate, in respect to the maintenance of the poor, or the appointment of overseers of the poor, in any case where it shall appear that such separation has commenced within sixty years before the passing of this Act."

Separation of towns from parishes, and distinct appointment of overseers lawful.

43 Eliz c. 2. But with respect to the poor, such separation must not have commenced within sixty years.

2. The number of Overseers.

2. What Number of Overseers may be Appointed.

Must be two and not exceed four, unless by special enactment.

By the express words of the statute there must be *four, three, or two* overseers, *exclusive of the churchwardens*. There must not be more than four, nor fewer than two, except where the parish is subdivided into townships, in which case each township may have four, three, or two overseers appointed. In some cases, particularly in larger towns, a greater latitude is given by some special statute; but no *usage* for a greater or smaller number than the 43 Eliz. prescribes will avail against the express terms of its enactment: and if more than four be appointed, the instrument is void as to every one of the persons appointed. *Rex* v. *Loxdale*, 1 *Bur.* 446; *Rex* v. *Morris*, 4 *T. R.* 550; *Rex* v. *Clifton*, 2 *East*, 168; *Rex* v. *All Saints, Derby*, 13 *East*, 143; *Rex* v. *Forrest*, 3 *T. R.* 38; *Rex* v. *Wymondham*, 6 *T. R.* 552.

A local act di-

Rex v. *Pinney*, 2 *B. & C.* 322; 3 *D. & R.* 578. By 47 Geo. III. s. 2, c. 111,

s. 92, it was enacted that the then overseers of Woolwich should continue to be overseers for the year 1807, and until two other overseers should be appointed, in the manner and at the time by law directed, to succeed them; and within one month of Easter, in every year, two persons, being substantial householders, should be appointed, in the manner by law directed, to be overseers. By an order, on the 25th March, 1823, four persons therein named were appointed overseers of Woolwich; and the sessions confirmed that order. A rule was obtained for quashing the order. *Abbot*, C. J.—"It is a general rule of construction, that affirmative words in a later statute do not repeal a former, unless there be something wholly inconsistent in the provisions of the two statutes. Lord C. B. *Comyns*, in his *Digest*, tit. '*Parliament*,' R. 25, lays it down that such affirmative words do not take away a former statute, unless they in sense contain a negative. Now the statute of Elizabeth directs that the overseers for parishes shall be four, three, or two substantial householders. The local act merely directs that the then overseers should continue in office to the end of the year, and until two others should be appointed, and that two others should be annually appointed. These words do not, in sense, contain a negative, nor is there any inconsistency between a provision authorising the appointment of four, three, or two overseers, and another directing the appointment of two. The latter statute requires absolutely that two shall be appointed, but it does not say that more than two shall not be appointed. That being so, I am of opinion that the provision of the statute of Elizabeth, as to the appointment of overseers, is not repealed by the local act, and that the order of justices was right." Rule discharged (*a*).

Number of Overseers.

rected that the then overseers of the parish of W. should continue to be overseers for the remainder of the current year, and until two others should be appointed, and that two overseers should be appointed annually: Held, that this act did not repeal the stat. 43 Eliz. c. 2, s. 1, and that an appointment of four overseers for the parish of W. was valid.

3. Who may be Appointed, and herein of Exemptions.

3. Who to be Appointed, &c.

By the statute "*substantial householders there*" are to be the overseers of the said parish, together with the churchwardens.

Churchwardens, it has been seen, were in effect overseers of the poor long before the 43 Eliz. c. 2. s. 1. And as the statute declares them to be such, and requires others to be *added to them* by the justices, they need no formal appointment, but are overseers *ipso facto*, by *becoming churchwardens*. And the ordinary is bound to swear in churchwardens elect, immediately upon their applying to be sworn in, notwithstanding an usage not to swear in until the first visitation after Easter. *Rex* v. *Middlesex*, 5 *Nev. & Man*, 494.

A churchwarden is *ipso facto* overseer.

To be sworn in immediately.

Rex v. *Marsh*, 6 *N. & M.* 668; 5 *A. & E.* 468. Where a parish is divided into four tithings, separately maintaining their own poor, and having separate overseers, and by custom the inhabitants of each tithing, at a general parish meeting, separately choose a churchwarden, and each of the churchwardens, though sworn in the usual form to the faithful execution of the office within his *parish*, acts only for the particular tithing for which he is chosen, except that all the four churchwardens unite in signing the annual presentment to the archdeacon, of the state of the repairs of the church, and other presentable matters;—each of such persons is a churchwarden for the whole parish. Therefore, service of a notice upon the churchwarden acting for one of such tithings, is sufficient compliance under 41 Geo. III. c. 109, s. 3, requiring service upon the churchwardens of the parish.

Churchwarden chosen for a tithing is the churchwarden of the parish.

Service on him is sufficient.

Semble, that a churchwarden continues in office until his successor is sworn in.

In office until successor sworn.

Rex v. *The Justices of Yorkshire, N. R.*, 2 *N. & P.* 103; 6 *A. & E.* 863. On a rule to quash an order of bastardy, it appeared that the application for the order was made in behalf of the inhabitants of the township of Egton. The notice was signed by the two overseers for the township. Egton is a perpetual curacy within the parish of Lyth, but it has its own church officers, called churchwardens, and who perform for the township

A chapelwarden of a township is not an overseer, so as to require his signature to a notice.

(*a*) See *Plowden*, 112, 113; and *Rex* v. *Burridge*, 3 *Peere, W.* 461.

3. *Who to be appointed, &c.*

all the duties usually executed by a churchwarden of a parish not divided into townships. Rates for the repair of the church are levied within the township, and marriages, baptisms, and funerals have always been performed in the church of Egton, but a small annual sum is contributed towards the repair of the parish church. Besides the two overseers of the township who had signed the notice, there was also an assistant-overseer; when the application was made to the sessions, it was objected that the notice was insufficient, as it was not signed by a majority of the churchwardens and overseers. Lord *Denman*.—Not only has a majority of the overseers signed this notice, but all of them have signed it. The statute of Elizabeth applied to parishes only. Then came the statute of Charles, which authorised the division of a parish where it was too large for the convenient management of the poor; but in that statute no reference is made either to churchwardens or chapelwardens. There are some subsequent statutes, from which it might be inferred that the legislature thought that churchwardens had been appointed for all places where there are overseers. But even supposing, from the language of subsequent acts, the legislature may have thought that a power had been given to the churchwardens of townships, that is quite insufficient to invest chapelwardens with the powers and authority of overseers. It would be a difficult matter in many cases to determine what the chapelry is of which the chapelwardens are to be overseers. It is infinitely more convenient to determine that the statute of Car. II. does not contemplate churchwardens of any township. This decision is not inconsistent with the judgment of *Bayley*, J. in *The King* v. *Nantwich*, 16 *East*, 228. In that case it was argued that it was necessary for the churchwardens of the parish at large to join. *Bayley*, J. there says, "the act probably meant, that if there were persons within a township exercising a similar function to that of churchwarden, they should join. But it seems incongruous to hold that it meant that the churchwardens of a parish were to concur in granting a township certificate, for then the churchwardens who are resident in township A., might have to certify that the pauper was settled in township B." That is not a decision that persons within a township, exercising a similar function to that of churchwardens, ought to join; but that it is not necessary for the churchwardens of the parish at large. However, it is quite clear that the observation, that the churchwardens of the township might be required to join, was unnecessary for the determination of the case. Another objection is, that the assistant-overseer has not signed the notice; but that is answered by saying we ought to see that there is an assistant-overseer, and to know what his powers are, before we can determine that his signature is necessary. *Littledale*, J.—Egton is not a parish, and the statute of Elizabeth speaks only of the churchwardens and overseers of a parish. The statute of Charles directs how overseers of any township are to be appointed, but it does not mention either church or chapel wardens. It is true that some acts of parliament speak of the churchwardens and overseers of the poor of any parish, township, or place, but those words may be construed to mean, the churchwardens and overseers of that parish, where there is a parish, and where there is a place maintaining its own poor, not a parish, the overseers of the poor of that place. We cannot say that it was necessary for the assistant-overseer to have signed the notice, as we do not know there was one, or what his powers are. *Patteson*, J.—This question arises on the construction of the 73d sect. of 4 & 5 Will. IV. c. 76; and in deciding it I wish to be distinctly understood as not expressing any opinion whether it is necessary that all the overseers should sign the notice. It is not requisite for the determination of this case to decide that point, because I am of opinion, that in the present case all the overseers have signed the notice. A similar point has been lately before the Court upon the construction of the 81st section. *Rex* v. *Derbyshire*, 1 *N. & P.* 703. The question in this case is, who are the overseers of the township? It is said that the chapelwardens are. They cannot be if the chapelry is not co-extensive with the township. *The King* v. *Nantwich*, determined that

the churchwardens of the parish at large cannot be the overseers of the township, nor do I think that the chapelwardens can be so considered, because the chapelry may not be co-extensive with the township. It is admitted that there is no decision to that effect, but it is said that there are statutes which treat the churchwardens of townships as overseers. The 9 Geo. I. c. 8, speaks of the churchwardens and overseers of parishes, townships, and places, which may mean churchwardens and overseers of parishes, but overseers only of townships. Whatever may be the construction of the 9 Geo. I. c. 8, s. 8, or of the 17 Geo. II. c. 3, as to the mode in which the notices required by those acts should be signed, they do not make the churchwardens of a township overseers of that township; there are therefore no overseers of this particular township except those who have signed the notice and the assistant-overseer, and it was incumbent on the appellants to show that he had authority to sign it. Rule discharged.

3. *Who to be appointed, &c.*

Partners in trade frequenting their premises daily for the purpose of business, but not residing there, are householders liable to serve as overseers of the parish in which the premises lie.

Rex v. *Poynder*, 2 *D. & R.* 258; 1 *B. & C.* 178; 1 *D. & Ryl. Mag. Ca.* 247. This was an indictment for refusing to take the office of overseer of St. Ann, Blackfriars, and the question was, whether the defendant was a householder within the 43 Eliz. c. 2. The defendants, W. Hopson and Poynder the younger, were lime-merchants and partners, and owners of a dwelling-house and premises in St. Ann, but neither of them slept there, Poynder dwelling at Clapham, and Hopson in Tottenham. One Medlicott, who managed the business for them, resided in the house. The rent, rates, and taxes were paid by the firm. Each of the partners frequented the premises daily, for the purpose of business, and the defendant had once voted at an election of a lecturer, which was a privilege belonging to resident householders. A verdict was found for the crown, and on a motion for a new trial *Rex* v. *Hall* was cited, 1 *B. & C.* 123; 2 *D. & R.* 241; in which the Court decided that one of several partners resorting daily for the purpose of business to a house rented by all, but which was inhabited by their servant, was a householder in the place where the house was situate, so as to qualify him to be a commissioner of a court of requests. The object of the statute in that case was to confer a privilege. It was also urged, that as the defendant was a householder in Clapham, he might be called upon to serve, in two places at the same time, an office requiring personal attendance. *Abbot*, C. J.—When a similar question was under our consideration last term, we were not insensible that a distinction might be attempted to be made between those cases where the legislature intended to confer a benefit, and others where it intended to impose a burden. We were of opinion that there was no foundation for such a distinction, and that the same rule of construction ought to prevail in all cases. We have no doubt in this case that the defendant is a householder within the meaning of the statute of Eliz. It was in evidence that he had enjoyed one of the privileges of a resident householder, for he had voted for a lecturer, which was a privilege belonging to resident householders only. *Bayley*, J., observed, that a large number of houses in the metropolis are merely occupied by clerks or servants, but that is no reason why their owners should not be called upon to discharge those duties which fall upon other householders.—*Holroyd*, J., and *Best*, J., concurred (*a*).

Meaning of term "inhabitant."

Donne v. *Martyn*, 8 *B. & C.* 62; 2 *Man. & R.* 98, S. C. On the interpretation of a local act, whereby the aldermen were authorised to appoint "some substantial inhabitant" collector of rates, *Bayley*, J., observed: "The word *inhabitant* may mean either occupier or resiant. The latter is the proper sense when it is used to denote persons, or when a personal

(*a*) In *R.* v. *Adlard*, 4 *B. & C.* 772; 7 *D. & R.* 340, S. C., it was held that a person is not liable to perform the office of constable unless he is *resiant*. And see the able judgment of the chief justice as to distinctions between inhabitants for purposes of pecuniary charge and for offices requiring *personal service*. Alluding to the poor law, the learned judge observed, "I have not noticed the poor laws, because the occupiers are mentioned in the statute as well as inhabitants."

3. *Who to be appointed, &c.*

(not a pecuniary) charge is to be imposed. *R.* v. *Adlard* (*a*). Here a personal service is imposed. The duties are to be performed by personal attendance within the ward. It is more convenient that the duties should be executed by '*a resiant.*'" The facts were similar to those in *R.* v. *Poynder*, but the Court held that he was not bound to perform *this office.* See also *R.* v. *Masheter*, 6 *A.* & *E.* 153.

The Court will quash the appointment as to those who are not substantial householders.

Rex v. *Weobly*, 2 *Str.* 1261; 1 *Bott*, 5. The defendants were appointed overseers of *Weobly* by the style of *principal* inhabitants. It was moved to quash this appointment, because they were not described to be *substantial* householders. *Et per Curiam.*—The justices must certainly pursue the power given them, which is to appoint substantial householders, which is a much more limited description than inhabitants; for a man may be an inhabitant, and a principal inhabitant, and not be a householder; so this appointment is void.

Who may be appointed.

The word "*substantial*" must be taken generally in its proper sense, but it is so far relative, that where there were no other persons to serve, two day-labourers with some land annexed to their cottages, of whom one only was a proprietor, and the other a farmer's servant, were held to be competent overseers, although the appointment of such men might be improper "in a place where there are a great many opulent farmers." (*Rex* v. *Stubbs*, 2 *T. R.* 406). And the phrase "*substantial householders*" has no reference to sex; although men are more proper to be appointed than women, where there are a sufficient number of men qualified; yet a woman may be appointed where the necessity of the case requires it. (*Id. ibid*).

Women.

Occasional residents.

The appointment of persons resident only for a part of the year, is discouraged by the courts; but such persons seem eligible in cases of necessity. (*Rex* v. *Moor*, *Carth.* 161; 1 *Bott*, 13). And the justices are to determine where this necessity exists, being "invested with a discretionary power of approbation." (*Rex* v. *Stubbs*, 2 *T. R.* 395; *Rex* v. *Gayer*, 1 *Burr.* 245).

Who are exempt.

Distinction between exemption and incapacity.

Exemptions.—The following classes are exempt from serving this office, and the justices therefore are not at liberty to make their nomination from among any of these persons. There is a distinction between the claim of a privilege to be exempted and an absolute incapacity. By the statute the registrar of births, &c. is exempted from serving this office. His appointment, however, is not void but good until he has appealed against it. *Rex* v. *Justices of Cheshire*, 30th Jan. 1840. Q. B.

Peers.

Peers, by reason of their dignity. 1 *Gibs. Codex*, 215.

Members of Parliament.

Members of parliament, by reason of their privilege. *Ibid.*

Justices of peace.

Justices of the peace, as having the control of overseers' accounts.

In *Rex* v. *Gayer*, 1 *Burr.* 245, the sessions, upon appeal, quashed the appointment of Gayer, because he was a *justice*, &c.; and King's Bench supported the judgment, upon the ground that the sessions had the same latitude of discretion as the two justices had. And in *Rex* v. *Pateman*, 2 *T. R.* 779, Lord *Kenyon* said, "in *Rex* v. *Gayer*, it seems to have been agreed that the office of justice of the peace and overseer are incompatible, because the accounts of the latter were subject to the control of the former. The court, in *Rex* v. *Gayer*, gave no judicial opinion upon the point." (*a*).

Aldermen of London, being justices.

Aldermen of London, who are justices of the peace, for the same reason. *Rex* v. *Abdy*, *Cro. Car.* 585; 1 *Bott*, 8.

Practising barristers and attorneys, officers of courts.

Practising barristers and attorneys, *Gerard's case*, 2 *Sir W. Bl.* 1123, and officers of the superior courts, are privileged, though there be a special custom for every parishioner to serve, according to the situation of his

(*a*) "It seems to have been considered both by the bar and the bench, that if the two offices were incompatible, the consequence would be that the party would be discharged from that of overseer, as having been disqualified or exempted, and not from that of justice of peace as being vacated by the appointment of overseer." *Parke*, J., in giving the judgment of court in *Rex* v. *Patteson*, 4 *B.* & *Ad.* 23, 1 *Nev.* & *M.* 612, S. C.

house. *Rex* v. *Prouse, Cro. Car.* 389; *et vide* 8 *T. R.* 379, note (*a*). An officer of the Court of Exchequer, (*Cawthorne* v. *Campbell*, 1 *Anst.* 205, 216; 8 *T. R.* 376). 3. *Who to be appointed, &c.*

The clerk of the treasury of the Court of Common Pleas is bound to a personal attendance on his duties, and, therefore, is not compellable to serve the office. (*Ex parte Jeffries*, 6 *Bing.* 195; 3 *M. & P.* 450, S. C.) And these officers may be relieved by writ of privilege, (*id. ibid.*; 8 *T. R.* 377; 1 *Chan. Rep.* 196).

Physicians.

The president, commons, and fellows of the college of physicians, (whose exemption, however, extends no further than the city of London,) but apparently no other physicians. 32 Hen. VIII. c. 40. (See 1 *Bott*, 13.)

Clergymen.

Clergymen, though without cure of souls, by reason of their order. (*Anon.*, *Gibs. Codex*, 215; 6 *Mod.* 140). (*b*).

Officers of the Court of Bankruptcy.

The accountant in Bankruptcy, the registrar and deputy-registrars, the official assignee, the messenger and usher of the Court of Bankruptcy, are exempt, and disqualified from serving any parochial office. 5 & 6 V. c. 122, s. 63.

Registrars.

Registrars of births, &c. 5 & 6 Will. IV.

Dissenting ministers.

Dissenting ministers, taking the oaths and subscribing the declaration and articles pointed out by 1 W. & M. c. 18, although they be also engaged in a trade. 1 W. & M. c. 18, s. 11; 52 Geo. III. c. 155, s. 9. (*Kenward* v. *Knowles, Willes*, 463; 1 *Gibs. Codex*, 215.)

Churchwardens.

Churchwardens during their continuance in office. *Rex* v. *All Saints, Derby*, 13 *East*, 143.

Freemen of the surgeons in London.

Freemen of the company and corporation of surgeons, established by 18 Geo. II. c. 15, who have been examined and approved pursuant to the rules of the company, so long as they exercise surgery and no longer. 18 Geo. II. c. 15, s. 10.

Apothecaries.

Apothecaries using their art in, or within seven miles of London, being free of the apothecaries' company, and having been examined and approved, and all persons using the said art in any other part of England, Wales, or Berwick-upon-Tweed, having served an apprenticeship of seven years according to the stat. 5 Eliz., so long as they exercise the art and no longer. 6 & 7 Will. III. c. 4, s. 2, 3.

Officers in the army.

The sessions on appeal quashed the appointment of Gayer, because he was an acting justice, and a lieutenant of marines on half-pay, and there were other substantial householders. Lord *Mansfield* said, "it was not necessary to consider the general question of the incompatibility of the offices. The justices have a discretionary power, and although they have stated two reasons for their judgment, yet it did not follow that they considered either of these offices as an exemption or a disability." No opinion was given on the general question. (*Rex* v. *Gayer*, 1 *Bott*, 9; 1 *Burr.* 245.)

Officers of the customs, tide-waiters, revenue officers.

Officers of the customs, tide-waiters, exchequer, and all other revenue officers, both by reason, it should seem, of the incompatibility of the functions, and by reason of the exemption granted them by the king, who has power to exempt by patent, charter, or otherwise, not only from offices under the crown, but even from parochial offices. *Rex* v. *Warner*, 8 *T. R.* 375; *Raymond* v. *St. Botolph's, Aldgate*, 2 *Chan. Rep.* 196; *Cawthorne* v. *Campbell*, 1 *Anstr.* 216. See also *Rex* v. *Routledge, Doug.* 531. But these exemptions granted by the prerogative were available only where there were a sufficient number of persons to serve the office, without recourse to the individuals so exempted; 8 *T. R.* 379, note (*a*); *Rex* v. *T. Clarke*, 1 *T. R.* 686; but by 7 & 8 Geo. IV. c. 53, officers of customs and excise are absolutely exempt.

Yeomen in ordinary.

Yeomen in ordinary of the king's body guard. *Ibid.*; *Rex* v. *Great Marlow*, 2 *East*, 245.

(*a*) The Poor Law Commissioners say that a woman would not be competent to be a guardian.

(*b*) This point was not decided, for three judges being against C. J. *Holt*, who thought the clergymen not exempt, it was "to be stirred again." The quotation from *Gibson* relates to the office of churchwarden.

3. *Who to be appointed, &c.*

Non commissioned officers, &c. of militia.

Sergeants, corporals, drummers, and privates of militia, from the time of their enrolment until they be regularly discharged; but there is no exemption enacted for the officers of that force. 42 Geo. III. c. 90, s. 174.

Captain in the guards.

Captain in the guards cannot claim his privilege of attending on the king when appointed constable. *Hawk.* 100.

Dissenters.

Dissenters scrupling to take the office, on account of the oaths or other matters required by law, repugnant to their peculiar religious opinions, are permitted to execute it by deputy, approved by such persons and in such manner as the principal should have been approved. 1 W. & M. sess. 1, c. 18, s. 7.

Customary exemptions.

An *immemorial custom* to be exempted from all office, will exempt a person from this office, though it is an office created within legal memory. (See *Littledale, J.*, in *Farr* v. *Hollis*, 9 *B. & C.* 338.)

Other exemptions.

The exemption from parish and ward offices, given by the 10 & 11 W. III. c. 23, and 58 Geo. III. c. 70, to prosecutors of felons to conviction, no longer exists, those statutes having been repealed by 7 Geo. IV. c. 64, and 7 & 8 Geo. IV. c. 27.

Quære, if younger brothers of the Trinity-House are exempted? (See *Charter King* v. *Clarke*, 1 *Term Rep.* 679; *Steer's Par. L.* 331.)

Persons residing out of parish.

Subject to these exemptions, the justices of the peace may appoint such householders as they in their discretion think meet. (*Rex* v. *Gayer*, *ante.*) But they ought not to appoint persons resident only for a time. (*Rex* v. *Moor*, *Carth.* 161.) They are no longer limited of necessity to householders residing in the parish or township; for the 59 Geo. III. c. 12, s. 6, has provided, "that it shall be lawful for his Majesty's justices of the peace, in their respective special sessions for the appointment of overseers of the poor, upon the nomination and at the request of the inhabitants of any parish in vestry assembled, to appoint any person who shall be assessed to the relief of the poor thereof, and shall be a householder resident within two miles from the church or chapel of such parish, or where there shall be no church or chapel, shall be resident within one mile from the boundary of such parish, to be an overseer of the poor thereof, although the person so to be appointed shall not be a householder within the parish of which he shall be so appointed an overseer of the poor; and it shall be sufficient, in every such appointment, to describe the person appointed by his name and residence, provided that no person shall be appointed to, or be compellable to serve, the office of overseer of the poor of any parish or place in which he shall not be a householder, unless he shall have consented to such appointment."

Power to appoint non-resident overseers.

4 & 5. *When and by whom to be appointed* (*a*).

Overseers to be elected at a vestry. Persons may vote at the poll, though not present at the nomination.

4 & 5.—At what time and by whom to be Appointed (*a*).

Reg. v. *Hedger*, 4 *P. & D.* 61. In general, the parishioners assembled in vestry select two proper persons to be appointed as overseers; and where by a local statute the inhabitants of each district in the parish, in vestry assembled, were to nominate a certain number of persons to be returned to justices at petty session, who were to select therefrom a certain number to be overseers, and at a vestry meeting for the above purpose, there was a contest as to the persons to be nominated, and after a show of hands a poll was demanded, it was held, that the nomination was not necessarily to be confined to the persons present at the meeting, but that a poll might be lawfully had on a future day, so that other persons entitled to vote might take part in the nomination.

(*a*) The 43 Eliz. c. 2, terms the investing a person with authority as overseer, a "*nomination*;" the 54 Geo. III. c. 91, calls it an "*appointment.*" The magistrates alone can by law make the nomination or appointment, and no usage can entitle the parishioners to elect them (*post*, 29.) However, it is usual for the magistrates to appoint the overseers out of a list selected by the parishioners assembled in vestry, and to take those placed at the head. Acting as overseer is *primâ facie* evidence of a legal appointment. *Governor of Bristol* v. *Wait*, 6 *Car. & P.* 595.

The 43 Eliz. provided that the overseers should be nominated early in Easter week, or within one month after Easter; but the 54 Geo. III. c. 91, provides, that the appointment of overseers of the poor shall in every year be made *on the 25th day of March, or within fourteen days next after* the said 25th day of March, in all and every the same manner as directed by the statute of Eliz. to be made in Easter week.

4 & 5. *When and by whom to be appointed.*

Overseers to be nominated on 25th March, or 14 days after.

Reg. v. *Sneyd*, 5 *Jurist*, 962. The words of this statute are directory only, and not mandatory; therefore, an appointment made after the fourteen days is good. Two justices met after the regular notice, and entered on the business of the appointment of overseers to a township, when, not agreeing, they adjourned the final appointment to a day more than fourteen days after the 25th March. One of the justices, discovering the mistake the day after the meeting, made an appointment of overseers at an ordinary meeting of magistrates, and without holding any communication with the justice who had first acted with him:—Held, that this was a bad appointment; and, that an appointment subsequently made on the adjournment-day was good. As to the continuance in office till successor appointed, *post*, 32.

The statute is only directory.

Any other day is more proper than Sunday to appoint overseers; though the circumstances of the officers being required by the 43 Eliz. to meet once a month on a Sunday, raises a doubt whether an appointment made on a Sunday may not be valid. It was held to be good in *R.* v. *Clerkenwell*, *Fol.* 4, but on the case being cited, Lord Mansfield said, "I should think that an appointment on a Sunday is *primâ facie* clandestine and bad." *Rex* v. *Butler*, 1 *Bla. Rep.* 649; *Rex* v. *Overseers of Bridgewater*, *Cowp.* 139.

An appointment on a Sunday is improper.

Ministerial acts may be performed on a Sunday, but judicial acts done on that day are void: and the appointing overseers is clearly a judicial act. *Waite* v. *Stokes*, *God.* 280; *Swan* v. *Broome*, affirmed on error, 3 *Burr.* 1595; *Rex* v. *Forrest*, 3 *T. R.* 78. See 1 *Chitty's Col. Stat.* tit. *Sunday*.

It is a judicial act.

Rex v. *Serle*, 1 *Bott*, 32. There were in this case two sets of overseers certified on the same day. It was objected that both of the appointments were for this reason void; as where two informations on a penal statute are made on the same day, both are void. *Hob.* 209. *Sed non allocatur*; for although in some judicial proceedings the law considers the day as entire, and knows no fraction, yet in a bond and release, and many other things, that fiction does not hold, and these niceties should not be allowed to overthrow such orders; and in *R.* v. *Great Marlow* it was held that the appointment which is prior in time is good, and the second void. The magistrates having made their appointment, their jurisdiction in that respect is at an end. *Rex* v. *Great Marlow*, 2 *East*, 244.

Where two or more appointments are made on the same day, the first is valid.

And the second appointment is invalid, though made only in consequence of a reasonable claim of exemption by the first appointees; unless where the first appointees are regularly discharged by the sessions in appeal, in which event it seems that the magistrates may constitute others in the place of those so discharged; for it then stands as if the full number had not been appointed at first, in which case the justices have jurisdiction to make a supplementary appointment, and the lapse of the fourteen days after the 25th of March does not take away that jurisdiction. *Rex* v. *Great Marlow*, 2 *East*, 244. See *Rex* v. *Morris*, 4 *T. R.* 550.

And cannot be changed or superseded, except on appeal to the quarter sessions.

Rex v. *Sparrow*, 2 *Sess. Ca.* 140; 2 *Str.* 1123; 1 *Bott*, 34. The mandamus, in obedience to which the justices had appointed overseers, was issued after the month after Easter was expired, and it therefore appeared that the appointment was not within the month after Easter. *Lee*, C. J., (who delivered the opinion of the Court), "As the justices are punishable by the act for not doing their duty, it would be a very hard construction to make the appointment itself void, for it would subject the parish to very great inconveniences for a thing which it is not in their power to prevent. To interpret an act of parliament, we must consider the mischief to be remedied, the remedy provided, and the true reason of that remedy. In this case, the defect is, the want of a proper officer to take care of the poor.

If the appointment be made after the time limited it is not therefore void, the act being merely directory.

4 & 5. When and by whom to be appointed.

The remedy is, that the justices shall appoint overseers, and that within such a time. Now the justices have neglected their duty, in not appointing overseers within the proper time, and by the act have forfeited 5*l.*, but that doth not make such appointment void. Were it the express direction of the act, that they should appoint in that and no other time, it would be otherwise; but here the statute (*a*) is only directory, and a penalty inflicted on the justices for not following such directions."

Sessions cannot appoint overseers because appeal is given.

The appointment is to be made *under the hand and seal of two or more justices*, that is, out of quarter sessions; for the quarter sessions have no original power to make it, as they have the determination of appeals against the appointment. *Rex* v. *Flag and Chilmerton*, 1 *Sess. Ca.* 260; *Fol.* 7; 1 *Bott*, 21. See *R.* v. *Gayer*, *ante*, 24.

Where the parish is part within and part without a corporation.

If a parish is partly within a corporate jurisdiction and partly without, though all the overseers, when appointed, may act indiscriminately for the whole parish, yet the original appointment should be made by four justices, two for the part within the county at large, and two for the part within the corporate jurisdiction. (1 *Nol. P. L.* 45).

Officers of corporate towns have the authority of justice of peace.

43 Eliz. c. 2, s. 8, also enacts, "That the mayor, bailiffs, or other head officers of every *town and place corporate and city* within this realm, being justice or justices of the peace, shall have the same authority by virtue of this act, within the limits and precincts of their jurisdiction, as well out of sessions as at their sessions, if they hold any, as is herein limited, prescribed and appointed to justices of the peace of the county, or any two or more of them, or to the justices of peace in their quarter sessions, to do and execute for all the uses and purposes in this act prescribed, and no other justice or justices of peace to enter or meddle there; (*a*) and that every alderman of the city of London within his ward shall and may do and execute in every respect so much as is appointed and allowed by this act to be done and executed by one or two justices of peace of any county within this realm."

Aldermen of London.

A parish extending into two counties, or into two liberties.

And by sect. 9, If any parish extend itself into more counties than one, or part to lie within the liberties of any city, town or place corporate, and part without, that then, as well the justices of peace of every county, as also the head officers of such city, town or place corporate, shall deal and intermeddle only in so much of the said parish as lieth within their liberties, and not any further: and every of them respectively, within their several limits, wards and jurisdictions, to execute the ordinances beforementioned concerning the nomination of overseers, to consent to binding apprentices, the giving warrant to levy taxations unpaid, the taking account of churchwardens and overseers, and the committing to prison such as refuse to account, or deny to pay the arrearages due upon their accounts; and yet nevertheless, the said churchwardens and overseers, or most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging, and shall duly exhibit and make one account before the said head officer of the town or place corporate, and one other before the said justices of peace, or any such two of them, as is aforesaid.

By the 5 & 6 Will. IV. c. 76, jurisdiction is given to county justices in all boroughs which have not a separate court of quarter sessions under that act.

Origin of term "Division."

In some of the ancient statutes, not now in force, as particularly the 22 Hen. VIII. c. 12, the justices were required to *divide* themselves, for the better execution of the regulations concerning the poor. And thence came the clause in the subsequent statute, that the justices *of the division* were to do such and such things. But as there is no law at present which requires them to *divide* for the aforesaid purposes, there is properly no

(*a*) Same principle adopted in the interpretation of a local act relating to the appointment of guardians. (*Rex* v. *Mayor of Norwich*, 1 *B. & Adol.* 310.) In *R.* v. *Sparrow*, many instances are cited of strong words being only directory.

division in the sense which the statutes intended; and consequently it cannot be necessary to set forth now that the justices *are in or near the division.*

4 & 5. *When and by whom to be appointed.*

6. PENALTY ON JUSTICES FOR NOT APPOINTING OVERSEERS, &c.

6. Penalty on Justices, &c.

By 43 Eliz. c. 2, s. 10, if in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5*l.* to the poor of such place, to be levied by the churchwardens and overseers, or one of them, by distress by warrant from the sessions. See *R.* v. *Sparrow, supra*, 27.

As the penalty is required to be levied by the *churchwardens and overseers*, or one of them, there should be a mandamus to make the appointment, and the penalty attaches for the omission to appoint at the time required.

The forfeiture being imposed upon *every justice of the division*, proceeds (it is said) upon the supposition of the justices being obliged to divide; (see *supra*); for in that case the appointment was to be by the justices in or near the division, and not otherwise; but now the justices at large are all equally concerned: and therefore it seemeth, that this penalty cannot now be levied on the justice of any particular district; but the more reasonable construction is, that all are liable. The language of the 43 Eliz. c. 2, is plainly to this effect; see *Rex* v. *Price, Cald.* 305; *Rex* v. *Skinn*, and *Rex* v. *Baker*, 1 *Bott*, 527, 528; *Rex* v. *Grose, Comb.* 289; *Rex* v. *Woodsterton*, 1 *Bott*, 464; *St. John* v. *St. John, Hob.* 78.

7. MODE AND FORMS OF APPOINTMENT.

7. Mode and Forms of Appointment.

In considering the mode of appointing, and the form and execution of the instrument by which such appointment is authenticated, it may be observed that the *churchwardens* require no specific appointment by the justices in order to give them the authority of overseers; for they become so by 43 Eliz. *in virtue of their office of churchwarden.*

With a view to the selection of proper persons for the office, two justices ought to issue a *precept* to the high constable, directing him to require the petty constables to enjoin all the overseers within their respective constablewicks to deliver in a list of qualified inhabitants within a certain time. The form of precept of warrant and proceedings thereon will be found in the Appendix.

Precept to return a list.

The appointment must be in writing under the seals of the justices. (*Rex* v. *Arnold*, 1 *Str.* 101.) Its proper custody is that of the overseer himself, and parol evidence of it cannot be given, until he has been called on. *Stoke* v. *Golding*, 1 *B. & A.* 173. See the form in Appendix.

Custody of appointment

The name of the county or other smaller jurisdiction for which the justices act should be set forth in some part of the order, that the parish or township for which the appointment is made may appear to be within their jurisdiction; for those who act under a jurisdiction given by act of parliament must show that jurisdiction, since, in a matter of jurisdiction, the Court will intend nothing. *Rex* v. *Holbeck in Leeds, Burr. Sett. C.* 198: *Rex* v. *Stepney, Burr. Sett. C.* 23; *Rex* v. *Chilvers Coton*, 8 *T. R.* 178; *Rex* v. *Houlditch, ante*, 25; *R.* v. *Houlditch*, 1 *Bott*, 4.

Parts of appointment considered

County.

The act requires that the appointment shall be by two justices at least: the number, therefore, must be shown, that the appointment may appear to have been made by a competent authority: however, if there be more than one *signature*, the omission of the number in the body of the order would not vitiate an appointment thus *primâ facie* made by more than one justice.

Number of justices.

But it would be insufficient for them to say, *We do hereby nominate*, without describing themselves as justices; for then there would be no jurisdiction apparent. And this defect will not be cured even after confirmation of the original instrument on appeal, by calling them justices in the order of sessions: as they might have been justices at the time of

Must show they are justices.

7. *Mode and forms of appointment.*

making the order of sessions, and yet not at the time of making the original instrument. *Walton* v. *Chesterfield*, 5 *Mod.* 322; *Rex* v. *Woodford*, 1 *Bott*, 434.

Of the peace.

It seems also insufficient to say merely *justices of the county*, without stating them to be of the *peace*, though the words "of our lord the king" may be omitted without prejudice. (*Haw. P. C.* B. 2, c. 8, s. 32; title "*Justices of the Peace*," Vol. III.) And where the appointment is by magistrates acting for a limited jurisdiction, the justices should show precisely on the face of the order to what liberty they belong. (*Rex* v. *Dobbyn*, 2 *Salk.* 474.) But they need not describe themselves as *dwelling in or near* the parish or division. (*Rex* v. *Sparrow*, 2 *Sess. Ca.* 140.) Nor is it now strictly necessary that it should be stated that one of them is of the *quorum*; but it is still requisite that one of them *in fact be* of the *quorum*, except where there is but one justice of the *quorum* in the whole jurisdiction, in which case the acts of two justices are valid, though neither be of the *quorum*. (See 26 Geo. III. c. 27; 7 Geo. III. c. 21; and 4 Geo. IV. c. 27.)

Of quorum.

Appointments may be by separate instruments.

Though not indispensable, the most eligible way is to appoint all the overseers by the same instrument; and this is the customary mode of proceeding. However, although there must be more than one overseer appointed for a district, there is no law that says there shall be an appointment of two or more overseers by one instrument. (*Rex* v. *Besland*, 1 *Bott*, 26; *Rex* v. *Morris*, 4 *T. R.* 550; *Rex* v. *Clifton*, 2 *East*, 168.) If more than four be appointed, the instrument is invalid as to all. *Rex* v. *Wymondham*, 6 *T. R.* 553.

Substantial householders of the district.

The old form describes the appointees as *being substantial householders of and in the parish* (or *township*), and it is proper to pursue this form where they are in fact resident within the parish or township, and their description as being *substantial* must be inserted in the body of the instrument, for so to describe them at the foot merely will not suffice. *Rex* v. *Weobly*, 2 *Str.* 1261. But if any one of the overseers appointed is not such a householder, but is a householder resident out of the parish or township, (see 59 Geo. III. c. 12, p. 26), it is sufficient to describe the person appointed by his name and residence. In the appointment, "*principal inhabitants*," instead of substantial householders, is an insufficient description. *Rex* v. *Weobly*, *Str.* 1261. It is proper too to say, *householders in the parish of* E., or if the name of the parish, and of that parish only, have occurred before in the same instrument, then at least to say *householders there*. *Rex* v. *Weobly*. A parish must be called a parish, and a township must be called a township, or a village, those being the terms used by the statute; or, which is in common acceptation synonymous, a hamlet or vill. *Rex* v. *Morris*. These descriptions cannot be supplied by intendment, and are so strictly required, that the order will be void if the parish or township be designated as such only under an *alias*, as the precinct of the *Tower*, *otherwise called the parish of St. Peter ad vincula*. (*Rex* v. *Severn and Arnold*, *Say*, 278.) Where the appointment is for a township, it is not sufficient that the overseer appointed be a householder in the parish of which that township is a district; he must also (*a*) be a householder in that particular township: but if he be described in the appointment merely as a householder in the *parish*, he shall be intended a householder in the vill for which he is appointed. *Rex* v. *Morris*.

Of parish, &c.

(*a*) See *supra*.

If an out-dweller.

As the 59 Geo. III. c. 12, ss. 6 & 35, provides that no out-dweller *shall be appointed*, unless he *shall have consented to such appointment*, it seems proper to add, after naming and describing him, "who has consented to this appointment," by way of showing the jurisdiction.

Must be styled "overseers."

The persons are to be described as "*overseers*," and where persons were appointed *to set the poor to work*, *&c.*, mentioning the several duties in the Act, but were not in express terms appointed *overseers*, the appointment was quashed. *Rex* v. *St. George*, *Fort*, 320; 1 *Bott*, 2.

It is usual to state that they are appointed *together with the church-*

wardens thereof. These words, however, are not essential; for "when overseers are once legally appointed, they are by operation of law joined with the churchwardens of the parish for which they are appointed." *Rex* v. *Searle*, 1 *Bott*, 1.

8. *Mode and forms of appointment.*

If the whole number has not been appointed by the first instrument, the justices may, it seems, add the rest by one or more supplementary appointments. *Rex* v. *Besland*, 1 *Bott*, 21; *Rex* v. *Morris*, 4 *T. R.* 550.

Together with churchwardens.

Supplementary appointment.

The words "*For the present year*," are proper at whatever period the appointment is made, the form in this respect being construed to signify, from the present time till the next season allowed by law for the appointment of overseers; and this is so, though "at this present time" the proper period has gone by: for the year here means the overseers' year. *Rex* v. *Sparrow*, 1 *Bott*, 34; *Rex* v. *Helling*, 3 *Burr.* 1905. The following forms have, on the same construction, been sustained by the Court: "for this present year, 1766." *Rex* v. *Helling*, *ibid.* "For a whole year." *Rex* v. *Great Marlow*, *Fol.* 5; *Rex* v. *Jones*, 1 *Bott*, 35. "For one year next ensuing." *Rex* v. *Burder*, 4 *T. R.* 778. "For one year next ensuing the date hereof," it shall be intended to be the overseers' year. *Rex* v. *Stubbs*, 2 *T. R.* 395.

For what time.

The signing and sealing of the justices should be in each other's presence; for the function is not merely ministerial, like the allowance of a rate, but judicial; and the magistrates ought therefore to confer, and the result of their conference should be the ground of their determination, according to the general rule, that where a statute requires the concurrence of two magistrates, they should both act together. *Rex* v. *Arnold*, 1 *Str.* 101; *Rex* v. *Great Marlow*, 2 *East*, 244. But from the analogy of a more recent case, upon a warrant signed by commissioners of bankrupts, it may be inferred that the rule is satisfied if the magistrates have in fact duly conferred together and agreed what shall be done, leaving the acts of signing and sealing to be performed by them asunder at a subsequent time. *Battye* v. *Gresley*, 8 *East*, 327.

Justices must meet and concur

8. Appointment of fresh Overseer in case of Death, Removal, or Insolvency, and of the Duration of Overseers' Office.

8. *Appointment of fresh Overseer in case of Death, &c.*

The 17 Geo. II. c. 38, s. 3, enacts, "That if any such overseer shall die, or remove from the place for which he is appointed, or become insolvent, before the expiration of his office, on oath thereof made, it shall be lawful for two justices of the peace to appoint another overseer in his stead, who shall continue in office until new overseers are appointed: and if any overseer shall remove as aforesaid, he shall before such removal deliver over to some churchwarden or other overseer of the same place, his accounts verified as aforesaid, with all rates, assessments, books, papers, sums of money, and other things concerning his office, under the like penalties as are inflicted by this Act on an overseer refusing to do the same after the expiration of his office; and if any overseer shall die as aforesaid, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office to some churchwarden or other overseer of the same place; and shall pay out of the assets left by such overseer, all sums of money remaining due, which he received by virtue of his said office, before any of his other debts are paid and satisfied."

17 Geo. 2, c. 38.

On an overseer's dying or becoming insolvent, two justices to choose another.

Overseers removing shall deliver his accounts to the churchwardens, &c.

Executors of overseers to account in 40 days.

Overseers, who continue solvent and resident, remain in office until the arrival of the period limited for the appointment of their successors. (*Rex* v. *Sparrow*, 1 *Bott*, 34). But not longer, even though no successors be appointed; nor, as it seems, does the authority even of the churchwardens, as overseers, continue beyond the expiration of the overseers' term, though "liable to be revived by the appointment of new overseers, if the churchwardens continue in office beyond the overseers' regular year." (*Vide* 1 *Nol. P. L.* p. 59).

Continuance in office.

9. *Enforcing or Avoiding Appointment.*

9. Means to obtain and to enforce or avoid an Appointment, and of Appeals.

Mandamus to appoint.

If the magistrates will not make an appointment within the proper time, a mandamus may be obtained from the Court of Queen's Bench to compel them; and the rule will be absolute in the first instance. (*Reg.* v. *Churchwardens of Manchester*, 7 *Dowl.* 707.)

Indictment for not acting.

If, however, the justices have made a valid appointment, and the parties refuse to take the office upon them, it may be *enforced* against them by *indictment* (*a*).

The district of Borough Fen is extra-parochial. It contains a considerable population; and it had been for some time the practice for the inhabitants to support the poor requiring relief, who were resident among them, by rates, &c. Overseers had been in several instances appointed, who discharged the ordinary duties of that office. But the liability of the inhabitants within the district to pay rates for this purpose being at length disputed, the magistrates appointed overseers, and a motion was now made in full Court for a certiorari to bring up such appointment, for the purpose of moving that it be confirmed, and thus obtaining the decision of the Court, whether, under all the circumstances, overseers could be legally appointed for the district. Both parties were anxious for, and ready to abide by, the judgment of the Court; and a note in 4 *Burn's Justice*, 26, was relied upon, which says, "The law has likewise permitted a *confirmation* of the appointment by the Court of King's Bench, on a motion to that effect, when it is brought up by certiorari;" and *Rex* v. *Standard Hill*, 4 *M. & S.* 382, was also referred to. The Court, however, said that they were not aware of any instance in which such an application had been granted with a view to *confirm* the appointment, though there were many cases in which an appointment of overseers had been moved into this Court for the purpose of *quashing* it, as was done in *Rex* v. *Standard Hill*, to which reference had been made; the rule was therefore refused. (*Rex* v. *Justices of the Liberty of Peterborough, Trin. K. B.* 1830; *Steer's Par. L.* 623).

Q. B. will not confirm an appointment.

Resisting appointment. The dissent of a majority of justices present, is no answer to a distress for a rate, if no fraud.

When the appointment is void, the objection to it may be taken on an indictment for refusal to take the office, or in an action for distraining under a rate made by such officers. In a distress for poor rate, the party rated cannot question the validity of the appointment of the overseers, on the ground that the majority of the justices present at the appointment did not concur in it. The jury negatived fraud. (*Pinney* v. *Slade*, 5 *New Cases*, 319. *See also Hinton* v. *Pawle, Cro. Car.* 92.) But it may be shown that the place for which the appointment is made was not a parish or vill. *Lane* v. *Cobham*, 7 *East*, 1.

The appointment may be directly impeached by appeal, either by the overseers themselves, or by any of the parishioners.

Appeal against appointment

An appeal was given against the appointment itself, by 43 Eliz. c. 2, s. 6, which provides, that if any person shall find himself aggrieved by any act done by the said justices, he may appeal to the general quarter sessions, whose order therein shall bind all parties. (*Rex* v. *Great Marlow*, 2 *East*, 244.)

The 17 Geo. II. c. 38, s. 4, gives an appeal to the party grieved by any

(*a*) The person is overseer completely by the appointment under the hand and seal of the magistrates, until upon appeal the sessions have allowed his excuse, or the Court of King's Bench have pronounced his appointment void; but its invalidity seems a good answer to an indictment, and may be taken advantage of by demurrer where its insufficiency appears on the face of the indictment itself. (*Rex* v. *Pardy*, 1 *Bott*, 380; *Rex* v. *Burder*, 4 *T. R.* 778.) It would probably be necessary on such an indictment to prove that he had received notice of his appointment; for such notice is requisite even to warrant a conviction before two justices in penalties under 43 Eliz. for neglect of his office, where notice seems the less important, inasmuch as such a conviction must allege the defendant to have accepted the office, which implies that he must have had notice. (*Rex* v. *Harman*, 1 *Bott*, 376.)

rate, or by overseers' accounts, or by an act done by the overseers, *or by any justices*, and in two cases relating to a poor rate, and one to the accounts of overseers, it has been decided that in those cases this provision of Elizabeth was repealed; and the appeal must in all cases be to the *next quarter sessions* after the party is aggrieved. (*Rex* v. *Coode*, 1 *Bott*, 290; *Rex* v. *Micklefield*, 1 *Bott*, 291; *Rex* v. *Worcester*, 5 *M. & S.* 457.) It may be doubtful if this applies to the appointment of overseers.

9. *Enforcing or Avoiding Appointment, &c.*

The appeal may be by any parishioner. (*Rex* v. *Forrest*, 3 *T. R.* 38.)

At the next sessions.

By the words, the "next sessions," (*a*) the *next "practicable sessions"* are intended. (See *Rex* v. *Justices of Sussex*, 15 *East*, 207; *Rex* v. *Justices of Essex*, 1 *B. & Ald.* 210.) It is advisable for the appellant to serve each of the justices who have made the appointment, and each of the other parish officers with whom he is nominated to act, with a copy of the notice of appeal, containing the grounds of his appealing, which must be done on or before the last day allowed for notices of appeal, by the practice of the sessions for the county where the case is to be heard. If the appointment were made by persons who were not justices, no appeal is necessary, for that is a nullity; but if the party do appeal in such case, and call the persons in question in his notice by the title of justices, he concludes himself, and cannot be heard to urge that they are not so; though an appointment by persons not justices is void *ipso facto*, without appeal, yet, where the effect of jurisdiction is merely that neither of the justices is of the *quorum*, the proper way to obtain the avoidance of the appointment is by appealing. (*Rex* v. *Fisher*, and *Rex* v. *Towill*, *Cald.* 135; 1 *Bott*, 72; *Albrighton* v. *Skipton*, 1 *Str.* 300.)

Appointments by persons acting as justices, but not being such, a nullity.

On appeal against order of removal the appointment for an extra-parochial place may be questioned.

If the appointment is void, it may be questioned collaterally in an *appeal against an order of removal*, made to an extra-parochial place having no officers, or to a township or other minor district, when it ought to have been made to the parish at large; or, probably, to a parish at large when it ought to have been to one of the townships in that parish. (*Rex* v. *Denham*, *Burr. S. C.* 35; *Dolting* v. *Stokelane*, *Fort.* 219; *Rex* v. *Tamworth*, *Cald.* 28; 1 *Bott*, 156; *Rex* v. *Swalcliffe*, *Cald.* 248; 2 *Bott*, 896.) Another mode, the converse of the last, is an appeal against an order of removal made from a wrong district. (*Forest of Dean* v. *Parish of Linton*, 2 *Salk.* 487.)

Or on a certiorari.

By 17 Geo. II. c. 38, s. 8, the distress is not unlawful for any defect of form in the warrant of appointment. The appointment may be removed into Q. B. by *certiorari*, at any time before the expiration of the year for which it was made; but it seems not afterwards. *Rex* v. *Bulter*, 1 *Bla. R.* 649. Upon which the Court will go into the consideration, not only of defects apparent on the appointment itself, but of extrinsic objections appearing by affidavit, such as that the justices had no jurisdiction, *Rex* v. *Great Marlow*, 2 *East*, 244; *Rex* v. *Butler*; or that the place for which the appointment is made, was not a township or vill, or reputed to be such. *Rex* v. *Standard Hill*, *ante*, 14, 4 *M. & S.* 244. It will also happen in some cases, that a motion for a mandamus, to be directed to two justices of the neighbourhood, commanding them to appoint overseers for the proper district, will be the proper method of disputing the propriety of an appointment. But according to Mr. Nolan, (1 *Nol. P. L.* 37, *note* (4),) it is not applicable to improper appointments for extra-parochial places. The custody of the instrument of appointment belongs to the overseers. (*Rex* v. *Stoke Golding*, 1 *B. & Ald.* 173.)

For certain defects by affidavit, as the place be a township or vill.

Mandamus to appoint.

10. The Powers of Overseers.

10. *Powers, Duties, and Liabilities of Overseers.*

The nature of the powers and duties of an overseer depends altogether upon the circumstance whether his parish is,

First, Without a select vestry, or guardians; or,

Secondly, Whether it is under a select vestry; or,

(*a*) See Vol. I. title "Appeal," as to what are "next" sessions, and *post*.

10. *Their Powers, Duties, and Liabilities.*

Thirdly, Whether it is under guardians; and each of these deserves a *separate* consideration.

First, Where there there is *not* any select vestry or *guardians*, the overseers were directed by the 43 Eliz. c. 2, ss. 1 & 2, to take order from time to time, by and with the consent of two or more such justices of peace as is aforesaid, for setting to work the children of all such whose parents shall not, by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children: and also for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise, weekly or otherwise, (by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit) a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff, to set the poor on work: and also competent sums of money for and towards the necessary relief of the *lame, impotent, old, blind,* and *such other among them, being poor, and not able to work*, and also for the *putting out of such children to be apprentices*, to be gathered out of the same parish, according to the ability of the same parish, and to do and execute all other things, as well for the disposing of the said stock, as otherwise concerning the premises as to them shall seem convenient."

Who shall be taxed towards the relief of the poor.

A convenient stock shall be provided to set the poor on work.

43 Eliz. c. 2. The overseers shall meet once every month.

"II. Which said churchwardens and overseers so to be nominated, or such of them as shall not be let by sickness or other just excuse, to be allowed by two such justices of the peace or more as is aforesaid, *shall meet together at the least once every month in the church of the said parish, upon the Sunday, in the afternoon after divine service*, there to consider of some good course to be taken, and of some meet order to be set down in the premises; upon pain that every one of them absenting themselves without lawful cause as aforesaid, from such monthly meeting for the purpose aforesaid, or being negligent in their office, or in the execution of the orders aforesaid, being made by and with the assent of the said justices of peace, or any two of them before mentioned, to forfeit for every such default of absence or negligence twenty shillings."

The act for the *whole* parish

The power of the overseers extends over the whole parish, but there may be a subdivision of the parish by the overseers themselves as a matter of arrangement. In such cases, the accounts form only an entire parochial account. (*Malkin* v. *Vickerstaff*, 3 *B. & A.* 189; and see 1 *Bar. & Adol.* 1; 3 *Bar. & Adol.* 941; 3 *Maule & Selw.* 471; *Eden* v. *Tilchmarsh*, 1 *Adol. & Ell.* 691.) And the overseers are responsible for the malversation of each other. (*Rex* v. *Justices of Essex*, 3 *B. & Adol.* 941.)

Employment of poor.

Under the statute of Eliz. it was the duty of the overseers to obtain *employment*, at reasonable wages, for able-bodied persons who were unable *to obtain employment* for themselves (*Rex* v. *Collett*, *post*); and to give *pecuniary relief* only to the sick and impotent. The general care and management of the poor was vested in them, subject only to some control from the justices of the peace.

Overseer not bound to expend money in vaccinating paupers.

An overseer is not bound to take precautionary measures against the small-pox, by causing the poor to be vaccinated. And even if the overseer has, by the direction of the vestry, agreed that the poor shall be vaccinated at the expense of the parish, and refuses to fulfil that agreement, the Court will not grant a criminal information against him: although in consequence of his conduct the infection of the small-pox has spread, and many of the poor have died. (*Anon.* 5 *Nev. & Man.* 12; 3 *Ad & E.* 552.)

The overseers are not bound to bury a pauper, though settled and dying in the parish, but not in a parochial house.

Reg. v. *Stewart*, 12 *A. & E.* 773. The governor of St. George's Hospital, in the parish of St. George's, Hanover-square, applied for a mandamus to compel the overseers to cause the body of M. K. to be interred. M. K., a married woman, and residing with her husband in the parish of St. George's, was admitted an in-patient in the hospital, and died there. She remained unburied, as the husband was, from poverty, unable to bury her.

He was receiving a weekly allowance from the parish, and he deposed, to his belief, that he was settled there. The affidavits declared the history of the hospital, and the overseers contended that the hospital was bound to inter the body. *Cur. adv. vult.*—Lord *Denman.*—Upon the argument we felt extreme difficulty in placing on any legal foundation either the right of the hospital to the writ, or the obligation on the parish to do the act required; yet we were unwilling at once to discharge the rule, considering how long the practice had prevailed and been sanctioned of burying such persons at the expense of the parish, and the general consequences of holding that such practice has no warrant in law. In the argument for the rule, the necessity of the case, a very large construction of the words of the St. of 43 Eliz. c. 2, and an inference from St. 48 Geo. III. c. 75, for the burial of shipwrecked bodies cast on shore, were alone relied on. These all appear to us insufficient; and in the last-named statute there are undoubtedly words from which it may be inferred that the framers of it recognised burials at the expense of the parish, and, in a doubtful case, such recognition might weigh something in affirmance of the legal obligation on the parish to provide such burials. But in the present case, we are thrown necessarily on the statute of Eliz.; the overseer is a statutable officer, dealing with a statutable fund, and accountable for its application to statutable purposes. The language of that statute leaves no doubt. The relief and employment of the poor are its objects; the fund is created for them, and cannot be diverted from them, unless to objects specifically engrafted on them by subsequent statutes, of which this is not one. No usage, however proper in itself, and however uncontroverted, can prevail against that which the plain construction of the statute forbids; and we cannot accede to the argument that the burial of a pauper receiving relief, but *not dying in any parish house*, can be brought within the objects of the statute, express or implied. We limit the rule thus purposely: for, on passing to the ground of necessity, we wish to be understood as distinctly recognising its existence, while we deny its application in the way now contended for. Every person dying in this country, and not within certain exclusions laid down by the ecclesiastical law, has a right to Christian burial, and that implies the right to be carried from the place where his body lies to the parish cemetery. Further, to use the words of Lord *Stowell*, in *Gilbert* v. *Bernard*, 2 *Hag.* 333, "that bodies should be carried in a state of naked exposure to the grave, would be a real offence to the living, as well as an apparent indignity to the dead." We have no doubt, therefore, that the common law casts on some one the duty of carrying to the grave, decently covered, the dead body of any person dying in such a state of indigence as to leave no funds for that purpose. The feelings and the interests of the living require this, and create the duty; but the question is on whom it falls. It is enough for the disposal of this rule to say that it is not cast upon the overseers, where the death does not take place under the roof of any parish house, or that which, under the circumstances, can be considered as such. But the principles above laid down seem to point to an important distinction, and we think it right in the present case, with a view to the extensive consequences of our decision, to state it. It should seem that the individual under whose roof a poor person dies is bound to carry the body, decently covered, to the place of burial: he cannot keep him unburied, nor do anything which prevents Christian burial; he cannot, therefore, cast him out, so as to expose the body to violation, or to offend the feelings, or to endanger the health of the living; and, for the same reason, he cannot carry him uncovered to the grave. It will probably be found, therefore, that where a pauper dies in any parish house, poor house, or union house, that circumstance casts on the parish or union, as the case may be, to bury the body, not by virtue of the statute of Eliz., but upon the principles of the common law. In the present case, however, the same principles would rather cast the burthen on the hospital than the parish, and form an additional, though not a necessary reason, for refusing the writ. Rule discharged.

10. *Their Powers, Duties, and Liabilities.*

Where a *select vestry* has been constituted under 59 Geo. III. c. 12, the overseers can give no relief, *but such as is ordered by the vestry.*

Their duty where a select vestry.

Wherever a parish, or united parishes, adopted the provisions of the 22 Geo. III. c. 83, and appointed guardians, that statute expressly enacts, that "neither the churchwardens or overseers shall interfere or intermeddle in the care and management of the poor, but shall continue to have the same powers of making and collecting rates, as they had at that time."

Where guardians appointed under Gilbert's Act.

Overseers, not guardians, to bind apprentices.

These words do not, however, transfer the power of binding out apprentices from the overseers to the guardians, for where a parish had adopted the provisions of 22 Geo. III. c. 83, and the overseer had executed the indenture, and not the guardian, C. J. *Abbott* said, "I am of opinion that this binding was valid. The 7th section of 22 Geo. III. c. 83, is calculated to raise a doubt upon the point, for it excludes the interference of the churchwardens and overseers in the care and management of the poor, where guardians are appointed. If there was nothing else in the act to guide us, it might be difficult to say that they could interfere in binding parish apprentices. But in subsequent parts of the statute various powers are expressly given to guardians of the poor; and by the 30th section they are authorised to provide for poor children until they arrive at a proper age to be placed out, when they are to be bound out according to the laws then existing; one of these laws was the 43 Eliz. c. 2, directing that parish apprentices should be bound out by the churchwardens and overseers. And it is better that a binding should take place by several churchwardens and overseers than by one guardian." *R.* v. *Lutterworth*, 3 *B. & C.* 487; 5 *D. & R.* 343.

Where guardians under new Poor Law Act. Make rates (*a*).

To pay to guardians. Rate-book.

And now, where guardians are appointed under 4 & 5 Will. IV. c. 76, that statute has transferred to them the general care of the poor. Still the overseers in every union shall make, assess, and collect all rates for the necessary relief of the poor, and for defraying all other charges and expenses chargeable on the same; and they are to pay to the common fund such sums as the guardians shall direct. They are to provide a rate-book in the form prescribed by the statute.

Relief in emergency. (See title "*Relief*," *post.*)

No money

Refusal.

By the 54 of the Poor Law Act they are empowered, in cases of sudden and urgent necessity, to give temporary relief in articles of necessity, but not in money; and the rules require that they should endeavour to procure the relieving officer to give it; and in all cases the same must be reported to the relieving officer. Should the overseer refuse relief in cases of necessity, a justice of the peace may order it; and the overseer is liable to a penalty.

Overseers are not now required to make any return of lunatic paupers, 5 & 6 Vict. c. 57, s. 6.

By a general order of the 22nd of April, 1843, overseers are required to give a report in writing of relief afforded by them, or under an order by justices, to the relieving officer, and also to transmit to him any order by justices directing out-door relief.

6. Appointment of Officers with Salaries.

Appointment of assistant overseers (*a*).

The overseers and guardians having a duty imposed on them by law, are not entitled to any remuneration for their services, but it has been found expedient to provide for the payment of a salary to *assistant overseers.* And by the 59 Geo. III. c. 12, s. 7, it is enacted, "That it shall be lawful for the inhabitants of any parish in vestry assembled, to nominate and elect any discreet person or persons to be assistant overseer or overseers of the poor of such parish, and to determine and specify the duties to be by* or them executed and performed, and to fix such yearly salary for the execution of the said office as shall by such inhabitants in vestry be thought fit; and it

* *Sic.*

(*a*) As to the duties and liabilities of an assistant overseer, see *Bennet* v. *Edwards*, 7 *B. & C.* 586; 1 *Man. & R.* 482, S.C.; 6 *Bing.* 230, 3 *Younge & J.* 464. An assistant overseer is liable to a penalty for selling goods for use of poor, for his profit, same as an overseer, *ibi.* But he is not liable for neglect of any supposed duty not prescribed in his appointment. *Id. ibid.* See cases, *post.*

shall be lawful for any two of his Majesty's justices of the peace, and they are hereby empowered, by warrant under their hands and seals, to appoint any person or persons who shall be so nominated and elected to be assistant overseer or overseers of the poor, for such purposes, and with such salary, as shall have been fixed by the inhabitants in vestry; and such salary shall be paid out of the money raised for the relief of the poor, at such times and in such manner as shall have been agreed upon between the inhabitants in vestry and the respective persons so to be appointed; and every person *to be so* appointed assistant overseer shall be, and he is hereby authorised and empowered to execute all such of the duties of the office of overseer of the poor as shall in the warrant for his appointment be expressed, in like manner and as fully, to all intents and purposes, as the same may be executed by any ordinary overseer of the poor; and every person or persons *so appointed* shall continue to be an assistant overseer of the poor until he or they shall resign such office, or until his or their appointment shall be revoked by the inhabitants of the parish in vestry assembled, and no longer; and it shall be lawful for the inhabitants of any parish, upon the nomination and election by them of an assistant overseer or overseers, to require and take security for the faithful execution of his or their office, by bond, with or without a surety or sureties, and in such penalty as they shall think fit; and every such bond shall be made to the churchwardens and overseers of the poor, and may, on any breach of the condition thereof, be put in suit by and in the names of the churchwardens and overseers of the poor for the time being, by the direction of the vestry, or select vestry, for the benefit of the parish, in the manner hereinafter provided."

6. *Officers with Salaries.*

Security may be taken.

Sect. 35. The same provision as to the election of an assistant overseer is extended to all townships, vills, and places having separate overseers, and maintaining their poor separately.

An appeal lies against his accounts. (*Reg.* v. *Wates, post.*) He cannot be a guardian. (5 & 6 Vict. c. 57, s. 14.)

By the stamp act, tit. "*Grant,*" any appointment in writing to an office or employment, where the yearly salary does not amount to 50*l.* a-year, must be stamped; an appointment to the office of assistant overseer, at a salary of 10*l.*, is within the very words of the act, and requires a 2*l.* stamp. *R.* v. *Lew,* 3 *M.* & *R.* 369; 8 *B.* & *C.* 655. But by s. 86 of the poor law act, the appointment of any paid officer engaged in the administration of the laws for the relief of the poor, or in the management or collection of the poor rate, shall not be chargeable with any stamp duty.

Appointment of a paid officer before 5 & 6 W. 4, c. 76, must have been stamped.

Secus since that act.

By the act for regulating the parish of St. Pancras, the officers are appointed by the vestry-men to hold their office at pleasure. The bond for their good behaviour does not determine by the directors going out of office. (*M'Gahey* v. *Alston,* 1 *M.* & *W.* 387.)

Paid Officers, under 4 & 5 Will. IV. c. 76, s. 46.

The appointment of paid officers will for the future be almost, if not altogether, regulated by the 46th section of 4 & 5 Will. IV. c. 76, which enacts, that the commissioners may direct the overseers or guardians to appoint paid officers with such qualifications as the commissioners shall think necessary for superintending or assisting in the administration of the relief and employment of the poor, and for auditing the accounts, and otherwise carrying the act into execution; and the commissioners are empowered to define the duties of such officers, their continuance in office, and the security to be given, and to regulate the salaries of such officers, and such salaries shall be payable out of the poor rates.

Commissioners may direct overseers and guardians to appoint paid officers for parishes or unions; and fix their duties, and the mode of appointment and dismissal, and the security; and regulate their salaries (*a*).

Reg. v. *Hunt,* 3 *P.* & *D.* 476, 12 *A.* & *E.* 130. On a rule to show cause why an order of the poor law commissioners should not be quashed, it appeared that the order dated 2d March, 1836, provided for the annual

(*a*) These salaries, it seems, are recoverable by action of debt; for where a statute casts on a party an obligation to pay a specific sum to particular persons, these persons may maintain an action for debt, *Tilson* v. *Warwick Gas Co.,* 4 *B.* & *C.* 962.

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election of guardians for St. Mary, Lambeth, and directed the overseers, before the day appointed for any annual election, to nominate a barrister of five years' standing as returning officer at the election of guardians. On the 26th February, 1839, they rescinded the provisions contained in the order of the 2d March, 1836, which prescribed the manner in which the guardians should be chosen, and directed that the election of guardians, for the year ending the 25th March, 1840, should be conducted according to certain articles; and, among others, Article 13 appointed Dr. Kay, an assistant poor law commissioner, returning officer for the year ending March, 1840; Article 14 gave the returning officer power to employ a competent number of persons to assist in conducting the election; and Article 15 was as follows: "Any assistants who may be employed by the returning officer shall receive such compensation for their services as shall be sanctioned by the poor law commissioners; and the compensation shall be paid by the overseers out of the poor rates. But no paid officer who shall have been appointed by the guardians, and who shall be bound to devote his whole time to the performance of the duties of his office, shall receive any such compensation, except for actual travelling expenses." The defendant, one of the churchwardens of the parish, disputed the validity of the above order, and refused to pay over the rates to the treasurer appointed by the commissioners. A mandamus issued commanding him to do so, to which he had made a return. The validity of the order was contested on the grounds, that as the commissioners had by their order of March 2d, 1836, directed the mode of electing guardians at any future annual election, they had exercised the power committed to them by 4 & 5 Will. IV. c. 76, s. 40, and had no authority to make any subsequent order rescinding the previous one, and substituting a different mode of election. 2nd. That they had no power to authorise their assistant commissioner to appoint paid officers, the appointment of paid officers being expressly given to the guardians only. Lord *Denman*, C. J.—We think that the 15th Article cannot be supported, and therefore the order must be quashed. The assistants appointed by the returning officer were clearly paid officers within s. 46, and therefore should have been nominated by the guardians. With regard to the returning officer, if he is an officer who ought to be paid, I doubt whether the poor law commissioners can take the appointment upon themselves, by nominating some one without a salary. *Littledale*, J., concurred. *Patteson*, J.—I do not see how the difficulty which arises on s. 46 can be got rid of. The order directs that the assistants to the returning officers shall be paid; if so, they are paid officers within s. 46, and it does not signify in the least whether they are permanent officers or not. When a payment for services is to be made out of the rates, the parish officers have the appointment. With regard to the manner of conducting the election, I do not wish, as far as my opinion is concerned, to have it supposed that the poor law commissioners may not alter their orders from time to time, as they think fit. *Williams*, J., concurred. Rule absolute.

Commissioners cannot appoint paid officers.

They may rescind an order.—*Semble. Ante*, p. 5.

Reg. v. *Poor Law Commissioners* (*Strand Union*), 9 *A. & E.* 901. This was an application for a certiorari to remove an order of the commissioners for appointing a collector of rates in ten several parishes within the Strand union, and among others for the parish of St. Paul's, Covent Garden. The ground of the application was, that by 10 Geo. IV. c. 68, local and personal, the right to elect all officers was vested in the vestrymen of the parish. *Cur. adv. vult.*—Lord *Denman*.—This order was resisted on the part of the vestrymen of St. Paul's, on account of a local act, which gave them power to appoint a collector with certain local privileges. We have entertained considerable doubts on the subject; and have at length come to the conclusion, upon a collation of the sections of the act of parliament, that the order of the poor law commissioners cannot be sustained. We think that, at least till the union is made perfect for the purposes of rating (4 & 5 Will. IV. c. 76, s. 34), there is no power to require that the guardians shall appoint a collector to act in the separate parishes, under the circumstances stated. We have thought it right to deliver this opinion, as soon as we had completely formed

Poor law commissioners have no power to require the appointment

of a collector of rates in St. Paul's, Covent Garden.

Nor for any parish of a union not being a union for the purpose of rating.

it, on account of the inconvenience alleged to arise from the question remaining undecided. Rule absolute.

Reg. v. *Poor Law Commissioners* (*Cambridge Union*), 2 *P. & D.* 323; 9 *A. & E.* 911. The commissioners made an order that the guardians of the Cambridge union, consisting of several parishes, should appoint a collector of the poor-rates of such parishes comprised therein as the guardians should deem to require a collector, and should report the same to the commissioners to approve or disallow the same. If the guardians should deem that any one parish should require an assistant overseer, they might appoint the person so appointed as collector; provided that those parishes in which either of the churchwardens or overseers should be willing to collect the rates, should not be deemed to require a collector. Persons appointed were to give security. The collector was to pay the rates to the treasurer of the union, to be placed to the account of the churchwardens and overseers of the parish on account of which they had been collected: the moneys so paid to be applied to the same purposes as they would have been applicable to if collected by the churchwardens and overseers. The guardians appointed one W. H. Smith collector for the parish of St. Andrew the Less, and the appointment had been confirmed by the commissioners. The inhabitants of this parish notwithstanding nominated one G. W. Brown assistant overseer, under 59 Geo. III. c. 12, s. 7, and specified, amongst his other duties, that he should collect the poor rates of the parish; and he was afterwards, under the provisions of the same act, duly appointed by two justices to the same office. Smith continued in office until the 5th of December, 1838, when he resigned. On a certiorari to remove the order of the commissioners for the purpose of quashing it, it appeared that the parish of St. Andrew was not regulated by any local act. *Denman*, C. J.—This appears to me a very clear case. We had occasion lately to look minutely at a former order of the commissioners in the case of the *Strand Union*, which came within the same principle as the present. The claim of the commissioners rests principally on s. 46, which authorises the commissioners to direct the appointment of such officers as they shall think necessary for a limited purpose, namely, the "administration of the relief, and the employment of the poor." This limitation coming after the general words must be taken to confine them to the provisions of this particular act (the 4 & 5 Will. IV. c. 76), which abounds in provisions for the due administration of the relief to the poor (properly so called), but is silent on the subject of collecting the poor rates. One indirect mode of justifying the appointment in question was resorted to. It was said that the commissioners may order the appointment of an assistant overseer for a union consisting of several parishes, and may subdivide his office, and prescribe to him the collection of rates. But, if the commissioners were to do that, it appears to me that they would exercise a power which the act does not give them. *Littledale*, J.—I am of the same opinion. The word "collector" does not occur in the act except in the interpretation clause. The words "paid officers" may certainly in themselves include a collector; but that construction cannot very well be given to them if a collector is not necessary for any of the purposes in the act. The phrase "administration of relief to the poor" seems to contemplate the application of rates after collection. The guardians might perhaps appoint a collector if their union had been formed for the purpose of a common rating, and this may account for the use of the word "officer," in the interpretation clause, to signify, among other things, a "collector." *Patteson*, J.—The union in the present case was evidently formed under s. 26 of 4 & 5 Will. IV. c. 76, and under that section only. It is not a union for purposes of settlement under s. 33, nor for purposes of rating under s. 34, nor for the purpose only of appointing and paying officers, and declared to be so by the order in question, under s. 46, which latter sort of union, however, I am unable to comprehend. Taking it then to be a union under s. 26, the latter words of that section will be found to be very material,—"but, notwithstanding such union and classification, each of the said parishes shall be separately chargeable with

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and liable to defray the expense of its own poor,"—for they show that the funds of one parish are in no way to be mixed with those of another by reason of their forming part of the same union. In support of this order s. 15 is relied on, which makes the administration of relief subject to the control of the commissioners. It is remarkable that, although this section enumerates many matters, rating is not one of them; and throughout the act no power is given either to them or the guardians of any union to interfere with the making or collecting the rates in any parish. There is, it is true, so far as I can discover, no express reservation in that respect, as in Gilbert's Act (22 Geo. III. c. 83), of the existing power of churchwardens and overseers to make and collect the rates, but there is a total omission of any enactments respecting the poor-rates, which cannot have been accidental. The argument in support of the present order certainly goes too far; for, if the commissioners may direct the appointment of a person to collect the rates, they may also, on the reasoning now employed, direct the appointment of a person to assess them also. The guardians certainly are authorised, by ss. 23 and 25, to assess rates, but that is for one particular purpose only, viz. the building and enlargement of union workhouses. Sect. 48 gives the commissioners power to remove officers, but not to appoint; the commissioners are only to require "the persons competent in that behalf to appoint," (that is, the persons appointing originally,) successors to the officers so removed. If it were otherwise, the guardians might complain, and get officers removed for the very purpose of transferring to themselves the right of appointment. The question then arises, if at all, on s. 46, by which paid officers may be appointed for certain purposes; and when the legislature has described, however generally, what those purposes are, we cannot stretch their language, and allow such officers to be appointed for other purposes. That section empowers the commissioners to direct overseers or guardians of any parish or union to appoint paid officers for certain purposes. The first purpose is for superintending or assisting the administration of the relief and employment of the poor, and it appears to me to be a perversion of these terms to say that they can apply to the collection of rates. Administration of relief is altogether another process from the collection of rates; the one begins where the other ends. The second purpose is for the examining and auditing, and allowing or disallowing, of accounts in such parish or union, or united parishes. Collecting the rates does not come under that head. Can the guardians then appoint a collector for the other general purposes afterwards referred to, viz. for "otherwise carrying the provisions of *this* act into execution?" Now these words following particular words must be applied to matters *ejusdem generis;* and, besides, the act contains nothing applicable to collection of rates; collection therefore is not, and cannot be made under the provisions of this act, which studiously, as I have before said, omits all provisions on the subject. The appointment of a paid officer, then, for the purpose of such collection, is not within the powers conferred by s. 46. In one case, where a union has been formed under s. 34, for the purpose of rating, s. 46 might authorise the appointment of collector by the guardians of the union, for such an appointment might then be taken as made for carrying that provision of the act into execution. At present I think such an appointment might be good, and, if so, it would satisfy the use of the word "collector" in the interpretation clause, as being one of the persons comprehended by the word "officer" in the body of the act, and so far the act would be consistent. For these reasons I am of opinion that the order in question is illegal. *Coleridge*, J.—I am of the same opinion. We all considered the *Strand Union* case with reference to the general scope of the act; and I for one made up my mind independently of the particular grounds there applicable. It is said that, although there are no particular words in the act, yet that there are general words large enough to justify this appointment of collector. But it appears to me that there is no safer mode of construing all these words than by considering them with reference to s. 15, which gives the commissioners their power. They are there given

the control "over the administration of relief to the poor throughout England and Wales;" but that power is subject "to the existing laws:" and we are met by these words, when it is said that the 59 Geo. III. c. 12, is repealed by implication because, (as it was ingeniously contended,) the commissioners may certainly direct the guardians to appoint an assistant overseer for the whole union, and may also impose on him, if they think proper, the duty of collector for the same district; all which, he says, being inconsistent with the 59 Geo. III. c. 12, s. 7, which gives the parish in vestry assembled the power of appointing him and of specifying his duties, must have the effect of virtually repealing it.

But the duties of an assistant-overseer are not limited by that act in like manner as the duties of an overseer are limited by the 43 Eliz. c. 2, so that the assistant overseer may have multifarious duties imposed on him. He may, or may not, have to do with the relief of the poor; his powers may be given him *pro re nata;* so that it does not follow, because the commissioners may direct the appointment of such an officer, that they may, by 4 & 5 Will. IV. c. 76, s. 46, assign him the particular duty of collecting the rate, unless that duty is in furtherance of the provisions of this particular act. The argument is also open to this objection, which has been already noticed by my brother Patteson, that, if carried out, it would operate as a virtual repeal, to a certain extent, of the 43 Eliz. c. 5, for it would justify the commissionors in giving the same officer power with respect to the assessment as well as the collection of rates. Rule absolute.

Such order, made and passed before 6th May, 1839, confirmed by statute.

This decision was made on the 6th of May, 1839; and by 2 & 3 Vict. c. 84, all orders heretofore made and issued by the poor law commissioners, "and not rescinded by them or quashed *before* the 6th of May in the present year" (1839), by which the commissioners may have directed the overseers or guardians of any parish or union to appoint any person to collect the rates for the relief of the poor, or shall have defined or directed the execution of the duties of such person, or the place or limits in the which the same shall be performed, or shall have directed the mode of apportionment, or determined the continuance in office or dismissal of any such person from his office, or the amount or nature of the security to be given by such person, or shall have regulated the amount of salary payable to such person, or the time or mode or the proportions of payment thereof, shall be deemed, and the same are hereby declared to have the same force and validity as if the same had been warranted by 4 & 5 Will. IV. c. 76; and the commissioners shall have the same power and authorities in respect to all such orders, and to the persons appointed in pursuance thereof, as they have had in respect to all orders made and issued to the said officers appointed under the provisions of the said act; and that every person appointed by guardians under any such order shall have the like powers, authorities, privileges, immunities, protections, and remedies, as and for the performance of his duties under such order as are by law given to overseers of the poor in the performance of the like duties.

The commissioners have power to order the guardians to appoint a chaplain. He is an officer "for carrying the provisions of the act into execution."

Reg. v. *Braintree,* 1 *Q. B.* 130; 4 *P. & D.* 593. The commissioners ordered the guardians of the Braintree union to appoint a chaplain of the union, and to report to the commissioners his appointment and amount of salary. It was objected that the order had not been sent to one of the secretaries of state, although at the several times, simultaneously with the order, an order in the same terms and to the same effect had been addressed to the Royston union. And further, that there was a prior order of the commissioners still unrevoked, providing for the performance of the offices of religion within the workhouse, independently of any appointment of a chaplain, prescribing only that in case the guardians should deem it necessary to appoint one, he should be licensed and approved by the diocesan, and that, if the appointment should be deemed necessary, he should perform certain specified duties, such as reading prayers and preaching, administering the sacrament, examining the children and visiting the sick paupers. The return to the mandamus then stated that the guardians, in the exercise of their judgment and discretion, did not deem it necessary

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to appoint a chaplain, as provision had been made for the performance of religious offices by the schoolmaster of the union, for the attendance of the paupers at the parish church and dissenting places of worship; and that clergymen within the union had been invited to perform spiritual functions in the workhouse, for the benefit of the poor, which invitation had been declined by the clergy, and accepted by the dissenting ministers, and that the majority of the paupers were dissenters. It was conceded that the first objection could not be supported, as the order was addressed separately to one union, and therefore was not a "general rule," which was defined by ss. 42 & 109 of 4 & 5 Will. 4, c. 76. Lord *Denman.*—This was an argument on the return to a writ of mandamus, but it brought into question the validity of the writ, which directed the guardians to appoint a chaplain to a union workhouse, according to an order of the commissioners, on the ground that that order is not warranted by the act. The defendants denied that such a power is given by the act, and properly called on the prosecutors to shew what provision of the act could be carried into execution by the chaplain of a workhouse, as the paid officers to be appointed under the 46th clause must be appointed either with reference to the administration of the relief and employment of the poor, or to auditing of accounts, or to the general terms, "otherwise carrying the provisions of this act into execution," and it was admitted that this appointment could not be referred to either of the two former objects. The effect of these general terms was much considered in *Reg.* v. *P. L. C., Cambridge Union,* (*ante,* 38,) and the language used by the judges on that occasion was pressed upon us in argument. We there held that the appointment of a collector of poor rates was not within those general terms, because there is no provision of the act which has any reference to the collection of the poor rates, they being made and collected under other acts, and the act in question applying only to the expenditure of those rates, after they are collected. The only provision to be found in the act, which could authorise the appointment of a collector, was that respecting a union of parishes for the purpose of rating, in which case the rate would be made and collected under the act in question, and the cases of such unions afforded occasions on which the interpretation clause, containing the word "collector," under the head of "officer," might operate. The same interpretation clause, under the same head of "officer," has the word "clergyman;" and applying the same tests as were applied in the case in 9 *A. & E.*, the result will appear to be very different. It is true that no provision is to be found in the act in question directly authorising the appointment of a chaplain, or even using the word "chaplain," or any word of a similar import, but s. 19 plainly shews the intention of the legislature, that the inmates of the union workhouse, of whatever religious persuasion, should have religious assistance from ministers of their own persuasion; it shews, moreover, that some *general* regulations for affording such assistance to the inmates were intended, as well as some exceptions and particular regulations in favour of those who dissented, and could not conscientiously reap the benefit of those general regulations. Then s. 42, giving power to the commissioners to make rules and regulations for the government of workhouses, makes it further incumbent upon them to carry into effect the intentions of the legislature, as shewn in s. 19. In these sections therefore are to be found the provisions of the act as to the religious assistance and instruction to the inmates of the workhouse; and s. 46 gives the commissioners the means of carrying into effect those provisions in the only way in which it could be done beneficially, namely, by enabling them to call on the guardians to appoint a chaplain, with an adequate salary, who by the interpretation clause comes clearly under the head of a paid "officer." This is not the only instance of such indirect provision in this act. Medical attendance is evidently contemplated, yet there is no specific enactment as to the appointment of medical men, but they are included in the interpretation clause under the head of "officer," in the same manner as "clergymen."

Neither were chaplains of workhouses unknown to the law, for many local acts of parliament contain express provisions respecting their appointment. Indeed that circumstance was used in argument by the counsel in favour of the return, as furnishing something on which the word "clergyman" in the interpretation clause might operate, and so make it unnecessary to find any part of the act in question to which to apply it. But, whatever force may belong to that argument, it would be very strange if the act meant to give the commissioners, by express provision, a control over chaplains under local acts, and not allow them to create similar duties and officers in the establishments which they were themselves to form. Remarks of this nature are by no means conclusive; we have no inclination to affirm judicially that the law has called a power into existence merely because there is a probability of its having intended to do so, or because it may have manifested the wish to have something done, for which that power would furnish the means; but we have no doubt that the religious instruction of the inmates was intended to be involved in the management of the workhouse, and that the legislature actually intended to give a general power to appoint chaplains, as it found that power existing in numerous parishes already. Thinking that the commissioners have acted strictly within the 46th clause, this decision is by no means opposed by the Cambridge case in which we thought their order was not within it. We say nothing on the return, which merely offers reasons of expediency and policy against this particular exercise of discretion. Of such matters, those to whom the discretion is confided are the sole judges. Nor do we remark on the argument respecting the possibility of appointing ministers of particular sects or persuasions, the right question being that of appointing any clergyman.

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The commissioners have power to dismiss any paid officer of a parish or union.

But the commissioners have power to dismiss any paid officer of a parish or union, 4 & 5 Will. IV., c. 76, s. 48; and when the urgency of the case requires, the notice required by s. 20 may be dispensed with, 5 & 6 Vict. c. 57, s. 4.

Appointment of clerk, treasurer, relieving officer.

In pursuance of the authority given to the commissioners, they have directed that in each union, at the first meeting of the guardians, or within one month after the same, the guardians shall appoint a fit and proper person to be *clerk to the board of guardians*, and a fit and proper person to be *treasurer* to the said union, and shall take such security for the proper discharge of the said office of treasurer as shall seem to them necessary and fitting; and shall also appoint such and so many competent person or persons as the said board of guardians shall think fit, to be *relieving officer* or *relieving officers* of the said union, and shall likewise determine the parishes or places for which each such relieving officer shall act.

Clerk.

The duties of the clerk are prescribed by an order of the 21st April, 1842, and by 5 & 6 Vict. c. 57, s. 69, he is required to make a return of lunatic paupers.

Auditor.

The guardians are required to appoint an auditor, and his duties and salary are also regulated by the commissioners.

These officers may be elected by the guardians *de facto*. See *Reg.* v. *Dolghelly*, p. 7.

Duties of the Relieving Officers.

To attend meetings.

To attend all ordinary meetings of the guardians, and all other meetings, when summoned by the clerk, and to reside in the district.

To receive applications for relief, &c.

To receive all applications for relief, and to examine into the merits and circumstances of each case, and report the same to the board at their next ordinary meeting.

To give temporary relief.

In cases of *sudden and urgent necessity, to give such relief* to the destitute person as shall be requisite, either by placing the pauper in the workhouse, or affording relief out of the house, but not in money; whether the destitute person be settled in the parish or not.

To notify sickness of paupers.

In case of sickness or accident requiring medical or surgical relief, to procure medical or surgical assistance by giving an order on the medical officer.

To keep account

To keep a separate account of moneys received and disbursed by him on

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of moneys disbursed by him for poor.

To report cases of relief given by churchwardens.

account of the relief of the poor, and also of all articles received and given out by him for the relief of the out-door poor, and to balance such account weekly, and present the same for inspection and approval to the clerk before, and to the board at the meeting.

To report to the board, at their ordinary meeting, all cases reported to him in which relief shall have been given by the overseer of any parish.

This is part of the duty of the relieving officer prescribed by the commissioners, by an order bearing date the 21st April, 1842. The order is applicable to the unions mentioned in the schedule, but it embraces almost all the unions then existing.

7. Of Select Vestries under authority of 59 Geo. III. c. 12. (a).

Parishes enabled to establish select vestries for concerns of the poor.

Constitution of select vestries.

Members elected to be appointed by a justice.

Vacancies to be supplied.

Continuance of select vestries.

Power of renewal.

Meetings and duties of select vestries (b).

The care and management of the poor, in parishes not within any union, may be placed under the direction of a SELECT VESTRY; for the 59 Geo. III. c. 12, s. 1, enacts, "that it shall be lawful for the inhabitants of any parish, in vestry assembled, and they are hereby empowered, to establish *a select vestry* for the concerns of the poor of such parish; and to that end to nominate and elect, in the same or any subsequent vestry, or any adjournment thereof respectively, such and so many substantial householders or occupiers within such parish, not exceeding the number of twenty nor less than five, as shall in any such vestry be thought fit to be members of the select vestry; and the rector, vicar, or other minister of the parish, and in his absence the curate thereof, (such curate being resident in and charged to the poor's rates of such parish,) and the churchwardens and overseers of the poor for the time being, together with the inhabitants who shall be nominated and elected as aforesaid, (such inhabitants being first thereto appointed by writing under the hand and seal of one of his Majesty's justices of the peace, which appointment he is hereby authorised and required to make,) shall be and constitute a select vestry for the care and management of the concerns of the poor of such parish; and any three of them (two of whom shall neither be churchwardens nor overseers of the poor) shall be a quorum; and when any inhabitant elected and appointed to serve in any such select vestry shall, before the expiration of his office, die or remove from the parish, or shall become incapable of serving, or shall refuse or neglect to serve therein, the vacancy which shall be thereby occasioned shall, as soon as conveniently may be, be filled up by the election and appointment, in manner aforesaid, of some other substantial householder or occupier of such parish, and so from time to time as often as any such vacancy shall occur; and every such select vestry shall continue and be empowered to act from the time of the appointment thereof until fourteen days after the next annual appointment of overseers of the poor of the parish shall take place, and may be from year to year, and in any future year, renewed in the manner hereinbefore directed; and every such select vestry shall meet once in every fourteen days, and oftener if it shall be found necessary, in the parish church, or in some other convenient place within the parish; and at every such meeting a chairman shall be appointed by the majority of the members present, who shall preside therein; and in all cases of equality of votes upon any question there arising, the

(a) Commonly called Sturges Bourne's Act.

(b) There must, it seems, be a majority of select vestrymen present to constitute a valid meeting, as it is a general rule, that where a public trust is to be executed by a *definite* number of persons, it must be executed at a meeting where a majority of that number is present, unless there be a usage or custom to the contrary; and where by certain statutes the commissioners for enlarging churches appointed twenty-six persons to be a select vestry, for the care and management of the church, it was held, that to constitute a good assembly of such vestry, a majority (viz. fourteen) must be present. *Blacket* v. *Blizzard*, 9 *B* & *C*. 851. The words of these statutes resemble those of the above statute. A common-law vestry consists of an indefinite number; and therefore this rule does not apply to them.

chairman shall have the casting vote; and every such select vestry is hereby empowered and required to examine into the state and condition of the poor of the parish, and to inquire into and determine upon the proper objects of relief, and the nature and amount of the relief to be given; and in each case shall take into consideration the character and conduct of the poor person to be relieved, and shall be at liberty to distinguish, in the relief to be granted, between the deserving and the idle, extravagant, or profligate poor; and such select vestry shall make orders in writing for such relief as they shall think requisite, and shall inquire into and superintend the collection and administration of all money to be raised by the poor's rates, and of all other funds and money raised or applied by the parish to the relief of the poor; and where any such select vestry shall be established, the overseers of the poor are required, in the execution of their office, to conform to the directions of the select vestry, and shall not (except in cases of sudden emergency or urgent necessity, and to the extent only of such temporary relief as each case shall require, and except by order of justices, in the cases hereinafter provided for,) give any further or other relief or allowance to the poor, than such as shall be ordered by the select vestry."

Overseers (except in cases of emergency) to give no other relief than such as shall be ordered by the select vestry.

Rex v. *Woodman*, 4 *B. & A.* 507. The parish of Morpeth, beyond the period of living memory, has been managed by a select vestry, consisting of twenty-four persons. The inhabitants constituting the select vestry have generally continued in office for life, unless they happened to leave the parish or declined to serve. None of the inhabitants, besides the twenty-four, and the rector or curate, ever attended these vestry meetings. A notice was duly given that a meeting of the twenty-four gentlemen would be held for the establishing of a select vestry, and a meeting was accordingly held; at which meeting the defendant and nineteen other substantial householders or occupiers within the township were nominated and elected to be members of such select vestry, and an order of a magistrate was subsequently made, by which such twenty persons were appointed to act as a select vestry for the care and management of the poor. *Abbott*, C. J. "I am clearly of opinion, that the sixteen persons who constituted the ancient select vestry for the township of Morpeth, cannot be considered the inhabitants of the parish in vestry assembled, within the meaning of the 59 Geo. III. c. 12. The power to appoint a select vestry is expressly given to the inhabitants in vestry assembled; and here it was exercised, not by the inhabitants in vestry assembled, but by certain persons possessing some of the powers of the inhabitants in vestry assembled. It is not necessary in this case to decide what the inhabitants may do, but I have no difficulty in saying that in my opinion the inhabitants at large may assemble and appoint a select vestry for the care and management of the poor, not interfering with any of the rights of the ancient select vestry. The rule for quashing the order must therefore be made absolute."

A select vestry for the management of the parish affairs existing by ancient custom, cannot elect another select vestry for the management of the poor within the 59 G. 3, c. 12.

Clarke v. *King*, 2 *Younge & J.* 525. Wherever a select vestry is appointed, the right of the common-law vestry has always, in practice, been considered as *de facto* superseded; and the language of this act of parliament appears to confer upon that body the authority relative to the care and management of the poor, which the parishioners at large were before in the habit of exercising. It is optional with the parishioners, whether they will or will not proceed upon the old law, or upon the provisions of the statute, by the appointment of a select vestry; but if they pursue the latter course, they delegate their authority to that body. It follows that the consent of a select vestry, constituted under this act, is sufficient to render valid a contract under 9 Geo. I. c. 7, s. 4, for the lodging, keeping, and maintaining the poor of a parish.

Appointment of a select vestry supersedes power of a common vestry.

Sect. 2. "That when any complaint shall be made to any justice of the peace, of the want of adequate relief, by or on the behalf of any poor inhabitant of any parish for which a select vestry shall be established by virtue of this act, or in which the relief of the poor is or shall be under the management of guardians, governors, or directors, appointed by virtue of

59 G. 3, c. 12. Justices empowered to order relief in certain cases for a limited time.

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special or local acts, such justice shall not proceed therein, or take cognizance thereof, unless it shall be proved on oath before him that application for such relief hath been first made to, and refused by, the select vestry, or by such guardians, governors, or directors; and in such case, the justice, to whom the complaint shall be made, may summon the overseers of the poor, or any of them, to appear before any two of his Majesty's justices of the peace, to answer the complaint; and if, upon the hearing thereof, it shall be proved on oath, to the satisfaction of the justices who shall hear the same, that the party complaining, or on whose behalf the complaint shall be made, is in need of relief, and that adequate relief hath been refused by the select vestry, or by such guardians, governors, or directors, or that such select vestry shall not have assembled as by this act directed, it shall be lawful for such justices to make an order, under their hands and seals, for such relief as they, in their just and proper discretion, shall think necessary, (reference being also had by such justices to the character and conduct of the applicant;) provided, that in every such order the special cause of granting the relief thereby directed shall be expressly stated, and that no such order shall be given for, or extend to, any longer time than one month from the date thereof: provided that it shall be lawful for any justice to make an order for relief in any case of urgent necessity, to be specified in such order, so as such order shall remain in force only until the assembling of the select vestry of the parish, or of such guardians, governors, or directors as aforesaid, to which such case shall relate."

One justice may order temporary relief, in cases of urgent necessity.

Minutes to be kept of the proceedings of select vestries.

Sect. 3. "Every select vestry, to be established by the authority of this act, shall cause minutes to be fairly entered in books, to be for that purpose provided, of all their meetings, proceedings, resolutions, orders, and transactions, and of all sums received, applied, and expended by their direction, and such minutes shall from time to time be signed by the chairman; and shall, together with a summary or report of the accounts and transactions of the select vestry, be laid before the inhabitants of the parish in general vestry assembled, twice in every year, that is to say, in the month of March and the month of October, and at such other times as the select vestry shall think fit; and the minutes, proceedings, accounts, and reports of every select vestry shall belong to the parish, and be preserved with the other books, documents, accounts, and public papers thereof."

Minutes of select vestries, and reports of their proceedings, to be laid before the inhabitants in general vestry.

Notice to be given of vestries for the establishment and election of members, and for receiving reports of select vestries.

Sect. 4 provides, "that the churchwardens and overseers of the poor shall cause ten days' notice, at the least, to be publicly given in the usual manner, of every vestry to be holden for the purpose of establishing any select vestry, or of nominating and electing the members, or any member thereof, and of every vestry to be holden for the purpose of receiving the report of the select vestry; and every notice of any such vestry shall state the special purpose thereof."

Justices to act within their respective jurisdictions.

Sect. 35. "All powers and authorities by this act given to and vested in justices of the peace shall be exercised and executed by such justices within the limits of their respective commissions and jurisdictions, and not elsewhere; and that all provisions, clauses, authorities, and directions in this act contained in relation to parishes, shall extend and be construed to extend to all townships, vills, and places, having separate overseers of the poor, and maintaining their poor separately; and that all acts and duties required and authorised by this act to be done and executed by churchwardens and overseers of the poor, may in every parish be performed, exercised, and executed by the major part of the churchwardens and overseers of the poor thereof; and that in townships, vills, and places which have no churchwarden, the same may be performed, exercised, and executed by the overseers of the poor thereof, or the major part of them; and that all the powers, provisions, and clauses in this act contained, which relate to vestries, or to the inhabitants of any parish in vestry assembled, shall be construed to extend to all meetings of the inhabitants of any township, vill, or place, having separate overseers of the poor, and maintaining its poor separately, to be held after due and legal notice, for carrying into execution the laws for the relief of the poor, as fully as if in every such

Provisions relating to parishes applied to townships, &c.

Majority to act.

Powers given to vestries applied to meetings of townships, &c.

provision and clause they were severally and respectively named and repeated."

Sect. 36 provides, "That nothing in this act contained shall extend or be construed to extend to take away, abridge, alter, prejudice, or affect, further than is hereby expressly enacted, any of the powers, directions, provisions, or regulations contained in the said act passed in the twenty-second year of his present Majesty's reign, for the better relief and employment of the poor, in or with respect to such parishes, townships, and places as have adopted, or as shall adopt and become subject to the provisions of that act; nor to take away, abridge, alter, prejudice, or affect any of the powers or provisions of any special or local act or acts, for the maintenance, relief, or regulation of the poor in any city, town, hundred, district, parish, or place, so nevertheless, that in every city, town, hundred, district, parish, or place, such of the clauses, directions, and powers in this act contained, as are not repugnant to, nor incompatible with, the provisions of the said act, of the twenty-second year of his Majesty's reign, or of such respective special or local acts, shall have the like force and effect, and may be adopted and applied in like manner, as in other parishes and places: provided also, that nothing in this act contained shall extend or be construed to extend to alter, affect, or disturb any select vestry which in any parish has been established and acted upon by virtue of any ancient usage or custom."

Saving powers of 22 G. III. c. 83, where the provisions are adopted.

Saving powers given by special acts.

Select vestries.

Sect. 37. "That this act shall extend only to that part of the United Kingdom called England."

Act extends to England only.

Rex v. *The Overseers of St. Martin in the Fields*, 3 *Bar. & Adol.* 907. Where an ancient select vestry existed in a parish having certain powers in the management of the poor, but not all the powers required by 59 Geo. III. c. 12, to be exercised by select vestries, the Court granted a mandamus calling on the parish officers to convene a meeting, pursuant to the act, for the purpose of establishing a new select vestry to perform those functions under the act which the former vestry could not discharge, but not otherwise to interfere with.

There may be two select vestries in a parish, the one elected under 59 G. III. having all the powers not belonging to an ancient one.

Golding v. *Fenn*, 7 *Barn. & Cres.* 765. A custom that there shall be a select vestry of an indefinite number of persons continued by election of new members made by itself and not by the parishioners, is valid in law. *Semble*, that it must be part of such custom that there should always be a reasonable number, and that the reasonableness of the number must be decided with reference to long established usage, and to the population of the parish, such custom having existed from time immemorial in a parish. In the year 1662, by a faculty granted by the Bishop of London, forty-nine persons, together with the vicar and churchwardens, were named as the select vestry, and that number was to be kept up by elections to be made by ten at least of those forty-nine, together with the vicar and churchwardens. In the year 1673 this number of ten was by another faculty reduced to seven, and these faculties were acted upon ever afterwards. Ten out of the fourteen vestrymen, exclusive of the vicar and churchwardens, who were present at the vestry holden next before the promulgation of the first faculty, were part of the forty-nine named in that faculty. Held, that as the vestry appointed by the faculty, and since continued, was not inconsistent with the vestry previously existing by the custom, the custom was not destroyed by the parish having accepted the faculty and acted upon it ever since, the faculty not being binding in law, and the vestry having power at any time to depart from its directions.

Election by select vestry may be valid, if the number be reasonable

Number defined by a faculty not binding.

Rex v. *St. Bartholomew the Great*, 2 *Bar. & Adol.* 506. To a mandamus calling on the overseers to summon a meeting for the purpose of establishing a select vestry, pursuant to 59 Geo. III. c. 12, a return was made stating that there was by custom an ancient vestry in the parish which had from time immemorial consulted and deliberated on parochial matters, and acted as a select vestry for the concerns of the poor, and that they had immemorially been accustomed to perform the duties imposed on select vestries by the statute: held, that the return was bad, since the

An ancient vestry cannot claim an immemorial right to exercise the power first given by the statute of Eliz.

7. *Of Select Vestries, &c.*

statute imposes some duties, as the management of money raised by poor rates, and making orders for the government of overseers, which could not have existed before the statute 43 Eliz. c. 2. *Parke*, J., observed, "The ancient vestry may have had from time immemorial the power of managing and applying the funds raised for the relief of the poor, otherwise than by compulsory rates. There is no reason they should not continue to enjoy that authority, if existing. But it is also clear that the inhabitants are not precluded from exercising the power of appointing a select vestry to discharge those functions, and very important ones they are, which arise out of the poor law first established by the statute of Elizabeth." And this decision will agree with the opinion expressed by Lord Tenterden in *Rex* v. *Woodman*, (*ante*, 35.)

Notice of unusual meeting must be served on every vestryman.

Where a select vestry has been established, notice of an unusual meeting must be served on every select vestryman, otherwise the meeting is not duly convened, and cannot justify the expulsion of a person who was not one of the select vestry. (*Dobson* v. *Fussy*, 7 *Bing.* 305.)

The appointment by the justice is a ministerial act.

Rex v. *Adams*, 2 *Adol. & Ell.* 409; 4 *Nev. & M.* 299. In the parish of Tenterden, the inhabitants elected twenty select vestrymen, and the justice omitted two in his appointment, because they were ex officio members, one as a justice and the other as an overseer. The Court granted a mandamus to compel him to insert the names, although it was sworn that injury had resulted from the union of the offices of select vestryman and justice. Lord *Denman*, "The magistrates have nothing to do, except to appoint the persons already chosen by the inhabitants. The word 'elect' is a very strong one. The word 'appoint' is certainly an unlucky expression, if the meaning of the legislature be that they are only to register the acts of others: but it is clear to me that this was the only meaning. That being so, whatever consequences may follow, we have merely to give effect to the act." The rest of the Court concurred.

8. Incorporation of Parishes.

Under the previous title of "Guardians prior to the 4 & 5 Will. IV. c. 76," will be found the several enactments for the incorporation of parishes under Gilbert's Act. The principal object of such incorporation, as well as of the modern unions, is to provide a common workhouse for the whole district; and we propose therefore to defer the other legislative provisions relating to the old incorporation until we treat of workhouses.

9. Unions.

Parishes may be united by the commissioners

The incorporation of parishes mentioned in the last chapter, for the care and management of the poor, was voluntary; but now, by the 4 & 5 Will. IV. c. 76, s. 26, the commissioners "may declare any parishes, (*a*) *which they think fit*, to be united for the administration of the laws for the relief of the poor, and such parish shall thereupon be deemed a union."

This statute did not give them power to order a new board of guardians in a single parish governed by a local act.

The commissioners have no power to constitute a new board of guardians in a parish already having guardians under a local act.

Rex v. *P. L. C. Pancras Union*, 1 *N. & P.* 371; 6 *A. & E.* 1. On an application for a certiorari to remove an order of the poor law commissioners, cause was shown in the first instance, under s. 106. The order was, that the laws for the relief of the poor of the parish of St. Pancras should be administered by a board of guardians, consisting of twenty members, and that such board should be elected and constituted according to the poor law amendment act. The laws for the relief of the poor in St. Pancras were at that time administered by a board of directors,

(*a*) By 22 Geo. III. c. 83, & 56 Geo. III. c. 129, every united parish must have been within ten miles of the workhouse; but these provisions are repealed by the 4 & 5 Will. IV. c. 76, s. 31.

consisting of forty members, under a local act affecting that parish only. The order was issued under the 39th section of the 4 & 5 Will. IV. c. 76. Lord *Denman*, *Patteson*, J. and *Coleridge*, J. (dissentiente, *Williams*, J.) were of opinion that the order was bad. Each judge delivered his opinion, and the opinion of the majority was in substance as follows:—The language of this section does not in direct terms give the commissioners power to order that the poor laws shall be administered by a board of guardians in a single parish, but enacts, that if they shall so order, the board shall be elected in the same manner as a union board. The power, however, seems to be necessarily implied. The order is resisted upon the ground that this section was not intended to apply to a single parish governed by a local act, and having already a board of guardians or directors, which for this purpose is the same thing, but only to such single parishes as were under the ordinary government of overseers, and as the commissioners might think not proper to be joined with other parishes in a union. The Court is now called upon to construe this section, and is urged to decide, from the generality of the expressions used in it, that it applies to all parishes without any limitation, and that it necessarily gives an implied power to the Poor Law Commissioners to repeal, at their will and pleasure, all local acts, so far as they regard the administration of the poor laws; for that such would be the effect of the construction prayed for, is undeniable. If the legislature intended to give so extensive a power to the commissioners, it might reasonably have been expected that it would have done so in express terms; and accordingly, in s. 41, a power of altering the mode of election under local acts is given in express terms. Even without express terms, if s. 39 would be inoperative unless such construction were put upon it, the Court might be compelled to infer that such a power was implied. If, however, the section can be made fully effectual by a more limited construction, there can be no conclusive proof that the more extensive power was contemplated by the legislature; and if such limited construction should appear to be in accordance with the other sections of the act, the Court might possibly, if it were to decide in favour of the power claimed by the commissioners, give that which the legislature intentionally withheld. One of the main objects of the act appears to be to provide for a uniform administration of the poor laws. With this view, s. 15 enacts, that the administration of the poor laws, according to the existing laws, shall be subject to the direction and control of the commissioners, and a general power is given to them to make rules for the guidance and control of all *guardians*, *vestries*, and parish officers, in the management of the poor, the audit of accounts, entering into contracts, and carrying the act into execution, the commissioners prescribing the method, but the guardians or other bodies performing the actual duty. And s. 21 expressly enacts, that, except where otherwise provided by this act, all powers given by any general or local act relating to the relief of the poor, shall be exercised by the persons authorised by law to exercise the same, under the control and subject to the rules of the commissioners. Now these sections point at the continuance of existing guardians, and other officers, subject to the control of the commissioners, while no express authority is given to them to dismiss any guardians, or to repeal the provisions of any local act, either by these or any other sections of the act. Sect. 26 empowers them to unite parishes. The words are as general as can well be conceived; they give the power in distinct terms, and would appear to apply to all parishes throughout the kingdom, containing no exception of parishes already united, and yet it must be read with such exception and limitation; for by s. 32, the commissioners are prohibited from dissolving or altering existing unions, without the consent of two-thirds of the guardians. The generality of the words of any section in this act is not, therefore, conclusive as to the real meaning of that section. By s. 38, a board of guardians must be constituted for every union of parishes established under this act; but no mention is made of any new board in the cases of existing unions. Next comes the 39th section, on which the case depends. The immediate object

9. *Of Unions.*

Act not to be construed so as to give commissioners power to repeal local acts.

Powers of local acts reserved

Construction of the 39th Sec

9. *Of Unions.* of this section is to enable the commissioners to cause the poor laws to be administered by a board of guardians in a single parish, without driving them to the necessity of uniting that parish with one or more others, for the purpose of having such a board. The legislature might well consider that some parishes are so large and populous that the commissioners might judge it expedient that they should not be united with any other, and yet that the poor laws ought to be therein administered by a board of guardians. It is however contended, that under this section the commissioners have powers, where a board of guardians, under a local act, already exists in a single parish, to supersede the board so far as regards the administration of the poor laws, and to order a new board to be elected under this act. It is conceded that the old board must in most instances remain, having other duties besides the administration of the poor laws, though no words are pointed out leading directly to any such conclusion. Section 40 regulates the mode and scale of voting, giving owners as well as occupiers the right of voting, thereby introducing a new class of voters, unheard of before, and also regulating the number of votes which each person shall have by the value of his property, which scale of voting appears to be a favourite object throughout this act. Sec. 41 is not very intelligible; but this much is clear, that an existing board of guardians of a parish, under a local act, may be continued; that the mode of their election may be altered by the commissioners of their own authority; but their number, mode of appointment, removal, and period of service, cannot be altered except by consent of a majority of owners and rate-payers, and the board will be under the control and subject to the rules of the commissioners. It is not denied that the commissioners *may* so continue an existing board; but it is said that they are *not obliged* to do so by reason of the generality of the words of the s. 39; and that they have the option either to continue and modify the existing board, under s. 41, or to abolish it altogether under s. 39. No such option is given to them as to existing unions, notwithstanding the general words of s. 26. Nor is there anything to lead to the conclusion that it was intended by the legislature to give such option as to single parishes, except the general words of s. 39. Sect. 54 again speaks of guardians under local acts exercising powers, but saves the power of the commissioners. Upon the whole it appears that the legislature intended to make use of all existing boards of guardians or directors (for their appellation makes no difference), to subject them to the control of the commissioners, and to alter the mode of their election at the discretion of the commissioners; but not to abolish any of them, or alter their number, without the consent of the majority of the owners and rate-payers. It further intended to enable the commissioners to unite parishes and constitute boards of guardians in single parishes, not already having boards. But there are not any words authorising the abolition of a board of guardians (except in the case of a dissolution of an existing union by consent), nor the taking away from an existing board of guardians any power they possess by law, or any part of their authority. On the contrary, there is a manifest intention throughout to preserve existing boards, and no allusion to there being in any instance more than one board in a parish or union. The control given to the commissioners is abundantly sufficient to secure uniformity of administration by existing bodies, regulated in their election by the provisions of this act. Equally general words in s. 26 must of necessity have a limited construction. Sect. 39 therefore, though general in its terms, does not apply to parishes having already a board of guardians or directors under a local act, and their order therefore is illegal.

Construction of 41st Sec.

Several parishes may be formed into union, although one of them is governed by a local act.

R. v. *P. L. C. Whitechapel Union*, 2 *N. & P.* 9; 6 *A. & E.* 34. In the Pancras case the order was made on 25th April, 1836. On the 21st January, 1837, an order was made for the formation of the Whitechapel union, which included several parishes and places, of which the place called the Old Artillery-ground was one; in which the administration of the laws for the relief of the poor was conducted under the directions of a local act, the trustees and managers whereof objected to the order.

C. a. v.—Lord *Denman.*—The first fourteen sections relate to the establishment of the machinery under which the act is to be conducted, and some of the usual consequences. Sect. 15 enacts, that the administration of relief to the poor according to the existing laws, or such laws as shall be in force at the time being, shall be subject to the direction and control of the commissioners; and then the section goes on to state the general power of the commissioners. This section does not at all contemplate any exception or abridgment, as to locality, of the full powers given to the commissioners over the whole of England and Wales. The five sections next following give general directions not applicable to the question in discussion. Sect. 21 enacts, that, unless in cases otherwise provided for by the act, all the powers and authorities given by the act of the 22 Geo. III. c. 83, which is generally called Gilbert's Act, and the 59 Geo. III. c. 12 (Sturges Bourne's Act), and every other act of parliament, general as well as local, relating to the poor, shall be exercised by the persons authorised by law to execute the same, under the control, and subject to the rules, orders, and regulations of the commissioners. And the commissioners, and their deputies, are authorised to attend at the parochial and local boards and vestries, and take part in the discussion, but not to vote. This clause, therefore, in express terms, gives the poor law commissioners, in some cases at least, a jurisdiction over parishes governed by local acts. Sect. 22 also gives some authority to the commissioners in parishes under local acts. After three sections containing regulations not material to this question, comes s. 26, upon which the question turns as to the power of the commissioners on the subject of this dispute. The language of this section is as general as possible, making no exception of any kind as to parishes or places already under unions, or under the regulation of local acts or otherwise. And it must therefore be so interpreted; unless it shall appear from other parts of the act that its operation was meant to be qualified; or that, by giving the full meaning and effect to the words, it should be found to have the effect of repealing, or be inconsistent, or interfere with some prior act of parliament connected with the same subject, when, taking the whole of this act and other acts together, it was not so meant. And in considering how far the provisions of a later act of parliament may interfere with those of a previous one, we entirely concur in the opinion of Lord *Kenyon*, in *Williams* v. *Pritchard* (*a*), quoted by my brother *Coleridge* in the case of the poor law commissioners (*b*), that "It cannot be contended that a subsequent act of parliament will not control the provisions of a prior statute, if it were intended to have that operation; but there are several cases in the books to show, that where the intention of the legislature was apparent that the subsequent act should not have such an operation, there, even though the words of such statute, taken strictly and grammatically, would repeal a former act, the courts of law, judging for the benefit of the subject, have held that they ought not to receive such a construction." In considering the question, how far the general and extensive provisions of an act of parliament are to be qualified or controlled, either by other provisions in the same act, or by enactments in other acts, the principal object and general intent of the later act, which is to be interpreted, must always be borne in mind. The great object of this act is to obtain an improvement in the management of the poor, and the legislature seems to have thought it was likely to be obtained by a uniformity in the system in the management of them. A perfect uniformity it seemed difficult to obtain. But it seems to have been the object of the legislature to come as near to it as could be, either by enactments to be carried into effect immediately, or at other convenient times, and the commissioners have accordingly been vested with powers to be exercised at such times as they may see occasion. And there is no doubt but that one of the most material variations in the system of the poor laws is authorised by this section: for whereas, in former times, as, for instance, in the time of queen Elizabeth, the poor laws were administered by parishes, it was considered in the time of Charles II. that in

Rules for ascertaining if one statute has repealed another.

(*a*) 4 T. R. 2, 3.
(*b*) 1 N. & P. 376

Uniformity in the management of the poor, the object of the Poor Law Act.

9. *Of Unions.*

Large districts preferable to small.

large parishes it might be better done in smaller districts, and which seemed to be the prevailing opinion for a long time; but afterwards a contrary course seemed to be thought the more advisable, and the 22 Geo. III. c. 83, commonly called Gilbert's Act, was passed, which, instead of dividing the administration of the poor laws into townships or villages, (as by the act of Charles II.) authorised the union of entire parishes; this, however, could only be done by a certain consent; but it is to be presumed that this union of parishes was found beneficial, because, by the act in question the commissioners are empowered of their own authority to make unions on a very extensive scale. Sect. 26 having, therefore, in the most general terms, authorised unions, it is now to be considered whether, considering the qualifications and exceptions to which I have before adverted, they are prevented from including in a union a parish or place which is already governed by a local act of parliament, and in which many, if not all, the powers and directions under which the general union is to be governed, and amongst other things a board of guardians, are already to be found; and which might, therefore, seem to render unnecessary any order of the poor law commissioners as to its government. Sect. 28 directs the commissioners to make inquiries as to single parishes, with a view to forming unions. Sect. 29 directs a similar inquiry as to former unions, either under Gilbert's Act or local acts, with a view to the future apportionment of expenses. Sect. 32 is a very material one. Sect. 26 having given the power to form unions, s. 32 authorises the commissioners to declare any union, whether formed before or after the passing of the act, to be dissolved in any parish, to be added to or separated from such union, and to adapt the constitution, management, and board of guardians, to the altered state of things: and then the parishes separated from the union may be united to other parishes or unions; and the commissioners are authorised to ascertain the proportionate value of the workhouses, and other things belonging to the parish, and give directions on the subject. But this alteration is not to take place unless a majority of two-thirds of the guardians of the union shall concur on the alteration. And on this it is to be observed, that the consent is only required when unions are altered, and not when originally formed under s. 26. Now this mode of ascertaining the proportion of expenses had been directed by s. 28, as to single parishes, and by s. 29, as to unions, under Gilbert's Act and local acts; all the parishes, therefore, under the contemplation of both those sections, must be considered as being capable of forming part of the union thus authorised by s. 32 to be altered. And if unions of parishes under local acts might be made parts of a union under the act in question, so may a single parish possessing a local act. Sect. 37 prohibits unions being formed under Gilbert's Act without the consent of the commissioners. Sect. 38 directs, that when parishes are formed into a union, there shall be a board of guardians, with particular directions relating to them. It is not, however, necessary to go through these particulars. One or two of the circumstances connected with the unions of parishes with local boards are worthy of observation. Sect. 26 itself provides, that notwithstanding the union there authorised, each of the parishes shall be separately chargeable with and liable to pay the expenses of its own poor, whether relieved in or out of the workhouse. Sect. 27 permits, that in any union, justices may direct, in certain cases, relief to persons not in the workhouse to be given, by whom the particular parish is chargeable. The relief cannot be given by the union guardians out of the union fund Therefore the parish guardians, wherever there are such, will be the persons to give this relief. Again, s. 38 enacts, that the workhouses of such union shall be governed, and the relief of the poor in such union shall be administered by the board of guardians—not the out-door relief—evidently giving to the board the government only of matters wherein the parishes have a common interest. The same section makes the justices ex officio guardians of the united or common workhouses (not of such union, nor of such parish); and further provides, that no ex officio or other guardian of any such board shall act,

except as a member, and at a meeting of such board. Now s. 54 is entirely confined to the relief of the poor of any parish which has a local board under this or any other act, or select vestry, and whether forming part of a union or incorporation, or not, and directs that such relief shall belong exclusively to such guardians of the poor or select vestry. Some of the provisions relating to bastardy and removal lead to similar observations, and strongly support the inference that parishes having local boards may be united with others, under s. 26. We do not feel it necessary to discuss the judgment pronounced by us on s. 39, though we were pressed at the bar with the consequences of it. We were told that the effect of it would be easily evaded, inasmuch as the commissioners would be at liberty to unite every parish having a local board, though not to give a board to a single parish possessing already a board under a local act. But we are not to assume that the commissioners will evade the law, or colourably unite a parish possessing a local board, merely because they have not the power to give them that constitution as single parishes. The power given by s. 26 is given in different terms from that given by s. 39, and the Court has decided under different conditions. We have no right to doubt that both the one power and the other will be faithfully carried into execution. The vast and populous parishes for which local constitutions have been enacted, stand plainly in a very different condition from the small parishes which have been affected by Gilbert's act, or have obtained local acts for themselves. Whether it is or is not desirable that the former should remain single, and act on their existing regulations, there are obvious reasons for supposing that parliament would have been unwilling to disturb what it found there established. But to withhold the power of uniting every small parish, otherwise fit to be united, might have had the effect of preventing the operation of the new law over a large portion of the country. We find, accordingly (as was, indeed, admitted in argument at the bar), that the power of uniting is conferred without any restriction whatever, and have pointed out several sections in which the union of such parishes is clearly contemplated. Upon the whole, therefore, we are of opinion that the commissioners have in this case exercised a lawful power, and that their order must be confirmed.

A parish created for ecclesiastical purposes only, and united with others, does not form a "Union."

Reg. v. *P. L. C.* (*Holborn Union*), 7 *A. & E.* 281. A rule was obtained for quashing an order of the commissioners for uniting the parish of St. Andrew, Holborn, united with the parish of St. George the Martyr, and the liberty of Saffron Hill, Hatton Garden, Ely Rents, and Ely Place, by the name of the Holborn Union, &c., on the following grounds, that the parishes of St. Andrew, Holborn, and St. George the Martyr, were a union at the time of making the order, and the administration of the poor laws was vested in a board of governors and directors, elected under 6 Geo. 4, c. 175 (local), and that the consent of two-thirds of the governors, &c., had not been obtained; that there being such a board, the commissioners had no authority to interfere; that the commissioners had ordered a board of guardians, to consist of twenty, to be elected, by which order the number of guardians was decreased, without having obtained the consent of the owners of property and rate-payers to such alteration. The parishes of St. Andrew, Holborn-above-Bars, and St. George the Martyr, had been, since 1825, governed by a board of guardians and directors, appointed under 6 Geo. 4, c. 175, consisting of fifty guardians; the district now forming the parish of St. George the Martyr, was formerly parcel of the parish of St. Andrew, Holborn, and that it was separated from that parish for ecclesiastical purposes only, in 1713, under the 10 Anne, c. 11, but that for all other purposes it never had been separated; and that, for the relief of the poor and all other parochial purposes, the two parishes continued united, having one workhouse and one set of overseers, and that the parishioners of the two parishes were rated under one rate for the relief of the poor. Formerly the parish of St. Andrew, Holborn, formed one entire parish, but under the 13 & 14 Car. II. c. 12, for the more convenient relief of the poor, was divided into three townships or liberties, called the upper and

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lower liberties in Middlesex, and the city liberty, all three of which supported their own poor separately. The commissioners, under 10 Anne, carved out of the upper liberty of the parish of St. Andrew, Holborn, a parish called St. George the Martyr, but only for ecclesiastical purposes. This district was sometimes called the Upper Liberty of St. Andrew, and sometimes the United Parishes of St. Andrew and St. George. Lord *Denman.*—It is alleged, that the district affected by this order comes within the exception contained in s. 32 of 4 & 5 W. IV. c. 76, and that therefore no dissolution, or alteration of it, or addition thereto, shall take place, unless a majority of not less than two-thirds of the guardians concur; for that, by several local acts, the two portions of the district are treated by the legislature as a union; that the term *union* is constantly applied to them, and therefore that it comes within the clause in question. We have already come to two decisions upon this act, which it is alleged apply to the present case. But, in my opinion, they do not. In the first case (*Pancras Union, ante, p.* 48), we held, that the act did not apply to a single parish with a local board of guardians. If this entire district, therefore, comprehended in the commissioners' order, has not a local board of guardians, the decision referred to does not touch the present question. It is then said, that it appears by our judgment in the second case (*Whitechapel Union, p.* 50), that we recognised a difference of intention in the legislature, between the proceedings to be applied to populous or small districts, and that, as these districts are large and populous, we should now act upon this distinction. It is true we did there observe upon the reasons which might have induced the legislature to exempt a parish having a board of guardians from the clause giving the commissioners power to make unions; but we entirely disclaim any right to give to the words of the legislature a meaning different from their natural import, in order to make them accord with some latent intention that may be supposed to have existed. In acts of general bearing like these, it is absolutely necessary to construe words according to their obvious meaning, and not to take the unwarrantable liberty of attributing a sense to plain words different from their natural import. Another argument has been argued, that parliament wished to interfere as little as possible with existing institutions. This we do not deny, and we acted upon it in the first case already noticed; but this consideration renders it imperative upon us to see what was the existing state of things in the parish at the time the order was made. Now to see whether there was a union existing here within the meaning of this act, we must look at s. 109 (the interpretation clause), to ascertain the import of the word *union*. We there find, that it is to include any number of parishes united either under that act, or under Gilbert's Act, neither of which is the case here; or thirdly, any parishes incorporated for the relief or maintenance of the poor under any local act. Does this district come within the third category? Are these parishes incorporated under any local act? To ascertain that, we must see what the legislature means by the word *parish*. By the same clause, parish is construed to be parish, city, district, and other place, or division or district of a place maintaining its own poor. It is clear that neither of these places is a parish in any other sense, and so far from either of them being a parish maintaining its own poor, each is a mere division of a larger parish. They have been divided, it is true, for ecclesiastical purposes, but neither of them has ever been called upon to maintain its own poor. I therefore think that the exception in s. 32 does not apply, and accordingly that a certiorari ought not to be granted. *Littledale* and *Williams*, and *Coleridge*, J., concurred.

Meaning of the word "Union."

Workhouse in common.

The workhouses of unions formed under 4 & 5 W. IV. c. 76, shall be for common use, and the poor of each parish shall be maintained and employed therein; but each parish shall be separately chargeable with the expense of its own poor, whether relieved in or out of the workhouse.

Each parish chargeable for its own poor. Estimate of pro-

In estimating the proportion which each parish is to contribute to the common fund, both for providing a workhouse and employing the poor, the commissioners are required to ascertain the annual average expense incurred

for the relief of the poor in each parish for the three years preceding the inquiry; and upon the application of the guardians, or overseers of any parish, or without such application, the inquiry may be from time to time repeated, and a new proportion determined, s. 28. A parish cannot refuse to pay its quota because no guardian has been elected, *Reg.* v. *Todmorden*, *ante*. The returns made to parliament of the sums expended for the relief of the poor, shall be taken as the ground on which the averages shall be calculated, s. 30. *No union* can now take place without the consent of the commissioners, s. 37. The commissioners may dissolve any union (except unions for the purpose of settlement or rating), or separate any parish, or add any to it, provided two-thirds of the guardians of such union concur therein. In such cases rules are to be adapted to its altered state, and the proportionate value to every parish of the common property, and the liabilities of each parish, are to be ascertained, and the sums due to be secured, s. 32.

Proportion to be paid by each parish.

Interest in common fund and liability to be ascertained.

If all the guardians agree, and the commissioners approve, all the parishes of a union may become one parish for the purpose of *settlement*. The agreement must be signed by *all* the guardians, and deposited with the clerk of the peace; from which time a settlement of any person in any one parish of the union, shall be considered (as between such parishes) a settlement in the union; and the expense of his maintenance, as well as that of ascertaining and litigating his settlement, shall be paid out of the common fund, s. 33.

United parishes may be one for the purpose of settlement;

The guardians may in the same way agree that, for the purpose of *rating*, the parishes of any such union shall be considered *one* parish; but in such cases all the parishes of the union must be situate within the same county, and under the jurisdiction of the same justices of the peace; and this agreement, when deposited with the clerk of the peace, cannot be revoked or annulled, s. 34. In such cases the guardians shall assess the value of the property in each parish; and all rates grounded on such assessment may be recovered, allowed, and appealed against, in the same manner as ordinary rates, s. 35. After the making of the common rate, the proportions fixed by s. 32 shall cease, and there shall be a common expenditure; if any parish at the time of such assessment is not represented by a guardian, it will not bind such parish unless a majority of the owners of property and rate-payers assent in a prescribed form, s. 36.

and for the purpose of rating.

Assessment.

Common rate.

Common expenditure

Parish without guardians.

One of the principal objects in the formation of unions is to provide "a well-managed *workhouse*, which should be the common workhouse of the incorporated district, to assign to those workhouses separate classes of poor, though composed of the poor of distinct parishes, each distinct parish paying to the support of the payments of the permanent workhouse establishment." (See *post*.) By s. 23 of 4 & 5 W. IV. c. 76, the commissioners are empowered, with the consent of a majority of the guardians of any union, or the majority of rate-payers and owners of property in any parish, to order the overseers or guardians of any parish or union not having a workhouse to build a workhouse, and to purchase or hire land or any building for that purpose; and, with the like consent, to order the overseers or guardians of any parish or union having a workhouse, or any buildings capable of being converted into a workhouse, to enlarge or alter the same, or to provide an additional workhouse of such size, description and plan as the commissioners shall deem proper; and the overseers and guardians are authorised to raise such sums of money as may be necessary for the purpose, by such means as are now by law given to overseers or guardians for purchasing or hiring land, or for building, hiring, and maintaining workhouses, or to borrow money for such purposes under this or any other act.

Workhouse.

Commissioners empowered to order workhouses to be built, hired altered, or enlarged, with consent, &c.

Sums to be raised for the purposes of building workhouses to be charged on poor rates; not to exceed one year's amount of poor rates.

And by s. 24, it is enacted, that the sum to be raised for such purposes shall not exceed the average annual amount of the poor rates; and any loan shall be repaid by annual instalments of not less than one-tenth, with interest: the money is to be charged on the poor rates.

By s. 25, it is enacted, that the commissioners may, without requiring

9. *Of Unions.* any consent, order the overseers or guardians of any parish or union having a workhouse, or any building capable of being converted into a workhouse, to enlarge or alter the same: provided, that the sums to be raised for such purposes, and charged upon any parish, shall not exceed fifty pounds, nor one-tenth of the average annual amount of the poor rates.

Power to order workhouses to be enlarged, without consent, but the sums not to exceed one tenth of one year's rates, or 50*l*. Commissioners have jurisdiction over a workhouse in *one* of two districts.

In *Trewin* v. *Lewis*, 4 *M. & C.* 249, it was determined that the commissioners had jurisdiction over a workhouse existing within the limits of *one* of two districts formed into the union.

10. Of Workhouses (*a*).

Workhouses before 4 & 5 Will. IV. c. 76.

9 G. I. c. 7, s. 4, two or more places may join, when one too small to procure a workhouse

When guardians or overseers are required to provide a workhouse, under 4 & 5 Will. IV. c. 76, s. 4, they are by the same section authorised to exercise all the powers which by law had then been given for similar purposes. By 9 Geo. I. c. 7, s. 4, a parish was enabled to purchase or hire a house for the maintenance and employment of the poor therein; and if any parish was too small to purchase or hire such house, then two or more parishes, with the consent of the inhabitants, and with the approbation of a justice, might unite in purchasing, hiring, or taking such house, for the purpose of keeping, maintaining, and employing the poor of the respective parishes.

Houses might be provided under Gilbert's Act.

By 22 Geo. III. c. 83, s. 17, the guardians of the poor of such places as should adopt the provisions of the act, are directed to provide a house, with proper buildings and accommodations, and might purchase or rent land for that purpose; and fit up and dispose the same, with the approbation of the visitor, if any, at the expense of such places respectively, in the proportions therein mentioned; and provide materials necessary for the employment of the poor: and by s. 18, the houses to be built or provided must be situate within the parish for which it is used, if a single parish; and if several parishes are united, the house shall be built or provided within one of them, and not in any other parish, without the consent of three fourth parts, in number and value, of the owners or occupiers of lands, qualified

And to be situated in the parish (if one), or in one of them if united, except by consent.

(*a*) In *Rex* v. *St. Peter and St. Paul, Bath*, (see *post*, *Certificate*), Lord *Mansfield* observed, in allusion to workhouses; that "the want of workhouses was, however, soon felt as an inconvenience; they were, not long after, introduced by the legislature; and, if well regulated, a most desirable mode of relief they are; they supply comfort and accommodation for those who cannot work, and employment for those who can. In many instances which have chanced to fall within my knowledge, particularly on the Midland circuit, they have reduced the annual amount of the poor rates one-half. But this benefit could not within itself be received by every separate district: for where parishes were small, the expense of the necessary buildings was too heavy for them. This obstacle was foreseen by the legislature, and provided against accordingly. Though single parishes could only contract for these buildings within their own limits, yet where two unite, no restrictions were imposed, the power is general. It is obvious that the workhouse of a single parish must be most conveniently situated in that parish. Upon a similar principle, where many parishes were jointly concerned, the legislature did not require that the building should be raised in either of the confederate parishes; because in such case, a spot might be found in some other parish more central and better accommodated to their general convenience, than any part of their united district. The act, therefore, authorises the purchase anywhere: and when once the joint purchase is made, wherever it be, it becomes a part of the local system of each contracting parish; and if the poor will not go there, they are not entitled to relief. The same narrow spirit that has impeded the progress of this beneficial plan, now starts up again to limit this power, and almost to overthrow the act itself; which was calculated ultimately to reduce expense, as well as promote industry and encourage manufactures, by employing all the poor under the eye of one master." He then refers the objection as not warranted by the certificate act. (See *post*, and 54 Geo. III. c. 170, s. 3.)

(*b*) By ss. 22, 23, incapacitated persons, &c. are empowered to sell.

as herein mentioned: and by s. 19, that all the houses, buildings, and lands, to be hired or rented under the authority of this act, shall be hired or rented in such manner, for such term or terms, and on such conditions, as are specified in the form of agreement contained in the schedule, No. IV.; and all such houses, buildings, and lands, shall be free from all parochial and parliamentary taxes, except such taxes, and to such amount, as they were assessed at the time they were first taken and applied for the purposes of this act: and by s. 27, the guardians, where any such poorhouse shall be provided, &c., may inclose from any waste or common land near thereto, with the consent of the Lord of the Manor, and the major part in value of the freeholders or persons having right of common thereupon, land not exceeding ten acres, for the purpose of building upon, or cultivating, the same, for the use of such poorhouse, and the poor persons.

On what condition to be rented, and how taxed and rated.

Enclosing commons for use of workhouses, &c. (a).

By the 59 Geo. III. c. 12, s. 8, (the Select Vestry Act,) any parish not having a workhouse, or a workhouse insufficient or inconvenient, the overseers, by the direction of the inhabitants, may erect and build in such parish a suitable workhouse, or alter any messuage belonging to such parish for that purpose, and to purchase or take on lease any ground within the parish for the purpose: and by s. 10, in any parish in which no sufficient poorhouse or workhouse can be procured for the accommodation of the poor, the overseers, by the direction of the inhabitants, may purchase or hire any house for that purpose, in any adjoining parish, with the consent of two or more justices, such consent to be written upon or annexed to the agreement for purchasing or hiring such house, such house not to be situated more than three miles from the parish.

Power to build or enlarge workhouses under the Select Vestry Act.

Where no poorhouse, &c. can be procured in the parish, adjoining parish may be resorted to.

The guardians may sue and be sued in their corporate name, and hold lands or goods as a corporation. 5 & 6 Vic. c. 57, s. 16. See also the previous statute on the same subject, 5 & 6 Will. IV. c. 69.

The guardians are a body corporate.

Wherever a board is empowered to make an order, or prefer a complaint before justices, a copy of the minute of the resolution, sealed, and countersigned by the clerk, shall be sufficient proof thereof; and they may empower any officer of the board to take proceedings before justices, as if they did it in person. 5 & 6 Vic. c. 57, s. 17.

A minute of their proceedings evidence in certain cases.

By 22 Geo. III. c. 83, s. 20, "when any such buildings shall be agreed to be erected, repaired, or fitted up, the expenses thereof, and of the purchase of the land necessary to be used for that purpose, shall be paid by the guardians of the poor, in the proportions to be settled and adjusted by the persons, and in the manner, directed by the agreement to be made as aforesaid; and the visitor and guardian, when such expenses, or the proportion thereof, shall amount to one hundred pounds or upwards, to borrow the same at interest, and secure such money by a charge upon the poor's rates, in sums not exceeding fifty pounds each, for the greater ease in discharging the same, in the form contained in the schedule, No. XI., or to the like effect; which charge shall continue upon the rates until the money so borrowed, and all interest, shall be fully paid: and the said guardians and their successors shall, and they are hereby required duly to pay and keep down the interest of such money so to be borrowed, as the same shall become due; and when the principal shall be called for, they may borrow it from some other person, and secure it by an assignment of such security indorsed on the back thereof, in the form contained in the said schedule, No. XIV., or to the like effect: and the visitor and guardian, in order to expedite such payments, shall, as soon as the savings in the poor's accounts shall amount to a sum sufficient to pay off and discharge one of the sums which shall have been borrowed, pay off and discharge such sum, and in like manner as to all succeeding savings, until the whole debt so contracted and secured shall be discharged. These assessments were to continue at the same rate as they were when the poorhouse was established; but this was repealed by the 43 Geo. III. c. 110, which, after reciting that doubts

Borrowing money upon the poor rates, &c.

(a) These powers are under the control of the commissioners. See Appendix, 5 & 6 Will. IV. c. 69, s. 4.

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had been entertained as to the efficiency of the 42 Geo. III. c. 74, which had enabled the overseer to pay off one-twentieth every year, enacts, that such assessments shall and may from time to time be diminished to such amount as shall be deemed proper and necessary: provided always, that the guardians of the poor, from the time being, of every such parish, shall yearly and every year, pay off or provide for a twentieth part at least of any moneys which shall have been borrowed for the purpose aforesaid, under the powers of the said act of the twenty-second year of his present Majesty's reign, and also shall duly keep down the interest of all moneys which shall be so borrowed; anything in the said recited acts of the twenty-second and forty-second years of his present Majesty's reign, or either of them, contained to the contrary notwithstanding. (S. 2.)

One twentieth to be paid off every year (*a*).

59 Geo. III. c. 12, s. 14, provides, "that no sum exceeding the amount of a rate or assessment at one shilling in the pound upon the annual value of the property in any parish assessable to the rates for the relief of the poor, shall be raised, expended, or applied, in any one year, in purchasing, building, and repairing any buildings, or land, by this act authorised to be purchased, taken, built, or repaired, and in fitting up, preparing, and furnishing such buildings, and in stocking such land, or for any one or more of such purposes or objects, unless the major part of the inhabitants and occupiers assessed to the relief of the poor, in vestry assembled, shall consent thereto, nor until two-third parts in value of all the inhabitants and occupiers so assessed as aforesaid (whether present in vestry or not) shall have also signed their consent thereto in the vestry or parish book."

Limiting the amount to be raised for buildings, and the purchase of lands, &c.

Sect. 15 enacts, "that in every case where the inhabitants of any parish shall in manner aforesaid consent that the greater sum than the amount of a rate or assessment of one shilling in the pound will raise, shall be expended in one year for all or any of such purposes and objects, it shall be lawful for the churchwardens and overseers of the poor of such parish, with the consent of such majority as aforesaid of the inhabitants and occupiers thereof, to be given and signed in the manner herein-before directed (after the rate or rates at or amounting to one shilling in the pound shall have been actually levied and applied for such purposes or some of them), to raise any additional sum or sums, by loan, or by sale of an annuity or of annuities on any life or lives, not being under the age of fifty years respectively, or for any certain term not exceeding fifteen years, so as the whole sum to be raised for all or any of such purposes by loan, and by the sale of annuities, or by either of such means, shall not be more than five shillings in the pound of or upon the true annual value of the property which shall in such parish be assessed to the poor's rates (every proposal for any such annuity being first stated to and approved by the inhabitants and occupiers of such parish in vestry assembled); and the churchwardens and overseers of the poor shall and they are hereby authorised, in the names and on the behalf of the inhabitants of the parish, to sign and execute securities for the money which shall be so borrowed, and for the annuities to be so granted; and by every such security to charge the produce of the future rates to be made for the relief of the poor of every such parish with the repayment of the principal sum which shall have been so borrowed, and the interest thereof, or with the payment of the annuity thereby granted (as the case may be), at and upon the days and times, and in such manner and proportions, as in and by the security for every such loan and annuity respectively shall be appointed and expressed for the payment thereof; and the money to be raised by such future rates shall be subject and liable to the payment of every such loan, and the interest thereof, and of every such annuity accordingly."

Power to raise further sums by loans, or by the sale of annuities.

Future rates charged with loans and annuities.

(*a*) The 36 Geo. III. c. 10, s. 1, after reciting that certain local acts had limited the annual sum to be raised for the poor rates, and that the high price of wheat rendered such sum insufficient, enabled overseers to raise more according to the price of wheat, so that the rate did not exceed double the amount of the then rate. This latter clause was however repealed by the 52 Geo. III. c. 73.

Sect. 16 provides, "that no greater sum in the whole than the amount of a rate or assessment at one shilling in the pound shall in any parish be charged upon the future rates thereof, unless two-third parts in value of the proprietors of messuages, land, and tenements within such parish (whether for estates of freehold or copyhold, or by virtue of leases for terms of not less than fifteen years absolute or determinable upon a life or lives), shall have consented to raise the money for which the charge or security shall purport to be made; such consents to be given by writing under the hands of all persons and corporations sole, and the consent of every corporation aggregate under the hand of the president, head, or chief member thereof for the time being, and the consents of *femes covert*, minors, insane persons, and persons out of the kingdom, by and under the hands of their respective husbands, guardians, committees, trustees, attorneys or agents, who are respectively authorized to give such consents, and the consent of the major part of the trustees for any charitable or other purpose shall be sufficient in respect of the trust estates." (*a*)

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No greater rate than 1*s.* in the pound shall be charged on future rates, unless with consent of two-thirds in value of the proprietors of premises.

4 & 5 Will. IV. c. 76, s. 63. The money requisite for providing a workhouse may be borrowed from the commissioners of exchequer bills.

By 22 Geo. III. c. 83, s. 21, for *the purpose* of taking lands, &c. the guardians were incorporated; see now 5 & 6 Vict. c. 57. s. 16.

Incorporation of guardians.

22 Geo. III. c. 83, s. 8. "From and after the appointment of such guardian as aforesaid, one or more of the churchwardens or overseers of the poor of every parish, township, or place, which shall adopt the provisions of this act, who shall be approved at some public meeting to be holden as aforesaid, shall receive the money to be collected by virtue of such poor's rates, and apply the same in manner following; (that is to say), if such parish, township, or place, shall not be united with any other by virtue of this act, such churchwarden or overseer shall pay to the guardian of the poor such sums, from time to time, as he shall have occasion to employ for the purposes of discharging the bills, and all other necessary expenses attending such house or houses, and the poor belonging to such parish, township, or place, and shall take receipts from such guardian for all the money so paid, expressing in every such receipt the purposes for which such money is wanted; and if the said parish, township, or place, shall be united with any other parish, township or place, by virtue of this act, such churchwarden or overseer shall pay from time to time, to the treasurer of such united parishes, townships, or places, their due proportion and *quota* of the several expenses attending the poor and poorhouse therein, under the authority and according to the direction of this act, and take his receipts for such money; or, if it shall be found more convenient, he shall permit such treasurer, from time to time, to draw drafts upon him for such money, in the form contained in the said schedule No. VIII., and pay the same when they become due, specifying in every such receipt and draft the general purposes for which such money is to be applied; all which payments so to be respectively made, shall be allowed to the said churchwarden or overseer, in his accounts with the parish, township, or place, wherein such money shall be raised; and the accounts, as well of the said churchwarden or overseer, as of the said guardian, shall be examined at every monthly meeting, and shall be examined and passed quarterly by the visitor of such poorhouse, after they shall have been verified upon oath before a justice of the peace."

Guardians to receive money and pay expenses.

Workhouse Officers.

Accounts to be examined, verified on oath, and passed quarterly.

By the 4 & 5 Will. IV. c. 76, s. 29, the commissioners are empowered to ascertain the proportion to be paid by each parish in any *existing* union, and to vary the same from time to time. See Appendix.

Commissioners may vary the proportion in an existing union.

By 41 Geo. III. c. 9, s. 2, "the guardians of the poor present at a monthly meeting held according to the directions of the said act, with the

Guardian may make money order on over-

(*a*) By the 22 Geo. III. c. 83, ss. 22, 23, and by the 59 Geo. III. c. 12, s. 18, a power of sale was given to corporate bodies and persons labouring under disabilities; but a more comprehensive provision on this subject has been made by 5 & 6 Will. IV. c. 69, ss. 1, 2, and 5 & 6 Vict. c. 57, s. 16.

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seers, &c. and which may be levied by distress if necessary.

approbation of the visitor, who shall sign the same, may make an order on the churchwardens or overseers, or collector of the poor's rates, some or one of them, for so much money as shall be necessary for the purposes of the said act; and if the churchwardens or overseers, or person or persons to whom the order shall be directed, shall neglect or refuse to pay the same to the treasurer or guardian to whom the same is made payable, within seven days after it shall be demanded, it shall be lawful for any justice of peace within the division or district, upon proof made on oath of such default, to issue his warrant for levying the same by distress and sale of the goods and chattels of the said churchwardens and overseers, or other person or persons, in like manner as by the 22 Geo. III. c. 83, is provided in case of nonpayment by the guardians of the poor."

Visitor of workhouse to be appointed, and his duties.

22 Geo. III. c. 83, s. 10. "That the guardians of the poor for the several parishes and townships which shall be so united as aforesaid, shall meet as soon as conveniently may be after such agreement shall have been made, to consider of three proper persons, respectable in character and fortune, fit to be put in nomination for the office of visitor of such poorhouse; and two or more of such guardians shall, as soon as conveniently may be after such meeting, apply to two justices of the peace acting for the limit wherein such poorhouse shall be, and produce to them the said agreement, and the names of the persons whom they shall desire to recommend, which justices shall then, or within three days after, appoint one of such persons so recommended to be visitor, in the form contained in the said schedule No. VII., or to that or the like effect: but if he shall refuse to accept that office, they shall then appoint one other of the persons so named; and if he shall decline it, they shall appoint the third person named in such list; and if he shall decline it, the guardians of the said several parishes, townships, and places shall, and they are hereby required to serve that office monthly, by rotation, subject to the control of the justices of the limit where such poorhouse shall be: and every such visitor, if not a guardian, is hereby authorised to nominate some discreet and proper person to be his deputy or assistant, if he shall think fit, in the form contained in the said schedule No. IX.; and every such deputy or assistant shall, in the absence of such visitor, and under his direction, act as inspector of the several matters so committed to the care of the visitor, and shall make his report thereof, from time to time, to him, for his better information, and render him all the assistance in his power; and every visitor so to be appointed shall superintend every such house or houses, and settle and adjust the accounts between the said guardians of the poor and the treasurer of such house, if any question or dispute shall arise respecting the same; and also shall settle and adjust all doubts and questions which may arise concerning the persons who ought to be sent to such house or houses, according to the intention of this act, and by every prudent means in his power enforce and promote the rules, orders, regulations, directions, and provisions established, enacted, and formed by and under this act, for the better accommodation and relief of the poor, and the preventing all unnecessary expenses and burthens on the said parishes, townships, and places: and every such governor, guardian, and treasurer is hereby required to observe and obey the directions which he shall from time to time receive from the visitor so to be appointed, touching the several matters aforesaid: and, where any act shall be required to be done by a justice of peace, such visitor, if not a justice, or his deputy or assistant, shall apply to some neighbouring magistrate to do the same: and every person so to be nominated or appointed visitor or deputy visitor as aforesaid, as an inducement to his undertaking and executing that office, shall be freed and discharged from serving the office of constable, and all parochial offices, and also from serving upon juries at the assizes or quarter sessions, so long as he shall continue in that office; and a certificate under the hand of a justice of the peace acting for the limit wherein he executes such office, in the form contained in the said schedule No. X., shall be admitted as evidence of his serving the office."

Visitor to be free from certain offices.

Sect. 11. "That if two-thirds, in number and value as aforesaid, of the owners or occupiers of lands, tenements, or hereditaments, within any single parish, township, or place, which shall adopt the provisions of this act in manner aforesaid, shall desire to have a visitor (*a*) appointed, and shall nominate and recommend to the justices of the limit three persons properly qualified for that office, the justices, upon application to them in manner aforesaid, shall appoint one of the persons so recommended, in the manner hereinbefore directed, concerning parishes, townships, and places so united as aforesaid."

Treasurer.

To be appointed from among the guardians of united parishes. See 41 G. 3, c. 9, s. 3, *post.*

Sect. 12. "That the guardians of the several parishes and townships united for the purposes of this act, shall recommend to the justices one of their own body to be treasurer of the poorhouse: and it shall and may be lawful for two justices of the limit to appoint the guardian, so recommended, or any other of the guardians whom they shall think better qualified, to that office, in the form contained in the said schedule No. VII., or to that or the like effect; which treasurer shall give sufficient security, to the satisfaction of the justices, to the other guardians, and their successors, for his duly accounting for the money which shall come to his hands; and shall keep the accounts, receive the money to be contributed by each parish and township, and pay or discharge the several bills and expenses which shall be allowed and ordered to be paid by the guardians, at their monthly meeting: and shall lay his accounts before the guardians, at every such meeting, for their perusal and approbation; and shall, once in every year, within fourteen days before the Michaelmas quarter sessions of the peace, for the county, riding, division, city, or place, where such poorhouse shall be situate, make out, or cause to be made out, a just and fair account of the expenses attending the same, distinguishing them under the several heads herein specified; and also an account of the number of poor persons, distinguishing their age and sex, which shall be contained in every such house at the time of making such account, and how they have been employed, and how much money hath been earned by the labour of the poor in the year preceding; which shall be laid before the visitor, and signified under his hand, if he approves the same, and shall afterwards be transmitted to the clerk of the peace, or town clerk, of such county, riding, division, city, or place, before or at the time of the said quarter sessions, and be by him laid before the court there for their inspection: and every such treasurer shall be allowed, for his trouble in executing that office, such annual sum not exceeding ten pounds, as the visitor, if not a guardian, shall think fit; and if no such visitor, as two justices of the peace for the limit shall appoint."

His duties.

Account.

Salary.

Treasurer of parish workhouse may be appointed with salary.

By the 41 Geo. III. c. 9, s. 3, "any two justices for the district or division within which any such parish shall be situate, to whom the expediency of such appointment shall be made appear, by application from two-thirds in number and value of the owners and occupiers of lands, tenements, and hereditaments, qualified as by the said act is directed, to appoint a treasurer for the poorhouse of such parish, with a salary not exceeding ten pounds, according to the form prescribed in the schedule to the said act, in the case of united parishes." See 4 & 5 Will. IV. c. 76, s. 41.

Governor.

Workhouse to be appointed.

By the 22 Geo. III. c. 83, s. 9, "it shall and may be lawful for two or more justices of the peace for the limit wherein such poorhouse shall be situate, and they are hereby required, as soon as conveniently may be, after such agreement shall have been made as aforesaid for adopting the provisions of this act, either by a single parish or township, or by two or more parishes or townships, upon application made to them by two or more of the persons who shall have signed such agreement, and upon producing the same to them, to appoint one of the persons recommended for governor of such poorhouse (*b*), (in the form contained in the said schedule, No. VII., or to

(*a*) The election of visitors is under the regulation of the commissioners. 4 & 5 Will. IV. c. 76, s. 41.

(*b*) An appointment of a governor for *one* parish is bad, where several were united. (*R.* v. *Hambledon*; see *post*, 4 *B.* & *C.* 459.)

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that or the like effect,) who shall have the care, management, and employment of the poor persons to be sent thither, and shall be allowed such salary or wages for his trouble as shall be specified in the said agreement; and it shall and may be lawful for the visitor of such poorhouse, with the consent of the guardians, or the major part of them, or for two or more justices of the peace for such limit, where a guardian shall be visitor, to remove the governor of such poorhouse, upon complaint, and sufficient proof, of misbehaviour or incapacity in the execution of his office."

and removable for misbehaviour, &c. (*a*).

Justices may appoint the keeper of the workhouse to be the governor.

By 50 Geo. III. c. 50, s. 3, "it shall be lawful for the justices in any such special session, upon the application of the overseers of the poor of any parish or place, or of the major part of them, to appoint the keeper of the workhouse of any such parish or place to be the governor thereof; and the keeper so appointed, so long as he shall continue keeper of such workhouse, until the justices in any such special session shall revoke such appointment, (which they are hereby empowered to do), shall have, use, and exercise the powers and perform the duties by the said act of the 22 Geo. III. c. 13, (*vide post*,) vested in and imposed upon governors of the poor."

Officers, how long to continue.

22 Geo. III. c. 83, s. 14, enacts "that the offices of guardian, governor, visitor, or treasurer, to which any person shall be appointed under the authority of this act, shall determine in Easter week next after the respective persons shall be appointed thereto, on the day upon which the public meeting for such parish, township, or place, shall be held there; when the persons who, according to this act, are qualified and have a right to recommend another person to the justices, to be appointed to such office, shall either agree with the persons who held the same, to continue in such office, or shall proceed to recommend others, in the manner hereinbefore directed, as if such person had died."

Vacancies, how to be filled up.

Sect. 13. "That when and as often as any vacancy shall happen in any of the offices aforesaid, by death, resignation, or removal, meetings shall be called, and recommendations offered to the justices in manner aforesaid; and they shall proceed, so soon as conveniently may be, in the manner before directed, to appoint a fit and proper successor to the person so dying, declining to act, or so removed as aforesaid."

Special rules and forms to be observed.

Sect. 34 enacts, "that the rules, orders, and regulations, specified and contained in the schedule hereunto annexed, shall be duly observed and enforced at every poorhouse or workhouse to be provided by virtue of this act, with such additions as shall be made by the justices of the peace of the limit wherein such house or houses shall be situate, at some special session; provided that such additions shall not be contradictory to the rules, orders, and regulations established by this act, and provided that the same be not repealed by the justices at their quarter sessions of the peace; and, for the purpose of having them more generally known, and more strictly attended to, the governors of every such house or houses shall, and are hereby required to cause the same to be printed in plain legible characters, and fixed up in some conspicuous part of every such house or houses."

(For the forms of proceeding directed by the act, see the Appendix.)

Forms to be observed. Two justices in petty sessions may direct the regulations prescribed by recited act to be observed.

By 49 Geo. III. c. 124, s. 5, reciting "that whereas certain rules, orders, bye-laws, and regulations are appointed to be observed and enforced in every poorhouse established under the authority of 22 Geo. III.; and whereas it is expedient that such rules, orders, bye-laws, and regulations should be extended to poorhouses and workhouses established in other parishes; it is enacted, that any two or more of his Majesty's justices of the peace may at any petty sessions direct such rules, orders, bye-laws, and regulations, or any of them, to be observed and executed in any parishes within their respective divisions or districts, as fully as in those incorporated by the said act.

Two justices may direct the regula-

50 Geo. III. c. 50, s. 1, after reciting statutes 22 Geo. III. c. 83, and 49 Geo. III. c. 124, s. 5, and that it is expedient that the benefit of 22 Geo. III.

(*a*) The commissioners have also the power to remove him. Sect. 48 of 4 & 5 Will. IV. c. 76.

c. 83, for the government of poorhouses and workhouses, should be extended to parishes which shall not have adopted the provisions of the said acts, enacts, "that any two or more of his Majesty's justices of the peace, within their respective limits, may at any special session direct the rules, orders, and regulations, in the schedule to the said act of the 22 Geo. III. specified and contained, or any of them, with such additions as shall be made by such justices, to be observed and enforced in the workhouses or poorhouses, or any houses set apart for that purpose, although there should be no master or mistress to superintend the same, of any parish or place within their respective divisions or districts, as fully and effectually as the rules and orders by the said act of the 22 Geo. III. established, are to be observed and enforced within the parishes adopting the provisions of the same act; and that it shall be lawful for two or more such justices in any special session, from time to time as they shall see occasion, to add to and alter the rules, orders, and regulations which shall at any special sessions have been made and ordered to be observed; provided that no addition or alteration to be made by such justices shall be contradictory to the rules, orders, and regulations established by the said act of the 22 Geo. III., and provided that the same shall not be repealed by the justices at their quarter sessions of the peace; and for enforcing and carrying into execution such rules, orders, and regulations, in every parish and place where the same shall be established by virtue of this act, every justice of the peace shall for that purpose have the powers by the said act of the 22 Geo. III. vested in visitors of the poor; and all churchwardens and overseers within their respective parishes and townships, shall have and exercise the powers, and shall perform the duties by the same act vested in and imposed upon governors of the poor."

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tions specified in schedule of 22 G. 3, c. 83, to be observed in workhouses where no master or mistress is appointed to superintend; and may alter such regulations.

By 50 Geo. III. c. 50, s. 5, "any breach of the rules and orders to be put in force by virtue of this act, shall be punished in such manner as is by the said act directed for the breach of the rules and orders to be enforced under the before-recited act of 22 Geo. III. c. 83." [See 54 Geo. III. c. 170, s. 7, *post*, p. 58.]

Breach of rules under this act to be punished.

No additions or alterations to the rules contained in schedule of 22 Geo. III. can be made without the consent of the commissioners, but when confirmed by them, they will be valid, and no justice can repeal them, 4 & 5 Will. IV. c. 76, s. 22; and by s. 42 the commissioners may make rules and regulations to be observed at every workhouse already established, or hereafter to be established for the government thereof, and the nature and amount of the relief to be given to, and the labour to be exacted from the persons relieved, and the preservation therein of good order, and from time to time to alter the same, and make new; and to alter, at their discretion, any of the rules and regulations contained in the schedule to the 22 Geo. III. c. 83, and also to alter or rescind any rules and regulations heretofore made in pursuance of the said act, or any local act relating to workhouses or the relief of the poor; and all rules made by the commissioners shall be binding, as if the same were specifically embodied in this act.

Commissioners may make rules, &c. for present or future workhouses, and vary bye-laws already in force or to be made hereafter.

Rex v. *Poor-Law Commissioners*, (*Re Alstonefield*), 3 *P. & D.* 59; 11 *A. & E.* 559. The facts of this case are fully stated in the judgment of the court, as delivered by Lord *Denman*:—This was a rule obtained by the Alstonefield corporation to try the validity of an order of the poor law commissioners, and the principal objections to it were founded on those parts which directed the appointment of an auditor or clerk. The corporation was formed under Gilbert's Act, 22 Geo. III. c. 83, and included under its management forty-two parishes. It was not disputed that the authority of the commissioners extended to direct the appointment of such officers as those above-named in unions formed by themselves, but it was urged that the 4 & 5 Will. IV. c. 76, expressly saved the operation of the 22 Geo. III. c. 83, in all matters not specifically altered or subjected to the control of the commissioners, and that the appointments in question fell within that rule, and were also inconsistent with the provisions of the 22 Geo. III. c. 83. Under that act, the overseers of each parish within the

The commissioners have power to order the appointment of an auditor and clerk in Unions under Gilbert's Act.

But an order prescribing the duties of a clerk, *inter alia*, to collect statistical information on the public service, is bad, and being bad in part is bad altogether.

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union pay to the treasurer of such union, out of the poor rate, the parish quota towards the expenses attending the poor and the poorhouse. The treasurer disburses this money under the orders of the guardians, and an officer called the visitor settles and adjusts the accounts between the guardians and the treasurer—"if any question or dispute shall arise respecting the same:" in addition to this, one of two accounts, which by s. 24 the treasurer is to submit to the guardians monthly, an account, viz., "of the victuals, beer, firing, and other necessaries for the use and maintenance of the poor and of the governor at the house, and all other incidental expenses, must, after it has been agreed to and signed by the guardians," be inspected by the visitor, *if not a guardian*, and allowed by him, if he shall approve thereof. The treasurer is also, by s. 12, to make out an annual account of the expenses of the union house, and the earnings of the inmates, which is to be laid before the visitor and signified under his hand, if he approves the same, and submitted to the quarter sessions for their inspection. These are the provisions made by the act for the discharge of the duties of an auditor; and we cannot but think that, even with reference to the expenditure under the former system for the relief of the poor, these provisions were very inadequate. So long as the guardians and the treasurer are agreed upon the general accounts of the latter, the visitor has no authority to interfere at all. And when he interposes, it does not appear that he has any power to control the expenditure, or question the orders of the guardians; his interference seems to be limited to ascertaining the accuracy of the sums and the accordance of the items with their orders. In effect, therefore, the visitor exercises no control over those with whom the expenditure originates: he may interfere to see that the treasurer's accounts are correct, but has no power to question the lawfulness of the objects on which the guardians may have directed the money to be expended. But, whatever might have been thought of the sufficiency of the visitor as an auditor, before the recent change in the poor law, as the guardians are now to execute their duties "under the control and subject to the rules, orders, and regulations of the poor law commissioners," (see 4 & 5 Will. IV. c. 76, s. 21,) and as their expenditure and mode of accounting have been by some of such rules, which are unquestionably binding, placed under new restraints, a necessity has arisen for an inspection and audit of their accounts, which it is certain the visitor has no authority to institute. If, therefore, the commissioners have the power to direct the appointment of any officers in such a union, no one can doubt the propriety of their doing so in the case of an auditor. Sect. 46 has words large enough to extend to this union, and in terms embraces the case of an officer for the auditing, allowing, or disallowing of accounts. Nor is there anything in this inconsistent with the provisions of Gilbert's Act—the guardians, indeed, are subjected to a new control, and are subjected to new duties, but this arises from the express provisions of s. 21; these duties occasion a necessity for an auditor. The former visitor will continue to perform his duty, but is incompetent to the discharge of that of auditor; and the commissioners supply the want under the authority given them by s. 46. The order in question therefore seems to us free from all objection on this head. As an auditor is clearly a proper officer in such a union as that under consideration, so it is impossible to read the order in question, which regulates, for the future, the manner in which the guardians are to manage its affairs, without feeling that it is necessary for them to have the assistance of an intelligent clerk. It is stated that at present the treasurer discharges the duties of that office not by virtue of any independent appointment as clerk, but as treasurer under the Gilbert Act. We turn therefore to s. 12 of the act, which defines his duties, but these are confined to the receipt and payment of moneys, and the keeping of accounts, such as we have before stated. We may form some notion of the amount of his contemplated labours from the fact that the section limits his salary to 10*l.* a-year. It is clear that this is not such a clerk as is now necessary, and equally so that the commissioners have authority to appoint such an officer in this

union. The order describes his duties, and they make it clear that he is assisting in the administration of the relief and employment of the poor, and in otherwise carrying the provisions of the new poor law act into execution. If, therefore, he had been appointed for the discharge only of duties (*a*) which fell within this definition, we should have thought that the order was free from objection on this head also; but we regret to find that other duties are imposed upon him, which appear to us clearly to go beyond the limits of the Poor Law Amendment Act; and it has not been suggested to us that the commissioners derive any authority from any other source to impose them. The most obvious of these are specified in "the preparing or superintending the preparation, and taking measures for ensuring the prompt and correct return of all such statistical information and reports as may be required for the public service." This may be in itself very desirable, but it must lead to expense in the way of salary and contingencies, which the commissioners have no right to impose on the parishes forming the union, and is too remotely and indirectly, if at all, connected with the object of the Poor Law Amendment Act to be within their jurisdiction. Upon this ground we think the order, which is entire, cannot be

Duties of clerk.

(*a*) The following were prescribed as the duties of the clerk:—"To attend all meetings of the guardians, and to enter punctually in the minute-book the minutes of all the proceedings at every such meeting, and to submit such minutes to the presiding chairman of the same for his signature. To keep minutes of all matters, the consideration whereof has been deferred, of all business or orders unexecuted, and duly and punctually to submit the same to the consideration of the guardians. To conduct the correspondence of the guardians according to their directions, and to keep copies of all letters sent, and preserve all letters received, and all books and letters belonging to the incorporation, in convenient order for reference, in some office or room belonging to the guardians. To direct the services of notices, to communicate to the several officers and persons engaged in the administration of relief within the incorporation all orders and directions of the poor law commissioners, or of the guardians; and, so far as may be, to give such instructions as may be requisite for the prompt and correct execution of all such orders and directions, and to examine and report on any neglect or failure therein which might come to his knowledge. To *prepare*, or superintend the preparation, and take measures for ensuring the correct and prompt return of *all such statistical information and reports as may be required for the public service.* At every meeting of the guardians to take down the names of all the guardians who attend such meeting; of all the guardians who send substitutes, together with the name and condition of each person so sent, and the alleged reason of the non-attendance of the guardian sending him; and of all the guardians who by non-attendance have incurred the penalty imposed by the 22 Geo. III. c. 83, s. 26."

The following were prescribed as the duties of the auditor:—"To audit the accounts of the incorporation, and of the several parishes comprised therein, at proper periods. To examine whether the expenditure in all cases is such as might lawfully be made, and to strike out such payments and charges as are not authorised by some provision of the law, or by virtue of the orders, rules, and regulations of the poor law commissioners. To see that the accounts are presented in the proper form, and that the particular items of receipt and expenditure are stated in detail, and supported by adequate vouchers of receipt and authority for payments; and that all sums received, or which ought to have been received, are brought into account." He was also required to give to the clerk to the board of guardians, to the treasurer, and to the officers of the several parishes, notice of the time of auditing the accounts; and for that purpose to fix some day within thirty days after Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day respectively. He was also to receive the objections in writing of any rate-payer to the accounts, and to decide upon them; to examine officers of the incorporation and parishes therein respecting their accounts, and any other persons who could supply information on the subject; and, if he should be of opinion that any money or other property of the incorporation, or of any parish therein, had been embezzled or wilfully wasted or misapplied by any officer or person accounting, to collect the necessary evidence and submit a statement of it to the board of guardians, in order that they might proceed against the offender; and to examine, correct, and sign the quarterly abstracts; and report to the commissioners any facts which he should deem important to the interests of the incorporation.

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supported; and we have said so much on the former objection, which we hold to be untenable, as well as on this which we sustain, for the purpose of pointing out in what way we think the jurisdiction of the commissioners may be legally as well as profitably exercised within the union, which we should hope would lead to an accommodation between them and the officers of the union. Rule absolute.

JUSTICES AND OTHERS VISITING WORKHOUSES.

Justices empowered to see bye-laws enforced, and to visit workhouses, pursuant to 30 G. 3, c. 49.

By 4 & 5 Will. IV. c. 76, It is enacted, that justices may inspect and examine the workhouses, for the purpose of ascertaining whether the rules or bye-laws have been duly observed, as well as for such other purposes as justices are now authorised to visit workhouses under 30 Geo. III. c. 49; and if such rules or bye-laws have not been duly observed, such justice may summon the party offending before any two justices to answer the complaint; and upon conviction the party so offending shall be liable to such penalties and punishments as are hereinafter prescribed against parties wilfully neglecting or disobeying the rules of the commissioners. Where no rules or byelaws shall have been directed by the commissioners to be observed in the workhouse, this act shall not prevent any justice, physician, surgeon, or apothecary, or the officiating clergyman of any parish, from visiting such workhouse, and examining and certifying the condition of the same and of the poor therein, in such manner as any of them are authorised to do by the 30 Geo. III. c. 49.

The power given to Justices, &c. to visit workhouses reserved where commissioners' rules, &c. are not in force.

Justices, clergymen, &c may visit parish workhouses,

By 30 Geo. III. c. 49, s. 1, "it shall and may be lawful to and for any of his Majesty's justices of the peace, or any physician, surgeon, or apothecary, for that purpose authorised by warrant under the hand and seal of any such justice or justices, or for the officiating clergyman (*a*) of the parish or place, duly authorised as aforesaid, at all times, in the day time, to visit any parish workhouse, or house kept or provided for the maintenance of the poor of any parish or place, within the county, riding, liberty, or division, wherein such justice or justices shall be resident and shall have jurisdiction, to examine into the state and condition of the poor people therein, and the food, clothing, and bedding of such poor people, and the state and condition of such house or houses; and if upon any such visitation, the said justice or justices, or persons duly authorised as aforesaid, shall find any cause or occasion of complaint, that then and in such case such justice or justices, or persons duly authorised as aforesaid, shall, and they are hereby authorised and empowered, if he or they shall think fit, to certify the state and condition of such workhouse or poorhouse, and the state of the poor therein, and of their food, clothing, and bedding, to the next quarter-sessions of the peace to be held for such county, riding, liberty, or division, wherein such workhouse or poorhouse shall be situate, under his or their hands and seals respectively; and such justice or justices, or other persons duly authorised as aforesaid, shall cause the overseers of the poor, or master or governor of the said workhouse or poorhouse of such parish or place, to be summoned to appear at the same sessions to answer such complaint; and the justices assembled at such quarter sessions, on hearing the parties on any such complaint, shall and may, and they are hereby authorised to make such orders and regulations, for the removing of any cause of complaint contained in such certificate as aforesaid, as to them shall seem meet; and all the parties concerned shall, and they are hereby required to abide by and perform such orders and regulations as shall be so made by the justices at the said sessions."

and certify their condition to the quarter sessions,

who may hear the complaint.

Finding the poor afflicted with contagious or infec-

Sect. 2. "Provided, that in case any justice or justices of the peace, or persons duly authorised by warrant as aforesaid, shall, upon any such

(*a*) It shall be lawful for any licensed minister of the religious persuasion of any inmate of any workhouse at all times in the day, on the request of such inmate, to visit such workhouse, for the purpose of affording religious assistance to such inmate, and also for the purpose of instructing his child or children in the principles of their religion. 4 & 5 Will. IV. c. 76, s. 19.

visitation, find any of the poor in any parish workhouse or poorhouse afflicted with any contagious or infectious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor in the said house, then and in such case or cases, if such visitation shall be made by a justice of the peace, it shall and may be lawful to and for such justice, and he is hereby directed and required to apply to one or more other justice or justices of the peace, in the county, riding, liberty, or division, and certify to him or them the state and condition of the poor in such parish workhouse or poorhouse; or if such visitation shall be made by the persons duly authorised as aforesaid, then and in such case or cases it shall and may be lawful to and for such persons, and they are hereby directed and required to apply to two or more justices of the peace in such county, riding, liberty, or division; and thereupon the said justices shall and may, and they are hereby authorised to make such order for the immediate procuring medical or other assistance, or of sufficient and proper food, or for the separation or removal of such poor as shall be afflicted with any contagious or infectious disease, in such manner as they the said justices, under their hands and seals, shall think proper to direct, until the next quarter sessions of the peace to be held in and for the said county, riding, liberty, or division, wherein such workhouse or poorhouse shall be situate; at which quarter sessions of the peace the said two justices are to certify the same, under their hands and seals respectively, to the justices assembled at such quarter sessions, who are hereby authorised and required to make such order for the further relief of the poor in such parish workhouse or poorhouse, as to the justices assembled at such quarter sessions shall seem meet and proper; and the charges and expenses of relieving such poor shall be, and are hereby directed to be paid out of the poor's rate of such parish, in such manner as the said justices assembled at such quarter sessions shall direct."

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tious disease, or in want of medical aid or proper food, &c.,

two justices may make an order to remedy it,

till the sessions.

Sect. 3. "Provided, that nothing herein contained shall extend to any poorhouse or workhouse in any district or districts which have been, or may be hereafter, incorporated or regulated by any special act or acts of parliament."

Not applicable to houses built under local acts.

We have seen that the justices may enforce the rules of the commissioners and bye-laws in the workhouse, p. 51.

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22 Geo. III. c. 83, ss. 35. 37. "That it shall and may be lawful for any justice of the peace, on complaint made upon oath, by or on the behalf of any poor person belonging to any parish, township, or place, that the guardian, upon application made to him, hath refused such poor person proper relief, and after inquiring into the condition and circumstance of such poor person upon oath, either to order him or her, by writing under the hand of such justice, some weekly or other relief, or direct such guardian to send such poor person to the poorhouse, in case he or she shall appear a fit object to be kept and provided for there, according to the true intent and construction of this act; which order shall be complied with, or sufficient cause shown to the contrary, before such justice, by such guardian, within two days after he shall receive the same; and if any guardian shall, upon due notice of any such order, refuse or neglect to obey the same, he shall, for every such refusal or neglect, forfeit the sum of five pounds. And be it further enacted, that out of the penalty hereby inflicted upon the guardian, for disobeying the order of a justice of the peace for the relief and maintenance of any poor person, so much thereof as the justices of the peace who shall convict such offender shall direct to be paid to such poor person to whom such relief was ordered, shall be paid to him or her accordingly, and the remainder applied in such manner as the other penalties are hereby directed to be disposed of."

Occasional relief ordered by the justices, upon refusal of guardian to relieve (a).

Penalty on guardian for disobeying order for relief.

(a) These sections do not appear to be affected by ss. 53, 54, of 4 & 5 Will. IV. c. 76.

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Remedy if the complainant is able and willing to work.

But if it appear that the complainant is an idle person, the justice may commit him.

Sect. 35. "Or if it shall appear to such justice, that the person so complaining, or on whose behalf such complaint is made, is able and willing to work, but wants employment, in that case it shall and may be lawful for such justice to order the guardian to procure him or her maintenance and employment in the manner hereinbefore directed; and if any guardian shall, upon due notice of any such order, refuse or neglect to obey the same, he shall, for every such refusal or neglect, forfeit the sum of five pounds. Or if it shall appear to such justice that the person making such complaint, or on whose behalf such complaint is made, is an idle or disorderly person, and has not used proper means to get employment, it shall and may be lawful for the justice, after examining such person, and hearing the whole circumstances of the case, to commit such person to the house of correction for any time not exceeding three calendar months, nor less than one calendar month; or if it shall appear to such justice, upon inquiry as aforesaid, that the husband or father of such person making complaint, or on whose behalf complaint shall be so made, for want of relief, is an idle or disorderly person, able to work, but by his neglect of work, or for want of seeking employment, or by spending the money he earns in alehouses, or places of bad repute, does not maintain his wife or children, and suffers them to be reduced to want, it shall and may be lawful for such justice of the peace, in like manner, to commit the husband of such poor woman, or the father of such poor child or children, to the house of correction, for any time not exceeding three calendar months, nor less than one calendar month."

Application to be made first to guardian, then to the visitor, before a justice makes any order.

Sect. 36. "Provided, that when any complaint or application shall be made to a justice of the peace, for the relief of any poor person, within any parish, township, or place, for which a visitor shall be appointed, such justice shall not summon the guardian to appear before him, unless application shall have been first made, by the person so complaining, to the guardian, and if he refuses redress, to the visitor (it being part of his duty to adjust matters of that sort), who shall order relief if he thinks it necessary, either within or out of the poorhouse as he shall judge right; but if sufficient relief shall not be so given or ordered, the poor person complaining, or on whose behalf such complaint shall be made, shall be redressed by such justice in the manner hereinbefore directed." But 59 Geo. III. c. 12, s. 27, enacts "that if it shall be made to appear to any justice to whom any such complaint or application for relief shall be made, that the visitor of the parish or united parishes from which relief shall be sought is absent from home, or is resident more than six miles from the place of abode of the complainant, and that application for relief hath been made to the guardian, and hath been refused, it shall be lawful for such justice to summon the guardian to appear before him to answer such complaint, and to proceed thereon, and make such order therein, as the case shall require, in like manner as in cases where application hath been made to the visitor, in the manner by the said act directed."

The visitor and not the justice is to determine whether relief shall be given in or out of the poorhouse.

Rex v. *Laughton*, 2 *M. & Sel.* 324. The defendant having been convicted by two justices at the special sessions, and fined 30*s.* for disobeying an order of a justice, under 33 Geo. III. c. 55, for the payment of 4*s.* for the relief of Mary Lewis and her children, appealed to the sessions. The conviction was confirmed. Case:—The parish of West Walton is incorporated under 22 Geo. III. c. 83, for the maintenance of its poor; and has a poorhouse fitted up for the reception of the poor. Application for relief being made by M. Lewis for herself and her two children, the guardian and the visitor directed them to be received into the poorhouse; whereupon the justice made the above order, directing a pecuniary relief out of the poorhouse. On the appeal, the question stated for the opinion of the Court was, "whether the magistrate had power and authority, under 22 Geo. III. c. 83, to make the said order for the pecuniary relief of the paupers out of the poorhouse?"—Lord *Ellenborough*, C. J. The justice does not affect to determine upon the ground of its being a qualified refusal of relief. If proper relief has not been refused, the justice has not any

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jurisdiction. The visitor, to whom it is referred by law, as a part of his duty, to say whether the relief shall be given in or out of the poorhouse, has decided that question, and has determined it to be proper relief. If it depended on the choice of the pauper, the poorhouse would be useless. The visitor having adjusted it, the matter was at an end, and not within the cognizance of the magistrate, and therefore the infliction of this penalty was not warranted.—*Le Blanc*, J. The 7th section of the statute, which has been relied on in argument as putting the guardian on the footing of an overseer, must be taken with reference to the general policy of the act in which it is contained; and when s. 36 of the same act directs that application shall be made both to the guardian and visitor, before any application is made to a justice, and when it adds that it is the duty of the visitor to adjust matters of that sort, that is, whether it is most proper to relieve in or out of the poorhouse, the liability of the guardian as overseer, imposed by s. 7, must be controlled by the subsequent clause. The visitor must always determine whether the party is to be relieved in or out of the poorhouse, otherwise the whole policy of the act would be avoided.—*Bayley* and *Dampier*, Js., concurred. Order of sessions quashed. See *Rex* v. *Keer*, 5 *T. R.* 159.

The guardians shall pay off a twentieth part of the borrowed money, under 22 Geo. 3, c. 83.

By 22 Geo. III. c. 83, s. 28, "that every person or persons, to be sent to any house or houses to be provided under the authority of this act, shall, at the time of his or her entering such house, deliver, or cause to be delivered, to the governor thereof, or to his assistant, if any, an order, signed by one of the guardians of the poor of the parish, township, or place from which such person shall come, for the admission of such person or persons, in the form or to the effect contained in the said schedule, No. XII.; which order shall be carefully kept by the governor, and entered by him in a book to be provided for that purpose."

Admitting paupers.

Sect. 29, regulating the persons to be admitted, is repealed by 4 & 5 Will. IV. c. 76, s. 31.

What paupers admissible to poorhouses. (a) Pauper children, how to be taken care of.

Sect. 30. "That all infant children of tender years, and who, from accident or misfortune, shall become chargeable to the parish or place to which they belong, may either be sent to such poorhouse as aforesaid, or be placed by the guardian or guardians of the poor, with the approbation of the visitor, with some reputable person or persons in or near the parish, township, or place to which they belong, at such weekly allowance as shall be agreed upon between the parish officers and such person or persons, with the approbation of the visitor, until such child or children shall be of sufficient age to be put into service, or bound apprentice to husbandry, or some trade or occupation; and a list of the names of every child so placed out, and by whom and where kept, shall be given to the visitor, who shall see that they are properly treated, or cause them to be removed, and placed under the care of some other person or persons, if he finds just cause so to do; and when every such child shall attain such age, he or she shall be so placed out, at the expense of the parish, township, or place to which he or she shall belong, according to the laws in being: provided nevertheless, that if the parents or relations of any poor child sent to such house, or so placed out as aforesaid, or any other responsible person, shall desire to receive and provide for any such poor child or children, and signify the same to the guardians at their monthly meeting, the guardians shall, and are hereby required to dismiss, or cause to be dismissed, such child or children from the poorhouse, or from the care of such person or persons as aforesaid, and deliver him, her, or them, to the parent, relation, or other person so applying as aforesaid: provided also, that nothing herein con-

(a) By s. 29, "that no person shall be sent to such poorhouse or houses, except such as are become indigent by old age, sickness, or infirmities, and are unable to acquire a maintenance by their labour; and except such orphan children as shall be sent thither by order of the guardian or guardians of the poor, with the approbation of the visitor; and except such children as shall necessarily go with their mothers thither for sustenance."—Repealed, s. 31, 6 & 7 W. 4, c. 76.

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tained shall give any power to separate any child or children, under the age of seven years, from his, her, or their parent or parents, without the consent of such parent or parents."

No lunatic, insane person, or dangerous idiot, to be detained in a workhouse more than fourteen days.

4 & 5 Will. IV. c. 76, s. 45, enacts "that nothing in this act contained shall authorise the detention in any workhouse of any dangerous lunatic, insane person, or idiot, for any longer period than fourteen days; and every person wilfully detaining in any workhouse any such lunatic, insane person, or idiot, for more than fourteen days, shall be deemed guilty of a misdemeanor: provided always, that nothing herein contained shall extend to any place duly licensed for the reception of lunatics and other insane persons, or to any workhouse being also a county lunatic asylum."

Idle persons neglecting to provide for their families may be prosecuted.

22 Geo. III. c. 83, s. 31, "that all idle or disorderly persons, who are able, but unwilling, to work or maintain themselves and their families, shall be prosecuted by the guardians of the poor of the several parishes, townships, and places wherein they reside, and punished in such manner as idle and disorderly persons are directed to be by the statute made in the seventeenth year of the reign of his late Majesty King George the Second; and if any guardian shall neglect to make complaint thereof, against every such person or persons, to some neighbouring justices of the peace, within ten days after it shall come to his knowledge, he shall, for every such neglect, forfeit a sum not exceeding five pounds, nor less than twenty shillings, one moiety whereof, when recovered, shall be paid to the informer, and the other moiety to be disposed of as the other forfeitures are hereinafter directed to be applied."

Persons not able to get employment, may be provided therewith by guardians.

Sect. 32. "That where there shall be, in any parish, township, or place, any poor persons who shall be able and willing to work, but who cannot get employment, it shall and may be lawful for the guardian of the poor of such parish, township, or place, and he is hereby required, on application made to him by or on behalf of such poor person, to agree for the labour of such poor person or persons, at any work or employment suited to his or her strength and capacity, in any parish, township, or place, near the place of his or her residence, and to maintain, or cause such person or persons to be properly maintained, lodged, and provided for, until such employment shall be procured, and during the time of such work, and to receive the money to be earned by such work or labour, and apply it in such maintenance, as far as the same will go, and make up the deficiency, if any; and if the same shall happen to exceed the money expended in such maintenance, to account for the surplus, which shall afterwards, within one calendar month, be given to such poor person or persons who shall have earned such money, if no further expenses shall be then incurred on his or her account to exhaust the same. And in case such poor person or persons shall refuse to work, or run away from such work or employment, complaint shall be made thereof by the guardian to some justice or justices of the peace in or near the said parish, township, or place; who shall inquire into the same upon oath, and on conviction punish such offender or offenders, by committing him, her, or them to the house of correction, there to be kept to hard labour for any time not exceeding three calendar months, nor less than one calendar month."

Clothing suitable to be provided by guardians.

Sect. 33. "That the guardian of the poor for any parish, township, or place, adopting the provisions of this act as aforesaid, shall provide, at the expense of such parish, township, or place, suitable and necessary clothing for the persons sent by him to such poorhouse as aforesaid; and in case of his neglect so to do, the governor or one of the guardians of every such house shall make complaint thereof to some neighbouring justice of the peace, who shall summon the guardian so making neglect to appear before him to answer the same complaint, and direct him to provide such clothing as shall to such justice appear necessary; and if such guardian shall make default in providing such clothing, within ten days after such direction, it shall and may be lawful for such justice of the peace to direct the governor of such poorhouse, or the guardian so making such complaint, to provide the same, and to demand from such guardian so making neglect, the charges

and expenses of such clothing; and in default of payment thereof, upon demand made, it shall and may be lawful for such justice or justices of the peace to levy the same, and the costs and charges attending the recovery thereof, by distress and sale of the goods and chattels of every such guardian so making default."

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By 22 Geo. III. c. 83, s. 24, "that the poor persons who shall be sent to every such house, by virtue and under the authority of this act, shall be maintained therein at the general expense of the respective parishes, townships, and places, so adopting the provisions of this act as aforesaid, according to the terms, and in the proportions, directed and prescribed by this act. And that the treasurer, with the assistance of the governor of every such house, to be appointed as aforesaid, shall provide all fit and necessary provisions for the maintenance of such poor, and keep an account thereof."

Maintenance by respective parishes.

Refusal of Pauper to go into the Workhouse.

The discretionary power of giving relief in or out the workhouse, invested in the guardian and visitor under 22 Geo. III. (*R.* v. *Laughton*, p. 68.)

Refusal to go to the poorhouse.

9 Geo. I. c. 7, s. 4. "And if any poor person of any parish, or united parishes, &c., where such house shall be, shall refuse to be lodged, kept, or maintained in such house or houses, he shall be put out of the parish book, and shall not be entitled to ask or receive relief from the churchwardens and overseers."

56 Geo. III. c. 129 (*a*), enacts "that *all* enactments and provisions contained in *any* act or acts of parliament since the commencement of the reign of his late Majesty King George the First, whereby any poor person or persons, *other than such as shall actually apply for and receive parochial relief*, are compelled or made compellable to go or remain in any house of industry or workhouse; or whereby any poor person or persons may be detained or kept in any house of industry or workhouse; at the discretion of the governors or directors thereof, or of the churchwardens or overseers of the poor of any district, parish, township, or hamlet, after such persons are capable of maintaining themselves; or whereby any poor person or persons may be compelled to remain in any house of industry or workhouse, until the charges and expenses to which any district, parish, township, or hamlet may have been put or become liable or chargeable for the maintenance or support of such poor person or persons, or any of his or her family, shall be repaid or reimbursed or satisfied by the earnings or labour of such poor person or persons; or whereby any poor child or children whomsoever is or are rendered liable to be apprenticed to any governor, director, or master of any such house of industry or workhouse; or whereby any parish, township, or hamlet, at a greater distance than ten miles from such house of industry or workhouse, shall hereafter be empowered or authorised to become contributors to, or to take the benefit of such house of industry or workhouse; or whereby any directors, governors, guardians, or masters of any such house of industry or workhouse, are authorised or empowered to hire out any poor person or persons of full age, or to contract or agree with any person or persons to have and take the profit of the labour of such poor person or persons; shall be wholly and severally, and the same are hereby wholly and severally repealed.

Acts passed since the beginning of the reign of Geo. I. compelling poor not applying for relief to go to the workhouse; or to remain there; or rendering them liable to be apprenticed to governor, &c.; or that distinct parishes shall not unite; or contracting for their labour; repealed.

Rex v. *Carlisle* (cited in *Rex* v. *Haigh*, p. 72,) 2 *Nol. P. L.* 357. The defendant was indicted for disobeying an order of sessions. Jane Carr, the pauper, having been delivered of two bastard children, was taken into the poorhouse of the parish of St. Mary's in Carlisle, which had been there established according to the 9 Geo. I. c. 7. There she and her children were maintained for a year and a half. Then the parish officers agreed to allow her 1s. a week towards the maintenance of herself and children. After six months they refused to continue the payment, but offered to take her and her children again into the poorhouse. She prayed them to take

Relief may be refused to a pauper refusing to go into workhouse.

(*a*) The preamble and marginal note both refer to *local* acts. The enacting part of the statute is not so limited in words.

Refusal of Pauper to go into the Workhouse.

one child, and said she would take care of the other. That being refused, she offered to take 6*d.* a week. But the parish officers persisted in giving her no relief, unless she would come again into the poorhouse. Whereupon she applied to the quarter sessions, who made an order on the overseers to pay her 1*s.* a week towards the maintenance of herself and her two bastard children, until further order. The defendant, one of the overseers, refused, but at the same time offered (as he had done several times before) to take her and her children into the poorhouse. The question reserved at the assizes for the opinion of the judges was, "whether, under these circumstances, the defendant was by law empowered to refuse payment of such weekly allowance?" And the case being laid before the judges, they were all of opinion, upon considering the words of the statute, that, under the circumstances of this case, the defendant was by law empowered to refuse payment of such weekly allowance.

When a mother asks for relief for her bastard child only, and not for herself, she cannot be compelled to go into the workhouse, nor can the overseers refuse relief to the child. (*a*)

Rex v. *Haigh*, 3 *T. R.* 637. The defendants were indicted for disobeying an order of a justice, for the payment of a weekly sum to Mary Gray for the maintenance of her bastard child. It appeared that the mother applied for relief for her child only; and the question was, "whether the defendants were bound to obey the order, as the mother of the child refused to go into the workhouse?"—Lord *Kenyon*, C. J. "The only question is, for whom was the relief asked? for such person only is, according to the terms of this act of parliament, (9 Geo. I. c. 7,) to be sent to the workhouse. It is stated that the *child* only wanted relief: the application indeed was made by the mother, but it was not on her own account, but for her child only, who was of too tender an age to apply herself. This is, therefore, very distinguishable from *Rex* v. *Carlisle*, where the relief was asked both for the parent and the child. It would be extremely hard, and contrary to the spirit and words of this act of parliament, if, when all the children of a family, except one, were capable of supporting themselves, and that one was unable to maintain itself, and was under the necessity of receiving relief, the whole family were to be sent to the workhouse."

Whether a mother asking relief for her children be compellable to go with them to the poorhouse.

Rex v. *North Shields*, *Doug.* 331; *Cald.* 68. By order of a justice the overseers of North Shields were directed to pay to Ann, wife of Thomas Irwin, 2*s.* 6*d.* weekly, until such time as they should be otherwise ordered, for the support of her three children by her said husband; one aged six years, one three, and one fourteen months. The overseers appealed. Order confirmed. Case:—There was, at the time of making the order, within the township, a poorhouse, established according to the 9 Geo. I. c. 7, into which the parish officers were willing to receive the pauper, with her three children, and offered so to do; but she refused to go into the house with them. She had another child of eight years of age, for whom she did not seek relief; neither did she seek relief for herself. Her husband was a mariner, and prisoner in France, and the order stated her inability to provide for the said three children. These children, being nurse-children, the opinion of the sessions was, that they ought not to be separated from their mother, and that the mother, not seeking relief herself, was not compellable to go into the workhouse. It was urged that in *Rex* v. *Carlisle*, the relief asked, and granted by the order, was partly *personal*, and therefore it was distinguishable from this case, and within the statute.—*Willes*, J., said, this was a humane order, and he wished to support it. He did not think the words of the act in the way, and inclined to adopt the distinction made by the counsel between this case and that of *Rex* v. *Carlisle*.—*Ashurst*, J., thought the act extended to the present case: that maintenance for the children was relief to the mother. There might be great inconvenience if the Court were to adopt the other construction. One object of the statute was to encourage industry, by holding out the disgrace of going into a workhouse; and if parents could obtain a maintenance for their children without being compellable to go to the

(*a*) All relief granted to a bastard child under the age of sixteen, shall be considered as granted to the mother, 4 & 5 W. 4, c. 76, s. 71.

workhouse, idleness would be thereby promoted among artificers and manufacturers.—*Buller*, J., on the contrary, thought the distinction between this case and that of *Rex* v. *Carlisle* to be clear. The act was meant in ease of parishes; but the effect would be quite the reverse, if, when one of a numerous family wants relief, the whole must go to the parish workhouse; and, on the other hand, that the parish is not entitled to the labour of a whole family, because one of them might want relief.—The case stood over, and the order of sessions was afterwards quashed on another point, and the original order confirmed.

Refusal of Pauper to go into the Workhouse.

Conduct of Master and Inmates.

The master is removable by the commissioners, 4 & 5 Will. IV. c. 76, s. 51; and he is required to keep a register; see s. 55, Appendix.

Penalty on embezzling or wilfully damaging goods.

50 Geo. III. c. 50, s. 4. "If any person who shall be sent to any poorhouse or workhouse shall embezzle, or wilfully waste, spoil, or damage any of the clothing, goods, or materials committed to his or her care, or shall take or carry away, without permission of the overseer of the poor or keeper of the said workhouse, any clothing, goods, or materials provided for the use of such poorhouse, or of any of the poor therein, complaint thereof may be made upon oath to one or more justices of the peace acting for the district or division in which such parish shall be situate; and such justices are hereby authorised to hear such complaint, and upon conviction to commit the offender to the house of correction, there to be kept to hard labour for any time not exceeding two calendar months, nor less than seven days."

Power of justices to commit offenders.

Masters, &c. of poorhouse not to punish with corporal punishment any adult, or confine him more than twenty-four hours.

54 Geo. III. c. 170, s. 7, enacts "that it shall not be lawful for the master, governor, or other person entrusted with the superintendence of any house for the reception of poor persons, or the churchwarden, overseer, or other persons, elected, constituted, or appointed, by or under the authority of any act or acts of parliament for the control or management of the poor of any district, parish, township or hamlet, to punish with any corporal punishment whatsoever, any adult person or persons, under his, her, or their care or charge, for any offence or misbehaviour whatsoever; or to confine any such person or persons whatsoever, for any offence or misbehaviour, for any longer or greater space of time than twenty-four hours, or such further space of time as may be necessary, in order to have such person or persons before a justice of the peace: anything in any act or acts of parliament contained to the contrary in anywise notwithstanding."

The sane poor not to be chained by chains or manacles.

And 56 Geo. III. c. 129, s. 2, enacts "that it shall not be lawful for any governor, director, guardian, or master of any house of industry or workhouse, on any pretence, to chain, or confine by chains or manacles, any poor person of sane mind."

Remedy against pawning goods, and apparel.

55 Geo. III. c. 137, s. 1, after reciting "that many persons received into public workhouses established for the relief, maintenance, and employment of the poor, pawn and dispose of their clothes and apparel, and the goods and chattels deposited in or belonging to such workhouses; and poor persons relieved by having clothes and apparel given them by the officers of parishes, frequently pawn and sell the same; and by the laws now in force, no punishment can be inflicted on them, or on the person or persons buying or receiving the same into pawn; for remedy whereof" it is enacted "that the property of and in all and singular the goods, chattels, furniture, provisions, clothes, linen, and wearing apparel, tools, utensils, materials, and things whatsoever, had and to be had, bought, procured, or provided for the use of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, shall be and the same is hereby vested in the overseers of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places for the time being, and their successors in office, for the purposes of this act, who are hereby empowered to bring, or cause to be brought, any action or actions, or to prefer or order

Property therein vested in overseers. (*a*)

(*a*) Similar provisions as to indictments, 7 Geo. IV. c. 64, s. 16.

Conduct of Master and Inmates.

the preferring of any bill or bills of indictment against person or persons who shall steal, take, or carry away, or buy or receive any such goods, chattels, provisions, clothes, linen, furniture, wearing apparel, tools, utensils, materials, or things whatsoever, as aforesaid, or any part thereof; and in every such action and indictment the said goods, chattels, provisions, clothes, linen, wearing apparel, tools, utensils, materials, and things, shall be laid or described to be the property of the overseers of the poor for the time being of such parish or parishes, township or townships, hamlet or hamlets, place or places, without stating or specifying the name or names of all or any of such overseers: provided always that nothing herein contained shall extend to repeal any of the provisions contained in any act or acts of parliament, whereby the property of and in any such goods, chattels, furniture, provisions, clothes, linen, wearing apparel, tools, utensils, materials, and things, is or may be vested in any other person or persons jointly with or independent of the overseers of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places."

Not to repeal provisions in local acts.

Parish officers may cause goods, &c. to be marked.

Sect. 2 enacts "that the overseers of the poor, or other person or persons who may be appointed for the ordering, regulating, managing, or providing for the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, jointly with or independent of such overseers of the poor, shall or may, and they are hereby authorised and empowered to cause all such goods, chattels, furniture, clothes, linen, wearing apparel, tools, utensils, materials, and things capable of being marked, and from time to time belonging to such overseers or other person or persons, to be marked, stamped, or branded with the word 'workhouse,' and such other mark or marks as they shall think proper for identifying the parish or parishes, township or townships, hamlet or hamlets, place or places, by which the same shall have been provided: And if any pawnbroker or other person or persons shall knowingly take in pawn, buy, exchange, or receive any goods, chattels, furniture, clothes, linen, wearing apparel, tools, utensils, materials, and things provided for the use of any of the poor who are or shall be received into the workhouse of any parish or parishes, township or townships, hamlet or hamlets, place or places, or to whom the same shall have been given by the overseers of the poor, or other such person or persons as aforesaid, appointed as aforesaid, of or for any such parish or parishes, township or townships, hamlet or hamlets, place or places, or any of them, or any of the goods or materials carried into any such workhouse or workhouses, to be wrought up, manufactured, or used by the poor there, or any of the goods or furniture of such workhouse or workhouses: or shall receive or buy any of the provisions allotted to or provided for the poor of such workhouse or workhouses, or shall be aiding or assisting therein: or if any person or persons shall cause such mark or stamp, marks or stamps as aforesaid, to be obliterated or defaced, every person so offending shall forfeit for every such offence any sum not exceeding the sum of five pounds, nor less than one pound, upon conviction thereof, either by the confession of such person or persons, or by the oath of one or more credible witness or witnesses, before any one or more of his majesty's justices of the peace of the county, city, town, riding, or division wherein the offence or offences shall be committed; one moiety of which said penalty shall go to the informer or informers, and the other moiety shall go and be paid to the overseers of the poor of the parish or parishes, township or townships, hamlet or hamlets, place or places to which such articles or things may belong, for the use of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places; and in case any person or persons who shall be convicted as aforesaid, shall not pay such penalty or penalties upon conviction, then and in such case such justice or justices of the peace shall and may and is and are hereby required to commit such offender or offenders to the common gaol or house of correction, there to remain, without bail or mainprize, for any space of time not exceeding two calendar months: and if any person or persons shall desert or run away from any workhouse or workhouses, and carry away with him, her, or

Penalty on persons buying or receiving into pawn any property provided for the poor by parish officers;

or defacing marks.

Penalty.

Application of penalty.

On nonpayment of penalty, offenders to be committed.

Persons absconding with workhouse property to be committed.

Conduct of Master and Inmates.

them, any clothes, linen, or other goods or things as aforesaid, such person or persons being thereof lawfully convicted, either by the confession of such party or parties, or by the oath or oaths of one or more credible witness or witnesses, before any justice or justices of the peace, shall by such justice or justices of the peace be forthwith committed to the common gaol or house of correction, there to remain, without bail or mainprize, for the space of three calendar months; and in all cases such mark, stamp, or brand, on any such articles or things as aforesaid (being duly authenticated) shall be considered and taken to be sufficient evidence, without further proof, of the right of property in such overseers or other person or persons appointed as aforesaid, as the case may be: provided always, that such mark or stamp as aforesaid shall not at any time be placed on any articles of wearing apparel so as to be publicly visible on the exterior of the same."

Mark or stamp on articles to be evidence of the right of property.

Mark not to be put on the outside of wearing apparel.

Sect. 5. "And whereas persons maintained in public workhouses sometimes refuse to work, or are guilty of drunkenness and other misbehaviour, and by the laws in being no sufficient punishment is provided for such offences; it is therefore enacted, that in case any person or persons maintained in any public workhouse or workhouses established for the relief, maintenance, and employment of the poor, shall refuse to work at any work, occupation, or employment suited to his, her, or their age, strength, and capacity, or shall be guilty of drunkenness or other misbehaviour, every such person or persons being thereof lawfully convicted before any justice or justices of the peace, shall thereupon by such justice or justices of the peace be committed to the common gaol or house of correction, there to remain, without bail or mainprize, for any period of time not exceeding twenty-one days, and during such time to be kept to hard labour."

Persons refusing to work and guilty of misbehaviour in workhouse may be committed.

4 & 5 Will. IV. c. 76, s. 92, enacts "that if any person shall bring or attempt to bring into any workhouse any spirituous or fermented liquor, without the order in writing of the master, it shall be lawful for the master or any officer of the same, acting under his direction, to apprehend such offender, and to carry him before a justice, who is empowered to determine such offence in a summary way; and upon conviction, the party offending shall forfeit not exceeding ten pounds; and in default of payment, such justice is required to commit such offender to the common gaol for not exceeding two calendar months, unless such penalty shall be sooner paid."

Penalty on persons introducing spirituous liquors into workhouses. (*a*)

Sect. 93 enacts "that if any master of a workhouse shall order any spirituous or fermented liquor to be brought into any workhouse, except for the domestic use of himself or of any officer of the workhouse, or their families, or except under the written authority of the surgeon, or of any justice visiting the same, or of the guardians, or in conformity with any orders of the commissioners; or if any master or other officer of any workhouse shall bring into such workhouse, or knowingly permit to be brought or sold, used, lent, or given away therein, any spirituous or fermented liquor, contrary to the orders of the commissioners; or shall punish with any corporal punishment any adult person in such workhouse, or confine any such person for misbehaviour longer than twenty-four hours, or such further time as may be necessary to have such person carried before a justice; or shall in any way abuse or ill-treat, or misconduct himself towards or with respect to any poor person in such workhouse, every master or officer of a workhouse shall for every such offence, upon the complaint of the overseers or guardians of the parish or union, or of any such poor person, and upon conviction before any two justices, forfeit not more than twenty pounds, as such justices may direct; and in default of payment such justices are required to commit such offender to the common gaol for not exceeding six calendar months, unless such penalty shall be sooner paid: provided that if at the time when any master or officer shall be so convicted there shall be due to him any money in respect of his

Penalty on master of workhouse allowing use of spirituous liquors, or ill-treating poor persons, or misconducting himself.

Power for justices to order salaries, &c. to be stopped, and applied towards payment of penalties.

(*a*) Sect. 91 of this statute repeals so much of 6 Geo. IV. c. 80, as relates to the prohibition of spirituous liquor in workhouses.

Conduct of Master and Inmates.

employment, or upon any balance of account from the overseers or guardians it shall be lawful for such justices, upon the application of such overseers or guardians, to direct that such money or balance shall be retained in payment of such penalty; and such order shall be a good discharge for so much money against the claim of the master or officer."

A copy of these clauses are to be hung up by the master in some public place. Sect. 94.

The statute then gives the following form of conviction:—

Form of conviction.

Be it remembered that on the day of in the year of our Lord A. B. is duly convicted before of his Majesty's justices of the peace for the county of [or "*city*" or "*liberty of* " as the case may be,] *of having* [here state the offence] *contrary to the statute in that case made and provided. Given under my hand and seal* [or, "*our hands and seals*," as the case may be], *the day and year first above written.*

Conviction not to be set aside for want of form.

And such conviction shall not be quashed for want of any other form of words, nor be removed by *certiorari*, or any other writ.

Appeal to the quarter sessions.

Sect. 9. If any person shall think himself aggrieved by the judgment, such person may appeal to the next quarter sessions of the peace; such person at the time of his conviction entering into a recognizance, with two sureties, conditioned personally to appear at the said sessions to try such appeal, and to abide the further judgment of the justices at such sessions; and the said justices at such sessions shall determine the causes and matters of such appeal in a summary way, and make such order therein as the said justices shall think proper; and the determination shall be final.

Recognizances to be entered into.

Decisions to be final.

Appeal under 22 Geo. III. c. 83.—Levying Penalties.

Appeal to quarter sessions.

By 22 Geo. III. c. 83, s. 46, "any person aggrieved by the act of any justice or justices of the peace out of sessions, in or concerning the execution of this act, may appeal to the next general quarter sessions of the peace for the county, riding, liberty, division, precinct, or district, wherein such act was done, giving eight days' notice thereof to the party against whom the complaint shall be made, and giving security, by recognizance, to be acknowledged before a justice of the peace, with a sufficient surety, to pay the costs attending such appeal, if the matter shall be determined against the appellant; and the justices at such quarter sessions are hereby authorised to hear and determine such appeal, and to award costs, for or against the appellant, as they shall see just cause so to do; which determination shall be final, and shall not be removed by *certiorari*."

Penalties.

Sect. 45. "That all penalties inflicted by this act shall be recovered before one or more justice or justices of the peace of the jurisdiction where the offender dwells; who shall, upon conviction, in default of payment, after due summons, and demand made, cause the same to be levied by distress and sale of the offender's goods and chattels, by virtue of a warrant under the hand and seal of any justice of the peace having jurisdiction where such offender shall dwell, rendering to the said offender the overplus, if any, after the charges of such distress and sale shall be deducted; and in case sufficient distress shall not be found, then, and in every such case, it shall and may be lawful to and for any such justice of the peace to commit such offender to the house of correction, there to remain, without bail or mainprize, for any space not exceeding six calendar months, nor less than one calendar month; and that every such penalty and forfeiture, if not hereby otherwise directed to be disposed of, shall be paid to the treasurer of every such house or houses, where any such shall be established under the authority of this act, to be applied by him towards defraying the monthly expenses of victuals, beer, firing, and other necessary provisions for the poor within such house or houses."

II. Relief of the Poor out of the Workhouse.

The commissioners have the regulation generally of the relief.

The authority of the commissioners in regulating the relief of the poor is now so general, that the present state of the law deserves consideration

before entering on the former law on this subject. The power of the *commissioners* is general, but they are by the 15th section of 4 & 5 Will. IV. c. 76, prevented from interfering in any *individual* case for the purpose of giving relief. Subject to their control, the 54th section of that statute (*a*) enacts, that the ordering, giving, and directing of all relief to the poor of any parish which, according to the provisions of any of the said recited acts (*b*), or of the 1 & 2 Will. IV. "for the better regulating of Vestries," or of this act, or of any local acts, shall be under the government and control of any guardians of the poor, or of any select vestry, and whether forming part of any union or incorporation or not (but subject in all cases to the powers of the commissioners), shall belong exclusively to such guardians of the poor or select vestry, according to the respective provisions of the acts under which they are appointed; and no overseer shall give any relief or allowance than such as shall be ordered by such guardians or select vestry, except in cases of sudden and urgent necessity; in which cases he is hereby required to give such temporary relief in articles of absolute necessity, but not in money, and whether the applicant be settled in the parish or not: provided, that in case such overseer shall neglect to give such necessary relief in any such case of necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, any justice may order the overseer to give such temporary relief in articles of absolute necesssity, but not in money; and in case such overseer shall disobey such order, he shall, on conviction before two justices, forfeit any sum not exceeding five pounds; provided always, that any justice of the peace shall be empowered to give a similar order for medical relief (only) to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it; and any overseer shall be liable to the same penalties as aforesaid for disobeying such order; but it shall not be lawful for any justice to order relief to any person from the poor rates except as hereinbefore provided.

11. *Relief of Poor out of Workhouse.*

They cannot order relief in an individual case.

No relief to be in future given, except by guardians, &c.;

or select vestry;

except articles of necessity in cases of sudden necessity.

When upon neglect of overseer a justice may order some relief to persons not settled nor usually residing.

Any justice may give order for medical relief in dangerous illness.

Sect. 27. "That in any union which may be formed under this act, it shall be lawful for any two of his Majesty's justices of the peace usually acting for the district wherein such union may be situated, at their just and proper discretion, to direct, by order under their hands and seals, that relief shall be given to any adult person who shall, from old age or infirmity of body, be wholly unable to work, without requiring that such person shall reside in any workhouse: provided always, that one of such justices shall certify in such order, of his own knowledge, that such person is wholly unable to work, as aforesaid; and provided further, that such person shall be lawfully entitled to relief in such union, and shall desire to receive the same out of a workhouse."

Justices may order out-door relief to aged and infirm persons wholly unable to work.

Sect. 52 recites, that a practice had obtained of giving relief to persons or their families who, at the time, were in the employment of individuals, and the relief of the able-bodied and their families is in many places administered in modes productive of evil in other respects: and whereas difficulty may arise in case any immediate and universal remedy is attempted to be applied in the matters aforesaid; and enacts, that it shall be lawful for the commissioners to order to what extent and for what period the relief to be given to able-bodied persons or to their families in any particular parish or union may be administered out of the workhouse, by payments in money, or with food or clothing in kind, and all relief given contrary to such orders is unlawful, and shall be disallowed in the accounts; provided, that in case the overseers or guardians, upon consideration of the special circumstances of such parish or union, or of any person or class of persons therein, be of opinion that the application of such orders at the time or in the manner prescribed by the commissioners, would be inexpedient, it shall be lawful

Commissioners to regulate the relief to able-bodied paupers and their families out of the workhouse.

Relief contrary to their regulations to be disallowed: but overseers may delay the operation of such regulations under special circumstances and make report thereof to commissioners.

(*a*) The substance only of the statute is here given; the whole will be found in the Appendix.

(*b*) The 36 Geo. III. c. 23; 55 Geo. III. c. 137, ss. 3 and 4; and 59 Geo. III. c. 12, ss. 2 and 5, are recited in the preceding section: and the provisions which gave to the justices power to order relief *out* of the workhouses repealed. See *ante*, "Justices," Vol. II.

11. *Relief of Poor out of Workhouse.*

for such overseers or guardians to delay the operation of such orders for thirty days, to be reckoned from the day of the receipt of such orders; and such overseers or guardians shall, twenty days at the least before the expiration of such thirty days, make report of such special circumstances to the commissioners; and all relief which shall be given by such overseers or guardians, before an answer to such report shall have been returned by the commissioners, shall not be deemed unlawful, although given contrary to such orders; but notwithstanding the special circumstances, it shall be lawful for the commissioners, by a peremptory order, to direct, that from a day to be fixed thereby, such orders as they think expedient shall be enforced; and if any relief be given by such overseers or guardians after the said last-mentioned period, contrary to such last-mentioned order, the amount shall be disallowed in the accounts: provided also, that in case the overseers or guardians shall depart from the order in a particular instance of emergency, and shall, within fifteen days after every departure, report the same and the grounds thereof to the commissioners, and the commissioners shall approve of such departure, or if the relief so given shall have been given in food, temporary lodging, or medicine, and shall have been so reported as aforesaid, then the relief granted by such overseers or guardians shall not be disallowed.

If commissioners disapprove of delay, they may fix a day from which all such relief shall be disallowed.

Cases of emergency.

Committees of guardians in distant parishes.

District committees of the guardians may be formed for receiving applications for relief, when the parish is distant more than four miles from the place of the meeting of the board, 5 & 6 V. c. 57, s. 7.

Relief by Loan.

RELIEF BY LOAN.

Such relief as commissioners may direct to be considered as loan.

By 4 & 5 Will. IV. c. 76, s. 58, it is enacted, that any relief, or the cost price thereof, which shall be given to or on account of any poor person above the age of twenty-one, or to his wife, or any part of his family under the age of sixteen, and which the commissioners shall direct, (*a*) to be considered as given by way of loan, and whether any receipt or engagement to repay the same shall have been given or not, is hereby declared to be a loan to such poor person.

Power to justices to attach wages in hands of master or employer.

Sect. 59 enacts, that where any relief shall be given by way of loan, it shall be lawful for any justice, upon the application of the overseers or guardians of the parish or union providing such relief, and upon proof of the same having been given and still remaining due, to issue a summons, requiring such person, as well as his master or employer, to appear before any two justices, to show cause why any wages due, or which may become due, should not be paid over to such overseers or guardians; and if no sufficient cause be shown, or if such person, or some one on his behalf, shall not appear, then the justices shall direct the master or employer to pay, either in one sum or by instalments, as the justices shall think fit, taking into consideration the circumstances of such poor person and his family, out of such wages, to such overseers or guardians, the amount of such relief, and the receipt of any such overseer or guardian shall be a good discharge to such master or employer for so much as shall be so paid; and upon neglect to pay the money the same may be recovered in the same way as penalties, &c. under the act. See a similar provision in 59 Geo. III. c. 12, s. 29, *post*.

Mode of proceeding against masters for recovery thereof.

RELIEF OF THE POOR NOT IN WORKHOUSE, AND BEFORE 4 & 5 WILL. IV. c. 76.

The intention of the legislature in passing the 43 Eliz. was *to provide work for the able-bodied poor out of employment, and money for the sick and impotent* (*b*); and for a long period this humane and just policy was

(*a*) Rule 26. Any relief, or the cost price thereof, which the board of guardians shall, after due consideration of the circumstances of the case, think fit to give, *by way of loan*, to or on account of any able-bodied male pauper, between the ages of twenty-one and sixty; or to or on account of his wife, or any part of his family under the age of sixteen, shall be considered as a loan to such pauper, and shall be recoverable as such under the Poor Law Amendment Act.

(*b*) In *Strype's Annals of Church and State*, under Queen Eliz., b. 2, p. 90,

the guide in the administration of relief. In modern times a different system prevailed, and constant relief was given to the able-bodied poor, though in full employment, whenever the number of children rendered the wages of the parents insufficient for their maintenance, a practice clearly sanctioned by the 22 Geo. III. c. 83, s. 32. This system became so general and was considered so pernicious, that the immediate object of the 4 & 5 Will. IV. c. 76, was to put an end to such practice, either at once or by degrees; and in a former section the regulations of the commissioners for this purpose has been considered (*a*). The administration of the relief of the poor was originally entrusted to the *overseers;* and even now, where there are no guardians, select vestry, or local act, *the duty still belongs to such overseers.*

Relief of Poor not in Workhouse.

Duty of Parish Officers to procure Employment.

43 Eliz. c. 2, s. 1, provides that the overseers shall take order for setting to work the children of all such whose parents shall not be thought able to maintain their children, and all such persons, married or unmarried, having no means to maintain them, and using no ordinary and daily trade; and for the necessary relief of the lame, impotent, old, blind, and such other among them being poor, and not able to work.

The enactment of 43 Eliz. c. 2, s. 1, as to mode of relief, &c.

Rex v. *Collett*, 3 *D. & R.* 582; 2 *B. & C.* 324. This was an appeal against the allowance of the accounts of the overseers. Case: The appellant is the proprietor of an estate in the parish of *K.*, a part of which is in his own occupation. In consequence of the depression in the price of agricultural produce, the farmers have been rendered unable to make any improvements on their lands, and consequently have employed few labourers, by which means a considerable part of the labouring population has been totally unemployed; and during this period, all poor persons belonging to the parish, who had been unable to obtain employment, have received sums of money for their maintenance from the parish officers in proportion to the number of their respective families, for which no labour has been required from them. The respondents admitted that the persons to whom the sums objected to in the account were paid, were in fact both able and willing to work, but that no employment could be obtained for them. No evidence was adduced to prove that the overseers could have employed the labourers. None of the sums objected to were paid under

Under the statute of Eliz. overseers must endeavour to find work for able-bodied poor who are out of employment.

Quere. Whether they could legally relieve such persons otherwise than by setting them to work and paying them for their labour?

there is a letter, which was addressed to Lord Treasurer *Burghley*, by a justice of peace for the county of *Somerset*, which shows that the great evils arising from habits of idleness amongst the poor began then to be understood, and strengthens the idea that one great object of the legislative provisions for the poor, made about that time, was to prevent able-bodied men from being unemployed. After observing upon the great increase of crime, and the number of wandering idle vagabonds, then committing depredations in that part of the country, the writer proceeds: "and when these lewd people are committed to the gaol, the poor country that is robbed by them are forced to feed them, which they grieve at. And this year there hath been disbursed, to the relief of the prisoners in the gaol, 73*l.*, and yet they allowed but 6*d.* a man weekly. And if they were not delivered at every quarter sessions, so much more would not serve, nor two such gaols would hold them. But if this money might be employed to build some houses adjoining to the gaol for them to work in, and every prisoner, committed for any cause, and not able to relieve himself, compelled to work, as many of them as are delivered upon their trials, either by the acquittal of the grand jury, or petty jury, burning in the hand, or whipping, presently transferred thence to the houses of correction to be kept in work, except some present will take any into service; I dare presume to say the tenth felony will not be committed that now is." This letter also shows that at that time prisoners committed for trial, although they could not be compelled, and were not willing to work, were, in point of fact, in some places supported at the expense of the public. It seems, however, that they could not legally claim to be so maintained. See the case of *The Justices of the North Riding of Yorkshire*, 2 B. & C. 286; S. C. 3 D. & R. 510. Vol. II. tit. "Gaols," &c.

(*a*) *Ante*, p. 62, note.

(*b*) The law, and several statutes relating to the relief of the poor, are very fully discussed in the argument in this case, and in a note by the reporters, B. & C.

Duty of Overseers to procure Employment.

any order from a magistrate. The parishioners met once a week, at which meetings all applications for relief were received, and where all labourers belonging to the parish, who had not in the preceding week been in constant employment, attended to give an account of their earnings, and received such sums as, with the earnings, should amount to a sum deemed competent to their maintenance in proportion to the number of their children. In several cases able-bodied men with four or five children, having had no employment in the preceding week, received from 7*s.* to 8*s.* 6*d.* for the week; having been employed three days, 3*s.* 6*d.* to 4*s.* *per* week; two days, 5*s.* *per* week; and so in proportion to the number of their children and the amount of their week's earnings. This relief was afforded to these persons, solely on the ground of their having been out of employment, without inquiry as to any means they might have for the supply of their immediate wants by sale or pledge of their household effects; and that in many instances the weekly relief was afforded to various able-bodied labourers for many weeks in succession.—*Abbott*, C. J. "It does not appear upon the case before us, that the overseers of the poor considered themselves bound to provide work for the unemployed poor, if that were practicable, nor whether they in any way endeavoured to attain that object. Before we determine whether the overseers were or were not justified in giving pecuniary relief to the unemployed poor, the case must go down to the sessions again, that we may be informed whether any, and, if any, what endeavours were made to procure employment for them. All that the court can now say is, that undoubtedly it is the primary duty of the overseers to find employment for the poor, if possible. And I express that opinion now for the sake of the poor themselves, to whom no greater kindness can be done than by enabling them to earn their own living by labour, instead of suffering them to eat the bread of idleness, by which their habits and morals must soon be corrupted."—*Bayley*, J., suggested, "That it was the bounden duty of the overseers to obtain work for the poor, if they could, either in or out of their own parish, and it was only in case of inability to procure work, that they would be justified in giving relief in money. Probably this very discussion would rouse overseers of the poor to a sense of their duty in endeavouring to find work for unemployed poor persons. There were several useful modes of employing poor persons, advantageous to the public, such as levelling hills, and improving roads. Within the last few years a great deal had been done in improving the public highways by this mode of employing poor labourers." The case was sent back to the sessions to be amended.

Parishes not availing themselves of the 22 Geo. III. c. 83, are not *compellable* to erect workhouses, but may maintain and employ their poor at their own homes. *Rex* v. *Wetherill*, *Cald.* 432.

Overseers to provide *land* for the employment of the poor.

To facilitate the employment of the poor, overseers have been authorised under various statutes to take *land.*

The 59 Geo. III. c. 12 (*a*), authorises them to use land belonging to the

(*a*) The 59 Geo. III. c. 12, s. 12, after reciting, that "whereas by an act passed in the 43d year of the reign of Queen Elizabeth, the churchwardens and overseers of the poor are directed to set to work certain persons therein described: and whereas, by the laws now in force, sufficient powers are not given to the churchwardens and overseers, to enable them to keep such persons fully and constantly employed;" enacts, "that it shall be lawful for the churchwardens and overseers of the poor of any parish, with the consent of the inhabitants thereof in vestry assembled, to take into their hands any land or ground which shall belong to such parish, or to the churchwardens and overseers of the poor of such parish, or to the poor thereof, or to purchase, or to hire and take on lease for and on account of the parish, any suitable portion or portions of land within or near to such parish, not exceeding *twenty acres* in the whole;* and to employ and set to work in the cultivation of such land, on account of the parish, any such persons as by law they are directed to set to work, and to pay to

* Extended to *fifty* acres by 1 & 2 Will. IV. c. 42, s. 1; and see *id.* c. 59, as to crown lands.

parish, or to purchase or rent land in or near the parish, not exceeding twenty acres. It further permits them to let portions of such land to the poor and industrious at a rent to be fixed by the vestry.

Duty of Overseers to procure Employment.

By 1 & 2 Will. IV. c. 59, s. 1, the overseer may enclose from any forest or waste lands belonging to the crown, lying in or near the parish, with the consent of the lord treasurer or the commissioners of the treasury, not exceeding fifty acres, for the purpose of cultivating and improving the same for the use and benefit of such parish, and the poor persons within the same (*a*).

Power to enclose fifty acres of forest lands for the poor.

By the 2 Will. IV. c. 42, allotments made for the poor in parishes enclosed under an act of parliament, may, with the consent of the trustees of the allotment and the overseers, be let to industrious cottagers. Each portion to be not less than one quarter of an acre, and not exceeding one acre. The statute makes provision about the mode and time of letting, and the recovery of the rent or possession of the land, and prohibits the erection of habitations, and it directs that the rent shall be applied in the purchase of fuel, to be distributed in the winter season among the poor parishioners legally settled and resident in or near the parish. There is a further power for the vestry to exchange such allotments for land more favourably situated. All these powers are now subjected to the rules of the commissioners. See Appendix, 5 & 6 Will. IV. c. 69, s. 4.

Allotments under enclosure acts.

The plaintiffs, overseers, enclosed some waste of a manor for employing the poor. The defendant pulled down the fence, under an alleged right of common, which the jury negatived. The plaintiffs failed to prove the consent of the lord, and on a motion for a nonsuit on this ground, C. J. *Tindal* said, "The plaintiffs enclose, cultivate, and allot portions of land; neither the lord of the manor nor the copyholder interfere; the defendant is a stranger, and as against him the plaintiffs are entitled to maintain this action on their mere possession." *Matson* v. *Cook*, 4 *Bing. N. C.* 392.

Overseers enclosing wastes for the poor may maintain trespass against a stranger, without proof of the consent of the lord.

To provide Work otherwise.

To encourage the employment of the poor various statutes have been passed to enable parishes to borrow money from the treasury. See statutes collected in a note to **Poor Rates**.

Overseers to provide *Work* for the poor.

By 3 Car. I. c. 4, s. 22, the churchwardens and overseers may, by the consent of two justices within their respective limits, wherein shall be more justices than one, and where no more shall be than one, with the assent of that one justice, set up and use any trade, mystery, or occupation, only for the setting on work and better relief of the poor.

Setting up trades for benefit of the poor.

By 43 Eliz. c. 2, s. 5, the churchwardens and overseers, or the greater part of them, by the leave of the lord of the manor, whereof any waste or common within the parish is parcel, and on agreement with him made in

Erecting houses for the poor.

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such of the poor persons so employed as shall not be supported by the parish, reasonable wages for their work; and the poor persons so employed shall have such and the like remedies for the recovery of their wages, and shall be subject to such and the like punishment for misbehaviour in their employment, as other labourers in husbandry are by law entitled and subject to."

Sect. 13 enacts, "that for the promotion of industry among the poor, it shall be lawful for the churchwardens and overseers of the poor of any parish, with the consent of the inhabitants in vestry assembled, to let any portion and portions of such parish land as aforesaid, or of the land to be so purchased or taken on account of the parish, to any poor and industrious inhabitant of the parish, to be by him or her occupied and cultivated on his or her own account, and for his or her own benefit, at such reasonable rent, and for such term, as shall by the inhabitants in vestry be fixed and determined."

(*a*) In 1832 a temporary act was passed for the better employment of the agricultural labourers, by which agreements made in vestry by a majority of three-fourths of the rate-payers, and approved by the justices at the petty-sessions, were to be binding on the parish; and it was enacted, that the overseers should not expend any money raised for the relief of the poor in the employment of any person in any work whatever. The statute continued in force till the 25th day of March, 1834.

To provide Work otherwise.

writing, under his hand and seal, or otherwise, according to any order to be set down by the justices in sessions, by like leave and agreement of the lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county as aforesaid, to be rated and gathered in manner before expressed, convenient houses of dwelling for the said impotent poor.

Overseers may contract for the maintenance and employment of the poor.

By 9 Geo. I. c. 7, s. 4, the overseers, with the consent of vestry (*a*), might contract with any person for the employing the poor in their respective parishes, or in the united parishes, and take the benefit of the work, labour, and service of such poor persons.

Farming out the poor to cease, where guardians appointed.

Agreement for diet or clothing of paupers in poorhouse.

22 Geo. III. c. 83, s. 1. So much of stat. 9 Geo. I. "as respects the maintaining or hiring out the labour of the poor by contract, within any parish adopting the provisions of this act, is repealed; and s. 2 provides, that it shall and may be lawful for the visitor and guardian, or visitors and guardians, appointed as hereafter mentioned, of any parish, township, or place, or parishes, townships, and places, which shall have adopted the provisions and complied with the requisites of this act, and shall have a visitor appointed, from time to time to make agreements with any person or persons for the diet or clothing of such poor persons who shall be sent to the house or houses to be provided under the authority of this act, and for the work and labour of such poor persons, so that no such agreement shall be made for any longer time than twelve months, and so that the same shall be, and every such agreement is hereby declared to be, under the strictest inspection and control of the visitor, guardian, and governor of such poorhouse, and also of the justices of the peace for the limit where such poorhouse shall be; two of which justices, upon proof of any abuse, shall have power to dissolve such contract."

Notice of contracts for supplying workhouses to be given.

By 55 Geo. III. c. 137, s. 7, it is enacted, "that when and so often as any contract or contracts shall be made or entered into for the providing, furnishing, or supplying any articles, materials, or things for the use of the poor in the workhouse or workhouses of or belonging to any parish or parishes, township or townships, hamlet or hamlets, place or places, or for the erecting of any building or buildings, the expense whereof is to be defrayed out of any rate or rates, or other moneys applicable to the relief of the poor, the churchwardens and overseers of the poor, or other person or persons having the management, control, or direction of the poor in such parish or parishes, township or townships, hamlet or hamlets, place or places, shall cause notice of their intention to enter into such contract or contracts, and of the time and place when and where they shall assemble and meet for such purpose, and of the security which will be required for the performance of such contract or contracts, to be affixed in a conspicuous manner on the outer door of the church, or respective churches, to which such parish or parishes, township or townships, hamlet or hamlets, place or places, shall belong, or to be inserted in one or more of the public newspapers most generally circulated in the neighbourhood, seven days at the least previous to such meeting, in order and to the intent that any person or persons willing to undertake the supplying or furnishing the same, may make proposals for that purpose to such churchwardens and overseers, or other person or persons as aforesaid, at the time and place mentioned in such notice."

43 G. 3, c. 54, repealed.

The 43 Geo. III. c. 54, enacted, that the contractors should reside in the parish, and give security, to the satisfaction of two justices, in a penalty not less than one-half of the amount of the poor rate; but this statute is repealed by 4 & 5 Will. IV. c. 76, s. 50, but the repeal is not to affect any bond or security given before the passing of the act. All contracts made by any parish or union relating to the poor must be made according to the rules of the commissioners. *Ib.* 49. See Appendix.

(*a*) Where a select vestry has been constituted under 59 Geo. III. the power here given may be exercised by them. *Clark* v. *King*, *post*.

To provide Work otherwise.

50 Geo. III. c. 50, s. 2. "Persons contracting for the maintenance of the poor of any parish or place shall, with respect to all such things as they shall contract to perform and provide for the poor, be subject to the jurisdiction and orders of justices of the peace in like manner in all respects as overseers of the poor are subject thereto; and that every order of any such justice to or upon any person so contracting, may be enforced and carried into execution by such means as the same might have been enforced and carried into execution against any overseer of the poor; and that every person so contracting for the maintenance of the poor, who shall refuse or neglect to obey any such order, shall be punishable by the like forfeitures and penalties, to be levied in the same manner as in cases of disobedience or neglect of the orders of justices by overseers of the poor."

Contractors for providing for the poor shall be subject to the jurisdiction of the justices as overseers of the poor.

Rex v. *Beeston*, 3 *T. R.* 592. On an application for a *mandamus* against an overseer of *Drayton*, to compel him to pay his proportion of parish money in his hands to the person who had contracted to maintain the poor: the question was, whether it was necessary that *all* the churchwardens and overseers, or the majority, should concur in making the contract. Three churchwardens and two overseers agreed to the contract, and one overseer refused to join. Lord *Kenyon*, "The foundation of my opinion is, that the stat. of 43 Eliz. c. 2, has directed that the general acts to be done by the churchwardens and overseers respecting the poor shall be done by a *majority* of them; and I think that the spirit of that statute pervades all the subsequent acts respecting the government of the poor. I consider the statute of Geo. I. as engrafted in the 43 Eliz. qualifying the particular act, but referring for the execution of it to the manner pointed out by that statute. Besides, in common understanding what is required to be done by the churchwardens and overseers, is satisfied by being done by a *majority*." The rest of the court concurred—and the rule was made absolute.

A contract made by a majority of the churchwardens and overseers will bind the rest.

Relief of Sick Pensioners and their Families.

Relief of Pensioners and their families.

Where the applicant for relief is entitled to a pension, the overseers are authorised to require an assignment of it.

The 2 and 3 Vict. c. 51, repeals so much of the 59 Geo. III. c. 12, as directs or authorises the assignment of any pension, superannuation, or other allowance granted in respect of service in the navy, royal marines, army, or ordnance for the indemnity or reimbursement of parishes, and as directs or authorises justices to order payment to parish officers of any such pensions, upon any pensioner or other person entitled thereto leaving his wife or family chargeable to any parish, and also the whole of the 6 Geo. IV. c. 27; and it provides for an assignment of such pensions when relief is given to the pensioner or his family, by admission *into the workhouse*. There is also a similar provision when the pensioner applies for *temporary relief*, without limiting the mode in which such relief may be given. If a pensioner leave his wife or family chargeable, a power is given to justices to direct a portion of the pension to be paid to the guardians, &c.—one-half if a wife and one child is left chargeable, and two-thirds if a wife and one child, or two, or more children.

Part of 59 Geo. III. c. 12, and 6 Geo. IV. c. 27, repealed.

Relief of pensioners in army, navy, marines, and ordnance.

Sect. 2. "And be it enacted, that when relief shall be given to any person entitled to or in receipt of any army or naval pension, or any superannuation or other allowance in respect of his service in the army, navy, marines, or ordnance, or any other branch of the military service, or in any civil branch of the army, navy, marines, or ordnance, or to his wife, or to any person whom he may be liable to maintain, by admission of such pensioner, his wife, or person into the workhouse of any union or parish, it shall be lawful for the guardians of such union, by minute, in the form in the schedule to this act annexed marked (A.) with respect to any pension payable at *Chelsea* Hospital, or payable out of any funds intrusted to the commissioners of *Chelsea* Hospital for the payment of pensions, and in the form in the schedule to this act marked (B.) with respect to any *Greenwich* out-pensions, and in the form in the schedule to this act marked (C.)

Guardians may require the payment of pensions to be made to them for relief given by admission of pensioners into the workhouse.

A. p. 86.

B. p. 86.

C. p. 87.

Relief of Sick Pensioners, and their Families.

with respect to any other of the before-mentioned pensions, superannuation, or allowance, to require that the next payment which shall become due of such pension or allowance shall be made to such guardians, who shall transmit a copy of such minute, attested by their clerk, at least one month before such payment shall become due, and addressed, as to pensions or allowances payable at *Chelsea* Hospital, or by the commissioners of the said hospital, to the secretary of *Chelsea* Hospital, with the words '*Chelsea* pension' written thereon, and as to *Greenwich* out-pensions to the paymaster general, Out-pension Office, *Tower Hill*, with the words '*Greenwich* out-pension' written thereon, and as to all other the before-mentioned pensions to the paymaster general, *Whitehall, London;* and the commissioners of *Chelsea* Hospital and her Majesty's paymaster general respectively shall thereupon, and upon the like proof being given as is hereinafter directed with respect to assignments, cause payment to be made to such guardians; and the said guardians shall thereupon enter upon their minutes the nature and amount of relief actually given to such pensioner, or his wife or other person, and upon application made by the said pensioner to the clerk of the said guardians shall inform the said pensioner of the amount thereof; and the said guardians so receiving any pension or allowance shall retain and apply so much thereof as will repay the cost of relief actually given as aforesaid for the use and indemnity of the union or parish, and shall pay the surplus (if any) to the pensioner or person entitled thereto; and upon the receipt of any such minute as aforesaid the payment of the pension or other allowance mentioned therein shall be suspended until sufficient proof shall have been given to entitle the guardians named in such minute to receive the money thereby required to be paid to them; provided that where such relief shall not be given to the pensioner himself, the said guardians, before transmitting any such minute as aforesaid, shall obtain satisfactory proof that the person to whom such relief shall be given is the lawful wife of the said pensioner, or a person whom such pensioner is by law liable to maintain, which proof shall also be entered upon the minutes of the said board of guardians."

Authorising assignment of pension on application for relief.

Sect. 3. "And be it enacted, that when any pensioner or person entitled to or in receipt of any pension or other allowance as aforesaid shall apply for temporary relief to the guardians of any union or parish in *England* or *Ireland*, or to the churchwardens or overseers of any parish in which the administration of the relief of the poor has not been directed to be governed by a board of guardians, or not situate within any union, so long only as such parish is not governed by such guardians, nor situate within any union, or to the heritors and kirk session in *Scotland*, or shall receive relief from the said guardians, churchwardens, and overseers, or heritors and kirk session, it shall be lawful for the said guardians, or churchwardens and overseers of the poor, and heritors and kirk session, but not compulsory upon them, to grant such relief in such case, or in the event of any pensioner receiving relief without previous application on his part, and to require the pensioner applying for or receiving the same to assign to them respectively his next quarterly payment of pension or other allowance, to the intent that such guardians, or churchwardens and overseers, or heritors and kirk session respectively, may receive the same, and retain for the use of the said union or parish so much thereof as shall have been by them respectively advanced for the temporary relief of such pensioner, or of his wife or family residing with him in such union or parish; and every assignment to be made of any such pension or other allowance for the purposes and according to the tenor of this act shall be exempt from stamp duty, and shall, as to any pensions payable at *Chelsea* Hospital or by the commissioners thereof, be in the form set out in the schedule to this act marked (D.), and as to *Greenwich* out-pensions in the form set out in the schedule to this act marked (E.), and as to all other the before-mentioned pensions and allowances payable by her Majesty's paymaster general in the form set out in the schedule to this act marked (EE.); and every assignment shall be certified by the chairman and clerk of the said union at some

D. p. 87.
E. p. 87.
EE. p. 88.

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meeting of the board of guardians, or by a churchwarden or overseer of such parish, or one of the heritors, and shall be attested by one of her Majesty's justices of the peace; and every such assignment shall be transmitted, within seven days after the same shall have been executed, and at least one month before the payment thereon shall become due, under cover, addressed, as to pensions payable at *Chelsea* Hospital or by the commissioners of the said hospital, to the secretary of *Chelsea* Hospital, with the words '*Chelsea* pensioner' written thereon, and with respect to naval pensions to the paymaster general, Out-pension Office, *Tower Hill*, with the words '*Greenwich* out-pension' written thereon, and as to all other the before-mentioned pensions, to the paymaster general, *Whitehall, London*, who shall thereupon respectively cause the payment thereof to be made to the said guardians of the union or parish, or to the churchwardens and overseers of the poor of the parish, or to the overseers of the poor alone where there are no churchwardens, or heritors and kirk session, for whose security the assignment shall have been made, in the same manner as the said payment would have been made to the person assigning the same if no such assignment had been made; and such guardians, or churchwardens and overseers, or heritors and kirk session, are hereby authorised to receive the same, and to retain thereout, for the use of the said union or parish, so much as shall have been advanced and paid on security thereof; and the said guardians, churchwardens and overseers, or heritors and kirk session respectively, shall keep an account in writing of the sum or sums so advanced, and also, immediately upon the receipt of the said pension, shall pay the residue thereof (if any) to the pensioner by whom such assignment shall have been made; and if any question shall arise between the pensioner making any such assignment, and the guardians, or churchwardens and overseers of the poor, or heritors and kirk session, receiving the same, touching the amount which shall be due and payable to them respectively by virtue of any such assignment, the same shall be determined in a summary way by one of her Majesty's justices of the peace, and his order and determination therein shall be final and conclusive: Provided always, that no such assignment shall entitle the said guardians, or churchwardens and overseers, or heritors and kirk session, to whom the same shall be made, to receive the pension or allowance purporting to be thereby assigned, if the same shall not have been transmitted within seven days after the same shall have been executed, if the party assigning the same shall die before the time when such pension would have become payable to him, as if no such assignment thereof had been made: Provided also, that all assignments not made in conformity with the provisions of this act shall be null and void."

As to the pension of insane pensioners.

Sect. 5. "And be it enacted, that in case any such army pensioner as aforesaid shall become insane, it shall be lawful for any one of her Majesty's justices of the peace for the county or place in which such pensioner shall reside, upon due proof being made of such insanity, to certify the same to the lords commissioners of *Chelsea* Hospital, who shall thereupon order and direct, according to their discretion, that the pension of the said insane pensioner shall be paid to the guardians of the union or parish, or churchwardens and overseers of the parish not governed by a board of guardians or comprised in any union, or heritors and kirk session of the place in which such pensioner shall reside, or to the wife, child, or other person to whom the care of such insane person shall be intrusted, or to the treasurer of the county, if such pensioner shall be confined in a county lunatic asylum, or public asylum, or house licensed for the reception of persons insane; and the receipt of the person to whom the same shall be directed to be paid shall be a sufficient voucher and discharge for so much money as shall appear to have been paid thereon."

When officers or seamen become lunatic, their pensions payable to &c. their wives,

Sect. 6. "And whereas by an act passed in the eleventh year of the reign of his late Majesty King *George* the Fourth, to amend and consolidate the laws relating to the pay of the royal navy, power is vested in the commissioners for executing the office of Lord High Admiral to direct pensions

Relief of Sick Pensioners, and their Families.

payable to the officers and seamen of the royal navy, and to the officers of marines and to marines, who shall become lunatic, or so much of such pensions as the said commissioners shall think fit, to be disposed of in the maintenance of such lunatic persons, and it is expedient that such power should be extended to the pensions, superannuations, and other allowances made to persons for services in the civil departments of the navy; be it therefore enacted and declared, that in all cases when any such persons as last mentioned are or shall become lunatic, such pensions, superannuations, or other allowances, or so much thereof as the said commissioners for executing the office of Lord High Admiral shall deem expedient, shall and may be paid by the paymaster general to the wife, relative, or other person having the care and maintenance of the lunatic, to be applied towards his support; and the receipt of the wife, relative, or other person as aforesaid to whom the same shall be so paid shall be a sufficient discharge to the said paymaster general for the same.

Orders and assignments relating to the same quarter's pension to be paid according to priority of dates.

Sect. 7. "And be it enacted, that if it shall happen that the minute of any board of guardians, and any assignment by the person entitled, and any order of justices relating to the same pension, or any two of such instruments, shall, as to such army pensions, be received at *Chelsea* Hospital, and as to such *Greenwich* out-pensions be received at the Pension Office, *Tower Hill, London*, or as to any other of such pensions or other allowance as aforesaid be received at the office of the paymaster general at *Whitehall*, in any one quarter, the commissioners of *Chelsea* Hospital or her Majesty's paymaster general respectively shall pay the quarter's pension upon such one of the said respective instruments as shall have been first executed according to the date thereof, and duly transmitted, so as to enable the commissioners and her Majesty's paymaster general respectively, according to their usual course of forwarding the receipts for quarterly pensions, to confer such priority; and in the event of any such instruments being dated and received the same day, then a proportionate part of the pension to which such instruments relate shall be paid upon every or each of the said instruments."

Definition of parish.

Sect. 98 provides against assignment of pensions to any persons but guardians and overseers, and the forgery of the documents is made felony by s. 9. The term "parish" to include all places separately maintaining their own poor, s. 10.

Forms given by the statute.

SCHEDULE (A.)

Form of Minute of Board of Guardians.

The Guardians of the union or parish of in the county of do hereby certify to the lords and others commissioners of the Royal Hospital for Soldiers at Chelsea in the county of Middlesex, that an out-pensioner from the regiment of at per diem, was on the day of received into the workhouse at [or *that the wife or other relation whom the said is bound to maintain*, as the case may be], *by order of the said guardians; and the said guardians do thereupon, in pursuance of an act passed in the year of her Majesty Queen Victoria, intituled* [the title of this act], *require that the next quarter's pension of the said shall be paid to the said guardians, to be applied pursuant to the provisions of the said act of parliament.*

Dated

Certified on the day of at a meeting of the board of the said guardians by A. B., *Chairman.*

C. D., *Clerk.*

To the Lords and others Commissioners of Chelsea Hospital.

SCHEDULE (B.)

Form of Minute of Board of Guardians.

The guardians of the union or parish of in the county of do hereby certify to her Majesty's paymaster general, that a Greenwich out-pensioner, No. , at per annum, was on the day of received into the workhouse at [or *that the wife or other relation whom the said is bound to maintain*, as the case may be], *by order of the said guardians; and the said guardians do thereupon, in pursuance of an act passed in the*

year of her Majesty Queen Victoria, intituled [the title of this act], *require that the next quarter's pension of the said shall be paid to the said guardians, to be applied pursuant to the provisions of the said act of parliament.*

Relief of Sick Pensioners, and their Families.

Dated

Certified on the day of at a meeting of the board of the said guardians by A. B., *Chairman.*

To her Majesty's Paymaster General C. D., *Clerk.*

Greenwich Out-pension Office, Tower Hill.

SCHEDULE (C.)

Form of Minute of Board of Guardians.

The guardians of the union or parish of in the county of do hereby certify to her Majesty's paymaster general, that a person entitled to [here state whether for pension or allowances in civil or military service, not as Chelsea or Greenwich out-pensioner], *at per annum, was on the day of received into the workhouse at* [or *that the wife or other relation whom the said is bound to maintain,* as the case may be], *by order of the said guardians; and the said guardians do thereupon, in pursuance of an act passed in the year of her Majesty Queen Victoria, intituled* [the title of this act], *require that the next quarter's pension of the said shall be paid to the said guardians, to be applied pursuant to the provisions of the said act of parliament.*

Dated

Certified on the day of at a meeting of the board of the said guardians by A. B., *Chairman.*

To her Majesty's Paymaster General, C. D., *Clerk.*

Whitehall, London.

SCHEDULE (D.)

I [naming the pensioner, and the regiment from which he was discharged] *do hereby assign to the guardians of the union or parish of* [or, as the case may be, *the churchwardens and overseers of the poor of the parish of* or *to the heritors and kirk session of*], *in which union* [or *parish*] *I am now residing, the next payment of my pension at the rate of per diem, granted to me as and payable from in order to secure to the said union* [or *parish*] *of the repayment of the sum of advanced to me by such guardians* [or *churchwardens and overseers,* or *heritors and kirk session,* as the case may be], *out of the funds of the said union* [or *parish*].

, *Pensioner.*

Signed by the above-named before me, one of her Majesty's justices of the peace for this day of

, *Justice.*

We do hereby certify the above assignment to be made pursuant to act Victoria, cap. intituled [stating the title of this act], *and to be for relief given out of the funds of the said union* [or *parish*] *on the day of at a meeting of the board of the said guardians.*

A. A., *Chairman.*
A. B., *Clerk.*
Or C. D., *the Churchwarden, and*
D. E., *the Overseer of*
Or E. F., *one of the Heritors and*
F. G., *an Elder of*

SCHEDULE (E.)

I [naming the pensioner] *do hereby assign to the guardians of the union* or *parish of* [or, as the case may be, *the churchwardens and overseers of the poor of the parish of* or *to the heritors and kirk session of*], *in which union* [or *parish*] *I am now residing, the next payment of my Greenwich out-pension at the rate of per annum, granted to me as and payable from in order to secure to the said union* [or *parish*] *of the repayment of the sum of advanced to me by such guardians* [or *churchwardens or overseers,* or *heritors and kirk session,* as the case may be,] *out of the funds of the said union* [or *parish*].

, *Pensioner.*

Signed by the above-named before me, one of her Majesty's justices of the peace for this day of

, *Justice.*

We do hereby certify the above assignment to be made pursuant to act Victoria, cap. intituled [stating the title of this act], *and to be for relief given*

Relief of Sick Pensioners, and their Families.

out of the funds of the said union [or *parish*] *on the day of at a meeting of the board of the said guardians.*

A. A., *Chairman.*
A. B., *Clerk.*
Or C. D., *the Churchwarden, and*
D. E., *the Overseer of*
Or E. F., *one of the Heritors, and*
F. G., *an Elder of*

SCHEDULE (EE.)

I [naming the person] *do hereby assign to the guardians of the union* [or *parish*] *of* [or, as the case may be, *the churchwardens and overseers of the poor of the parish of* or *to the heritors and kirk session of*], *in which union* [or *parish*] *I am now residing, the next payment of my* [here state whether for pension or allowances in civil or military services, not as Chelsea or Greenwich out-pensioner] *at per annum, and payable from in order to secure to the said union* [or *parish*] *of the repayment of the sum of advanced to me by such guardians,* [or *churchwardens or overseers* or *heritors and kirk session,* as the case may be,] *out of the funds of the said union* [or *parish*].

, *Pensioner.*

Signed by the above-named before me, one of her Majesty's justices of the peace for this day of

, *Justice.*

We do hereby certify the above assignment to be made pursuant to act Victoria, cap. intituled [stating the title of this act], *and to be for relief given out of the funds of the said union* [or *parish*] *on the day of at a meeting of the board of the said guardians.*

A. A., *Chairman.*
A. B., *Clerk.*
Or C. D., *the Churchwarden, and*
D. E., *the Overseer of*
Or E. F., *one of the Heritors, and*
F. G., *an Elder of*

RELIEF TO PRISONERS CONFINED UNDER MESNE PROCESS FOR DEBT, IN GAOLS WHICH ARE NOT COUNTY GAOLS (*a*).

Relief to prisoners for debt.

52 Geo. III. c. 160. After reciting that "great distress is suffered by poor persons confined under mesne process for debt in such gaols as are not county gaols, in consequence of their not receiving any allowance whereon to subsist during the time of such confinement," it is enacted, s. 1, "that it shall be lawful for any one justice of the peace acting for the county, riding, or division, wherein any gaol which is not a county gaol is situated, to order the overseers of the poor of the parish, township, or place wherein any such gaol (which is not a county gaol) shall be situated, to relieve any poor person who shall be confined in such gaol under mesne process for debt, and who shall appear to such justice to be unable to support himself or herself, and who shall have applied for relief to such overseers as aforesaid."

Justices to order parochial relief to debtors in such gaols as are not county gaols.

Limiting the sum.

Sect. 2. "That the sum to be given for the relief of any such poor person shall not exceed 6*d. per diem*, during the time of his or her confinement in such gaol, under mesne process for debt."

Legal settlement of debtor to be ascertained.

Sect. 3. "The overseers of the poor of any such parish, township, or place, to whom any such application for relief shall be made as aforesaid, if they shall doubt whether such poor person is legally settled in such parish, township, or place, shall cause him or her to be examined upon oath before one or more justice or justices of the peace, touching his or her last legal settlement, upon which examination it shall be lawful for justices to make an order for the removal of such poor person to the place of his last legal settlement, and to suspend the execution of such order of removal during the time of such person being confined in such gaol under

Order of removal to be suspended while debtor is imprisoned;

(*a*) Since the abolition of imprisonment for debt under mesne process without a special order, this statute has become of little importance.

Relief to Prisoners for Debt.

such mesne process, which suspension of the same shall be indorsed on the said order, and signed by such justices, and the subsequent permission to execute the same shall be indorsed on the said order, and signed by such justices, or by any other two justices of the peace acting for the same county, riding, or division."

and to be served on the overseers of the poor of his parish;

Sect. 4. "That a copy of the order of removal, and of the order for suspending the execution of the same as aforesaid, shall, as soon as may be after the making thereof respectively, be served upon the overseers of the poor of the parish, township, or place in which such poor person shall, by such order of removal, be adjudged to be legally settled."

who shall repay the expense attending the pauper.

Sect. 5. "That although such poor person shall not have been actually removed in pursuance of such order of removal as aforesaid, it shall be lawful for any justice of the peace to direct the overseers of the poor of the parish, township, or place in which such pauper is adjudged to be settled, to repay to the overseers of the poor of the parish, township, or place wherein such gaol shall be situated, all the charges proved upon oath of any such overseers of the parish, township, or place where the gaol is situated, to have been incurred in granting relief to such pauper during the time of his confinement and the suspension of such order, not exceeding 6*d. per diem;* and if the overseers of the parish, township, or place to which such order of removal shall be made, or any or either of them, shall refuse or neglect to pay any such sum so advanced as aforesaid within twenty-one days after demand thereof, and shall not within the same time give notice of appeal as hereinafter mentioned, it shall be lawful for one justice of the peace, by warrant under his hand and seal, to cause the money so directed to be paid as aforesaid, to be levied by distress and sale of the goods and chattels of the person or persons so refusing or neglecting to pay the same, and also such costs attending the same, not exceeding 40*s.*, as such justice shall direct; and if the parish, township, or place to which the removal was ordered to be made, be without the jurisdiction of the justice of peace issuing the warrant, then such warrant shall be transmitted to any justice of the peace having jurisdiction within such parish, township, or place as aforesaid, who upon receipt thereof is hereby authorised and required to indorse the same for execution; provided nevertheless, that if the sum so ordered to be paid on account of such costs and charges exceed the sum of 5*l.*, the party or parties aggrieved by such order may appeal to the next general quarter sessions for the county, riding, or division in which such gaol is situated, against the same, as they may do against an order for the removal of poor persons by any law now in being; and if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court may and is hereby directed to strike out the sum contained in the said order, and insert the sum which, in the judgment of the said court, ought to be paid; and in every such case the said court of quarter sessions shall direct that the said order so amended shall be carried into execution by the said justices by whom the order was originally made, or either of them, or by such other justice or justices as the said court shall direct."

Amount advanced to be levied by distress, if not paid or appealed against.

On appeal sessions may reduce the amount.

Appeal against the order of removal.

Sect. 6. "That it shall be lawful for the overseers of the poor of the parish, township, or place wherein such poor person shall, by such order of removal, be adjudged to be legally settled, to appeal against such order to the next general quarter sessions of the peace for the county, riding, or division in which such gaol is situated, holden after the service of the copy of such order of removal, in case such copy shall have been served upon such overseers twenty-one days before the holding of such quarter sessions; but in case the same shall not be served twenty-one days before the holding of such next general quarter sessions, then the appeal may be to the next succeeding general quarter sessions holden for the said county, riding, or division, and upon such appeal the like proceedings may be had as are observed in other cases of appeals against orders of removal of poor persons by any law now in being: provided always, that in case such order of

Relief to Prisoners for Debt.

removal and suspension is not appealed against in manner aforesaid, or if upon appeal such order shall be confirmed, such poor person shall be deemed and taken to be legally settled in the parish, township, or place in which he shall by such order of removal be adjudged to be legally settled."

If pauper has no settlement in England or Wales the allowance is to be paid out of county rate.

Sect. 7. "That in case any poor person applying for relief under the provisions of this act shall, upon his examination as to his last legal settlement, be found not to be legally settled in any parish, township, or place within *England* and *Wales*, it shall be lawful for any one justice of the peace to order the overseers of the poor of the parish, township, or place wherein the gaol is situated, (in which such poor person shall be confined under mesne process for debt,) to relieve such poor persons with a sum not exceeding 6*d. per diem* out of the funds in their hands applicable to the relief of the poor, which sum shall be reimbursed to the overseers of the poor of the said parish, township, or place, for the use of such funds, out of the county rate, by the treasurer of the county, riding, or division in which such parish, township, or place shall be situated, at the expiration of the confinement of such poor person upon such mesne process as aforesaid."

Medical Relief.

Relief by Medical assistance.

Medical assistance is within the meaning of *relief*, as understood and used in the poor laws, and an overseer is bound to supply such *relief* to a pauper labouring under a dangerous illness, though out of the workhouse, and not having previously had relief. *Per Holroyd*, J., *Rex* v. *Warren*, *Worcester Lent Ass.* 1820. See Casual Poor, *post*, 88 to 96; and see 4 & 5 Will. IV. c. 76, s. 54.

A stranger, and, *à fortiori*, a deputy overseer, *directing* a surgeon to attend a pauper, is liable, in respect of his *retainer*, to pay the surgeon's bill. But a deputy overseer is not liable unless he has expressly retained the surgeon. *Watling* v. *Walters*, 1 *Car. & P.* 132.

Relief by Loan (*b*).

Relief by Loan.

Overseers empowered, in certain cases, by direction of justices, &c., to give relief by way of loan only (*a*).

59 Geo. III. c. 12, s. 29, after reciting, that it is expedient to discourage that reliance upon the poor's rates which frequently induces artisans, labourers, and others, to squander away earnings which would, with suitable care, have afforded sufficient means for the support of their families, enacts, "that whenever it shall appear to the justices, or to the general or select vestry, or to such guardians, governors, or directors as aforesaid, or to the overseers of the poor, to whom application shall be made for relief for any poor person, that he might, but for his extravagance, neglect, or wilful misconduct, have been able to maintain himself, or to support his family (as the case may be), it shall be lawful for the overseers of the poor (by the direction of the justices, or of the general or select vestry, or of such guardians, governors, or directors, where application shall have been made to them respectively,) *to advance money weekly*, or otherwise, as may be requisite, to the person so applying, by way of loan only, and to take his receipt for, and engagement to repay every sum to be so advanced (for which no stamp duty shall be required); and it shall be lawful for any two justices, upon the application (within one year after any such loan or loans) of one or more of the overseers of the poor for the

(*a*) It is stated in the Report, p. 333: "From nearly every district complaints were received that large classes of persons who obtained, during particular seasons, such wages as would enable them to maintain themselves and families until the return of their season of work, and provide by insurance against sickness and other casualties, spend the whole of their earnings as fast as they receive them, and when out of work throw themselves and their families on the parish, and remain chargeable until the period of high wages returns. The alternation of dissipation and privation, to which such persons have become habituated, renders it probable, that, even under an improved system of administration, many of them would endure the most rigid workhouse discipline during the winter, to gain freedom from self-restraint in spring, summer and autumn."

(*b*) See also *ante*, p. 64.

Relief by Loan.

time being of the parish, to summon the person to whom any money shall have been so advanced; and if upon examination by such justices into his circumstances, it shall appear to them that such person is able, by weekly instalments or otherwise, to repay the whole or any part of the money so advanced to him, and for which he shall have given any such receipt and engagement, it shall be lawful for such justices to make an order under their hands and seals for the repayment of the whole or of any part of such money, at such time and times, and in such proportions and manner as they shall see fit; and upon every default of payment, by their warrant to commit such person to the common gaol or house of correction, for any time not exceeding three calendar months, unless the sum and sums which shall be due and payable by virtue of such order shall be sooner paid."

Similar provisions under the Poor Law Amendment Act have been already noticed, p. 64. See 4 & 5 Will. IV. c. 76, s. 58.

Order of Justices for Relief.

Order of Relief.

Rex v. *Highworth*, 1 *Str.* 10; 1 *Bott*, 460. An order to pay 3*s.* weekly to a poor person was quashed, because it did not appear that the person relieved was poor *and impotent*. *Parker*, C. J., "I favour these orders as much as I can, because nobody takes care to draw them up for the poor. *But it must be quashed.*" (*Rex* v. *Stoke Ursey*, 1 *Str.* 10; S. P. *Rex* v. *Tipper*, 1 *Bott*, 460.)

The order must express that the person is *impotent* as well as poor.

Rex v. *Fearnley*, 1 *T. R.* 316. This was a demurrer to an indictment against the overseer of *Checkheaton*, for disobeying an order of two justices, for the payment of 1*s.* 6*d.* a week to *Sarah Firth*, for the maintenance of herself and her bastard child. It was objected, that as the money was ordered to be paid weekly, the defendant could not be guilty of any disobedience before the expiration of the first week. But the Court were of opinion that the sum which was ordered to be paid *weekly* was due at the *beginning of the week.* Judgment was given for the defendant on another point.

On an order for relief weekly, the money is due the beginning of the week.

Rex v. *Colbitch*, 1 *Barnard.* 46. An order of sessions was made upon the overseers of this parish, that they should pay a *surgeon* his bill for curing certain poor under their care. The Court said that the sessions have no power to make such orders, and so quashed it.

Sessions have no power to order surgeon's bills to be paid;

Rex v. *Woodsterton*, 2 *Barnard.* 207, 247; 1 *Bott*, 465. An order by two justices for paying 5*l.* upon account of a poor inhabitant when he was in gaol, and likewise for paying a surgeon's bill that was due upon his account, was confirmed at the sessions. It was moved to quash these orders. It was urged that the justices have only power to order parish officers to relieve a poor inhabitant where it is fit he ought to be relieved. But in the present case the parish officers have actually given the party relief. They employed a surgeon and a nurse to take care of him. The surgeon and nurse have a proper remedy by way of action against the officers; and the justices have no pretence to interfere in this manner. And the Court were of opinion that these orders should be quashed. See **Casual Poor**, *post*, 88 to 100, and the cases collected in 1 *Bott*, 416, n.

nor the justices.

Where to be Relieved.

Where to be Relieved.

By the several statues, the poor were to resort or be sent to their own parishes to be relieved; and in *Clypton* v. *Ravistock*, *Sett. & Rem.* 49; 2 *Nol. P. L.* 369; an order recited that *J. S.* was last settled in *Clypton*; then ordering the overseers of *Clypton* to repair to the parish of *Ravistock*, and to relieve him, being so sick that he cannot be removed. By the Court: "The justices have no authority to send for officers out of another parish, but *the parish where the poor reside are bound to maintain them as long as they continue with them.*" In *Darlington* v. *Hemlington*, (*Dougl.* 9, *n.* 2, *Cald.* 6,) where two bastard children, settled at *Darlington*, resided with their mother as nurse-children in the parish of *Hemlington*, where the mother was settled, it was determined that the parish where the children's settlement was, should maintain those children in that other parish.

Poor to be maintained in the parish where they are;

excepting in the case of bastards, being nurse children.

Where to be Relieved

As a parish is not bound to maintain the poor, who are settled, but not resident therein, relief given to a pauper inhabiting another parish affords evidence that the pauper is settled in the relieving parish *Rex* v. *Wakefield, post*

Casual poor, post

Casual poor, and persons who have no settlement, are entitled to relief in the parish in which they happen to be when the necessity for it arrives See **Casual Poor**, *post*, 88 to 100.

Of appealing against the order

Appeal against Order

No appeal lies from an order of maintenance

In *Rex* v *North Shields, Dougl* 331 (see *ante*, 54), *Willes*, J, on delivering the judgment of the Court, said, "We think it unnecessary to give an opinion on the question which has been argued in this case, because I and my two brothers *are satisfied that no appeal lies from an order of maintenance* The 3 W III c 11, s 11, gives a concurrent jurisdiction, in the making orders for the relief of the poor, in or out of sessions, and doth not authorise an appeal The 9 Geo I c 7, makes no alteration in this respect The reason for not giving an appeal is, that the pauper might starve while the cause was in suspense We have spoken to several gentlemen very conversant in sessions law, and none of them ever heard of such an appeal" And the order of sessions was quashed, because they had no jurisdiction, and the original order affirmed

Mandamus to hear such appeal refused the overseer should obtain a fresh order of removal into the proper parish

Rex v *Justices of Devon*, 4 *M & S* 421 On a rule *nisi* for a *mandamus* to the justices at sessions to hear an appeal against an order for the relief of a pauper, which appeal the justices had determined at the last sessions, conceiving that they had not any jurisdiction, and the counsel cited a note from *Burn*, vol iv p 117, 21st edit (*a*) *Per Curiam* "If, in every case

(*a*) Note of Dr Burn, in the 21st edit. of this work It has been observed by Mr *Douglas* (*Dougl* 333), that the words of 3 W III c. 11, are, "by authority, under the hand of one justice residing within the parish, or (if none be there dwelling) in the parts near or next adjoining, *or by order of the justice in sessions*" This, he says, it should seem, must mean *by order of the court of quarter sessions*, not of justices as individuals, when they happen to meet at the quarter sessions. Therefore he makes a query concerning the case of *Rex* v. *Winship, post*, 83, where the court is stated to have held, that the sessions could *not* make an original order of maintenance. (See 36 Geo III c 23, *post*)

Unto which it may be added, with respect to this last case of *North Shields*, that the great fundamental statute of 43 Eliz c 2, s 6, enacts, that "if any person shall find himself aggrieved by anything done by the churchwardens and overseers, or by the justices, in relation to the relief of the poor, he may appeal to the general quarter sessions, whose order therein shall be final" which, by the rule that acts *in pari materiâ* are to be taken together and considered as one entire act, may seem to include this case concerning the order of maintenance The *Carlisle* case above mentioned was upon an original order at sessions, in which the jurisdiction was not objected to, but the cause was determined on the real merits The case of *Rex* v *Winship, post*, 83, in note, also was upon an original order of sessions, which order the report says was quashed, because the court was of opinion that the sessions had no power to make such order This present case of *North Shields* was an *appeal* against an order of a justice out of sessions, and in this case of appeal likewise the court was of opinion that the sessions had no jurisdiction From which two last cases it seems to follow that an order of maintenance by a private justice out of sessions is absolutely conclusive, which imports a power in this respect not usual in other like cases, especially as such justice is required by the statute to be an inhabitant of the parish, if any such be there residing, and consequently in all probability essentially interested in the poor rate As to the matter of practice, it is certain that nothing is more common at the sessions than applications for the maintenance of poor persons as well by original motion as by way of appeal from the order of private justices In some places this makes up almost half the business of the sessions, even to a degree of ridicule among the unthinking part of mankind, as if magistrates could be better employed than in relieving the miseries of the distressed. The reason that has been sometimes alleged against removing the poor rate into the courts at *Westminster*, lest the poor might starve before the cause should be determined, does not hold with regard to appeals against orders of maintenance The justice's order takes effect immediately, and continues in force till altered by other legal

of an order for relief, an appeal will lie, this will divert the funds of the poor into other channels. This order is not *in perpetuum*, it is to pay *until further order;* and why cannot the overseers go back to the quarter where it was made, and point out that the pauper's residence is in another parish, and obtain a fresh order?" Rule refused.

Appeal against Order.

12. Of the Regulations of Parish Vestries under stats. 58 Geo. III. c. 69, and 59 Geo. III. c. 85. (*a*)

12. Regulations of Parish Vestries.

[See *ante*, Vol. I. tit. Churchwardens.]

The 58 Geo. III. c. 69, intituled *An act for the regulation of parish vestries*, enacts, s. 1, that "no vestry or meeting of the inhabitants in vestry of or for any parish shall be holden until public notice shall have been given of such vestry, and of the place and hour of holding the same, and the special purpose thereof, three days at the least before the day to be appointed for holding such vestry, by the publication of such notice in the parish church or chapel on some *Sunday* during or immediately after divine service, and by affixing the same, fairly written or printed, on the principal door of such church or chapel."

Three days' notice to be given of vestries; by publication in the church, and affixing on the church door.

Sect. 2. "And for the more orderly conduct of vestries, be it further enacted, that in case the rector or vicar, or perpetual curate, shall not be present, the persons so assembled in pursuance of such notice, shall forthwith nominate and appoint, by plurality of votes, to be ascertained as hereinafter is directed, one of the inhabitants of such parish to be the chairman of and preside in every such vestry; and in all cases of equality of votes upon any question arising therein, the chairman shall (in addition to such vote or votes as he may by virtue of this act be entitled to give in right of his assessment) have the casting vote; and minutes of the proceedings and resolutions of every vestry shall be fairly and distinctly entered in a book (to be provided for that purpose by the churchwardens and overseers of the poor), and shall be signed by the chairman, and by such other of the inhabitants present as shall think proper to sign the same."

Chairman of vestries appointed.

Chairman to have the casting vote.

Minutes to be entered and signed.

Sect. 3. "In all such vestries every inhabitant present, who shall, by the last rate which shall have been made for the relief of the poor, have been assessed and charged upon, or in respect of any annual rent, profit, or value not amounting to 50*l.*, shall have and be entitled to give one vote, and no more; and every inhabitant there present, who shall in such last rate have been assessed or charged upon, or in respect of any annual rent or rents' profit or value, amounting to 50*l.* or upwards (whether in one or more than one sum or charge), shall have and be entitled to give one vote for every 25*l.* of annual rent, profit, and value upon, or in respect of which he shall have been assessed or charged in such last rate, so, nevertheless, that no inhabitant shall be entitled to give more than six votes: and in cases

Manner of voting in vestries. (*a*)

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authority. The usual way is for the justices to order the overseer to pay to the pauper so much weekly or otherwise, *until he shall be otherwise ordered according to law to forbear the said allowance*, or, more generally, *till further order*. And this, if not acquiesced in, brings on an appeal to the sessions, where the court enlarges, mitigates, or takes off the charge as they shall see cause.

Rex v. *Winship*, 5 *Burr.* 2677; *Cald.* 72. A pauper having refused to go into the poorhouse, the overseers refused to pay her the allowance. She applied to the quarter sessions, where an order was made of the sum in arrear, and 2*s.* a week. The overseers refused to pay the allowance, whereupon they were indicted. The Court of K. B. thought the general question of vast consequence, but gave no opinion upon the merits, holding the sessions order to be bad and illegal upon the face of it; "the sessions cannot make such an original order." Judgment for the defendants. In a note, Mr. *Caldecott* says, that *certainly the court made no such determination* as that expressed in the words marked by inverted commas. See *Cald.* 71, n.

(*a*) Where guardians are elected under 4 & 5 Will. IV. c. 76, the right of voting is regulated by that statute, as regards the occupier, but the number of votes which the owner may give is to be governed by this law; and see this subject more fully considered, Title, "Vestries."

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where two or more of the inhabitants present shall be jointly rated, each of them shall be entitled to vote according to the proportion and amount which shall be borne by him of the joint charge; and where one only of the persons jointly rated shall attend, he shall be entitled to vote according to and in respect of the whole of the joint charge." (*a*)

Persons rated to the poor, though not resident, may vote in vestry.

59 Geo. III. c. 85, reciting 58 Geo. III. c. 69, which gives a power in certain cases to rate payers, enacts, s. 1, "that any person who shall be assessed and rated for the relief of the poor in respect of any annual rent, profit, or value arising from any lands, tenements, or hereditaments, situate in any parish, in which any vestry shall be holden under the said recited act, although such person shall not reside in or be an inhabitant of such parish, shall and may lawfully be present at such vestry; and such person shall have, and be entitled to give, such and so many vote or votes at such vestry in respect of the amount of such rent, profit, or value, as, by the said act, any inhabitant of such parish present at such vestry might or ought to have and be entitled to give, in respect of such amount, and to all intents and purposes, as if such person were an inhabitant of such parish; anything in the said recited act to the contrary in anywise notwithstanding."

Clerk or agent of corporations, &c., may vote in vestry according to the value of the premises rated.

Sect. 2. "That in all cases where any corporation or body politic or corporate, or company, shall be charged to the rate for the relief of the poor of such parish, either in the name of such corporation, or of any officer of the said corporation, it shall and may be lawful for the clerk, secretary, steward, or other agent duly authorised for that purpose, of such corporation or body politic or corporate, or company, to be present at any vestry to be holden in the said parish under the said recited act; and such clerk, secretary, steward, or agent shall be entitled to give such and so many vote or votes at such vestry, in respect of the amount of the rent, profit or value of such lands, tenements, or hereditaments, as by the said act any inhabitant assessed to such rate, present at such vestry, might or ought to have and be entitled to in respect of such amount; anything in the said recited act to the contrary in anywise notwithstanding."

Inhabitants coming into parish since the last rate may vote.

58 Geo. III. c. 69, s. 4. "That when any person shall have become an inhabitant of any parish, or become liable to be rated therein, since the making of the last rate for the relief of the poor thereof, he shall be entitled to vote for and in respect of the lands, tenements, and property for which he shall have become liable to be rated, and shall consent to be rated in like manner as if he should have been actually rated for the same."

Inhabitants refusing to pay poor rates, to be excluded from vestries.

Sect. 5. "That no person who shall have refused or neglected to pay any rate for the relief of the poor, which shall be due from and shall have been demanded of him,* and shall be entitled to vote or to be present in any

* *Sic.*

(*a*) Where a right of nominating a perpetual curate was given to the parishioners, the bye-law or resolution of a parish vestry cannot exclude those who have not paid their church rates. *Faulkner* v. *Elgar*, 4 *B. & C.* 449; 6 *D. & R.* 517. But in *Edenborough* v. *Archbishop of Canterbury*, 2 *Russ.* 93, Lord *Eldon* held, that where the advowson of a parish was vested in trustees for the benefit of the parishioners, the right of voting at the election may by long usage be limited to parishioners who pay church and poor's rates; and an election by such was confirmed. In this case the same eminent judge determined that a vote by ballot on such occasions was illegal, and an election so made void.

Attorney-General v. *Wilkinson*, 7 *Moore*, 187; S. C. 3 *B. & B.* 266. Where, under a deed of feoffment, certain lands were granted to fourteen feoffees, for the maintenance of a schoolmaster to instruct the children of all the inhabitants of a parish, and it was provided that no act concerning the lands should be done but in a vestry or meeting of the feoffees, and ten at least of the inhabitants of the parish which should be vestrymen and not feoffees, in a vestry to be held by them; and a power of removal of the schoolmaster was given, so that it was with the consent and agreement of the feoffees and vestrymen, or the major part of them which should be assembled in vestry, so always as there should be ten at least of the vestrymen which were not feoffees vote at the holding of the vestry, in which the putting away of any schoolmaster should be agreed upon: Held, that in the execution of the power of removal of the master, the votes were to be taken *per capita*, and not according to the provisions of the 58 Geo. III. c. 59.

vestry of the parish for which such rate shall have been made, until he shall have paid the same."

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Mistake rectified.

The word "and" was inserted in the above statute by mistake, to rectify which, it was enacted by 59 Geo. III. c. 85, s. 3, "that no person who shall have refused or neglected to pay any rate for the relief of the poor, which shall be due from and shall have been demanded of him, shall be entitled to vote or to be present in any vestry of the parish for which such rate shall have been made, until he shall have paid the same; nor shall any such clerk, secretary, steward, or agent, be entitled to be present or to vote, nor shall be present or vote, at any vestry in such parish, unless all rates for the relief of the poor, which shall have been assessed and charged upon, or in respect of, the annual rent, profit, or value, in right of which any such clerk, secretary, steward, or agent, shall claim to be present and vote, which shall be due, and which shall have been demanded at any time before the meeting of such vestry, shall have been paid and satisfied."

Clerk of companies disqualified from voting if rates not paid.

In the parish of *W.*, the poor rates, according to ancient custom, had always been made without respect to the value of property in the parish, but according to the supposed ability of the party charged: Held, that persons so rated were not rated in respect of any annual rent, profit, or value, within the meaning of the 58 Geo. III. c. 69, s. 3, and therefore were not entitled to more than one vote at vestry meetings, although rated upon more than 50*l.*

Nightingale v. *Marshall*, 2 *B. & C.* 313; 3 *D. & R.* 549. Case for a false return to a *mandamus*. The office of sexton for the parish of *Saint Mary, Whitechapel*, in the county of *Middlesex*, is an ancient office, and the right of election is in the inhabitants paying church and poor's rates, in vestry assembled. The office became vacant, and there were two candidates, the plaintiff and *J. W.* Several inhabitants of the parish claimed a right to give more than one vote under the 58 Geo. III. c. 69, s. 3: and the only question in the case is, whether, under the circumstances hereinafter stated, a plurality of votes was admissible at the said election. The poor rates are not, and never have been, assessed upon all the inhabitants uniformly, according to an equal pound-rate: but the rate purports to be made, and, according to ancient custom, always has been made, by the discretion of the vestry without respect to value, but according to the ability of the party charged, such ability being estimated with reference to property, whether in the parish or out of it. In some instances the property is stated in respect of which the party is charged; but in a great majority of cases the property is not stated, and where it is stated, the rate is not in proportion to the rent of the property. *Abbott*, C. J. "I give no opinion as to the validity of the rates in question. My opinion is founded entirely on the third section of the 58 Geo. III. c. 69, which provides for a plurality of votes. Looking at this rate, I am clearly of opinion that no person in this parish 'is rated *upon or in respect of any annual rent, profit, or value.*' If the rate were so made, it must be proportioned to the amount of the rent, profit, or value, in respect of which it is imposed. It is not so proportioned; and it therefore appears not to have been imposed in respect of the property mentioned in the act, but in respect of some ability to contribute to the relief of the poor, measured by some other standard. I am therefore of opinion that the provisions of 58 Geo. III. c. 69, respecting a plurality of votes, do not apply to the parish in question; the plaintiff, consequently, was not duly elected to the office of sexton, and a nonsuit must be entered." *Bayley*, J. "I am of opinion that this parish is not within the operation of 58 Geo. III. c. 69, s. 3. The general rule is, that there shall be an equal pound-rate upon the property in the parish; therefore all persons having an estate equal in value contribute the same sum. The value of their property is the criterion of the rate. It was the intention of the legislature, by the statute referred to, to increase the power which each inhabitant would have at the vestry meetings, in proportion to the burthen borne by him. This parish cannot have the benefit of that act, for the custom (which may be legal) to make the rate in a particular mode, prevents the property of any individual in the parish being the criterion of the burthen borne by him. We cannot, then, say that the rate is imposed in respect of any annual rent, profit, or value; and unless that be so, the provision for a plurality of votes does not apply." *Holroyd*, J. "The rate stated in this case is not such as to bring the parish within the third section of 58 Geo. III. c. 69. To be within that, the parties must be assessed upon some annual rent, profit, or value: the rate does not

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show that they have been so assessed. Certain rents are stated, but the inequality of the rate shows that it is not imposed in respect of those rents; nor does it appear to have been imposed in respect of any profit or value, much less annual profit or value. It is left uncertain in respect of what it is assessed, and therefore is quite insufficient to make the 58 Geo. III. c. 69, s. 3, applicable to their vestry meetings." *Best*, J. "If the inhabitants of *Saint Mary, Whitechapel*, are anxious to avail themselves of the provisions of the vestry act, they must alter their mode of rating. By that act it is not sufficient that the parties should be rated at 50*l.* or upwards; to have more than one vote, they must be rated in respect of annual rents, profit, or value. Now it is stated in the case, that each inhabitant is rated according to the discretion of the vestry, and the rate itself shows that the amount of it is not regulated by the amount of the property in the parish. If so, it cannot be made according to the principle laid down in the act; and therefore no person can, by virtue of that act, be entitled to a plurality of votes."

For preserving parish books and papers.

58 Geo. III. c. 69, s. 6. "That as well as the books hereby directed to be provided and kept for the entry of the proceedings of vestries, as all former vestry-books, and all rates and assessments, accounts and vouchers of the churchwardens, overseers of the poor, and surveyors of the highways, and other parish officers, and all certificates, orders of courts and of justices, and other parish books, documents, writings, and public papers of every parish, except the registry of marriages, baptisms, and burials, shall be kept by such person and persons, and deposited in such place and manner, as the inhabitants in vestry assembled shall direct; and if any person in whose hands or custody any such book, rate, assessment, account, voucher, certificate, order, document, writing, or paper shall be, shall wilfully or negligently destroy, obliterate, or injure the same, or suffer the same to be destroyed, obliterated, or injured, or shall, after reasonable notice and demand, refuse or neglect to deliver the same to such person or persons, or to deposit the same in such place as shall, by the order of such vestry, be directed, every person so offending, and being lawfully convicted thereof on his own confession, or on the oath of one or more credible witness or witnesses, by and before two of his Majesty's justices of the peace, upon complaint thereof to them made, shall, for every such offence, forfeit and pay such sum, not exceeding 50*l.* nor less than 40*s.*, as shall by such justices be adjudged and determined; and the same shall be recovered and levied by warrant of such justices in such manner and by such ways and means as poor's rates in arrear are by law to be recovered and levied, and shall be paid to the overseers of the poor of the parish against which the offence shall be committed, or to some of them, and be applied for and towards the relief of the poor thereof: provided nevertheless, that every person who shall unlawfully retain in his custody, or shall refuse to deliver to any person or persons authorised to receive the same, or who shall obliterate, destroy, or injure, or suffer to be obliterated, destroyed, or injured any book, rate, assessment, account, voucher, certificate, order, document, writing, or paper belonging to any parish, or to the churchwardens, overseers of the poor, or surveyors of the highways thereof, may in every such case be produced against in any of his Majesty's courts, civilly or criminally, in like manner as if this act had not been made."

Penalty on retaining or injuring parish books, &c.

Recovery and application of penalty.

Not to affect other proceedings.

Provisions in relation to parishes extended to townships, &c.

Sect. 7. "That all provisions, authorities, and directions, in this act contained, in relation to parishes, shall extend, and be construed to extend, to all townships, vills, and places having separate overseers of the poor, and maintaining their poor separately, and that all the directions and regulations herein contained, in regard to vestries, shall extend and be applied to all meetings which may by law be holden of the inhabitants of any parish, township, vill, or place, for any of the purposes in this act expressed; and that the notices by this act required to be given of every vestry, may, in places in which there is or shall be no parish church or chapel, or where there shall not be divine service in such church or chapel, be given and published in such manner as notices of the like nature shall

Manner of giving notices of vestries and meetings in special cases.

have been there usually given and published, or as shall be most effectual for communicating the same to the inhabitants of every such parish, township, vill, or place, respectively."

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Sect. 8. "That nothing in this act contained shall extend, or be construed to extend, to alter the time of holding any vestry, parish, or town meeting which is, by the authority of any act, required to be holden on any certain day, or within any certain time, in such act prescribed and directed; nor shall anything in this act contained extend to take away, lessen, prejudice, or affect the powers of any vestry or meeting holden in any parish, township, or place, by virtue of any special act or acts of any ancient and special usage or custom, or to change or affect the right or manner of voting in any vestry or meeting so holden."

Not to alter time for holding vestries specially directed; nor to affect special vestries.

Sects. 9 and 10. "That nothing in this act contained shall extend to any parish in the city of *London*, or borough of *Southwark*."

Not to extend to London or Southwark.

Sect. 11. "That this act shall extend only to *England* and *Wales*."

To England and Wales only.

Rex v. *Churchwardens of St. James's, Clerkenwell*, 1 *Adol. & Ell.* 317; 3 *Nev. & Man.* 411, S. C. A local act passed before the stat. 58 Geo. III. c. 69, for the regulation of parish vestries created the office of guardians of the poor for a particular parish, and enacted that vacancies should be annually filled up by the rated inhabitants assembled in the vestry-room, who should elect persons in the room of those going out: held, that after the passing of 58 Geo. III. c. 69, the inhabitants must be allowed in such election the number of votes in proportion to their respective assessments defined in the latter act, for that the local act did not give this vestry such a peculiar constitution as to bring it within sect. 8 of 58 Geo. III. c. 69, which preserves to vestries holden under any special act, the powers and rights of voting which they previously enjoyed. The intention of the act was to change the method of determining the majority in all cases where no special constitution existed before (*a*).

The exception as to local acts does not apply where the vestry is not specially constituted.

May v. *Gwynne*, 4 *B. & A.* 301. A rule had been obtained, calling on the plaintiff in this case to produce and permit the defendant to inspect and take copies of certain papers, belonging to the parish of *Hammersmith*, which were in his possession. It appeared that the defendant had, by the authority of the vestry, made a report, in writing, respecting the conduct of the plaintiff, founded, as was stated, on the inspection of certain documents then in the parish chest, but now in the possession of the plaintiff. This report having been published, an action was brought by the plaintiff for a libel, which the defendant wished to justify, and these documents were necessary for that purpose; and the defendant contended, that he, being an inhabitant of the parish, was entitled to see and take copies of them. It was doubtful in the affidavits, whether the plaintiff or another person was legally the vestry-clerk of the parish. Cause having been shown, *Abbott*, C. J., said, "This is a motion of the first impression; and I am of opinion that the court ought not to order a plaintiff to furnish evidence against himself. If the plaintiff be legally the vestry-clerk, then he has a right to the custody of these documents; and if he be not, then the person really entitled to the office may by mandamus obtain possession of them. But the defendant has no such right; and I think that we ought not, in this case, which is for a libel, to grant the defendant's application. If the papers had been wanted for the purpose of advancing any parochial right, the case would have been different."—Rule discharged with costs.

The court will not compel the vestry clerk of a parish to produce and permit copies to be taken of documents from the parish chest in his custody, for any other than parochial purposes.

Wilson, D. D. v. *M'Math*, 3 *B. & A.* 241. The ecclesiastical court has jurisdiction, *ratione loci*, over the order and proceedings of vestry meetings held in a church; and therefore, where a rector had libelled in that court a parishioner, for preventing him from presiding as chairman at such meeting, a prohibition was refused.

In sound legal principle the rector is the head and præses of the meeting. The vestry-act, 59 Geo. III. c. 69, s. 2, (*a*) provides "that in case the rector,

Chairman of vestry.

(*a*) The right of voting for a churchwarden is regulated by this statute, 5 A. & E. 865. See also *Queen* v. *Rector of Lambeth*, 8 A. & E. 356.

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vicar, or perpetual curate, shall not be present, the persons so assembled shall forthwith nominate, by plurality of votes, one of the inhabitants to be chairman," which is nearly tantamount to a declaration, or by necessary implication declares, that if the rector, vicar, or curate, *be present*, he shall preside; and the legislature must evidently have considered that by law and usage he was entitled to preside. (3 *Phill. Ec. Ca.* 87.)

The acts of one vestry are not binding on a succeeding vestry, and may be confirmed or rescinded by such succeeding vestry; but the confirmation of the succeeding vestry is not necessary to make the acts of the preceding one valid. (*Mawley* v. *Barbet*, 2 *Esp.* 687.) As to power of a vestry see *Rex* v. *Guyer*, *post*.

Vestrymen who signed a resolution, ordering the parish surveyor to take steps for defending an indictment for not repairing a road, were held not personally responsible for the payment of the attorney employed by the surveyor. (*Sprot* v. *Powell*, 3 *Bing.* 478. And see *Lanchester* v. *Tricker*, 1 *Bing.* 201; 8 *Moore*, 20; and *Lanchester* v. *Frewer*, 2 *Bing.* 366; 9 *Moore*, 688, S.C. See *Holmes* v. *Williamson*, 6 *M. & Sel.* 158.)

13. *Of the Liability of Relations to maintain each other.*

13. Of the Liability of Relations to maintain each other. (*a*)

43 Eliz. c. 2, s. 7; 7 Jac. I. c. 4, s. 8; 5 Geo. I. c. 8; 59 Geo. III. c. 12, s. 31, 32; 5 Geo. IV. c. 83, s. 3; 11 Geo. IV. c. 10, s. 2; 4 & 5 Will. IV. c. 76, s. 56, 57, 71.

The statute 43 Eliz. c. 2, compelling the relief of poor persons by their parents or children.

Stat. 43 Eliz. c. 2, s. 7, enacts, "that the *father and grandfather*, and the *mother and grandmother*, and the *children* of every poor, old, blind, lame, and impotent person, or other poor person not able to work, being of a sufficient ability, shall, at their own charges, relieve and maintain every such poor person in that manner, and according to that rate, as by the justices of peace of that county where such sufficient persons dwell, or the greater number of them, at their general quarter sessions, shall be assessed; upon pain that every one of them shall forfeit twenty shillings for every month which they shall fail therein." [See also 4 & 5 Will. IV. c. 76, s. 56, 57.]

Sect. 11. "Which penalties shall go and be employed to the use of the poor of the same parish, and towards a stock and habitation for them, and other necessary uses and relief, as before in this act are mentioned and expressed; and shall be levied by the said churchwardens and overseers, or one of them, by warrant from any two such justices of the peace, or mayor, alderman, or head officer of city, town, or place corporate, respectively, within their several limits, by distress and sale thereof as aforesaid; or in defect thereof, it shall be lawful for any two such justices of peace, and the said aldermen and head officers, within their several limits, to

(*a*) The natural obligation upon such near relatives as parent and child cannot be disputed. See the doctrine, 1 *Bla. Com.* 447. But independently of the *express enactment* in the 43 Eliz. c. 2, and other subsequent statutes, there is no legal obligation on a parent to maintain his child, or on a child to relieve his parent; and therefore a third person, who may afford such relief, even from absolute want, cannot *sue* the parent for a reasonable remuneration, unless he expressly or impliedly *contracted* to pay. See *per Le Blanc*, J., 4 *East*, 84; Sir *T. Raym.* 260, margin; *Palmer*, 559; 2 *Stark.* 521; and where the father had reasonable grounds for believing that the child was provided for by another, a third person cannot relieve the child and sue the father, *Urmston* v. *Mersconnem*, 4 *A. & E.* 899. Whereas, in the case of *husband and wife*, the former may, in some cases, be sued for necessaries provided for the latter, even in defiance of the husband's injunctions not to supply them. The *common* law considered moral duties of this nature, like others of imperfect obligation, as better left in their performance to the impulse of nature. However, a parent may, under circumstances, be indicted at common law for not supplying an infant child with necessaries. *Russell & R. C. C.* 20; 2 *Camp.* 650; and very slight circumstances will suffice to justify a jury in finding a *contract* on the part of the father.

commit the offender to the said prison, there to remain without bail or mainprize till the said forfeitures shall be satisfied and paid."

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The 59 Geo. III. c. 12, s. 26, after reciting the 40 Eliz., and whereas it is expedient to extend the power by the said act given to justices in their quarter sessions to justices in petty sessions, enacts, "that it shall be lawful for any two or more of his Majesty's justices of the peace, for the county or other jurisdiction in which any such sufficient person shall dwell, and they are hereby empowered, in any petty session, to make such assessment and order for the relief of every poor, old, blind, lame, impotent, or other poor person not able to work, upon and by the father, grandfather, mother, grandmother, or child (being of sufficient ability), of every such poor person, as may by virtue of the said act be made by the justices in their general quarter sessions; and that every such assessment and order of two or more justices in any petty sessions shall have the like force and effect as if the same were made by the justices in their general quarter sessions; and the disobedience thereof shall be punishable in like manner."

Justices in *petty sessions* empowered to order relief by parents, &c.

And 4 & 5 Will. IV. c. 76, s. 78, gives the same powers for recovering these sums as are given for the levying of penalties under that act.

Rex v. *Munday*, 1 *Str.* 190. Order reciting that *Munday* had a good fortune with his wife, and that her mother was poor, therefore he is ordered to provide for her. By *Pratt*, C. J. "The cases which have hitherto been were either where the judges were divided, or the matter came not directly in question, or was only a case at the judge's chamber. It never came judicially before the whole court till now. And as it is *res integra*, on consideration we are all of opinion that *the son-in-law is not bound*, either within the words or intent of the statute, which provides only for *natural parents*. By the law of nature, a man was bound to take care of his own father and mother. But there being no temporal obligation to enforce that law of nature, it was found necessary to establish it by act of parliament, and that can be extended no farther than the law of nature went before; and the law of nature doth not reach this case."

The statute of Eliz. extends only to *natural* relations. (*a*)

Tubb v. *Harrison*, 4 *T. R.* 118. This was an action of covenant, in which the defendants, who were father and son (after reciting that differences had arisen between the son and his wife, and that they had agreed to live separate), covenanted *inter alia* to pay all the debts contracted by her, *which her husband was by law liable to pay*. One of the breaches assigned was, that they had refused to repay money laid out for board, lodging, and other necessaries for her infant son by a former husband. Lord *Kenyon*, C. J., on the authority of *Rex* v. *Munday*, 1 *Str.* 190, *ante*, p. 78, in which an order of maintenance was reversed by the court, *because the stat. of Eliz. extends only to natural relations*, was of opinion that the husband was not liable to pay the expenses of maintaining the wife's child by a former husband, although the wife were then living, and ordered those articles in the account to be disallowed.

Same point.

One who marries a widow, having children by her former husband, was not bound under the statute of Eliz. to maintain such children, though they were maintained by the widow before her second marriage, when her second husband acquired her former means. Therefore, if the second husband maintain such children, it was holden a good consideration for a

By that statute a man was not bound to maintain his step-children.

(*a*) Before this case a different doctrine prevailed. *Reg.* v. *Clentham*, *Fol.* 39. By the whole court: "The husband ought to provide for the daughter-in-law during the wife's life, in the right of his wife; but when the wife dies, the relation is dissolved, and he is not by any means obliged to provide for the daughter-in-law after the mother's death." In this case the wife was dead.

Reg. v. *St. Botolph's*, *Aldgate*, *Fol.* 42. The question was, whether the husband shall be chargeable to maintain his wife's children by a former husband? And it was resolved he was during the wife's life, in her right, but not after.

There was an order upon the mother, who was married to a second husband, to maintain her children which she had by the former husband. But, by the court: "A feme covert cannot be charged, but they ought to have charged her husband." *Fol.* 44; 1 *Bla. Com.* 448, 449.

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promise by them, when they come of age, to repay the expense of their maintenance respectively; especially where the second husband was a man of small substance, and the children had a competent provision to receive when they came of age, which was to accumulate for them in the meantime, and he made no application to Chancery for an allowance out of the fund, as he might have done. *Cooper* v. *Martin*, 4 *East*, 76.

But the Poor Law Amendment Act imposes this liability.

But now by the 4 & 5 Will. IV. c. 76, s. 57, every man who after the passing of the act (14 Aug. 1834) shall marry a woman having children, legitimate or illegitimate, shall maintain them as part of his family, until the child attains the age of sixteen, or the mother dies; and the children, for the purposes of this act, are to be deemed part of the husband's family (*a*). This statute gives the justices no express power to make any order; but the 78th section empowers justices to enforce the payment of orders under 43 Eliz. or *that act*, as penalties may be.

Son's wife, the son having run away, not to be maintained by the son's father.

Rex v. *Kempson*, 2 *Str.* 955. An order was made upon the father to pay a sum to his son's wife, his son having run away from her. A divorce *a mensâ et thoro* for adultery was afterwards obtained against the wife. Two exceptions were taken: first, that it appears the son's wife was an adulteress; and therefore the husband himself would not have been bound to maintain her, much more the husband's father could not. To this it was answered, and allowed by the court, that whatever effect this act of the wife might have upon the husband, it could not have any upon the parish. Secondly, it was objected, that the statute extends only to natural relations, and for this purpose was cited the case of *Rex* v. *Munday*, and the court were of opinion that this objection was fatal, and that the act doth not extend to relations in law. 2 *Barnard*, 329, 364, in *Rex* v. *Flintan*, p. 107. It was urged in favour of the argument, that the husband was bound to maintain a wife living in adultery; that otherwise the latter would be cast upon her relations; upon which *Bailey*, J., said, "If the husband were dead, she must be supported by those relations; may it not be said that her misconduct shall have the same effect?" *Littledale*, J. "Having rendered herself unworthy of her husband's protection, she returns to the same state as if she were not married." 1 *B. & Ad.* 227.

Parents of an adulteress liable to maintain her.

Father not liable for son's widow.

Reg. v. *Dunn*, 2 *Nol. P. L.* 263. An order was made that the defendant should maintain his son's widow. An objection was taken, that by the death of the son the relation which she bore to the father ceased; and although the order was quashed, because it was not set forth that the father was of sufficient ability, yet the court seemed to allow the exception good.

Nor daughter-in-law.

Rex v. *Benoire*, 1 *Bott*, 449; 2 *Nol. P. L.* 263. An order for the maintenance of a daughter-in-law was quashed because there was no relation in blood, nor obligation by nature.

The instances are not numerous in the books in which this question has been discussed. Affection will, in most instances, induce the discharge of this obligation with more efficacy than an act of parliament; and even where that motive is wanting, a sense of shame will supersede the necessity of resorting to the statute, where the party is of sufficient ability to render this assistance to relatives, even more distant in degree than is expressed in the enactment.

An order on a grandfather need not state that the father is unable.

In *Rex* v. *Cornish*, 2 *B. & Adol.* 498. Lord *Tenterden*. "There is nothing in the statute of Eliz. to show that the obligation of the *grandfather* is absolute only in the event of the father being unable, and that being so, the justices who make the order are not bound to assign on the face of it any reason why they made it on the grandfather." *Littledale*, J. "The statute gives the justices a discretionary power; if the grandfather be a rich man, and the father a poor man, they may in the exercise of their discretion make an order on the grandfather to maintain his grandchildren." Order confirmed.

S. P.

Though the father be living, yet, if he be unable, the grandfather, being

(*a*) "For the purposes of this act." This refers to their maintenance, and not to their settlement, *Reg.* v. *Wendron*, 3 *R. & P.* 62; 7 *A. & E.* 819, *post*.

of ability, may be compelled to keep the grandchild, and also to pay so much money as the justices shall think reasonable for the time past. *Reg.* v. *Joyce*, 16 *Viner*, 423.

13. *Liability, &c.*

OF THE ORDER OF MAINTENANCE.

The order must set forth that the person is poor, &c.;

St. Andrew's Undershaft v. *Mendez de Breta*, 1 *Ld. Raym.* 699. The defendant, being a Jew, had an only daughter, who was converted from Judaism, and embraced Christianity, whereupon the defendant turned her out of doors, and refused to allow her any maintenance. On complaint to the sessions, they, reciting that she was the daughter of the defendant, and that he was a man able to maintain her, made an order that the defendant (being very rich) should allow her 20*s.* a month. But because they did not allege that she was poor, or likely to become chargeable, the order was quashed.

and chargeable;

An order on a husband to relieve his wife, stating her to be poor, &c. but not adjudicating that she was chargeable, is bad. *Rex* v. *Tripping*, 16 *Ven.* 424; 1 *Bott*, 430.

and not able to work.

Rex v. *Gulley*, *Fol.* 47; 1 *Bott*, 431. The order set out that *Mary Gulley* was in a poor destitute condition, and that her father was able to maintain her, and therefore they made an order upon him to allow her 2*s.* 6*d.* a week till further order. Objected, it did not appear that she was lame, blind, or unable to work; so that, though she was in a destitute condition, it might be because she would not work; and upon this exception the court quashed the order.

And that the person on whom the order is made is of sufficient ability.

Reg. v. *Halifax*, *Sett. & Rem.* 52; 1 *Bott*, 429. On a motion to quash an order for the father-in-law to pay so much a week to his daughter-in-law, because it was not said that he was of *sufficient ability*, *Parker*, J. said, "This order must be quashed. Everybody is supposed, *prima facie*, to be of ability to maintain himself and family, and no further. Suppose this woman had had three husbands, who shall contribute then?" *Powis* said, "The last husband's father."

An order to pay indefinitely as to time, is good.

Jenkin's Case, 2 *Salk.* 534. An order of sessions was made, that the defendant shall pay 2*s.* a week towards the support of his father, till that court shall order the contrary. Which was held good because it was *indefinite*, and no set time limited; and if an estate happened to fall to him, they might apply to the justices, otherwise if a time was limited.

The order must be made by the justices of the county where such sufficient person dwells.

The order may be made either by the justices at quarter sessions, 43 Eliz. p.98, or at petty sessions, 59 Geo. III. c. 96. If a child lives in the county of *Middlesex*, and be maintained by the parish there, and the grandfather lives in the county of *Suffolk*, the justices of *Middlesex* can make no order therein, but the justices of the county of *Suffolk* must make the order, 2 *Bulstr.* 344, *Rex* v. *Reeve*.

A recital that G. was of the parish, and a subsequent adjudication that the said G. should pay, shows that G. was within the jurisdiction.

Reg. v. *Toke*, 3 *N. & P.* 323; 8 *A. & E.* 227. This was an order made in the form given in the Appendix, where it was recited that application had been made to the justices by the overseers against *Gilbert* of the parish of *M.* in the said county, and it was objected, that there was no adjudication that *Gilbert* dwelt within the county, so as to show that the justices had jurisdiction.—*Littledale*, J. In *Comyns'* Digest, Abatement (F. 25), "Many cases are given in which the word 'of' may be used to signify a person's addition of place, although it would not necessarily denote that he resided there. This order was made under the 59 Geo. III. c. 12, s. 26, which extends to justices at petty sessions the jurisdiction given by the statute of Elizabeth, to them at quarter sessions. Jurisdiction is given to two or more justices of the peace, 'for the county or jurisdiction in which such sufficient person shall dwell;' and the objection to this order is, that it does not sufficiently appear that the party on whom it is made was dwelling within the county, so as to give the justices jurisdiction. I confess I have doubts whether this objection is not good, but my brothers are against the objection, and my doubts are not strong enough to induce me to dissent from their opinion. Complaint is made to the justices against

Order of Maintenance.

'*T. G.* of Mersham,' &c., and they make an order upon the *said T. G.*, and if the justices thereby adopt the description given to *T. G.* by the complaining parties, it may be taken that there is an adjudication that *T. G.* was dwelling within the county; although I should say the word 'said' perhaps goes no farther than to make out the identity of the party. In 2 *Nolan's* Poor Law, p. 264, it is said that the order of maintenance must state that the person upon whom it is made lives within the jurisdiction of the justices who make it, and *Rex* v. *Woodford*, 1 *Bott*, 460, is cited as an authority. In that case the order was bad, but the form of it is not given. Altogether, I must own, I am not without doubt on this question." *Patteson*, J. "I had some doubt during the argument, but am now satisfied that the order is good. Although the word 'of' has various significations, it is very commonly used to signify a person's dwelling-place. Then the word 'of' having this meaning, are we to take it as having been used by the justices, or merely by the churchwardens? If it is used by the churchwardens only, then we must be driven to intendment, which I would rather avoid, to support this order. But I am of opinion, without any intendment whatever, that the justices themselves may be considered to have adopted the description given by the churchwardens of the party on whom they make the order." *Coleridge*, J. "I think that, whether in the case of orders or convictions, it is the duty of this court to see that the justices do not act without jurisdiction. But when once their jurisdiction appears, the language in which facts are stated by them should be construed fairly and candidly, and supported by reasonable intendment. Here the question is, with reference to their jurisdiction, whether the word 'of' sufficiently indicates the place of the party's abode, on whom they have made their order; I think it does. The word then being sufficient in itself, have the justices employed it? On reading through the order, I think it appears that they have adopted, as their own, the word used in the first instance by the churchwardens, and have in fact adjudicated upon *T. G.'s* residence. The case of *Day* v. *King*, 5 *A. & E.*, is distinguishable. The order in that case set forth the evidence of a number of facts, the existence of which was necessary in order to give the justices jurisdiction, but the adjudication did not decide that they had any existence." Rule discharged. Counsel then applied for costs, it being a rule against magistrates. *Per Curiam.* "No; it is a very slovenly order."

Pauper not to be *sent* to such sufficient person.

Reg. v. *Jones*, *Fol.* 41; 1 *Bott*, 425. There was an order for the grandmother to take care of her grandchildren, and by the order they send the grandchildren to the grandmother. By the whole court: "They cannot send the grandchildren to the grandmother; but the justices ought to have made a rate upon the grandmother of so much a-week." See 59 Geo. III. c. 12, §. 38.

It must appear that pauper is chargeable.

And an order may be that the grandfather shall pay so *much* (*a*) *for the time past*, while the grandchild was chargeable, as well as for the time to come, the father being living, but *unable* to do it. (*Reg.* v. *Joice*, 16 *Vin. Abr.* 423.) The inability of the father need not appear in the order. (*Rex* v. *Cornish*, *ante*, 80.)

Penalty of 20*s*. a month for disobedience, but the order of maintenance to a larger extent may be enforced by indictment.

Mr. *Christian* has supposed (1 *Bla. Com.* 448, *note* 1,) that the relations mentioned in the 43 Eliz. c. 2, can only be compelled to allow each other 20*s. a-month, or* 13*l. a-year;* but he has not distinguished between the power to award a *sufficient maintenance* and the *punishment* for the breach of the order. The *amount* of maintenance is in the discretion of the magistrates, and they may order much more than 20*s*. a-month. And if the party disobey the order by not paying that sum, though exceeding 20*s*. a-month, he may be indicted. (2 *Burr.* 799.)

Rex v. *Robinson*, 2 *Burr.* 799. The defendant was *indicted* for refusing to obey an order of sessions for maintaining his two infant grandchildren.

(*a*) Retrospective order on a parish is bad, *Rex* v. *Maulden*, 2 *Man. & R.* 146; 8 *B. & C.* 80, *post.*

Order of Maintenance.

In arrest of judgment it was urged that this is a new offence: and where a statute creates a new offence, and gives a particular penalty, and a specific method of recovering the same, that course ought to be pursued, and the party shall not be punished by indictment. By Lord *Mansfield*, C. J. "The rule is certain, that where a statute creates a new offence by prohibiting and making unlawful anything that was lawful before, and appoints a specific remedy against such new offence, not antecedently unlawful, by a particular sanction and particular method of proceeding, that method must be pursued, and no other; but where the offence was antecedently punishable by a common law proceeding, and a statute prescribes a particular remedy by a summary proceeding, there either method may be pursued, and the prosecutor is at liberty to proceed either at common law, or in the method prescribed by the statute; because there the sanction is cumulative, and doth not exclude the common law punishment. In the present case a remedy existed before the statute of the 43 Eliz.; for disobedience to an order of sessions is an offence indictable at common law. So that there are two remedies: one, to proceed by way of indictment for disobeying the order, where the weekly payment is neglected or refused to be made: the other, to distrain for the 20*s.* penalty after neglect of payment for a month. The former method has been taken in the present case; and there is no doubt but that an indictment will lie for disobeying an order of sessions. But, notwithstanding there are two remedies given, it would be extremely oppressive to take the remedy by indictment, if there are no circumstances which obstruct the proceeding in the shorter way of summary remedy. This would be wrong and unreasonable when the primary remedy can be put in practice. But in some cases it may be impracticable to proceed in the summary method by way of distress, as if the party upon whom the order is made be gone out of the county (which is said to be the case here), in which case the penalty cannot be levied by distress and sale, nor the offender committed by the justices. And there may be a disobedience to the order, even before the month is out, and the forfeiture is only 20*s.* for every month which they shall fail. However, that would be too severe a verdict for disobedience to the order, with such very great haste as not to wait till the month should be expired." And the court were unanimously of opinion that the judgment ought not to be arrested.

Indictment will lie for refusing to obey the order of sessions.

An order of maintenance must be positive, not by recommendation; it must observe the words of the statute, and state how long the maintenance is to continue. (*Rex* v. *Pennoyer*, 1 *Bott*, 433.)

It must be an *order*, not a recommendation.

Since disobeying an order of justices is an offence at common law, (*vide Rex* v. *Balme*, Vol. III., tit. Indictment, s. 2), the law of the above case also applies to orders made by two or more justices in petty sessions, under stat. 59 Geo. III. c. 12, s. 26, *ante;* 22 Geo. III. c. 83, s. 31.

An order must be served and obedience formally demanded, to complete an indictable offence. (4 *Dougl. Rep.* 388; *R.* v. *Moorhouse.*)

Order to be served.

14. Of Persons deserting, or Absent from their Families, and Smugglers.

14. Of Persons deserting or absenting themselves from their Families.

5 Geo. I. c. 8; 59 Geo. III. c. 12, s. 31 & 32; 5 Geo. IV. c. 83, s. 3; and 11 Geo. IV. c. 10, s. 2.

The 5 Geo. I. c. 8, recites that divers persons run or go away from their places of abode into other counties or places, and sometimes out of the kingdom, some men leaving their wives, a child, or children, and some mothers run or go away, leaving a child or children, upon the charge of the parish or place where such child or children was or were born, or last legally settled, although such persons have some estates, which should ease the parish of their charge in whole or in part, and then enacts "that it shall and may be lawful for the churchwardens or overseers of the poor of such parish or place where any such wife, or child or children shall be so left, upon application to, and by warrant or order from any two justices of the peace, to take and seize so much of the goods and chattels, and receive

Churchwardens, &c., by warrant of two justices, may seize the goods, rents, &c.

14. *Persons Deserting their Families.*

of husbands and parents absenting themselves.

And by order of quarter sessions dispose thereof.

so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as such two justices of the peace aforesaid shall order or direct, for or towards the discharge of the parish or place where such wife, child or children are left, for the bringing up and providing for such wife, child or children; which warrant or order being confirmed at the next quarter sessions, it shall be lawful for the justices of such quarter sessions to make an order for the churchwardens or overseers for the poor of such parish or place to dispose of such goods and chattels by sale or otherwise, or so much of them for the purpose aforesaid as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the sessions as aforesaid, of his or her lands and tenements for the purpose aforesaid."

Churchwardens accountable for the moneys so received.

By s. 2, the churchwardens and overseers aforesaid shall be accountable to the justices at quarter sessions for all such money as they, or any of them, shall receive by virtue of this act.

Punishment as a vagrant.

The 5 Geo. IV. c. 83, s. 3, enacted, that persons being able to work or other means, but refusing wilfully or neglecting to work to support their families, whereby they shall become chargeable to the parish, shall be deemed idle and disorderly persons, punishable by imprisonment and hard labour, not exceeding a month. And the fourth section enacts that "every person running away and leaving his wife, or his or her child or children, chargeable, or whereby she or they, or any of them shall become chargeable to any parish, township, or place, shall be deemed a rogue and vagabond, punishable as therein mentioned." See tit. **Vagrants**.

A bastard is not "a child" within the Vagrant Act.

Reg. v. *Maude*, 6 Jurist, 646, *Wightman*, J. "On a rule for a mandamus to D. Maude, justice, to convict a single woman under the 5 Geo. IV. c. 83, for running away and leaving her bastard child chargeable to the parish, the question to be considered was, whether a bastard was included under the word 'child' in the act of parliament. By the 4th section, certain persons are to be deemed rogues and vagabonds, and, amongst them, 'every person running away and leaving his wife, or *his* or *her child* or children chargeable to the parish.' It was argued that, though in the cases of *tenure* the word 'child' is to be understood a legitimate child, it is not to be so considered where the object of the law is to punish or to disable. It was admitted, that the question was raised for the first time, and that it had hitherto been considered that the penalties of the act applied to the desertion of legitimate and not of illegitimate children. But it will, on considering the question, appear that the 5 Geo. IV. c. 83, is not the first statute in which the same or nearly the same words are used in describing a class of persons who are to be deemed rogues and vagabonds. By the 3 Geo. IV. c. 40, s. 3, 'all persons who run away and leave their wives or children chargeable to the parish, are to be so deemed; and by the 17 Geo. II. c. 5, s. 2, 'all persons who run away and leave their wives or children, whereby they become chargeable to the parish,' are to be deemed rogues and vagabonds. In all these statutes the words are nearly the same, 'wives or children,' and by placing them together, it would seem, without more, to indicate that the legislature intended legitimate children and not bastards; and for nearly a century these words have been so used, and in those statutes have been so considered. And there is no instance to be found, at least I have found none, of any attempt to apply those words to illegitimate children. But it has been expressly held, in the case of *The City of Westminster*, v. *Gerrard*, (2 *Bulstr.* 346) that a bastard was not within the 7th section of the 43 Eliz. c. 2, which enacts, 'that the fathers and grandfathers, and the children of every poor person unable to work, shall relieve.' I am therefore disposed to think that a bastard child is not within the meaning of the word 'child,' as used in the act of parliament in question. It is no further necessary to refer to the acts of parliament relating to the putative fathers and mothers of bastards, than to observe that distinct provisions are made for the maintenance of bastard children, and the compelling the parents to provide for them; and that in all such statutes, bastards are described in terms as such; and that in the General Poor Law Amendment

Act, 4 & 5 Will. IV, c. 76, where the word 'child' is used, as for example in sect. 56, a legitimate child is clearly intended; and that where the word 'child' is intended to have a more extensive signification, it is expressly so declared, as in sect. 57, by which the husband is made liable to maintain the children of the wife before marriage, whether legitimate or illegitimate. The only case referred to in the argument in support of the rule, was that of *R.* v. *Hodnett*, (1 *T. R.* 86,) in which it was held, that a bastard was within the meaning of the Marriage Act, 26 Geo. II. c. 33, s. 11; but the question there was not as here with respect to the meaning of the word 'child,' which was not used either in the 11th or the subsequent section, but whether a bastard was so strictly *filius nullius*, that he could not be considered within the meaning of the statute, which requires that the marriage of a person under age by licence shall be by consent of the father, mother, or guardian. That case seems to me hardly to bear upon the particular point in the present, which turns, as I have already stated, upon the meaning of the legislature in the use of the word 'child;' and I therefore think that the rule should be discharged."

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The order must state how much of the goods or rents should be seized, and the quantum of relie to be appropriated out of them; and in case of rents must limit the period of such appropriations.

Stable v. *Dixon*, 6 *East*, 163. In covenant for rent, the defendant pleaded as to 7*l.* 16*s.* parcel of the rent, that before the rent became due, the plaintiff had gone away from his place of abode at *Corney* into some other place, leaving his wife chargeable to *Corney*, their place of settlement; that he continued away from the 24th of *June*, 1801, to the time of the action brought, and that during all that time she continued chargeable; and was necessarily maintained by the parish: whereupon, upon application of the overseers, an order was made by two justices, and delivered to the overseers, whereby the said justices authorised and commanded the said overseers of *Corney* to *receive the annual rents and profits of the lands and tenements* of the plaintiff at *Bromhill, towards the discharge of the parish at* Corney *for the providing for the plaintiff's wife, &c.* On the 18th of *July*, 1801, *the order was confirmed* by the Court; and the Court did then order the overseers, &c., to receive 7*l.* 16*s.* rent of the rents of the lands of the plaintiff at *B.*, towards the discharge of the said parish for the providing the plaintiff's wife. And then the plea alleged payment. To this the replication was, that on the first of *October*, 1801, the said 7*l.* 16*s.* in the order of sessions mentioned, was paid by defendant to the then overseers of *Corney*, pursuant to the said order, and that on the 25th of *March*, 1802, the said 7*l.* 16*s.* was allowed by the plaintiff to the defendant out of the rent. To this replication it was by the defendant rejoined, that the said *sum of* 7*l.* 16*s.* *so mentioned in the fourth plea* to have been so paid, *was* another and a different sum of 7*l.* 16*s.* than the sum of 7*l.* 16*s.* so deducted and allowed as aforesaid, viz. *for the second year's payment under the said order in the said plea mentioned.* To this there was a demurrer. And it was urged, that the original order *was void*, as being *prospective*, to seize the rents and profits *for future expenses; or* if it might be prospective, still *it did not ascertain the quantum of relief required by the parish*, conformably with the words "*so much*" in the statute; and *Rex* v. *Chaffey* (*a*) was cited. Also that the sessions had it only in their power to confirm the order, and direct a sale, and (perhaps) vary the sum before directed to be levied. And, that if the sessions could remedy any defect in the original order by ascertaining the sum to be raised, they have fixed it at 7*l.* 16*s.*, and that sum is by the pleadings admitted to be paid and deducted out of the rent: the *order* therefore is *functus officio;* for it does not state that the same sum shall be raised *annually*. Lord *Ellenborough*, C. J. "The 5 Geo. I. gave to magistrates a power of appropriating to the purposes of the act *so much* of the goods and chattels, and *so much* of the annual rents and profits of the

See form, Appendix.

(*a*) 2 *Ld. Raym.* 858, where on a motion to quash an order of justices authorising the overseers to seize "of the goods of the defendant what they should judge proper to secure the parish for the maintenance of a bastard child," it was objected that the 13 & 14 Car. II., c. 1, 2, s. 19, only authorised a seizure of what the justices should deem proper; and for this reason the order was quashed.

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party, as they should order and direct, or as the sessions afterwards, to whose confirmation such order is to be submitted, should think fit. But it never was meant to invest the parish officers or magistrates with a right to take indefinitely all the property of such a person without apportioning how much of it was to be taken for that purpose. The language of the act is, that the goods and chattels, &c. are to be taken for or towards *the discharge* of the parish; which imports that it was to relieve the parish from a burthen already incurred, and which was therefore capable of being then ascertained. But even if they had a *prospective* power, still the justices are to ascertain *how much* is to be taken. The act expressly says, the officers shall take *so much* as the justices shall order. That makes it imperative on the magistrates to ascertain the sum: but if an order like this could be sustained, it would open a door to great vexation. If any person happened to go away, leaving his family a charge on the parish, it would authorise the justices to make the parish officers trustees for the whole of his property to whatever amount. The original warrant then being made in the exercise of an indefinite instead of a limited authority, and being void in that respect, the next question is, Whether it were capable of receiving confirmation from the sessions? and assuming that it could, as capable of limitation in respect of the sum to be taken by the parish officers (for they seem there to have abandoned the ground of an indefinite seizure), then can the order of sessions be sustained beyond the terms of it, as an order to receive the sum of 7*l.* 16*s.*? Admitting that it might be good to that extent, as an order to receive a definite sum (subject, however, to the objection to it as a confirmation of an original indefinite order of seizure), the answer is, that the sum is already paid and allowed: but taking it as it is now contended for, as an order to receive that sum annually out of the rents and profits without any limitation of time, the objection applies, that from want of such limitation, as, 'till some other order made,' it is void by the authority of the case mentioned. Therefore, unless the order of sessions be understood as limited to raise 7*l.* 16*s.* once for all, that would be invincibly bad; and if so understood, the order has been satisfied." *Grose*, J. "The defendant insists that the order of sessions authorises the annual payment of 7*l.* 16*s.* for ever. If it do, such an order cannot be sustained for a moment, for the statute authorises the overseer to take only *so much* as the justices shall direct: that is, so much as the parish shall have sustained. The intention of the legislature was only to indemnify the parish: and it meant either that the money ordered to be taken should have been expended by the parish, or that the justices should judge what was proper to be expended upon the family of the absconding man." *Lawrence*, J. "The first order ought to have specified the sum to be raised; it should have specified how much property was to be seized, and then the order of sessions should have stated how much of that should be sold or appropriated. I cannot consider the order of sessions as directing that more than one sum of 7*l.* 16*s.* should be taken. If more had been intended they should have said so more distinctly, by adding the word '*annually*,' or '*till further order*.' The defendant has no reason to complain of having been misled by the order. Besides, if the order were illegal, he should have refused payment, and if indicted for disobedience he might have defended himself; or he might have brought an action of trespass if his goods had been distrained, for he would not have been concluded by an order to which he was no party from showing that it was illegal. But I think the order of sessions only meant that one sum of 7*l.* 16*s.* should be taken."—Judgment for the plaintiff.

Can the order be prospective?

Can the illegal order of justices receive confirmation from the sessions?

If the husband remain in the parish, his effects cannot be seized for his wife's support The act applies to runaways only.

It has been held, that if a man refuse to maintain his wife, but nevertheless *remains* in the parish, no order can be made on 5 Geo. I. c. 8, to seize his effects; but the wife must have recourse to the common remedy of suing for alimony; or any one who supplies her with necessaries may have his action against the husband for money expended to his use. (*Rex* v. *Justices of Kent, Burn's Justice*, 25*th edit.*) See now the 5 Geo. IV. *ante*.

Assignment by a

Before the 5 Geo. I. the parish officers might have taken an assignment of

the property of the husband, and there is nothing in this statute to prevent that. But as the land was conveyed in trust for the benefit of a charitable use, to the intent that the rents and profits may be applied to the use and benefit of the poor in aid of the poor-rate, the deed is within the enacting clause of 9 Geo. II. c. 36, s. 1, and not being enrolled is void. It is not a deed within the 2nd sect., made for a valuable consideration paid by the person to whom it is made.

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pauper in custody to indemnify the parish for expenses incurred for his wife, is good; but it is a charitable use and must be enrolled.

Rex v. *Flintan*, 1 *Bar. & Adol.* 227. This was an appeal against a conviction of the defendant as an idle and disorderly person for refusing to maintain his wife.—Conviction confirmed. Case:—*Elizabeth*, the wife of *W. H. Flintan*, became chargeable to the parish of *St. Andrew* on the 20th of *February*, 1829, and received from that time to the time of the conviction four shillings a week from the said parish. *W. H. Flintan* was then able wholly to maintain his wife. *W. H. Flintan* and his wife cohabited together for some years until the 26th of *November*, 1826, when they quarrelled on account of her having pawned some of their plate; and on the following day she quitted his house in his absence, and without his knowledge, and has not resided with him since. She subsequently sued her husband for alimony, by reason of adultery committed by the husband, who produced, in his defence, evidence of adultery committed by his wife; and the Court decreed, that *W. H. Flintan* had been guilty of adultery, and that the said *Elizabeth Flintan* had been guilty of adultery, and therefore dismissed *W. H. Flintan* from the citation. The adultery which was proved upon the wife had been committed while she lived with her husband, and without his knowledge or subsequent condonation; the adultery proved upon him did not take place till after that time, and after she had left him. The question for the opinion of this Court was, Whether *W. H. Flintan* was, at the time of the said conviction, legally bound, under these circumstances, to maintain his wife, within the meaning of the 5 Geo. IV. c. 83, s. 3? *Bayley*, J. "This case is very clear. By this statute, a man is criminally answerable for refusing to maintain any of his family whom he is legally bound to maintain. That obligation must be made out; and it is not established in the case of a wife who has left her husband and lives in adultery." *Littledale*, J. "I do not see the distinction attempted between the parish and an individual supplying necessaries. If the husband is not obliged to answer for the wife's contracts, or to receive her into his house, it cannot be said that he is 'legally bound to maintain her.'" *Parke* J. "It would be strange if the Court could hold that a man was not civilly liable for the supply of necessaries to his wife, and yet that not supplying them rendered him a vagrant." (*a*)—Conviction quashed.

A man is not liable to the penalty of 5 Geo. 4, c. 83, s. 3, for neglecting and refusing to maintain his wife, who has left him and committed adultery; although he himself has been guilty of adultery since her departure.

Clauses.

Pension may be applied to wife and family.

Pensioner, deserted, a chargeable.

By 2 & 3 V. c. 51, the clauses of 59 Geo. III. c. 12, relating to the assignment of pensions, and the whole of 6 Geo. IV. c. 27, are repealed. See s. 1 & 2 *ante*, p. 83; and by s. 4 it is enacted, "that when any pensioner or other person entitled to or in receipt of any army, naval, or other pension or allowance as aforesaid, shall leave his wife or family in any union or parish, or shall suffer them to become chargeable to any union or parish, it shall be lawful for two or more of her Majesty's justices of the peace for the county or place in which such union or parish is situate, upon complaint thereof made on oath to them by any one or more of the guardians of any such union or parish, or any one of the churchwardens and overseers of the poor of such parish where no union or board of guardians is established, or by the relieving officer of such union or parish, or the heritors and kirk session in *Scotland*, and upon due and satisfactory proof being given to the said magistrates that the person so left is the lawful wife of the said pensioner, or the lawful child, (as the case may be,) by order under their hands and seals, as to army pensions payable at *Chelsea* Hospital or by the Commissioners thereof in the form set out in

(*a*) As to the liability of parents, &c. to maintain the wife under these circumstances, see *R.* v. *Kempson*, *ante*, 100.

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the schedule to this act marked (F.), p. 110, and as to *Greenwich* out-pensioners in the form set out in the schedule to this act marked (G.), p. 110, and as to all other the before-mentioned pensions and allowances payable by her Majesty's paymaster-general in the form set out in the schedule to this act marked (H.), p. 110, to direct that one half of the next payment which shall become due of such pension or other allowance, in case it shall be the wife or one child only who shall have been so left or suffered to become chargeable, or two-thirds thereof in case a wife and child, whether his own or a stepchild, or two or more children, shall have been left or suffered to become chargeable, shall be made to the guardians of such union or parish, or to the churchwardens and overseers of the poor of the parish, or heritors and kirk session, to which such wife or family shall have become chargeable; and such guardians or churchwardens and overseers of the poor, or heritors and kirk session, shall transmit or cause to be transmitted such order as to such army pensions as aforesaid to the commissioners for the affairs of the Royal Hospital at *Chelsea*, and with respect to such naval and other pensions as aforesaid to the paymaster-general, *Whitehall, London*, in like manner and within the like period as any assignment is hereinbefore directed to be transmitted, which said commissioners of *Chelsea* Hospital and her Majesty's paymaster-general respectively shall thereupon, and upon sufficient proof being given to their satisfaction respectively that the person whose pension shall be directed to be paid shall have been living when the same has become payable, and would have been entitled to receive the same if no such order had been made, cause the said payment of one moiety or two-thirds, as the case may be, to be made to the said guardians of the union, or churchwardens and overseers of the poor of the parish, or heritors and kirk session, for whose security such order shall have been made; and the guardians or churchwardens and overseers of the poor, or heritors and kirk session, receiving any such pension by virtue of any such order, shall retain and apply the same, or so much thereof as shall have been actually expended for the purposes aforesaid, for the use and indemnity of the said union or parish, and shall pay the overplus (if any there shall be) to the pensioner or person entitled thereto; and upon the receipt of any such order as aforesaid by which the pension to be mentioned therein shall be directed to be paid as aforesaid, the payment thereof shall be suspended until sufficient proof, by the personal appearance of the pensioner before the collector of excise, or in such other manner as shall be directed by the lords and others commissioners of *Chelsea* Hospital, or paymaster-general, shall have been given, to entitle the said guardians or churchwardens and overseers of the poor of the parish in such order named, or heritors and kirk session, to receive the money thereby directed to be paid to them; and upon the like proof, the other moiety or one-third, as the case may be, of the quarterly payment of the said pension shall be paid by the commissioners of *Chelsea* Hospital and her Majesty's paymaster-general respectively to the pensioner entitled thereto, upon his own receipt; provided that in all cases where it shall be made to appear to the said justices that the woman relieved or to be relieved as the wife of the said pensioner shall be notoriously profligate, or cohabiting with any other person than her said husband, it shall be lawful for the said justices and they are hereby required to refuse making any order with respect to the payment of the said pension."

Justices empowered to order payment of wages of seamen, whose family, during his absence, has become chargeable, for the indemnity of parishes.

The 59 Geo. III. c. 12, s. 32, recites that, "in many instances the wives and families of seamen employed *in the merchants' service* become chargeable to parishes, while their husbands and fathers are absent on such service, and it is expedient to provide for the indemnity of such parishes by and out of the wages of such seamen; it enacts, that where the wife or family of any seaman employed in any voyage or trip (not being his Majesty's service) shall, during his absence on such employment, become chargeable to any parish, it shall be lawful for two justices, upon complaint thereof to them made by any one or more of the churchwardens and overseers of the poor of such parish, and verified on oath, by order under their

hands and seals, to direct the acting owner or owners, ship's husband, or agent of the ship or vessel in which such seaman shall be employed, to pay, out of the wages which shall become due to such seaman, unto the churchwardens and overseers of the poor of the parish to which his wife or family shall have become chargeable, so much as shall have been by such parish necessarily expended for their maintenance or relief, the amount, in case of any dispute, to be ascertained by two justices, whose determination thereon shall be final; and upon the production of any such order, the owner, ship's husband, or agent, by whom the wages of the seamen therein to be named shall be payable, shall pay to such one or more of the churchwardens and overseers of the poor of the parish for whose indemnity such order shall have been made, as shall demand the same, the sum and sums to be therein specified and directed to be paid, or so much thereof as the wages then due shall amount unto; and the payment to and receipt of any such churchwarden or overseer shall be a good discharge for so much of such wages as shall be paid to them or him by virtue of any such order; and if any such owner, ship's husband, or agent, shall refuse or neglect to pay to the churchwarden or overseer producing any such order, the money thereby directed to be paid, or so much thereof as shall be actually due for the wages of the seaman to be therein named, the same may be levied and recovered, and the payment thereof enforced, against the owner or owners, ship's husband, or agent, by whom the same shall be payable, in such and in the like manner as poor's rates in arrear may be levied and recovered, and the payment thereof enforced, against the parties and persons chargeable and charged therewith; provided always, that nothing herein contained shall authorise or compel the payment of any sum or sums of money by such acting owner or owners, ship's husband, or agent, until the voyage in which the vessel shall be so engaged shall be completed, nor beyond the sum that shall be then actually due to such seaman, by such acting owner or owners, ship's husband, or agent, as wages or otherwise."

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And the owner, &c. to make such payments to churchwardens, &c. accordingly.

And upon refusal, proceedings may be had against owner, &c. as in case of poor-rates.

By 11 Geo. IV. c. 10, intituled, "An Act for the Relief of Parishes from the expenses of Maintaining the Wives and Families of Men convicted under the Laws for the Prevention of Smuggling, and sentenced to serve his Majesty in his Naval Service," reciting that "whereas many seamen are now serving in his Majesty's naval service, by virtue of certain acts passed for the prevention of smuggling; and whereas it is expedient to make provisions respecting the payment and distribution of the wages of such seamen, and of such others as may hereafter enter the naval service by virtue of any act for the prevention of smuggling, and also respecting the relief of parishes to which the wives or families of any such seamen are or may become chargeable whilst they continue in the service; be it therefore enacted, that no person who shall be hereafter adjudged or entered to serve in his Majesty's naval service by virtue of any act made or to be made for the prevention of smuggling, shall be entitled to receive more than half the pay of his rating in the ship's books."

Persons adjudged to serve in the navy under the smuggling laws, not to receive more than half the rating.

Sect. 2. "That the wages of every seaman now serving, or who shall hereafter be adjudged or entered to serve in his Majesty's naval service, under or by virtue of any such act made or to be made for the prevention of smuggling, whose wife or family is or shall become chargeable to any parish or place, shall from and after the passing of this act be distributed as follows: (that is to say), a proportion, not exceeding one-half, of the wages at which such seaman is rated in the ship's books shall be made available for the support of his wife and family; and in order to effectuate the said purpose, it shall be lawful for any one or more of the churchwardens and overseers of the poor of such parish or place where the wife or family of such seaman shall be or become chargeable, to make complaint thereof on oath to any two justices of the peace acting for the county in which such parish or place shall be situate, and upon the transmission by the said justices of a certificate thereof to the commissioners of his Majesty's navy, specifying therein the proportion (not exceeding one-half) of the wages they shall deem necessary to be paid for the relief of the parish,

Distribution of the wages of seamen serving under the smuggling laws.

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according to the circumstances, having regard to the number of the family; and the said commissioners shall thereupon take the requisite measures for causing payment thereof to such person as shall for that purpose be named in the justice's certificate, in the same manner and under similar regulations as allotments of seamen's wages are now or shall be payable, and that the moneys so paid shall be applied towards the relief and indemnity of the parish; and all payments to be made by the treasurer of the navy, under the authority of this act, shall be deemed good and valid payments, and shall be allowed as such in his accounts."

Forms given by 2 & 3 V. c. 71.

SCHEDULE (F).

Form of order to be made in pursuance of 2 & 3 Victoria, cap. 71.

County of } *To the Right Honourable the Lords and others Commissioners of the Royal Hospital Chelsea.*

Whereas complaint upon oath hath been made unto us, two of her Majesty's justices of the peace acting in and for the said County by the of the union [or *parish*] *of in the county aforesaid, that late a soldier in the regiment of but now a pensioner of the Royal Hospital at Chelsea from the said* [*regiment at the rate of per diem, hath suffered his to become chargeable thereto, and that now maintained by the said union* [or *parish*] *at the expense of per week, and due proof having been given to us of the said being the lawful wife* [or *lawful children*] *of the said* [or, *that the said is liable to maintain the said* as the case may be] :

Now we do hereby, in pursuance of the statute in that case made and provided, order and direct, that [*one moiety,* or *two thirds,* as the case may be,] *of the next payment which shall become due of such pension shall be paid by the said commissioners to the guardians* [or *churchwardens and overseers,* or *heritors and kirk session,* as the case may be,] *of the said union* [or *parish*] *of in order that they may retain and apply the same, or so much thereof as shall have been actually expended as aforesaid, for the use and indemnity of the said union* [or *parish*] *paying the overplus* (*if any*) *to the pensioner or person entitled thereto.*

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and at in the county aforesaid.

SCHEDULE (G).

Form of order to be made in pursuance of Victoria, cap.

County of } *To her Majesty's Paymaster-General.*

Whereas complaint upon oath hath been made unto us, two of her Majesty's justices of the peace acting in and for the said county, by the of the union [or *parish*] *of in the county aforesaid, that a Greenwich out-pensioner, No. at the rate of per annum, hath suffered his to become chargeable thereto, and that now maintained by the said union* [or *parish*] *at the expense of per week, and due proof having been given to us of the said being the lawful wife* [or *lawful children*] *of the said* [or *that the said is liable to maintain the said* as the case may be] :

Now we do hereby, in pursuance of the statute in that case made and provided, order and direct that [*one moiety,* or *two thirds,* as the case may be,] *of the next payment which shall become due of such pension shall be paid by her Majesty's paymaster-general to the guardians* [or *churchwardens and overseers* or *heritors and kirk session,* as the case may be,] *of the said union* [or *parish*] *of in order that they may retain and apply the same, or so much thereof as shall have been actually expended as aforesaid, for the use and indemnity of the said union* [or *parish*], *paying the overplus* (*if any*) *to the pensioner or person entitled thereto.*

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and at in the said county of

SCHEDULE (H).

Form of order to be made in pursuance of Victoria, cap.

County of } *To her Majesty's Paymaster-General.*

Whereas complaint upon oath hath been made unto us, two of her Majesty's justices of the peace acting in and for the said county, by of the union [or

parish] *of* [*in the county aforesaid, that* *a person entitled to* [here state whether for pension or allowances in civil or military service, not as Chelsea or Greenwich out-pensioner] *at the rate of* *per annum, hath suffered his to become chargeable thereto, and that the said* *is* [or *are*] *now maintained by the said union* [or *parish*] *at the expense of* *per week, and due proof having been given to us of the said* *being the lawful wife* or *lawful children of the said* or *that the said* *is liable to maintain the said* (as the case may be).

14. *Persons Deserting their Families.*

Now we do hereby, in pursuance of the statute in that case made and provided, order and direct, that [*one moiety*, or *two thirds*, as the case may be,] *of the next payment which shall become due of such pension shall be paid by her Majesty's paymaster-general to the guardians* [or *churchwardens and overseers*, or *heritors and kirk session*, as the case may be,] *of the said union* [or *parish*] *of* *in order that they may retain and apply the same, or so much thereof as shall have been actually expended as aforesaid, for the use and indemnity of the said union* [or *parish*], *paying the overplus* (*if any*) *to the pensioner or person entitled thereto.*

Given under our hands and seals this *day of* *in the year of our Lord one thousand eight hundred and* *at* *in the said county of* .

15. Of Relieving Casual Poor.

1. *By whom to be relieved, and herein of Accident.*
2. *Scotch and Irish Poor, &c.*

1. By whom to be relieved.

15. *Of Relieving Casual Poor.*
1. By whom to be relieved, &c.

It is contrary to the humane spirit of the English laws, that any individual shall be permitted to perish from starvation or want of medical assistance. Whoever is by *sudden emergency or urgent distress* deprived of the ordinary means of subsistence, has a right to resort for *immediate* relief to the overseers of the poor of the parish in which he may happen to be at the time when he is thus bereft of support, whether he has acquired a settlement there or not, or to the relieving officer; and it is the bounden duty of the *overseers and relieving officers immediately*, and without waiting for an order of relief, to render the necessary assistance in such cases.

Duty of *overseers* to relieve.

By the 4 & 5 Will. IV., c. 76, s. 54, the overseers are bound, in cases "of sudden and urgent necessity," to give relief in articles of absolute necessity, but not in money, whether the party is settled in the parish or not; and if they refuse, a justice may make an order; and also in cases of sudden and dangerous illness, give an order for medical relief.

Duty of overseer under 4 & 5 W. 4 c. 76.

The relieving officer is also bound to supply all cases of immediate want: of this provision the professional beggar fully avails himself. At a late period of the day, when there is no time for inquiry into the truth of his story, he applies for relief, and the relieving officer gives him an order for the workhouse, which the beggar knows ensures him some food and a clean bed without any cost. To check impositions, the legislature has, by the 5 & 6 V. c. 57, s. 5, provided that the guardians may prescribe a task of work for such persons; but they are not to be detained for more than four hours after breakfast, and if they refuse to work, they may be committed as vagabonds.

Duty of relieving officer.

Vagrants relieved in the workhouse may be compelled to work for four hours.

Where *guardians* have been appointed under the 22 Geo. III, c. 83, the 38th section provides, that in case any poor person shall be retarded in his passage through a parish in which he has no settlement by accident, by dangerous illness, or bodily infirmity, the guardian where such distressed object shall be, shall provide lodging and suitable nourishment and assistance, and may recover the expenses from the guardian of the parish in which he is settled. It makes provision also for the burial of such persons if they die, and also of those found dead. (*a*)

Duty of *guardians* to relieve under 22 G. 3.

(*a*) By 22 Geo. III. c. 83, s. 38, "if any poor person shall be retarded on his or her passage through any parish, township, or place, in which he or she has no legal settlement, by reason of his or her *meeting with any accident, or being afflicted with*

1. *By whom to be Relieved.*

Where a person in need has no settlement, or it cannot be discovered, he must be relieved in the parish where he happens to be whilst remaining in a state of pauperism; and so also if he is irremovable.

Who are casual poor.

There is also another class of paupers to be here mentioned, viz. persons born in *Scotland, Ireland,* or the *Isle of Man, Guernsey,* or *Jersey,* and who have acquired no settlement in *England* or *Wales;* and provisions have been made for their removal. Persons comprehended within any of the above descriptions are called "*casual poor,*" the law with respect to whom will be here stated in detail.

Casual p

In *Paynter* v. *Williams* (*post*), it was argued that casual poor were persons in the parish without the intention of remaining there. *B. Bolland.* "I think that definition of casual poor cannot be so confined. In *R.* v *Chatham,* 8 *East,* 498, Lord *Ellenborough* lays down the rule much wider." See that case, which determines that persons whose settlements are unknown are casual poor.

A child left at the door of the Foundling Hospital, is casual poor.

Reg. v. *St. Pancras,* 7 *A. & E.* 750. The governors of the Foundling Hospital are incorporated by the 13 Geo. II., c. 29, *for the maintenance and education of exposed and deserted young children.* Any person may bring children to it, to be received therein, if the governors think proper; no parochial officer can prevent them, or exercise authority in the Hospital, and no residence therein will confer a settlement. A woman left a parcel

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any dangerous illness or bodily infirmity, without the means of subsistence, or of proceeding to the place of his or her settlement, the guardian living near the place where such distressed object shall be, shall, and is hereby required, upon notice thereof, forthwith to provide lodging, and suitable nourishment and assistance (and also clothing, if necessary) for such person, until he or she can be removed with safety; and when such person shall be in a state of health fit to be removed, shall take such person to some neighbouring justices of the peace of the county, riding, division, city, or place, where such person was found, who shall examine him or her upon oath, touching the place of his or her settlement, and make an order for his or her removal thither, if they think fit: and the parish officer who shall so receive and provide for such person or persons as aforesaid, shall make a charge of the expenses attending the same, which, on being allowed and certified by the justices before whom such poor person shall be so taken, or some other neighbouring justices within the limit where such person was found, the same shall be paid by the guardian of the parish, township, or place, where such poor person shall be settled, in case the same can be discovered, and shall happen to be within that county, on demand made thereof, and on the production of such allowance and certificate as aforesaid, or in default of payment, the same shall be levied upon the goods and chattels of any such guardian so making default, after due summons, by warrant from a justice of peace having jurisdiction there; and if any poor and sick person circumstanced as aforesaid shall die before he or she can be so examined, or if any poor person shall be found dead in any parish or place to which he or she did not belong, the guardian of such parish or place respectively shall, and is hereby required, in every such case, to cause such person to be buried in the parish, township, or place where he or she so died or was found dead, and shall make a charge of the expenses attending the same respectively, which shall be allowed and certified by a justice of the peace, after examining into the place of his or her settlement, and shall be paid by the guardian of the parish, township, or place where such person shall appear to have been settled, if the same shall be within that county; but in case the settlement of such poor persons respectively cannot be discovered, or shall not be within that county, the same shall be paid by the treasurer of such county, riding, division, city, or place where such person was so relieved, on the production of such allowance and certificate, out of the county or public money to be collected within his limit, and allowed to such treasurer in his accounts."

And by 33 Geo. III. c. 35, s. 3, "after the passing of this act, all such *casual poor* as may happen to be within, and would be entitled to relief from, any one of such parishes, townships, or places as have been, or may hereafter be, united together for the purposes of the act hereinbefore first mentioned, shall be relieved by all the said parishes, townships, or places conjointly, and in the same respective proportion as they shall and are directed to contribute for the general purposes of the said act, according to the provisions and regulations in the said act specified and contained."

And see *Rex* v. *Meredith, Russ. & Ry. C. C.* 46; *Cur. Crim. Law,* 269; 3 W. & M. c. 11, s. 11.

containing a child at the Hospital, which the governor refused to receive. This child is casual poor, and must be maintained by the parish of St. Pancras, within whose ambit the hospital is situated.

1. *By whom to be Relieved.*

Where a bastard child is born, for whose support the parents neglect to provide necessaries, the parish officers are obliged to do so, without an order of justices for that purpose. (*Hags* v. *Bryant*, 1 Hen. Bla. 253.)

Neglected bastard.

Independent of the particular provision for places having guardians, it may now be considered as a general principle, that there is a legal and moral obligation upon the overseers of every parish to maintain every pauper, that meets with an accident or becomes afflicted with a sudden and dangerous illness in his parish; and that the parish cannot be relieved by causing such person to be removed to a neighbouring parish. It is true, that where an *inhabitant* of the parish is so afflicted, an order for his removal may be obtained, and execution of it suspended, and then the expenses incurred will be repaid by the parish in which the pauper is settled, if he was afterwards removed to it. But no such order can be obtained, where the pauper was accidentally in the parish, and has not come there to settle. Without such order, the parish in which the accident happens has no legal claim on the parish in which the pauper is settled; but if an overseer authorises directly a surgeon to attend a non-resident parishioner, he is liable to the surgeon. It seems he is also liable, if after knowledge of the attendance of the surgeon, he sanctions it by requiring a fresh attendance. No promise can be implied from a *master* to pay a surgeon for his attendance on his servant, who may meet with an accident in the discharge of his duty. These principles will be found to have been established in the following cases:—

Relief of paupers meeting with an accident.

Rex v. *St. James, Bury St Edmunds*, 10 *East*, 25. An order removed S. Offord from St. James in Bury to Ixworth. Order quashed. Case:— The pauper being settled in Ixworth, was employed on the 23d of December, 1807, as a day labourer, by R. H. of Ixworth, to drive a load of hay to Bury, and to return with a load of muck. In loading the muck, he fell and broke his leg. On the 24th of December, two magistrates took the pauper's examination, made out the order of removal, and (the pauper being unable to be moved) suspended the execution by an indorsement on the back of the order. The pauper was attended by a surgeon, by the order of the parish officers of St. James. On the 1st of April, 1808, the magistrate took off the suspension, and made the order for payment of the expenses. Lord *Ellenborough*, C. J. "No doubt can be raised on the question; no person is removable from the parish where he is, but by positive statute. The 13 & 14 Car. II. c. 12, (which confers the power of removing) after reciting that poor people endeavour to settle themselves in those parishes where there is the best stock, &c., and when they have consumed it then go to another parish, &c. says, that it shall be lawful, on complaint of the parish officers, within forty days after any such person *coming so to settle as aforesaid, in any tenement under the yearly value of* 10*l.* for any two justices of the peace of the division where any person likely to be chargeable to the parish shall *come to inhabit*, by their warrant to remove him to the place of his last legal settlement. The expression of *coming to settle*, denotes the party comes *animo morandi*, or *manendi*; it may be for a temporary purpose, but still it must be understood that he comes to settle there. But how can it be said that the pauper went into this parish *animo morandi* at all? He went into the town with a cart of hay, which he was to dispose of, and return with a load of muck. How, then, can it be said that he went there to settle? Then, if he were not removable within the terms of the 13 and 14 Car. II., can we find any enlargement of the power of removal? The 35 Geo. III. has the words *inhabiting* or *sojourning*; but it would be an extravagant construction of either of those terms to say that it meant to include such a case as this.

A labourer who goes to a parish to load a cart, and breaks his leg there by accident, is casual poor, and no order of removal can be made with respect to him whilst he is unable to be removed. (*a*)

Persons "coming to settle" only can be removed.

(*a*) As to the removal of a person oscillating between two parishes, *Rex* v. *Birmingham*, 11 *East*, 251, *post*.

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Then, if the order be not warranted by either of these statutes, there is no authority for it, and the sessions have done right to quash it?'—*Le Blanc*, J. said, that "it had been properly admitted, that 35 Geo. III. did not enlarge the 13 & 14 Car. II. The 35 Geo. III. was meant to provide that persons who by law were before removable, if likely to become chargeable, should not be removed till actually so; and to make provision for suspending the order of removal, when made in case of sickness or infirmity, and that the expenses incurred in the care and maintenance of the persons, between the order to remove and the actual removal of them, should be defrayed by the parish to which they should be found to belong."

A poor person legally settled in the parish of A., came into the parish of B. animo morandi, and met with an accident, he cannot be regarded as *casual poor*, and an order of removal being made and suspended, the parish of A. must pay the expenses incurred in curing and maintaining the pauper during the suspension.

Rex v. *Oldland*, 6 *N. & M.* 529; 4 *A. & E.* 929. *S. Vox* was removed from Monythusloyn to Oldland. Order confirmed. Case:—Some considerable time before the accident hereinafter mentioned, *S. Vox* being then settled in Oldland, resided in Monythusloyn for the purposes of his employment, and continued to reside there up to the time of the order. During his residence he was employed in a colliery there, and in the course of his employment, on the 29th day of May, 1832, his thigh-bone was broken. *Vox* was thereupon carried to the nearest dwelling-house in Monythusloyn,—a surgeon was sent for by the parish officers of that parish, and the expense of 10*l.* 2*s.* 6*d.* was afterwards, and by reason of the accident, incurred by the said parish officers in his cure and maintenance. *Vox* had not been chargeable to M. up to the time of the accident, but the surgeon had been employed by the said parish officers to attend *Vox* in consequence of the accident, before the order of removal was made. On the 30th of May, 1832, *Vox*, being by reason of the accident incapable of being removed or brought before any justice, for the purpose of being removed, without endangering his life, his examination was duly taken, and thereupon the order in question was made, and suspended. On the 31st of October following, *Vox* being in a fit state to be removed, the same justices took off the suspension, and made an order for the payment by the appellants of 10*l.* 2*s.* 6*d.*, for the expenses incurred under the suspension of the order. The question was, whether at the time when the order was made, *Vox* was removable from Monythusloyn, so as to charge the appellants with costs incurred under the suspension of that order.—Lord *Denman*. "This is a perfectly clear case. The pauper had, before the accident occurred, or the order of removal was made, come to settle, within the meaning of the 13 & 14 Car. 2, in Monythusloyn. Previously to 35 Geo. III. a person who had so come to inhabit, if *likely to become* chargeable, was removable. The 35 Geo. III. altered the law in that respect, and permitted the removal to take place only where the party was *actually* chargeable. It appeared to the legislature that there was some danger that a pauper who became chargeable by illness might be removed too soon, and the statute therefore gives power to the magistrates to suspend the order, if it shall appear to them that the pauper is unable to travel by reason of sickness or other infirmity, or that it would be dangerous for him so to do. 'Other infirmity,' I apprehend, means any infirmity, however occasioned, and therefore includes an accidental injury like that in the present case. There was another danger to be prevented. The party might be taken before a magistrate to be examined as to his settlement, before he was in a fit state to go out. This occasioned the fourth section of 49 Geo. III. c. 124, which provides that whenever any pauper is by age, illness, or infirmity, unable to be brought up to the petty sessions, to be examined as to his settlement, any one magistrate acting for the district where the pauper may be, may take his examination. The present is the converse of *Rex* v. *St. James, in Bury St. Edmunds*. The decision in that case proceeded on the ground that the party had not come to settle and inhabit, within the meaning of the statute of *Charles*. Here, he had come to settle and inhabit."—*Littledale*, J., concurred.—*Patteson*, J. "I think the order was valid. To hold otherwise, would be to decide in direct opposition to the act of 35 Geo. III. Undeniably the pauper might have been removed if that removal could have taken place without danger to his life.

He was an *inhabitant;* he had *come to settle*, and was *actually chargeable.* It is immaterial whether he became chargeable in consequence of an accident, or from any other circumstance. It is said that the pauper was not removable because he was liable to be maintained by the parish in which the accident occurred. If indeed it had happened that he was *casually* in the parish, then no removal could have taken place, because the statute of Charles only authorises the removal of persons who have *come to settle.* In that event he would have been a casual pauper. I do not agree with the definition, that casual poor are poor persons made chargeable to parishes by meeting with accidents in such parishes. A person who is *resident* in a parish, and becomes chargeable by reason of having met with an accident, cannot be considered as a casual pauper. I do not however mean to lay down that a foreigner, who resided in a parish, and who there met with an accident and became chargeable, might not be considered as a casual pauper."—*Coleridge*, J. "The question is, whether the pauper was removable at the time when the order was made, so as to charge the parish to which the pauper belonged with the cost of his maintenance, during the period of the suspension of the order of removal. First, then, was the pauper removable? If by this question it is meant to ask whether the magistrates could make a valid order of removal, I say that undoubtedly they could. The magistrates might have gone, if it had been necessary, and examined the pauper, as to his settlement. He had come into the parish *animo morandi*, and he was chargeable. But although the order might be made, it could not be carried into effect, on account of the infirmity of the pauper. The 35 Geo. III. was passed for the very purpose of providing for this state of circumstances. It empowers the magistrates to suspend the order, and imposes the expense of maintaining the pauper during the time of suspension, on the parish to which he belongs. The only remaining question is, whether the order of suspension could be made. It is shown that the pauper was incapable of being removed without danger to his life, in consequence of infirmity; and this being so, it follows, of course, that it was the duty of the justices to direct that the execution of the order should be suspended." Order of sessions confirmed.

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Who are casual poor.

Rex v. *St. Lawrence, Ludlow*, 4 *B. & Ald.* 660. Order of removal from *St. Lawrence, Ludlow*, to *Leinthall Starks, Salop*, discharged. Case:—On the 31st of October, 1818, *G. Thomas*, the pauper, was sent with his master's team for coals, and on the road, in the parish of *Bromfield*, was thrown down by the horses, by which means his thigh was fractured: the accident took place about half a mile from Ludlow, in the parish of Bromfield. A person passing by with an empty waggon took the pauper to the Bell Inn, in the parish of St. Lawrence, Ludlow, where the pauper was taken in, and remained fourteen weeks, attended by a surgeon. The overseers of Ludlow came to the Bell the same day, and examined the pauper, and directed the mistress of the house to take care of him: they also were present when the surgeon was there. On the 4th of November an order of removal was made by the magistrates, removing the pauper to Leinthall Starks, his place of settlement. There was also an order of suspension at the same time. On the 17th of July, an order for the charges incurred by St. Lawrence was made.—*Abbott*, C. J. "I am of opinion that in this case the sessions were right in holding that the pauper was irremovable. The *Rex* v. *St. James, Bury St. Edmunds*, (*a*) seems to me to have been most correctly decided, and I do not think the present case materially distinguishable from it. But it is said that *Rex* v. *Birmingham*, (*b*) 14 *East* 251, is at variance with its authority. I am not of that opinion; but if it were necessary to decide between the two cases as conflicting authorities, I should adhere to the opinion of the court in *Rex* v. *St. James, Bury St. Edmunds.* For the 13 & 14 Car. II. c. 12, only gave a power of removal of those paupers who were coming to settle. Now how can it be said that this pauper was coming to settle in St. Lawrence, Ludlow? Nor

A pauper settled in *A.* met with a severe accident in *B.*, and was carried into the adjacent parish *C.*, to be cured: He is casual poor in *C.*, and irremovable. An order of removal to *A.*, and suspended, is invalid.

(*a*) p. 113.

(*b*) *Post*, title "Removal of Casual Poor."

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does the 35 Geo. III. c. 101, make any difference, for previously to the passing of that act, a pauper under these circumstances could not have been removed. And that act only regulated the powers of removal already existing, but did not give any new power to the magistrates for removing paupers who were irremovable before." Order of sessions confirmed.

Where a pauper had his leg fractured in one parish, and was conveyed for cure to a house in another parish, the overseer of the parish where the cure was performed, was held liable for the expenses. (*a*)

Lamb v. *Bunce*, 4 *M. & Sel.* 275. *Assumpsit* for a surgeon's bill. Smith, a carter to a farmer in West Woodhay parish, met with an accident, in driving his master's team, in the parish of Hamsted Marshall by which one of his legs was fractured. He was immediately conveyed to the nearest and most convenient house, which was a public-house situate in the adjoining parish of Enborne, and distant about half a mile from the spot where the accident happened. Smith, not being in a condition to be removed to his master's, the plaintiff, who was a surgeon and was generally employed to attend the poor of Enborne, was sent for, but it did not appear by whom, and he attended him until he recovered. During his attendance, the defendant, the overseer of Enborne, frequently visited Smith, and knew that the plaintiff attended him, and when Smith was fit to be removed, took him in a cart to his master's at West Woodhay. Smith was not a parishioner of Enborne.—Lord *Ellenborough*, C. J. "This pauper was to be considered as casual poor wherever his infirm and indigent body was found, and he had a claim on the parish where he was so found to have his necessities provided for by them. That was the parish of Enborne; and I consider that when the parish officer visited the pauper according to his duty, and knew that the plaintiff, who was generally employed for the poor, was in attendance upon him, and did not repudiate his attendance, he in effect commanded it. It cannot be matter of dispute in point of law, and I could wish it were so understood, that where time is not afforded for procuring an order of justices, the law raises an obligation against the parish where the pauper lies sick as casual poor, to look to the supply of his necessities; and, if the parish officer stands by and sees that obligation performed by those who are fit and competent to perform it, and does not object, the law will raise a promise on his part to pay for the performance. Mr. *Shepherd* has argued, that a moral obligation is not sufficient to raise an implied promise to a third person; but I think this case is out of that objection, because the defendant, by not repudiating the plaintiff's attendance, did that which is equivalent to a previous request. As to the objection that the parish of Hampstead Marshal was the place where the accident and injury arose, there is no pretence for saying that there is an

(*a*) In a former edition was the following *note*. It may sometimes happen that the parish where the accident occurs may not afford a proper place to give relief. The parish officers or others may, probably, without bestowing a thought upon the boundaries of parishes, do that which ought to be done immediately, namely, carry the pauper to the house *nearest* to the place where the accident happened, instead of conveying him to a considerable distance. In *Lamb* v. *Bunce*, the impression of the Court was, that the parish in which the house was situate was the proper parish to have given relief. There is no express decision upon this point, and Mr. Justice *Bayley*, it will be seen, reserved it, in giving his judgment in *Tomlinson* v. *Bentall*, (*post*, 117.) It can hardly be doubted, however, that whenever the question comes to be decided, that the Courts will follow up the manifest impression of these cases, and declare that this expense must be borne by the parish in which the house is situate where relief is afforded, if such house is nearest to the spot where the accident has happened, and has been chosen on that account alone, from a laudable anxiety to obtain for the pauper the most prompt and efficient assistance. It can make no difference in this respect, even where the pauper's settlement is in the adjoining parish. It is highly prejudicial to the rights of the poor, that when an accident has happened, the question should be agitated, or even pass in the minds of those persons in whose power the sufferer is of necessity placed, whether a burthen, which must fall somewhere, must be borne by them, or can, by any contrivance, be shifted to others. The various *dicta* upon this subject seem to establish that a pauper, become so under such circumstances, *obtains a settlement pro tempore* in the parish where the accident has *left him to be relieved;* and that his settlement in his own parish is suspended till the cause of its interruption is removed.

exclusive liability attaching to the parish upon that account; there is no reason for connecting the place where the accident happened with the liability."—*Le Blanc*, J. "There is no doubt that if the parish officers had sent for the plaintiff to attend the pauper, he would have been bound so to do. For here the plaintiff was in the habit of attending the parish poor; therefore he was not a stranger, but a person pointed out by the parish as the person to attend to this duty. He does attend, and this with a full knowledge of the parish officer, who does not make any objection on his part; consequently the parish officer must be taken to have assented to it. Therefore, there is quite sufficient to raise the presumption of a previous request."

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In case of accident to a poor person, it is the duty of the overseers of the parish in which the accident happened to provide necessary medical and other relief, and such parish is bound to pay all needful expenses, though the pauper is in fact removed to another parish.

Tomlinson v. *Bental*, 5 *B.* & *C.* 738; 8 *D.* & *R.* 493. *Assumpsit* for a surgeon's bill. The plaintiff was a surgeon. The defendants in 1824 were overseers of the parish of Heybridge. In October in that year P. Bannister, a poor woman belonging to the parish of Malden, returning from Witham to Malden in a cart, about ten o'clock at night, was thrown out of the cart in the parish of Heybridge, near to a public-house there called the Hoy. Her thigh was broken, and she was otherwise much hurt. The constable of Heybridge being sent for, desired her to be sent out of that parish. She was placed again in the cart, and taken over a bridge (which divides Heybridge and Malden); the driver of the cart then remonstrated with the constable, and told him that he was wrong in removing her from Heybridge. Upon this the constable ordered her to be taken back to Heybridge, and said he would go and consult a neighbouring magistrate. The magistrate, who was also churchwarden of Heybridge, advised him to take the woman to the nearest public-house and send for a doctor. The landlord of the Hoy refused to take her in. The driver of the cart then suggested to the constable to take her to the poorhouse. The constable said he did not know where they would put her. The pauper, who had been exposed to the cold air for some hours, said, "if you do not know where to put me, for God's sake take me home." The constable desired a bystander to pay attention to the request made by the pauper to be sent home, as it was likely they might be called to speak to the fact upon some future occasion. She requested not to be put under the care of the plaintiff, (who was apothecary of the parish of Malden,) but of one Thorpe, who was apothecary of Heybridge. The constable then desired her to be taken to Malden. The driver of the cart refused to take her back to Malden, unless the constable would give him a note that she should be taken care of by the parish of Heybridge. The constable said he would, but he did not. He accompanied her to her house at Malden, where she arrived about two o'clock in the morning, and asked Thorpe to attend her, and told him the pauper was at her own house. Thorpe said that in that case he, as the apothecary of Heybridge, had nothing to do with her. The constable then sent for Tomlinson, and the latter attended her for several weeks. B. Graham was of opinion, that there was some evidence to go to the jury, that the magistrate, who was churchwarden, and the constable, felt the obligation to afford the pauper relief, and that the constable actually undertook to pay the plaintiff for his attendance; and secondly, he was of opinion, that as the accident which happened in the parish of Heybridge was one which required immediate care and attention, it was the duty of the officers of that parish to have taken the pauper to the house nearest to the place where the accident happened, and where they could procure accommodation for her, and to have provided medical assistance immediately; and if, as humanity required them to have done, they had sent for a surgeon to attend her in that parish, they would clearly have been liable; and that they could not, by neglecting their duty and removing her to another parish, relieve themselves from that liability which the law had cast upon them. Verdict for the plaintiff. On motion for a new trial—*Abbott*, C. J. "The pauper met with the accident in Heybridge, an accident that entirely incapacitated her from going to her own place of abode; and, therefore, if she had been taken to any house in Heybridge, as she

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ought to have been, and relief had been administered to her there, it is clear that the parish officers would have been liable for the expenses of her cure. *Rex* v. *St. James, in Bury St. Edmunds*, (*ante*, 113,) is an authority to show that "it would not have been competent to the parish officers to have removed her, as a person coming to settle in Heybridge. If she had been taken to a house in Heybridge, therefore, the parish officers would have been under a moral and legal obligation to provide assistance for her. One of the parish officers did very properly recommend her to be taken to the nearest public-house, which was in Heybridge. The occupier of that house did not think proper to open his doors and receive her. A proposition was then made to take her to the poorhouse; and upon the way thither, some conversation took place, which excited in the mind of the poor woman (who at that time had been lying in the cold some hours) an alarm, whether, when she arrived there, she should be properly treated, and she said, 'for God's sake, take me to my own house!' and she was then taken home. The first proposal was to take her to her own parish; but, upon a remonstrance by the driver of the cart, the constable desisted. She was, however, ultimately taken to her own house. The constable of Heybridge sent to the plaintiff, and desired him to take care of her. As the parish officers of Heybridge must have paid for the medical attendance if she had remained there, it seems to me that the removal from that parish to another, (although it was her own,) coupled with the fact that the surgeon was called in from the parish of Malden, does not relieve the inhabitants of Heybridge from the obligation to which they would have been clearly liable, if this woman had been taken to some house in that parish, and taken care of there: and for these reasons I think that the verdict was right."—*Bayley*, J. "I am of opinion that the verdict was right. It is of very great importance, with a view to the protection to which the poor are entitled, that it should be fully understood upon whom, under such circumstances as those which have occurred in the present case, the legal obligation to provide medical attendance attaches. I do not put the case upon the ground of moral obligation, or upon the ground of the constables having sent for and employed the plaintiff; but I put it upon the ground that the law imposed a legal obligation upon the parish officers of Heybridge to employ a surgeon for the cure of the pauper. I think it is highly prejudicial to the rights of the poor, that when an accident has happened, the question should be agitated or even pass in the minds of those persons in whose power the sufferer is of necessity placed, whether a burthen which must fall somewhere, must be borne by them, or can by any contrivance be shifted to others. It is of importance, therefore, that it should be certain upon whom the obligation to provide medical attendance rests. For otherwise the consequence will be, that poor persons, who ought not to be removed from the place where they have met with an accident, will, perhaps, at the risk of their life, but certainly with great aggravation of their sufferings, be removed to a distance. In this case the pauper met with the accident in Heybridge, which incapacitated her from moving herself from the spot where it happened. The best and most obvious course would have been, to have done that which the magistrate of the place suggested should be done, viz., to have removed her into the public-house, but if she was not placed there, she ought to have been placed in the poorhouse, or, at all events, she ought to have been sent to some house in the parish. I am of opinion that when the parish officers refused her an asylum in that parish where she was entitled to have it, and forced her to go to her own house, all the attendance given by the plaintiff in the parish of Malden, in consequence of the wrongful conduct of some of the parishioners of Heybridge, is to be considered as if it had been given in the parish where the accident happened, and as if the house which she occupied had been in the parish of Heybridge. Although the attendance was not given in the parish of Heybridge, but in the parish of Malden, yet as one of the parish officers of Heybridge knew that the attendance was indispensably necessary, and that the removal from Hey-

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bridge to Malden had been wrongful; it seems to me exactly the same as if the parish officer had stood by and seen the attendance of the surgeon upon the pauper in the parish of Heybridge" After referring to *Lamb* v. *Bunce*, he said, "There was a subsequent case of *Gent* v. *Tomkins*, in this Court, which seems to support the principle, that the law casts the obligation of providing medical attendance for a pauper disabled by an accident, upon that parish where the accident has happened. In that case the action was brought, not against the overseers of the parish in which the accident happened, but against the overseer of the parish to which the pauper belonged, and the Court intimated a very strong opinion that it was not properly brought against the overseer of the latter parish. It may sometimes happen that the parish in which the accident happens may not be the proper place to give relief. It may happen that the parish officers, without entering into the question what are the limits of particular parishes, will do that which ought to be done immediately, namely, carry the pauper to the house nearest the place where the accident happens, instead of carrying her to a considerable distance. In *Lamb* v. *Bunce*, *ante*, 91, the impression of the Court was, that the parish in which the house was situate was the proper parish to have given the relief; but, without deciding that point, I am of opinion that, in this case, inasmuch as the accident happened in the parish of Heybridge, and that was the place where, under all the circumstances, the pauper was entitled to receive surgical assistance, the plaintiff is entitled to look to the parish of Heybridge for payment of his bill." *Holroyd*, J. "The accident having happened to the pauper in the parish of Heybridge, it was the duty of the officers of that parish to provide medical assistance for her there. They might have done that, although the occupier of one public-house refused to receive her. But I think they could not, by removing her elsewhere, shift upon other people that burthen which the law cast upon themselves; and that, whether they procured the medical assistance to be given *in* the parish or *out* of the parish, they are liable."—*Littledale*, J. "Whenever any accident happens to a poor person of such a serious nature as to render removal out of the parish dangerous or improper, I think the law casts an undoubted obligation on that parish to administer all necessary relief. If the pauper in this case had actually been taken to a house in Heybridge, and resided there while the surgeon was attending her, that parish would have been liable for her cure; but it appears to me that, under the circumstances of this case, she was improperly taken out of the parish; and that any officer or inhabitant taking her to another parish, where it was improper to take her, cannot by so doing release the inhabitants of the former parish from the obligation."

If a pauper meet with an accident in a parish not his own, and he is attended by a surgeon there, no legal obligation lies upon the overseers of the *pauper's parish* to pay the surgeon's bill. (*a*)

Gent v. *Tomkins*, 1 *D. & R.* 541; 5 *B. & C.* 746. The plaintiff, a surgeon at Winslow, was called in to attend one Tyrrell, a pauper of Newton Longville, who had met with an accident in the former parish. Tyrrell was confined at Winslow, and regularly attended by the plaintiff till he was removed to his own parish, of which the defendant was an overseer. Previous to Tyrrell's removal from Winslow, the defendant called upon the plaintiff, and desired him to take care of the pauper, and do what he could for him, and added, "that he would see him paid;" and, on a subsequent application by the parish officers of Winslow, the defendant said, "that if it was right that they should pay the surgeon's bill, they would." The plaintiff originally made the parish officers of Winslow debtors in his bill, but subsequently altered it, and debited the parish officers of Newton Longville.—*Abbott*, C J. said, he was quite satisfied there was not in this case any legal obligation upon the defendant to pay the plaintiff's demand

(*a*) This case (as *Sneath* v. *Tomkins*) is noticed in a note 1 *Car. & P.* 132, where the reporters say, "that it was intimated from the bench, that two of the judges thought it highly doubtful whether, as the pauper was casual poor in *B.*, there was any consideration even for a subsequent express promise by the overseer of *A.*, and they had very great doubts whether the action could be maintained, as this promise came within the rule of *nudum pactum*."

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in the first instance, or to provide for the pauper. The court said they were clearly of opinion there must be a new trial, in order that the jury might distinctly consider whether the attendance of the plaintiff upon the pauper, after the accident, was in consideration of the defendant's express promise to pay.—Rule absolute.

But an overseer may render himself liable by express promise to pay.

In *Wing* v. *Mill*, 1 *B. & A.* 104. The pauper was attended by a surgeon (the plaintiff), but was not resident in *W.*, the defendant's parish, though settled there, and Lord *Ellenborough* said, "In this case both the legal and moral obligation obtain. The parish of *W.* have, by their weekly allowance, admitted that they were bound to provide for the pauper, and the defendant, one of the overseers, after the pauper's death, expressly desires the plaintiff to send his bill made out to the overseers, and promises that he shall be paid. *Watson* v. *Innes*, *Buller's N. P.* 129, is decisive on the subject, and the plaintiff is entitled to recover."

Acquiescence in a surgeon's attendance upon a non-resident parishioner raises a promise by the overseer to pay; but without evidence of express employment or *acquiescence* of overseer, a surgeon cannot recover.

Paynter v. *Williams*, 1 *Cromp. & Mees.* 810. Lord *Lyndhurst*, "The facts of the case are, that the pauper being settled in *G.*, resided in *F.* for some time, during which he received an allowance from his own parish; that allowance was afterwards discontinued, the overseers saying they would not pay him any more unless he removed into his own parish. He was afterwards taken ill, and attended for nine weeks by the plaintiff (a surgeon); then a letter is taken to the overseers of *G.*, and they directed the allowance to be renewed, and it was continued to the death of the pauper. They knew, therefore, of the pauper's being there; that in my opinion amounts to a request on the part of the officers that the pauper should not be removed, and to a promise that they will allow what is requisite. They knew by the same letter of the plaintiff's attendance. This in my opinion was an acceptance of the plaintiff's services, and created a legal liability." *Bayley*, B., "The legal liability of the parish was not alone sufficient to enable plaintiff to maintain this action without a retainer or adoption by the parish. The legal liability does not give any person who chooses to attend a pauper a right to call for payment. In *Wing* v. *Mill*, *supra*, the parish officers knew of the attendance, and sanctioned it." Verdict for plaintiff for the expenses incurred after the letter.

If a stranger gives an order for the attendance of the plaintiff as a surgeon, he is liable. There can be no implied promise from a deputy overseer. (*Watley* v. *Walters*, 1 *C. & P.* 132.)

Parish liable for all attendance in cases of accident.

Simmons v. *Wilmott*, 3 *Esp. R.* 91, Lord *Eldon* held that the parish was not merely liable to a *surgeon* who exerts his professional skill, and gives the requisite medical attention to a pauper under such circumstances, but that a common person who took care of an individual who had been severely bruised by accident, by being thrown off his master's cart, so as to render it unsafe to remove him, and was carried to such person's home, who attended him for ten days and provided a nurse, &c., might recover against the parish for the lodging, maintenance, &c., of the individual so relieved, as he came within the description of casual poor. On the day of the accident, the plaintiff sent to the overseer to inform him of the circumstance and the overseer ordered the parish beadle to assist in taking care of the person, and Lord *Eldon* said, if a common person takes care of such a person on the liability of the parish officers, I think he has a right to recover against them.

The law will not raise an implied promise in the parish where a pauper is settled, to reimburse the money laid out by another parish in which he happened to be, in providing necessary medical assistance for him. (a)

Atkins v. *Benwell*, 2 *East*, 505. The plaintiffs were the parish officers of Toddington, and the defendants of Milton Bryant. J. Mitchell was a pauper settled at the time of his illness and death in Milton Bryant, but resided with his family at Toddington, and was there suddenly attacked with dangerous illness, which prevented his being removed from the place of his residence to that of his settlement without endangering his life. The plaintiffs gave notice to the defendants of the illness of their pauper within two or three days after the pauper was so taken ill; and the pauper, about three weeks from such notice, died in Toddington; and the plain-

(a) In this case an order of removal might have been obtained, and execution

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tiffs, from the time of such notice, laid out 14*l.* 12*s.* as well for necessaries for the pauper and family, as for medicines, and also on the funeral. The present action was brought to recover that sum. The jury found that there was no express promise of the defendants to pay it to the plaintiffs. *Watson* v. *Innes*, (*Bul. Ni. Pri.* 129,) was cited, where, however, there was a special promise to pay the plaintiff's bill. Lord *Ellenborough*, C. J. "That last circumstance makes all the difference. A moral obligation is a good consideration for an express promise; but it has never been carried further, so as to raise an implied promise in law. There is no precedent, principle, or colour for maintaining this action."—*Le Blanc*, J. "There was a moral as well as legal obligation to maintain the pauper in his illness in the parish where he was at the time."

A master is not liable, upon an implied *assumpsit*, to pay for medical attendance on a servant who has met with an accident in his service.

Wennall v. *Adney*, 3 *Bos. & Pul.* 247. This was an action to recover the amount of a surgeon's bill for attending the servant of defendant, who had broken his arm and was caried to the house of his mother, where the surgical attendance was given. As the defendant had not employed the plaintiff, or made any promise of payment, the plaintiff was nonsuited. Lord *Alvanley*, C. J. "I have reason to believe that the opinion delivered by Lord *Kenyon*, in *Scarman* v. *Castell*, (*b*) was not a hasty opinion, but formed upon reflection. I have no difficulty, however, in saying that I concur with the learned judge before whom this cause was tried, in thinking that the defendant is not liable. In this kind of question much may depend upon the nature of the contract entered into between the master and the servant. Sometimes a master engages to supply his servant with necessary victuals, and it may undoubtedly be argued, that necessary victuals mean such victuals as may suit the state of health or infirmity in which the servant happens to be; as if a servant be in need of wine, or victuals of that description, which are given by way of medicine. It is sufficient, however, to observe, that previous to *Scarman* v. *Castell*, there is no authority in the law of England to be found, which warrants the position contended for on the part of the plaintiff. I have no doubt whatever that parish officers are bound to assist, where such accidents as these take place; and that the law will so far raise an implied contract against them, as to enable any person who affords that immediate assistance which the necessity of the case usually requires, to recover against them the amount of money expended." The other judges fully concurred.

Parish officers bound to assist him.

The master of a servant, whose limb is fractured by an accident in the course of his duty, is not liable to the expense of his cure, but he is casual poor, and must be supported by the parish in which the accident happened.

Newly v. *Wiltshire*, *Cald.* 527; 4 *Dougl.* 283, S. C. This was an action brought by an overseer of one parish against the defendant, for expenses incurred in the cure of the defendant's servant, whose limb had been fractured by his falling from the shaft of his master's waggon, in the parish of which the plaintiff was overseer. The defendant knew of the accident the same night it happened, and visited the boy during the cure, and afterwards received him to complete his year's service, and paid him his whole year's wages. Lord *Mansfield*, "Whether judicially said, or when other subjects were under consideration, I cannot help thinking in general, that a master ought to take care of his servants in sickness. Upon every principle of humanity he ought; but the question here is, what is the *law*? and no authority has been produced to show that the parish have a remedy over against the master; and it cannot be. Parishes are bound to take care of their casual poor. There is no express contract to this purpose, nor can any be implied." *Postea* to the defendant.

2. Scotch and Irish Poor, and Persons born in the Isles of Man and Scilly.

By the 3 & 4 W. IV. c. 40, so much of the 17 Geo. II. c. 5, 59

of it suspended; and then the parish of *Milton Bryant* would have been liable, *Rex* v. *Oldland*, p. 114.

(*b*) 1 *Esp.* 220. There Lord *Kenyon* ruled that the master was liable for medicines supplied to his servant under his own roof. The doctrine of the text is recognised in *Sellen* v. *Norman*, 4 *C. & P.* 80; *Reg.* v. *Smith*, 8 *C. & P.* 153.

2. *Scotch and Irish Poor.*

Geo. III. c. 12, and 5 Geo. IV. c. 83, as relates to the removal of poor persons born in Scotland, Ireland, the Isles of Man and Scilly, are repealed.

Justices at sessions may order removal, by sea or land, of chargeable poor born in Scotland, Ireland, the Isles of Man or Scilly, at the expense of the complaining parish.

2. And it is enacted, that from and after the first day of January, 1834, it shall be lawful for two justices of the peace, and they are hereby authorised and required, upon the complaint of the churchwardens and overseers of the poor of any parish, township, or other place maintaining its own poor, that any person born in Scotland, or Ireland, or in the Isle of Man or Scilly, hath become chargeable to such parish, township, or other place maintaining its own poor, by himself or herself, or his or her family, to cause such person to be brought before them, and to examine such person and any other witness or witnesses on oath touching the place of the birth or last legal settlement of every such person, and to inquire whether he or she, or any of his or her children, hath or have gained any settlement in that part of the United Kingdom called England; and if it shall be found by such justices that the person so brought before them was born in either Scotland or Ireland, or the Isle of Man or Scilly, and hath not gained any settlement in England, and that he or she hath actually become chargeable to the complaining parish, township, or other place maintaining its own poor, by himself or herself, or his or her family, then such justices shall, and they are hereby empowered, by an order of removal under their hands and seals, in the form in the Schedule hereunto annexed, to cause such poor person, his wife, and such of his or her children so chargeable, as shall not have gained a settlement in England, to be removed, by sea or land, in such manner as may have been directed by the justices at quarter sessions assembled in and for the county, city, borough, town corporate, division, or liberty in which the said parish, township, or other place maintaining its own poor may be situate, by and at the charge and expense of the complaining parish, to Scotland or Ireland, or the Isle of Man or Scilly respectively, according as such poor person, or his or her family, shall belong to Scotland, Ireland, or the Isle of Man or Scilly, the charge and expense whereof shall be repaid, in manner hereinafter mentioned, to such complaining parish, township, or other place maintaining its own poor, out of the county rate raised and levied in the county, city, borough, town corporate, division, or liberty in which such parish shall be situate.

Expense to be repaid by county &c., in which complaining parish is situate.

The wife and unemancipated children of a Scotchman, who has not acquired any settlement in England, must, if chargeable, be sent by a pass along with the husband to Scotland, and cannot be removed to the maiden settlement of the wife.

Rex v. *Leeds*, 4 *B. & A.* 498. An order for removing Hannah, the wife of T. Robinson, and her children, from Leeds to Almondbury, was discharged. Case: The husband of Hannah was a Scotchman, residing at Leeds with his family, and had not acquired any settlement in England. Not being able to maintain his wife and children, they were obliged to apply for relief to the township of Leeds, and were actually chargeable to that township at the time of the order. He consented that his wife and children should be removed to Almondbury, the place of his wife's maiden settlement.—*Abbott*, C. J. "This question arises out of the compulsory power formerly vested in justices of the peace, of removing a wife from her husband by consent: and it is one, and that not the smallest of the evils attendant on the poor laws, that cases should have arisen under them, in which this court has held that such a removal, amounting to a temporary divorce, might lawfully be made. It is to be observed, however, that in *Rex* v. *Eltham*, (*a*) there was the consent of both husband and wife to the separation. I am very glad we are relieved by this act of parliament from the necessity of considering those cases. I think it is impossible to read the words of the 33d sect. of 59 Geo. III. c. 12, without seeing that the magistrates have now the power in cases like the present, of sending the husband, together with his wife and family, by a pass to Scotland; and, having this power, I am of opinion that they cannot now remove the wife and family to her maiden settlement, so as to separate her

(*a*) See the form of the order in the Appendix, and how the expenses are to be paid, *post*, title "Removal." The powers of this act are continued by 3 & 4 Vic. c. 27.

(*a*) 5 East, 113. See the case at length, *post*, "Removal of Wife."

from her husband. I think, therefore, that the order of sessions was right, and ought to be confirmed."—*Bayley*, J. "It is against public policy and good morals, to permit the separation of husband and wife, even with their consent. This question, however, turns on the 59 Geo. III. c. 12 s. 33, which enacts, that it shall and may be lawful for the magistrates, and they are thereby required, in certain specified cases, to cause persons born in Scotland, &c., to be brought before them. Now these are words of compulsion on the magistrates to institute proceedings in cases like the present. The act then provides, that the justices shall inquire into the settlement of the head of the family and his or her children, in order, as it seems to me, to ascertain whether any of those children have been emancipated. It then enacts that such justices shall and are hereby empowered to cause such poor person, his *wife*, and such of his children as have not gained a settlement in England, to be removed by a pass to *Scotland*. Now it is to be observed that the wife is thus, for the first time, introduced in the latter part of this clause, which is perfectly silent in the prior part of it, as to any inquiry to be made by the justices respecting her settlement. I think therefore that the magistrates have no discretion given them of removing the wife to her maiden settlement, and thereby of separating her and her family from the husband. If the magistrates remove at all, they must remove the whole family together to Scotland, under the provisions of this act of parliament."—*Holroyd*, J. "The words of this clause are imperative on the magistrates, in case they make any order, to remove the whole family to Scotland, and not, as they have done here, to remove the wife and family to the place of her maiden settlement. By the act, if the husband becomes chargeable by himself, or his family, he may be removed; and it seems to me, that it is altogether immaterial, provided the head of the family be born in Scotland, whether the children be born in England or not. The only exception is as to those children who have gained settlements in England in their own right. Then, as a power is now given to remove the husband, the wife must be removed with him: for the power of removing her to her maiden settlement was allowed to exist only from the necessity of the case, and must cease with it. It seems to me that we cannot narrow the construction of the words of this statute, unless, in so doing, we clearly saw that we should further the intention of the legislature. And as I do not think that their intention was to prevent the removal of the whole family together, I am of opinion that the decision of the sessions was right."—*Best*, J. "If the point decided in *Rex* v. *Eltham* were to occur again, I think it would perhaps be worth considering whether that decision could be supported. It is, however, not necessary to determine that question now, because I am clearly of opinion, that, under the clause of this act of parliament, it is imperative on the magistrates to remove the whole family to Scotland. It seems to me that clearer terms could not have been used. For the act expressly says, 'that the magistrates shall, and they are hereby empowered, to remove such poor person, his wife, and such of his children as have not gained a settlement, to the place of his birth or last legal settlement.' The statute could not, therefore, mean to leave a discretion in the magistrates as to whether they would exercise this power or not. And by adopting this construction, we shall, as it seems to me, further the object of the statute, which was to remove the inconvenience which existed from idle and improvident persons coming to this country, and remaining here irremovable with their wives and families. Any other construction would produce great inconvenience. It is quite clear that the head of the family may be removed; and if he should be removed, after the separation from his family, the wife and children would, in all probability, remain permanently chargeable."—Order of sessions confirmed.

2. *Scotch and Irish Poor.*

Rex v. *Benett*, 2 *Bar. & Adol.* 712. C. Hines, an Irish pauper, being pregnant, was at her own request, on the 9th of March 1831, admitted into the workhouse belonging to the parish of St. Luke, Middlesex, and on the

Under the statute 59 G. III. c. 12, s. 33, an Irish female pauper having a

2. *Scotch and Irish Poor.*

bastard child born in a parish in England, and within the age of nurture, may, on becoming chargeable, be passed to Ireland, though the child cannot be sent with her, the act not authorising the removal of any settled person.

23d was there delivered of a bastard child. She resided in the workhouse from the time of her admission, and was during that time chargeable to the parish. On the 6th of May the parish officers took her before two magistrates and required them by a pass to cause her to be removed, and her infant child also, for the purpose of nurture. They refused. A rule *nisi* was obtained for a mandamus to compel them to sign the pass, and after argument Lord *Tenterden*, C. J., delivered the judgment of the court. "This case was very well argued in the course of this term. The difficulty is in saying what precisely ought to be done under the statute 59 Geo. III. c. 12, s. 33, which provides for the removal of Irish and Scotch paupers in the mode pointed out as to rogues and vagabonds, by 17 G. II. c. 5, s. 13, 14. It was said in support of the rule, that where a woman settled in one parish in England had a bastard child born in another parish, also in England, it had been usual to remove the child with the mother for nurture, and that it was then taken care of by the parish to which it was sent, at the expense of the parish where it was settled by birth. On the other hand, it was contended, that the child having a settlement in the parish where it was born, the act of parliament gave the justices no power to remove it; and it was observed, that where a child was removed with its mother from parish to parish in England, no difficulty arose, because one parish or the other was obliged to give it present support, but that in Ireland, where there are no poor laws, there was no parish which could be called upon to nurture the child, nor any one to enforce maintenance from the place of its birth. There was much weight in those observations. There may certainly be great inconvenience in separating the mother and child; still, if the law gives no authority to remove the child, that inconvenience cannot be avoided while the law continues as it is. And it is clear that by 59 Geo. III. c. 12, s. 33, no such power is given. That section requires two justices, upon complaint that any person born in Scotland or Ireland hath become chargeable to a parish by himself or herself, or his or her family, to inquire whether he or she, or any of his or her children, have any settlement in England; and if it shall be found that such person born in Scotland or in Ireland has no settlement in England, and has become chargeable to such parish by himself, or his or her family, then by a pass to cause such poor person, his wife and such of his or her children *as shall not have gained a settlement in England*, (*a*) to be removed to the place of his or her birth, in the manner directed by the 17 Geo. II. c. 5, s. 13 and 14. The statute therefore authorises and requires the justices to remove to Ireland the mother who has not gained any settlement in England, but it gives them no power to remove the child which has acquired a settlement there by its birth. There may undoubtedly be hardship in removing the mother without the child, but that must be submitted to, for the act is imperative. The rule, therefore, must be made absolute as to the removal of the mother, and discharged as to that of the child."

The daughter of Irish parents who had gained no settlement in England, she and the family are removable to Ireland, under 3 & 4 W. IV., c. 40, though she was above 18 and born in England. The provisions of this act are not affected by 4 & 5 W. IV., c. 76, s.

Rex v. *Mile-end Old Town*, 5 *Nev. & Man.* 581; 4 *Ad. & El.* 196. Appeal against an order of removal of Ann Cotterall and her bastard child from St. Leonard's, Shoreditch, to Mile-end Old Town. Case:—Ann Cotterall, aged 18 years, who has never done any act to gain a settlement in her own right, was born in wedlock, in Mile-end Old Town, of Irish parents who have not gained any settlement in England. On the 20th August, 1834, she was delivered of a male bastard child in St. Leonard's, Shoreditch, in the house of her father, with whom she continued to reside as part of his family, occasionally going out charing; and on 21st August, 1834, application was made by her mother to the overseers of St. Leonard's, Shoreditch, for relief for Ann Cotterall and her bastard child only, upon which the order appealed against was made. The question for the

(*a*) The language of the 59 G. 3, c. 12, was the same in this respect as the present statute. The chief alterations are in the mode and expense of removal.

56, limiting the age during which a parent is considered liable for relief given to his child to 16.

Where the daughter of an Irish pauper is removed with her father to Ireland under 3 & 4 W. 4, c. 40, her bastard child born in England cannot be removed with her.

decision of the court is, whether reference being had to the provisions of 3 & 4 Will. IV. c. 40, s. 2, and 4 & 5 Will. IV. c. 76, ss. 56 & 71, the pauper and her bastard child were settled in Mile-end Old Town. The judgment was delivered by *Patteson*, J., as follows:—" The question in this case is, whether the removal of the pauper, with her infant bastard child, to the appellant hamlet can be sustained; and that depends upon this further and principal question, whether she ought not to have been removed with her father to Ireland, under the provisions of 3 & 4 Will. IV. c. 40, s. 2. The case states that the pauper was born in the appellant hamlet, of Irish parents, who have gained no settlement in England. They, therefore, are directly within the section of the statute above referred to, if at the time of this order made the father had become chargeable to the parish of St. Leonard's, Shoreditch, provided the effect of it has not been altered by the subsequent statute of 4 & 5 Will. IV. c. 76. And it seems to us that the pauper's father was so chargeable at the time in question. The language of the 2d section of the first-mentioned act, with reference to this subject, is, 'hath become chargeable by himself or herself, or his or her family.' Now the pauper was, at the time of her removal, living with her father as a part of his family, having done no act, nor having contracted any relations, inconsistent with that character. Relief therefore to the pauper under her father's roof, in the manner stated in the case, did render the father removable to Ireland, and as a consequence the daughter also. It is now to be considered how far the former act is affected by the 4 & 5 Will. IV. c. 76. And it is at once observable that the object of the two statutes is perfectly distinct. The former is confined merely to making provisions for the removal of certain persons born in Ireland, Scotland, &c., who have gained no settlements in this country. No question affecting the removal or settlement of persons born in England is touched or attended to; whereas the objects and provisions of the latter statute are purely and exclusively English. Various and important alterations are made in the laws respecting the gaining of settlements, the duty of overseers, and the management of the poor; all of which are of necessity applicable and confined to England. It is observable, also, that the title of the act itself purports to concern England and Wales, and them only; nor do we perceive any regulation which has the slightest relation to Ireland, Scotland, &c., the places enumerated in the first-mentioned statute. We think therefore that the sound construction and interpretation of the two statutes is to hold them to be in effect and operation, as they are in object, wholly separate and distinct. This being so, we are of opinion that the provision in the 56th section of 4 & 5 Will. IV. c. 76, as to the age up to which the parent is to be deemed answerable for relief given to a child, viz. sixteen, (whatever might have been its effect upon relief given to a child above that age, as to the chargeability of the parent, if the parties had been English,—on which we give no opinion,) does not apply to the present case, depending, as it has been already stated it does, on the 3 & 4 Will. IV. c. 40, s. 2. We think, therefore, that the character of the daughter's residence with the father, and his liability to maintain her and to be considered chargeable by relief given to her, are to be considered as they would have been if the latter act had not passed. It is true that in *Rex* v. *Whitehaven* (*post*, 126,) the sessions had quashed an order of justices removing an Irishwoman pregnant, and living with her parents unemancipated, to her birth settlement, upon the ground (as stated in the case) that she ought to have been sent with her parents by a pass to Ireland under the 59 Geo. III. c. 12, (which has the same expressions as to the chargeability of the father as the 3 & 4 Will. IV. c. 40, viz. 'became chargeable by himself or his family:') and this court quashed the order of sessions upon, as it seems, but little discussion, and not with very much consideration. Upon that case two things are to be observed; first, that the question how far the woman, circumstanced as she was, could gain a settlement by birth, was not noticed at all; whereas, in the case of *Rex* v. *Leeds* (*ante*, 122,) that question was

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considered, and it was held that birth in such case gave no settlement; (*a*) next, that the decision proceeds expressly upon the ground that under the 59th Geo. III. the chargeability contemplated by the statute was the actual asking for relief, and not the constructive chargeability (by pregnancy) under the 35th Geo. III. c. 101; upon which it may be sufficient to observe, that the defect upon which the court held the decision of the sessions wrong, does not exist here. Relief in this case was actually asked for and given before the order of removal was made. It remains to be added, that, according to the authority of *Rex* v. *Bennett*, p. 123, the bastard in this case cannot be removed with the mother to Ireland. This however is a circumstance not necessary for our decision, which is, that the removal of the pauper, which should have been to Ireland, having been made to the appellant hamlet, is wrong; and that therefore the order of removal and the order of sessions confirming the same, must be quashed."

Where the unemancipated daughter of an Irishman, not having acquired any settlement of his own in England, became pregnant, and as such chargeable: held, that this did not make her father and family removeable by a pass; but that she might be removed to the place of her birth.

Rex v. *Whitehaven*, 5 *B. & A.* 720; 1 *D. & R.* 384. Case: The pauper, Mary M'Cormick, an unmarried woman with child, and thereby chargeable, but who had not applied for or received parochial relief, was removed from Whitehaven to Workington, as the place of her birth settlement. The pauper, at the time of her removal, was above the age of twenty-one, had gained no settlement for herself, was unemancipated, and living with her father and mother, as part of their family. The father and mother were both Irish, and had gained no settlement in England. The father had not applied for or received any relief from the removing township, for himself or any part of his family. *Per Curiam.* "We are of opinion that the chargeability contemplated by the legislature in 59 Geo. III. c. 12, s. 33, was the actual asking for parish relief, and not the constructive chargeability created by 35 Geo. III. c. 101, s. 6."

The child born in England of Irish parents is removeable to the place of his birth, if his father is dead, and mother married again.

R. v. *Great Clacton*, 3 *B. & A.* 410. John Welsh, aged eight years, was removed from Ipswich to Great Clacton. Order confirmed. Case: W. Welsh, the pauper's late father, was born in Ireland, and was married in that country, 1807, to A. Clanty, who was also born there. The son was born in 1810 in the parish of Great Clacton, and the father died in Ipswich in 1817, without having gained any settlement in England. The mother subsequently married H. Fayett, a settled inhabitant of Ipswich, where she resided when the pauper became chargeable. Before the last marriage she had acquired no settlement in England. *Per Curiam.* The removal was properly made. Without determining what the case might have been, if the mother had been also removable at the time, it is clear here, that she having acquired a settlement by marriage, the pauper's case is to be considered as if he had no parent alive. Then if so, the clause in question only applies to persons who are themselves born in Ireland, which she was not.—Order confirmed.

An English-born emancipated child of Irish parents, who have no settlement, has a birth settlement, and is not removable with his parents to Ireland.

Reg. v. *Preston*, 4 *P. & D.* 509; 12 *A. & E.* 822. Ann, wife of Daniel Minto, and her children, were removed from Great Bolton to Preston. Order confirmed. Daniel Minto was born in the township of Preston, of Irish parents, who were both resident there at the time of his birth and for some years afterwards, but they subsequently removed to Manchester, where they have since dwelt. Neither of them ever had a settlement in England. He married the pauper, Ann Minto, in Manchester, in 1832, and the children removed are their legitimate children. For some time after his marriage he continued to reside in Manchester with his wife apart from his parents. He then quitted Manchester, with his wife and family, and went to reside in Great Bolton, where they lived together until about four months before this order, when he absconded, leaving his wife and family chargeable to Great Bolton. He did not reside with his parents after his marriage." Lord *Denman.* "*Rex* v. *Clacton* (*supra*) is in point, and must govern this case. Though *Rex* v. *Clacton*

(*a*) The decision in that case was, as she remained a part of the family of an Irish native." See *Reg.* v. *Preston.*
"That the child was not entitled to the benefit of her Birth Settlement, so long

was shortly argued, there is no reason for saying that it was not well considered. The circumstances of *Rex* v. *Leeds*, and *Rex*. v. *Mile End Old Town*, were very different; those cases are not opposed to *Rex* v. *Clacton*." Order confirmed.

2. *Scotch and Irish Poor.*

The wife of an Irishman, who has no settlement in England, may, if deserted by him, be removed to her maiden settlement.

Rex v. *Cottingham*, 7 *B. & C.* 615; 1 *M. & R.* 439, 469. Case: Anne O'Hara's maiden settlement was in Cottingham, and she had acquired no subsequent settlement. The settlement of her eldest child Henry, who was a bastard, was also in that parish. Patrick O'Hara, a native of Ireland, was married to Anne, on the 28th of April, 1819, and the three youngest children were the issue of such marriage; he had no settlement in England. In 1819, after the marriage, and whilst Patrick and his wife resided at Hull, Anne and her eldest son became chargeable to Hull, and were thereupon (with the consent of the husband) removed to Cottingham, the place of her maiden settlement, and the order of removal upon that occasion stated her to be the wife of Patrick, an Irishman, who had no settlement in England, and the said P. O'Hara had consented to her removal. This order was not appealed against, and the appellant parish granted relief to Anne and her said child for a short time. In 1827, P. O'Hara having left Hull, and it not being known what had become of him, the wife and family again became chargeable to the parish of the Holy Trinity, who removed them to Cottingham. *Bayley*, J. "This is a very plain case. Before the 59 Geo. III. c. 12, passed, it was clearly established by a series of authorities, from *St. John's Wapping* v. *St. Botolph's Bishopsgate*, to *Rex* v. *Harberton*, that where a woman had a settlement, married, and was deserted by her husband, who had no settlement, the maiden settlement of the wife was thereby revived, and she might be removed thither. Here the husband at the time when the order of removal was made had deserted his wife, and she did not know where he was. According to the authorities she was clearly removable to Cottingham, unless the law in this respect has been altered by the 59 Geo. III. c. 12, s. 23. The object of the legislature was to relieve parishes from the necessity of maintaining, as casual poor, persons born in Scotland or Ireland; and with that view it authorises their removal to the place of their birth, together with their wives, &c. The statute does not authorise the removal of the wife alone to the place of the birth of the husband; and the husband having quitted the parish could not be removed to Ireland, and that being so the wife could not be removed without him. This is a case, therefore, not within the act of parliament, and the law applicable to this case remains as it was before the passing of the act. In *Rex* v. *Heaton Norris*, the same construction was put upon this statute. In that case, a Chelsea pensioner, born in Scotland, left his wife and family at Heaton Norris whilst he came to do town duty, and in his absence the wife and family were removed to the wife's maiden settlement. On appeal, the sessions stated a case, in which the only question they put was, whether under the 59 Geo. III. c. 12, s. 33, the removal ought to have been to Scotland? The judges thought not. In *Rex* v. *Leeds*, (*ante*, 122,) it was only decided that where the husband (who was born in Scotland) and his wife were living together, the wife must be sent along with him to Scotland. The law applicable to this case remains the same as it was before the 59 Geo. III. c. 12; it follows, therefore, that the wife and children were clearly removable to the place of her maiden settlement. No mischief will result from this decision, for during the absence of the husband, the family will be maintained by the parish which is bound to maintain them, and upon his return that parish may pass him and his family to Ireland."

Poor persons born in Guernsey and Jersey.

Power to remove chargeable poor born in Jersey or Guernsey, at expense of complaining parish.

The 11 Geo. IV. c. 5, repeals the several provisions relating to removal of paupers, born in Guernsey and Jersey, contained in 17 Geo. II. c. 5, 59 Geo. III. c. 12, and 5 Geo. IV. c. 83, and enacts, by sect. 2, "that it shall be lawful for two justices of the peace, and they are hereby required,

Guernsey and Jersey Poor.

upon the complaint of the churchwardens and overseers of the poor of any parish, that any person born in either of the isles of Jersey or Guernsey hath become chargeable to such parish, by himself or herself, or his or her family, to cause such person to be brought before them, and to examine such person, and any other witness or witnesses, on oath, touching the place of the birth or last legal settlement of every such person, and to inquire whether he or she, or any of his or her children, hath or have gained any settlement in that part of the United Kingdom called England; and if it shall be found by such justices that the person so brought before them was born in either of the isles of Jersey or Guernsey, and hath not gained any settlement in England, and that he or she hath actually become chargeable to the complaining parish, by himself or herself, or his or her family, then such justices shall, and they are hereby empowered, by an order of removal under their hands and seals, to cause such poor person, his wife, and such of his or her children so chargeable, as shall not have gained a settlement in England, to be removed, by and at the charge and expense of the complaining parish, to the place of his or her birth."

Relief of Insane Persons.

When the settlement of an insane person cannot be ascertained, he is to be confined in an asylum at the expense of the county.

It sometimes happens that the settlement of an insane person cannot be ascertained. The legislature has therefore provided, that, in such cases, the person, by the order of justices, is to be confined in the asylum for the county in which the person is found. If there is no such asylum, then in a public hospital or place licensed for the reception of insane persons, and the expenses of removal and maintenance are to be defrayed by the county. 9 Geo. IV. c. 40, s. 41. See title "Insane," where the statute is recited at length. By s. 42, where the settlement of a person so confined has not been ascertained, two justices may inquire into it, and may make an order on the parish where the settlement is adjudged to be, for the repayment of the charges incurred within twelve months previous to the date of such order, and may make an order for the future expenses. When any poor person is deemed to be insane, one justice may require the overseers to bring such person before two justices, who upon due examination may cause him or her to be sent to the lunatic asylum, or licensed house. By 5 & 6 Vic. c. 57, s. 6, the guardians of a union have all the powers given to the overseers, and they are required to pay for the maintenance of the poor in the public asylum.

Two justices may ascertain the settlement and order repayment of expenses and an order for future expenses.

The justices who order the repayment must be the same justices who inquire into the settlement.

Reg. v. *Darton*, 12 *A. & E.* 78. Two justices of the West Riding of Yorkshire made the following order:—To wit.—Whereas Ann Challenger, of Woolley, in the said riding, being a person, insane, lunatic, and dangerous to go abroad, was, on the 29th day of August last past, removed to and confined, under an order of two justices of the peace acting in and for the West Riding, in the lunatic pauper asylum at Wakefield in the said riding, and whose legal settlement, after due inquiry made and satisfactory evidence obtained, is at Darton, in the said riding: therefore we, two of her Majesty's justices of the peace acting in and for the said riding, do hereby adjudge the legal settlement of her, the said Ann Challenger, to be in the parish, township, or place of Darton, in the said riding. And whereas it had been duly proved before us, upon oath, that the sum of 6*l.* 13*s.*, being reasonable charges, hath been incurred by the township of Woolley aforesaid, in the removing, maintenance, and care of the said Ann Challenger, the insane person, to the lunatic pauper asylum at Wakefield aforesaid: we do, therefore, order and direct the overseers of the poor of the parish, township, or place of Darton aforesaid, to which parish, township, or place, the last legal settlement of the said Ann Challenger is ascertained and adjudged to belong, to pay the sum of 6*l.* 13*s.* to the overseers of the poor of Woolley aforesaid, upon demand. Given under our hands and seals the 20th day of March, 1839. Lord *Denman*, C. J. "We would make every possible intendment in favour of an order of justices; but, where two successive acts are to be done by the same persons, and

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there is no proof that they were so done, but we are told to assume it, merely because of some reference made to the first in executing the last: that is a gap which we cannot get over by intendment. Stat. 9 *G.* 4, c. 40, s. 42, enacts that the same justices who make the order for repayment shall have inquired into the settlement, and done all things necessary to such inquiry. Now in this case it does not appear that the justices who made the order had the proper parties before them and made the requisite inquiry. The order, therefore, is bad, and it is unnecessary to say anything as to the other objections."—*Littledale*, J. "I am of the same opinion. It does not appear that the justices who inquired and those who made the order were the same persons. From the statement, I should rather imagine not. It seems as if they had been told what took place on the inquiry."—*Patteson*, J. "This is clearly a bad order under sect. 38. And sect. 42 comes into operation only where the settlement is discovered after the pauper has been sent to the asylum. The persons who are then to act in ordering repayment, are the justices who inquired into the settlement. This order does not say before whom the evidence was taken and inquiry had. All may have been done on some occasion previous to that of making the order. And I think that the magistrates cannot in any case order payment to be made to the overseers of the removing parish. If the place of settlement is known, an order for the expenses may at once be made upon the overseers of the place of settlement, under sect. 38; if unknown, it may be made upon the county treasurer. If the overseers do not choose to obtain either order, it is their own fault. The order for repayment must be made upon some one who was legally obliged to pay at first. That seems, in the present case, to have been the county treasurer."

An order for removal of a lunatic is good, though the words used are "having adjudged."

Rex v. *Maulden*, 2 *Man. & R.* 146; 8 *B. & C.* 78. This was an appeal (as stated in the notice) "against an order of settlement and maintenance" of a lunatic, and the order stated, that the justices, after due examination, *having adjudged* the legal place of settlement of A. C. to be Maulden, did require, &c. Lord *Tenterden*, C. J. "I think that on reading the order and the notice of appeal, we must assume that there was but one order, and one proceeding. The appellants by the notice of appeal treat the order in question as an order of settlement. That being so, the first question is, whether there appears on the face of the order a sufficient adjudication by the justices that the pauper's last place of settlement was in Maulden? The justices say in their order 'that they by virtue of the powers vested in them by the statute 5 Geo. IV., after due examination had on oath, *having* adjudged the legal place of settlement of the pauper to be in Maulden.' Now it is conceded, that if the justices had said 'that they *do adjudge*,' it would have been sufficient. As the appellants, however, by their notice of appeal treat the order in question as an order of settlement, we must assume that there was no other order made; and if that be so, we cannot understand the words 'having adjudged' to have been used in any other sense than that which would have belonged to the words 'do adjudge.' The next question is, is the order good altogether? It is objected to as being retrospective. The effect of a retrospective order is to bring on inhabitants who ought not to bear it a charge incurred during a former period. It is quite unnecessary that the justices should have the power of making a retrospective order; for an order for the payment of a weekly maintenance might have been made as soon as the pauper was placed in the asylum; and as there is not any necessity that the justices should have such power, and as no such power is expressly reserved to them, I am of opinion that they had it not. This order, therefore, so far as it relates to the bygone time is bad, but good as to the residue." Rule absolute for quashing the order as to that, discharged as to the residue.

Retrospective order bad: order good in part.

The 9 Geo. 4, c. 40, s. 38, does not authorize a *retrospective* order for

Rex v. *St. Nicholas, Leicester*, 4 *Nev. & Man.* 624; 3 *Ad. & E.* 79. In November, 1832, H. Beaumont was removed to the house of J. Burgess, licensed for the reception of insane persons, by an order, which stated,

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the maintenance of a lunatic. And an order stating that the justices *have* adjudged that the pauper's settlement is in a particular parish was held sufficient, though the form given in the schedule to the act was not pursued, and the order contained no words of *present adjudication.*

Form of Order of Removal.

"that the justices, having called to their assistance S. Eddowes, surgeon, and upon examination had of him the said H. Beaumont, are satisfied *that he is so far disordered in his senses that it is dangerous for him to be permitted to go abroad;* and having made inquiry into the settlement of the said H. B., *we have adjudged* that his settlement is in the parish of St. Nicholas." In November, 1834, an order was made by the same justices; which, reciting the former order, it appears to us the said justices, that the said H. Beaumont was, pursuant to order of the justices conveyed to the house of J. Burgess, and directed the overseers of St. Nicholas to pay the weekly sum of 18*s.* unto J. Burgess for the maintenance, medicine, and care of H. Beaumont, during so long a time as H. Beaumont "*hath been*" and shall be under the care of the said J. Burgess. These two orders were removed by certiorari.—Lord *Denman.* "It appears quite plain from the terms of the act, and from the judgment of Lord *Tenterden* in *Rex* v. *Maulden* (*ante*), that a *retrospective* order cannot be supported; because by the act of parliament the power is only given to make an order for *future maintenance.* But with regard to the first order, there is in my opinion no valid objection to it. It proceeds on the 44th clause, which enacts [his lordship here read sect. 44 of the 9 Geo. IV. c. 40]. The justices are authorized to proceed in the same way with regard to the persons to whom that section relates as had been directed by the 38th section. Now according to s. 38, which refers to the schedule No. 5, there are only three descriptions of persons, viz. persons who are lunatic, insane, or dangerous idiots, for whose maintenance an order is authorized to be made; and the 44th section introduces a new description, viz. a person so far *disordered in his senses,* that it is dangerous for such person to be permitted to go abroad. In such a case section 44 requires the order to be made in conformity with the form given in the schedule No. 5, which is referred to by section 38. As section 44 requires the order to be made according to the form in the schedule, it must necessarily introduce into the meaning of the words of the form that new description of persons. The order in this case does not say, in the precise language of the form in schedule 5, that the party is a lunatic, insane, or dangerous idiot. Probably it would have been more correct to have introduced that form of words. The form, however, is sufficiently complied with when in every other respect the order follows the language of the schedule." *Littledale,* J. "I am entirely of the same opinion. By section 44, (which relates to persons not chargeable, whereas section 38 relates to poor persons chargeable to any parish), this person is brought within the jurisdiction of the justices; for it appears that he was a person wandering about and at large, and deemed to be insane, and not chargeable to any parish, and that he was brought before the justices, and was found to be so far disordered in his senses that it was dangerous for him to be permitted to go abroad. The justices are also to inquire as to the settlement of the party. This they have done. By section 44, therefore, the justices have jurisdiction, and they are to exercise that jurisdiction in the manner therein pointed out. An objection is made to the form of the order, but it exactly pursues the form given in schedule 5, except where that form is adapted to a person who is lunatic, insane, or an idiot."—*Patteson,* J. "I am of opinion that the rule must be made absolute so far as regards quashing the *prospective* part of the second order. The first order appears to me to be good. The objection to the first order, as to the adjudication of settlement, is answered by Lord *Tenterden* in *Rex* v. *Maulden* (*ante,* 129). We must construe the words 'have adjudged' as if they were 'do adjudge.' With regard to the objection as to the *form* of the order, we must look at section 38 coupled with section 44. It is evidently intended that when a party is deemed insane, wandering abroad, the justices should proceed in the manner pointed out in section 38, and that the form of order should be such as would apply to the circumstances of the case. In the form given in the act, the words 'as the case may be' are inserted after the words 'lunatic, insane, or idiot.' I do not mean to say that if the order in this case had used the word 'insane,' it would not have been good. Look-

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ing at section 44, the legislature seem to have used the words 'a person being so far disordered in his senses that it is dangerous for him to go abroad' as a definition of the insanity; for section 44, after directing an examination whether a person is so far disordered in his senses, that it is dangerous for him to be permitted to go at large, goes on to say, that the justices shall make inquiry into the settlement of such *insane person*. As to the *retrospective* part of the second order, *Rex* v. *Maulden* (*ante*, 867,) is directly in point, and this cannot be distinguished from that case." *Coleridge*, J. "I am of the same opinion. Two objections have been made to the order of November, 1832; of which the first is, that it does not follow the form in the schedule in the act. If the words of section 44 are examined, it will be found that there is nothing there said which makes that necessary. The act only directs that the parties shall proceed in the same manner before directed in the case of a person chargeable to any parish. Then when section 38 (which applies to persons chargeable) is looked at, the only direction there is, that *it shall be lawful* for the justices to make an order according to the form in the schedule, not that they are *always* to make use of that form, but they are to frame the order *according* to that form. It never can be contended that the very words of the form are to be used. The form states that the person is chargeable to the parish, without any restrictions with reference to the 44th section. It never could be the intention of the legislature, that a form untrue in fact should be used. The form in the schedule contemplates persons lunatic and insane, and idiots. A person not fit to walk abroad may be insane, but the 44th section, in my opinion, applies to a different class of persons from those described in section 38. The first objection, therefore, cannot be sustained. The other objection is, that there is no adjudication of the settlement. The first order is not directed to the parish to which the person is *to be removed*, but to the officers of the parish where the party is *found*. The words 'have adjudged' may be construed to mean 'do adjudge;' but surely if these words could not bear this meaning, yet as the section does not direct in what manner, or when, or where, an adjudication of the settlement is to be made, it would be quite sufficient for the justices to say 'we *have* adjudged' that the settlement is in a particular place. I quite agree that the second order is bad, in so far as it is retrospective." Second order quashed so far as relates to payments in respect of a by-gone period.

What notice of appeal is insufficient to raise the question whether justices have jurisdiction to make an order directing repayment of the expenses of maintaining a lunatic to the treasurer of the county.

If a previous order ascertaining the settlement had been quashed on appeal for want of form, other justices have jurisdiction to make a subsequent order.

Justices of the county of G. have jurisdiction to make the order on the overseers of P. in the county of H., though the latter county does not jointly maintain the lunatic asylum.

Reg. v. *Pixley*, 7 *Jurist*, 597. The facts of this case will appear in the judgment of the court. The grounds of appeal were that the order had not been made in conformity with the 9 Geo. 4, c. 40; that it had been made by two justices for the county of G. on the overseers of P. in the county of H.; that the settlement of the pauper had been previously ascertained by two other justices of the county of G.—*Williams*, J. "This was a case stated for our opinion by the sessions of the county of Gloucester; it thereby appeared that two justices of the county, Cooper and Baker, made an order bearing date the 28th October, 1841, under the stat. 9 Geo. 4, c. 40, respecting a pauper lunatic, and directed the officers of the appellant parish to pay a certain sum to the treasurer of the said county of Gloucester, for the expense of maintaining the said pauper in the lunatic asylum for the county, and which said order was upon appeal confirmed. The said order is set out at length in the case, and it is stated by way of recital therein, that the said pauper lunatic had been brought before two other justices of the said county, Crawley and Wintle, as chargeable to the hamlet of Wotton in the county of Gloucester, on the 4th May, 1840; that the said last-mentioned justices having called in medical advice, were satisfied the pauper was insane and a lunatic; that the said last-mentioned justices made inquiry into the settlement of the said pauper, but that the same could not be ascertained, and that thereupon, by their warrant or order, the overseers of the said hamlet of Wotton were directed to convey the said pauper to the lunatic asylum for the said county of Gloucester; that it appeared to them, the first-mentioned justices, that the said pauper was still confined in the said asylum, and that the sum of 23*l.* had been

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An order on the overseers of the appellant parish for the repayment of the expenses of removal and for maintenance of a lunatic pauper to the overseers of the removing parish is bad.

paid out of the rates by the treasurer of the said county of Gloucester; and that it was duly proved before them the first-named justices, Cooper and Baker, that the pauper's settlement was in the appellant parish of Pixley in the county of Hereford; it was thereupon ordered that the officers of the said appellant parish of Pixley should repay to the treasurer of the county of Gloucester the said sum of 23*l.*, together with a further weekly sum in the said order specified. From this statement on the face of the order in question, it would appear that the justices secondly mentioned had made one order only on the subject. By the statement of the case, however, it appeared that those justices had made two orders: one apparently, for it is not stated directly, in the form in the schedule No. (5), annexed to the said act, and dated 4th May, 1840; and another dated April 19, 1841, by which latter the settlement of the said pauper had been ascertained and adjudged to be in the same place, viz. the appellant parish; this latter order containing the adjudication of the settlement, was, it seems, quashed for want of form, but not upon the merits, at the October sessions, 1841; and thereupon the present order of the 28th October following was made. And the question now arises upon the competency of the first-mentioned justices, Cooper and Baker, to make that order; and especially after the statement in the case in opposition to the recital therein above noticed, that two other justices had previously inquired into and by their order adjudicated upon the settlement of the said pauper lunatic, and found him to be as we have already seen in the appellant parish of Pixley. The first objection to the jurisdiction of the justices arises from the manner in which the repayment of the expenses of the lunatic in the asylum is directed to be made; namely, to the treasurer of the county. The first section regulating the repayment of the expenses incurred by the lunatic is the 38th: that directs it to be made by the officers of the place in which the lunatic is adjudged to be settled to the treasurer or other proper officer of the lunatic asylum. The treasurer of the county is not therein named. The next section to which reference was made, is the 42nd; and there is no person therein named to whom the repayment of the reasonable charges of the removal or maintenance of the lunatic is to be made. By the 41st section, relating to the case in which the settlement cannot be ascertained, in such case the treasurer of the county is authorised to pay the expenses out of the county-rate; but that is, such expenses as he shall be authorised to defray by order of two justices to him directed for that purpose. Supposing therefore that, although no person is named in the 42nd section, under which this order purports to be made, to whom repayment is to be made, the treasurer of the county having been named in the 41st, he must therefore be supposed to be the person intended in the 42nd; yet as no order of two justices directed to him for that purpose existed in this case, third persons, such as the appellants here, seem not to be barred from appealing against it. But then comes the question whether the present objection is open to the appellants on their notice of appeal. We think it is not. By sect. 60, it appears 'the nature and matter' of appeal must be stated; and the only head under which this can come, if at all, is No. 3 in the notice of appeal; but that is too general and is not sufficient, especially where the notice does, as here, specify other particulars. If the notice of appeal had stated this as an objection, the order to the treasurer might have been produced. For these reasons this objection is not sustainable. It is further objected, that the language of the 42nd section under which any argument is attempted to be made to sustain the present order is in the following terms:—[The learned judge read it]. The jurisdiction therefore of two justices is made to depend upon the settlement of the lunatic not having been previously ascertained. And it is said in this instance, that there is no jurisdiction, as there has been an order of two justices on the 19th April, 1841, ascertaining the settlement; and such is true in fact. But the case states, that that order had been quashed upon appeal for want of form, and not upon the merits. The order no doubt was intended to point out the distinction as to the consequence of it, but there is no dis-

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tinction as to the order itself, whether it be quashed for want of form or on the merits. It would make a difference as to the future litigation of some points, but the order is equally gone in either case. It must be taken, therefore, that, as there was no previous adjudication of settlement, no objection exists as to the jurisdiction to make the order on that ground. The fourth head of appeal arises on the objection to the order being made by two justices of Gloucestershire upon the overseers of a parish in Herefordshire. Of course the jurisdiction must be consistent with the language of the 42nd section; and that is large enough to extend to it. But the 43rd section raises a difficulty by specially authorising two justices of one county to make an order on the overseers of a parish in another county where the two counties have a common lunatic asylum. It may be true that if such an effect be given to the 42nd section as would make no restriction necessary, the 43rd section would become unnecessary. That section may have been introduced into the act for abundant and unnecessary caution; but we do not think we should be justified in restraining the general words of the 42nd section; and if so, the justices had jurisdiction. Upon the whole, we think the order of sessions must be sustained." —*Order confirmed.*

An order on the removing parish is bad.

Reg. v. *St. Andrew's, Worcester*, 7 *Jurist*, 598. This was an order of removal and maintenance, whereby the settlement of J. Hughes, a lunatic, confined in a lunatic asylum at Droitwich, was adjudged to be in St. Andrew's, Worcester, and whereby the overseers of St. Andrew's were ordered to repay to the overseers of St. Peter's, a certain sum for the removal and past maintenance, &c. of the pauper, and to pay another sum for future maintenance.—*Williams*, J., delivered the judgment of the court: "The question in this case also depends on the stat. 9 Geo. 4, c. 50. It is not needful to enter into all the questions which were fairly raised by the notice of grounds of appeal, because we think that one of them is fatal. In the case just disposed of, we had occasion to advert to the different sections of the stat. 9 Geo. 4, c. 40, and in none of them is there any provision enabling the justices to reimburse the parish officers. The jurisdiction of the justices over this subject depends entirely upon the statute, and therefore their order, not being made in compliance with its provisions, cannot be supported."—*Order quashed.*

Lunatic returns.

A return of lunatics must be made out by the clerk of the guardians in the form prescribed by 5 & 6 Vic. c. 57. (See Appendix.)

The appeal.

The appeal against a settlement of insane paupers must be made under the 54 sec. of 9 Geo. IV. *Reg.* v. *Justices of Kent*, 2 *G. & D.* *Reg.* v. *Holdsworth*, 1 *Q. B.* 221, *post*, "*Notice of Appeal.*"

Reg. v. *St. Lawrence, Ludlow*, 3 *P. & D.* 155. An appeal lies to borough quarter sessions against an order of borough justices, under 9 Geo. IV. c. 40, s. 48, for paying the expenses of removing a pauper to a lunatic asylum, although the charter, granted to the borough under 5 & 6 Will. IV. c. 76, confers criminal jurisdiction only.

CHAPTER II.

OF THE POOR RATE (*a*).

1. *The Statutes,*
2. *Who are to make a Poor Rate,*
3. *The Purposes for which made,*
4. *Time for which to be made,*
5. *On whom to be made,*
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        - *In respect of what Property Rateable,*
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    - *Occupiers,*
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            - *Corporate Bodies,*
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        - *Beneficial Occupation,*
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    - *Power to rate Owners by Statute,*
6. *In respect of what Property the Occupier is rateable,*
    - *Lands and Houses,*
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    - *Right of Way,*
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    - *Tithes,*
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        - *Coal Mines,*
        - *Other Mines not,*
        - *Quarries,*
    - *Saleable Underwoods,*
7. *Exemption from Rates,*
8. *Property rateable under Local Acts,*

(*a*) As to the *Labour Rate Act*, see 2 & 3 Will. IV. c. 96; it will be found that the *Poor Law Amendment Act*, 4 & 5 Will. IV. c. 76, does not affect the Poor Rate, Parish Paving and Lighting Act, 11 Geo. IV. c. 27, s. 25.

9. *Estimate of Value for the purposes of Rate,*
10. *Where Property to be rated,*
11. *Form of Rate, Allowance and Publication thereof,*
12. *Inspection of Rate,*
13. *Relief from by Justices in case of Inability to pay,*
14. *Appeals against Rate, and Remedies under Local Acts,*
15. *Enforcing Payment of Rate,*
Remedies if Distress illegal,
16. *Taxing in Aid.*

I. Origin and Progress of Enactments respecting this Parochial Fund.

1. *Origin and Progress of Enactments respecting this Parochial Fund.*

The Revenue or Income out of which the *Poor* are to be relieved is either *general* or *ordinary*, arising from *general rates*, usually made twice or oftener in every year; or, *extraordinary* and *casual*, as in the instances of penalties given for numerous offences, half to be paid to the overseers for the use of the poor of the parish. Of late such penalties have in general been made payable in aid of the *County Rate*.

The ancient statutes prescribing compulsory maintenance.

It is curious to a contemplative person to investigate by what steps and degrees the compulsory maintenance became established in this kingdom. By a statute made in the 12 Ric. II., viz. c. 7, the poor were restrained from wandering abroad, and were required to abide in the towns where they were born, or in other places within the *hundred;* within which districts they were allowed to beg.—By 22 Hen. VIII. c. 12, the justices were to distribute themselves into several *divisions*, within which divisions respectively they might license persons to beg.—By 27 Hen. VIII. c. 25, the several *hundreds, towns corporate, parishes*, or *hamlets*, were required to *sustain* the poor with such charitable voluntary alms, as that none of them might of necessity be compelled to go openly in begging, on pain that every person making default should forfeit 20*s*. a month; and the churchwardens or other substantial inhabitants were to make collections for them with boxes on *Sundays*, and otherwise at their discretions; and the minister was to take all opportunities to exhort and stir up the people to be liberal and bountiful. By 1 Ed. VI. c. 3, houses were to be provided for them by the devotion of good people, and *materials* to set them on *work;* and the minister, after the *Gospel* every *Sunday*, was specially to exhort the parishioners to a liberal contribution.—By 5 & 6 Ed. VI. c. 2, the collectors of the poor on a certain *Sunday* in every year, immediately after divine service, *were to take down* in writing what every person was *willing* to give weekly for the ensuing year, and if any should be obstinate and refuse to give, the minister was gently to exhort him; if he still refused, the minister was to certify such refusal to the bishop of the diocese, and the bishop was to send for him to induce and persuade him by charitable ways and means, and so according to his discretion to take order for the reformation thereof.—By 5 Eliz. c. 3, if he stood out against the bishop's exhortation, the bishop was to certify the same to the justices in sessions, and bind him over to appear there; and the justices at the said sessions were again gently to move and persuade him, and finally, if he would not be persuaded, then they were to assess him what they thought reasonable towards the relief of the poor, and in case of refusal were to commit him till paid.—By 14 Eliz. c. 5, power was given to the justices to lay a general assessment, and this hath continued ever since, for the 43 Eliz. c. 2, only re-enacts former provisions, with very little alteration.

Advances of money, &c. under 57 G. 3, c. 34.

By 57 Geo. III. c. 34, intituled, "An Act to authorize the Issue of Exchequer Bills, and the Advance of Money out of the Consolidated Fund to a limited amount, for the carrying on of Public Works and Fisheries in

1. *Origin and Progress of Poor Rate.*

the United Kingdom, and Employment of the Poor of Great Britain in manner therein mentioned." (*a*) See also Appendix.

Advance not to be made to parishes, unless application made with consent of majority in number, and three-fourths in value, of persons paying poor-rates; or where there is a select vestry, &c. then with consent of four-fifths of that body.

Sect. 29. "It is enacted that no such exchequer bills shall be advanced in aid of any parish in Great Britain unless the application for such advance shall be made with the consent of *not less than the majority in number*, and of *three fourth parts in value*, such value to be calculated and ascertained from the last rate made for the relief of the poor in such parish, of the persons assessed to and paying such rates; or where the poor rates of any parish shall be under the care and management of any select vestry or commissioners, governors of the poor, trustees, or other select body, then with the consent of not *less than four-fifths* of such select body, by whatever name the same may be called; such consent to be certified by some justice of the peace or magistrate acting as such in each parish, and one or more of the overseers of the poor of the parish or place in respect of which the application shall be made."

Principal sums of exchequer bills with interest to be repaid by instalments.

Sect. 35 enacts, "that the principal sums contained in the exchequer bills, which shall be advanced or lent by the said commissioners for the execution of this act in Great Britain, under the authority of this act, shall be repaid, without deduction or abatement, together with interest for the same, by instalments; that is to say, the principal sum in each and every exchequer bill shall be repaid to the cashier or cashiers of the Bank of England at their office, together with interest for the same at and after the rate of five pounds *per centum per annum*, by the space of fifteen days at least before the time when each such exchequer bill shall become payable according to the provisions of this act, such interest to be computed on the said principal sum from the date of such exchequer bill to the time of the payment thereof."

Regulating advances to parishes.

By 53 Geo. III. c. 124, s. 5, it is enacted, "that no advance shall be made under the provisions of 57 Geo. III. c. 34, for the use of any parish, township, or place in Great Britain, in which the amount of the money actually expended for the relief of the poor, in the year ending at Easter, 1817, or ending at the usual quarter-day immediately preceding Easter, 1817, shall not exceed by three-fourths the average annual amount of the money expended for the relief of the poor for the three years preceding Easter, 1816, or shall not exceed by one-half the amount so expended for the year ending Easter, 1816, anything in the said act of 57 Geo. III. c. 34, to the contrary in anywise notwithstanding."

Repayment of exchequer bills.

Sect. 6 enacts, "that the principal sums contained in the exchequer bills which shall be advanced or lent by the said commissioners for the execution of this act in Great Britain, under the authority of the recited act (57 Geo. III. c. 34), the payment whereof shall not be otherwise provided for pursuant to the said recited act, shall be repaid without deduction or abatement, together with interest for the same at and after the rate of five pounds *per centum per annum*, to the cashier or cashiers of the Bank of England, at their office, by the space of fifteen days at least before the time when each such exchequer bill shall become payable according to the provisions of this act; such interest to be computed on the said principal sum from the date of such exchequer bill to the time of payment thereof."

Commissioners under recited acts, when directed by the treasury, to advance money towards carrying into execution any act for completing works of general importance and utility.

By 1 Geo. IV. c. 60, and 3 Geo. IV. c. 86, the 57 Geo. III. c. 34, and c. 124, are continued and amended; and by 5 Geo. IV. c. 77, after reciting the above acts, it is enacted, "that it shall be lawful for the commissioners for the time being for the execution of 57 Geo. III. c. 34, and of the several other acts hereinbefore recited, whenever the said commissioners shall be directed so to do by any warrant under the hands of any three or more of the said commissioners of the treasury, and the said commissioners are

(*a*) The overseer cannot *borrow money* for the general relief of the poor, but with a view to their better employment, the providing a workhouse for them, and encouraging emigration. The legislature has authorized the loan by various statutes. See sect. 62, 63, of 4 & 5 Will. IV. c. 76, Appendix.

hereby required to advance and lend any sum or sums of money toward the carrying into execution any act of parliament for making, completing, or maintaining any works of general public importance and utility, which shall be carried on under the direction of any commissioners appointed by authority of parliament, on such terms and conditions as shall from time to time be directed by the said commissioners of the treasury, or any three or more of them, anything in the said recited acts, or any of them, contained to the contrary in anywise notwithstanding: provided always, that the rate of interest payable on such loan or advance shall not be less than the current rate of interest which shall be payable on exchequer bills at the time of making such loan or advance."

1. *Origin and Progress of Poor Rate.*

Interest not to be less than the current rate payable on exchequer bills.

The 43 Eliz. c. 2, (*a*) s. 1, after enacting that certain persons shall be the churchwardens and overseers of the poor of every parish, it enacts, that they, or the greater part of them, shall take order from time to time, by and with the consent of two or more justices of the peace in the same county, whereof one to be of the *quorum*, dwelling in or near the same parish or division where the same parish doth lie, to "raise weekly or otherwise, by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit, a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff to set the poor on work; and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor, and not able to work, and also for the putting out of such children to be apprentices, to be gathered out of the same parish, according to the ability of the same parish, and to do and execute all other things as well for the disposing of the said stock, as otherwise concerning the premises, as to them shall seem convenient."

43 Eliz. c. 2, as to making a rate.

Who to be taxed towards relief of poor, and a convenient stock shall be provided to set the poor on work, &c.

The overseers of townships and vills have the like duty and power, under 13 & 14 Car. II. c. 12, s. 21; and the 43 Eliz. c. 2, s. 8, 9, provides for towns corporate and parishes extending into two counties, &c.

II. Who are to make the Rate.

The Churchwardens and Overseers shall, &c.] It is said by C. J. *Holt*, that the overseers, with the confirmation of the justices, may order a sum of money to be levied for the relief of the poor, without the concurrence of the parish. (*Tawney's case*, 2 *Ld. Raym.* 1009.) The churchwardens and overseers are required by 43 Eliz. c. 2, s. 1, (*supra*,) to make the rate (*Tawney's case*, 2 *Ld. Raym.* 1009; 2 *Salk.* 531); and they may be indicted if they neglect to make such rate. And a *mandamus* will lie to compel overseers to make a rate (*Rex* v. *Barnstaple*, 1 *Barnard.* 137; 1 *Bott*, 85, *Lidleston* v. *Exeter*, 1 *Bott*, 80); and the rule for a *mandamus* to make a poor rate is peremptory in the first instance, for otherwise the poor might starve (*Rex* v. *Fisher*, *Sayer*, 160; *R.* v. *Edgbaston*, 1 *N. & P.* 20): but not to make an *equal* rate, (*R.* v. *Canterbury*, 4 *Burr.* 2290, 1 *Bl.* 667,) or to insert or omit any person or property, because it is to be presumed the overseers will do justice, and if they do not, there is a proper remedy by appeal to the sessions. (*Rex* v. *Barnstaple*, 1 *Barnard.* 137; 1 *Bott*, 85, 2 *Stra.* 1259.) And the overseers cannot charge for the

2. *Overseers are to make the rate.* (*b*.)

Concurrence of parish not necessary.

Mandamus will lie to compel the making a rate.

But not the making of an *equal* rate.

(*a*) The statute of Elizabeth was passed to enforce (what are called) duties of imperfect obligation. For it was a duty before that statute was made to relieve the poor and necessitous. And the provisions of that act were adapted to the enforcing of those duties in the only way in which they could be enforced, namely, by raising a fund from persons who are deemed competent to pay it. *Per* Lord *Kenyon*, C. J., 4 *T. R.* 775.

(*b*) The overseers were required to make rates even where guardians were appointed under the 22 Geo. III. c. 83. Gilbert's Act; and so now under the 4 & 5 Will. 4, c. 76, they must still make rates; and by a recent statute are liable to severe penalties if they neglect to pay.

2. *Who are to make the Rate.*

One overseer may by *mandamus*, compel another to make a rate.

employment of a person to make a rate, although such employment was authorized by a parish vestry. (*Rex* v. *Gwyer*, p. 139.)

Where one of two overseers refused to concur in making a rate, the other may apply for a mandamus; the 1 W. 4. c. 21, s. 6, makes no alteration as to the parties applying for the writ only with regard to costs. *Rex* v. *Gadsby*, 1 *N. & P.* 572.

3. For what Purposes. (*a*)

3. *For what purposes.*

There are many purposes for which a poor rate may be made in addition to those mentioned in 43 Eliz. c. 2. (*a*) That statute provides for setting to work the children of those poor whose parents are not able to keep and maintain them: also, all persons, married and unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by; and for the putting out poor children apprentices.

It may now be *professedly* made for the express purpose of building a workhouse, employing the poor, paying officers, and repaying money borrowed for the purposes of the act, or for the emigration of paupers. See 4 & 5 Will. IV. c. 76.

The 59 Geo. III. c. 12, gave power to build poorhouses; aud, of course, impliedly gave power to defray the expense.

Relief and removal of paupers and vagrants.

The 18 Geo. III. c. 19, relates to re-payment to constables of the money expended by them in the relief and removal of poor persons, and of vagrants.

Expenses of litigating questions of settlement.

Rex v. *Essex*, 4 *T. R.* 595. It was said, *per Ashhurst*, J., to have been the constant practice to allow the expenses of litigating the questions of settlement consequent upon the removal of paupers, to be defrayed out of the parish stock; the legality of which had never been disputed. (*b*)

After overseers are out of office, a rate cannot be made to reimburse money laid out by them whilst in office; but an overseer may make a new rate for the relief of the poor, and out of that retain to pay himself.

Tawney's case, 2 *Salk.* 531; 2 *Ld. Raym.* 1009. Tawney, being overseer of the poor, laid out his money in the relief of the poor, and was turned out of his office by the justices before the end of the year; by which means he lost the opportunity of making a rate to reimburse himself. Upon this he applied for a *mandamus* to the overseers to make a rate to reimburse him.—By *Holt*, C. J. "We cannot order the parish or overseers by a *mandamus* to make a rate to reimburse an overseer, but only to raise money for the relief of the poor; nor can they make a rate otherwise. The act of parliament is expressly so, and must be pursued. An overseer is not bound to lay out money till he have it; if he do, he must make a new rate for the relief of the poor, and out of that he may retain to pay himself. *Tawney* should have done so; he trusted where he need not have done it. He hath not pursued the means the statute gave him, and we cannot relieve him."—And by the whole court. The *mandamus* lies not.

An overseer for several successive years, cannot, in the last year, make a rate to reimburse himself for the preceding years (*c*).

Rex v. *Goodcheap*, 6 *T. R.* 159. A person appointed an overseer for four successive years, did not make any rate in the three first years to reimburse himself what he expended in those three years, he cannot in the fourth year make a rate for that purpose; and Lord *Kenyon* said, "It was impossible to raise any doubt upon the question. Overseers ought not to

(*a*) As to reimbursing overseers see more particularly 22 Geo. III. c. 83, s. 20; 42 Geo. III. c. 74; 43 Geo. III. c. 110, s. 1, 2; 59 Geo. III. c. 12, ss. 8 to 16; 36 Geo. III. c. 10, s. 1; and 52 Geo. III. c. 73. See further, *post*, as to *Overseers' Accounts*.

(*b*) *Quere.* Whether the expenses of a valuation of the property of a parish which has been directed by a majority of the vestry, can be legally defrayed out of the poor rate? (See 1 *Nol. P. L.* 67, note 3.)

Semble, that if a select vestry so order under 59 Geo. III. c. 12, the expense may be defrayed out of poor rate. (*Rex* v. *Micklefield*, 1 *Bott, P. L.* 113.) A church rate to reimburse churchwarden is bad. (1 *Burn, J.*, tit. "Churchwardens.") So as to a county rate. (1 *Burn, J.*, tit. "County Rate," and see *post*, 106, note (*a*).)

(*c*) It is a general principle that a rate cannot be retrospective. It was so decided as to church rates. (*Rex* v. *Dursley*, 5 A. & E. 10.) As to a borough rate. (*Wood* v. *Reed*, 2 M. & W. 777; see also, *Rex* v. *Maulden*, *ante*, 129.)

include in their accounts charges for several years, but all the items of the accounts should be confined to that year when the accounts are directed by the act to be passed."

3. *For what Purposes.*

But now by 41 Geo. III. U. K. c. 23, s. 9, after reciting that "whereas it may have happened that the churchwardens and overseers of the poor have not been able to collect a sum sufficient for the relief and maintenance of the poor, but they or the guardians of the poor have advanced and expended considerable sums for that purpose;" it is enacted "that the churchwardens and overseers, or any of them, out of any money they shall collect in pursuance of any rate for the relief of the poor, may reimburse the preceding churchwardens and overseers or guardians such sums as *they* or any of them *have* heretofore *advanced* or expended for the relief or maintenance of the poor of such place, *during the time that no rate or assessment for the relief thereof has been made, or during the time that any appeal has been depending which affected the whole of such rate or assessment*, or upon hearing of which the whole might be quashed; and, in default of payment of such money so advanced and expended within fourteen days next after demand in writing, such preceding churchwardens and overseers or guardians, or any of them, may apply to the next general quarter or quarter sessions, giving due notice in writing of such application to the then churchwardens and overseers, or any two of them; and such court shall examine the parties and witnesses upon oath, and shall make an order upon the then churchwardens and overseers, or any of them, out of the money collected or to be collected by them, or any of them, in pursuance of any rate made for the relief of the poor, to pay such sum to the preceding churchwardens and overseers or guardians, or any of them, as the said court shall think fit: and such sums so ordered to be paid may be levied by distress, and by all such other ways and means as the poor rate may."

But now succeeding churchwardens and overseers are empowered to repay money expended by preceding churchwardens, &c. for the maintenance of the poor, while there was no rate; or during an appeal, and in default of such repayment, the quarter sessions, on application being to them, shall make an order for payment.

Notice.

Order.

Distress, &c.

Rex v. *Wavell, Dougl.* 116. The rate was removed by *certiorari*, and the title was an assessment on the occupiers of lands and houses in the parish of Effingham, for the necessary relief of the poor, and *towards payment of money borrowed for building and repairing the workhouse*,—*Willes*, J. "Can we reject, as a surplusage, what is a material part of the title of the rate? If we cannot, is a rate good to repay money borrowed? *Tawney's case*, (*ante*, p. 105,) is in point. And as to an appeal against the overseer's accounts, is a parishioner obliged to pay money, and be turned round in that manner to get it back if levied without authority? The rate cannot be supported."—*Buller*, J. "This rate imports to be made for two purposes, and we are desired to consider it as only made for one. I conceive that a rate cannot be made for money borrowed, even though within the year. *Tawney's case* goes that length; for it is not confined to the *mandamus*." The rule for quashing was made absolute. (*a*) (See *Rex* v. *Mayor of Gloucester*, 5 *T. R.* 346.)

Rate cannot be made to repay money borrowed, though for building or repairing workhouses.

Title of rate material.

In *Rex* v. *Glyde*, 2 *M. & Sel.* 323, Lord *Ellenborough*, C. J., said, "We have no doubt on the face of the order, that the overseer has no title to a salary for any meritorious services, or for any services at all."

Nor can he be remunerated even by resolutions of vestry for making a poor rate, or making divisions of the same or copies for the collectors, or for payments to an accountant, or for making lists of defaulters, or for collecting the rates, though he employed another to do so under the authority of a vestry resolution. *Rex* v. *Gwyer*, 4 *Nev. & M.* 158; 2 *Adol. & Ell.* 216.

Overseers not entitled to remuneration for services, although ordered by a vestry.

But if a rate is merely intended for past purposes, but that does not appear on the face of the rate, the objection must be made to the accounts and not to the rate. (*Rex* v. *Sillifant*, 4 A. & E. 355.)

(*a*) This principle also prevails as to church rates, although the money to be reimbursed may have been laid out under an order of vestry. (See *Lanchester* v. *Thompson, et al.* 5 *Madd.* 64; *Lanchester* v. *Tricker*, 8 *J. B. Moore*, 20; 1 *Bing.* 201, S. C.; *Lanchester* v. *Frewer*, 2 *J. B. Moore*, 688; 2 *Bing.* 361, S. C.)

3. *For what Purposes.*

If the title is legal, the intention to misapply the money is no ground for quashing rate.

Expenses of indictment for assault on constable, not allowable out of poor-rate.

But where a local statute gave the overseers power to make a rate (*inter alia*) for the reasonable expenses of the overseers in the execution of their duty, a rate, purporting to be a rate "for raising the sum of 80*l.* as necessary to defray the reasonable expenses which they now, or hereafter may pay," is legal on the face of it, and cannot be quashed; and if the 80*l.* is improperly expended, then the appeal must be against the overseer's accounts. *Rex* v. *Mayor of Gloucester*, 5 *T. R.* 346.

Rex v. *Bird*, 2 *B. & A.* 522. The expenses, which are to be allowed a constable out of the parish rates, are those necessarily incurred by him on behalf of the parish, as relieving or conveying vagrants, &c., within 18 Geo. III. c. 19, s. 4; but the expenses of indicting a party for assaulting him in the execution of his duty, are not expenses so incurred, although the prosecution was directed by a magistrate. (See also *Rex* v. *Seville*, 5 *B &. Ald.* 180; *ante*, Vol. I. title Constable, s. 7.)

It has sometimes been the practice of coroners to require the *overseers* of the poor, in that character, and out of the poor rates, to prosecute parties charged with murder or manslaughter; but there is no legal ground on which that power has been assumed.

As to the appointment of an *assistant* overseer with a salary, and other paid officers, the subject has been already considered.

The enactments relative to labour rates in 2 & 3 Will. IV. c. 96, and to lighting and watching rates, 11 Geo. IV. c. 27, s. 25, will be elsewhere considered.

4. For what Time a Poor Rate may be made.

4. *For what time a poor rate may be made.*

Rate may be prospective.

"*Raise weekly or otherwise.*" *Durrant* v. *Boyes*, 6 *T. R.* 580. A poor rate may be made prospectively; and if it were made for six months, it would not (it seems) be bad on that account. Lord *Kenyon*, C. J., said, "Every person who is conversant in matters of this kind, knows the impossibility of foreseeing and providing for every expense that may arise; and therefore a rate may be made prospectively, not indeed wantonly, but such as is adapted to the probable exigencies of the parish."

A standing rate cannot be made by the justices.

Rex v. *Audley*, 2 *Salk.* 526; 1 *Bott*, 110, 272. A rate was agreed on in 1665, by the inhabitants of *Audley*, which had been followed ever since till the last year, when a new rate was made. On appeal to the sessions, the new rate was quashed, and the old one ordered to stand. By *Holt*, C. J., "The old rate, however just at first, may be unequal now; and therefore the justices cannot make a standing rate."

As to the *amount* of the rate, that in general must depend on the necessities of the poor; but by some local acts it was the practice to limit it to a specific sum. (*a*)

Concurrent rates are bad.

Reg. v. *Fordham*, 3 *P. & D.* 96; 11 *A. & E.* 73. The case stated that a rate was made on the 3rd July, 1838, duly published and allowed, and partially collected. Several persons refused to pay, and were summoned before the magistrates, and warrants of distress granted, but not acted upon, in consequence of the solicitor for the overseers considering the rate to be void for defects on the face of it. On this account they made another rate on the 21st August, 1838. An appeal was entered against both rates, and upon a case granted on this and other points (see *post*), Lord *Denman* said, "The first rate was in existence when the second was made. It was argued, but not I think with confidence, that concurrent rates might on general principles be allowed. I think not: a rate-payer cannot be called on to pay a second quota for the same period."—The other Judges concurred.

(*a*) A joint rate for various purposes in respect of some of which property included therein was not rateable, is altogether bad; and *semble*, a rate is bad that is antedated and made for a period antecedent to the date. (*Douglas* v. *Chalk*, 2 D. C. 76, M. C.)

5. On whom the Rate to be made.

5. *On whom the Rate to be made.*

By the 43 Eliz. c. 2, the rate is directed to be made "*By taxation* (*a*) *of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods in the said parish.*"

This was the only general law on this subject, prior to the 3 & 4 Vic. c. 29. It was indeed suggested that the parochial assessment act had altered the law of rating inhabitants, inasmuch as it prescribed certain forms not adapted to the assessment of inhabitants; but in *Reg.* v. *Lumsdaine*, 2 *P. & D.* 219; 10 *A. & E.* 157; and *Hodges, Rep.*, it was decided that the law was not altered in that respect. This was an appeal against a rate, for the poor of Wimborne Minster. Rate confirmed. Case:—The rate was in the proper form. No stock in trade was rated. There was considerable stock in trade, yielding profit, in the parish, at the time when the rate was made. The parish contains 12,000 acres, rateable to the relief of the poor. In 1833 stock in trade not having been included in a poor-rate, made on the 3rd day of May, an appeal was entered against it on that ground, when the rate was quashed, and a new rate was made on the 28th February, 1834, in which stock in trade was assessed. From that time stock in trade continued to be regularly rated down to June, 1835. Stock in trade had not been rated therein from the year 1796 until the rate of February, 1834, and there was no evidence of stock in trade having been rated in the parish previously to 1796. Stock in trade has not been assessed in the said parish since the month of June, 1835.—The question for the consideration of this court is, whether stock in trade, yielding profit in the said parish, ought or ought not to have been assessed in the said rate. After the argument against such rate, and without calling on the counsel on the other side, Lord *Denman*, C. J., said, "It is exceedingly probable that it was the intention of the legislature to repeal, to some extent, the statute of the 43 Elizabeth; but no such intention is carried into effect, and the court expresses this opinion at the earliest possible time, in order that another statute may be passed, if any such alteration is intended. All the observations which have been addressed to us, fall short of maintaining the proposition contended for. The object of the statute is to provide for an uniform mode of rating for the relief of the poor; but nothing is said about introducing a new principle of rating. The statute directs that a rate shall be made, upon an estimate of the net annual value of the several hereditaments rated thereunto; the word 'hereditaments' being liable to much observation, as to its meaning. The second section directs that every rate shall contain an account of every particular set forth in the form given in the schedule; and upon looking at the column which contains the description of the property rated, the examples given consist of property, which comes under the class of hereditaments only. But the former part of that section enacts, that the particulars in the schedule shall be given 'in addition to any other particular which the form of making out such rate shall require to be set forth.' It is contended that the statute amounts to a declaration, that personal property shall not be rated; on the contrary, it expressly avoids doing so. The decisions on the statute of Elizabeth clearly establish, that personal property is rateable. These decisions could only be got rid of, by words of positive enactment, and as the statute contains no such positive words, the old law must be taken to prevail and continue. This court cannot, and will not, do by implication, that which ought to be done by an express act of the legislature. This rule must, therefore, be made absolute, to quash the rate."—*Littledale*, J. "The 43rd

Stock in trade, yielding profit, being rateable to the relief of the poor, under 43 Eliz., is not exempted by the (Parochial Assessment Act) 6 & 7 Will. 4, c. 96.

(*a*) The poor rate is a *tax*. An exemption, therefore, from all *taxes* exempts from the poor rate. (*Mitchell* v. *Fordham*, 6 B. & C. 274.) And a covenant to pay all *taxes* would include a poor rate, although it was decided (*Theed* v. *Starkey*, 8 Mod. 314) that all taxes *on the land* did not include the poor rate, that being a rate on the occupier in respect of land.

5. *On whom the Rate to be made.*

of Elizabeth embraces two classes of contributors to the poor's rate. First, 'every inhabitant, parson, vicar, and other,' which includes all the inhabitants within the parish; and secondly, 'every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods, within the parish.' The rateability of personal property depends upon the first part of this section, and so far as the decisions have hitherto gone, stock in trade, and ships, are the only kinds of personal property in respect of which inhabitants have been held to be rateable. Then comes the 6th and 7th of W. 4, c. 96, which probably contemplated that personal property should no longer be included in the rate. It recites that it is desirable to establish one uniform mode of rating, but its provisions are confined to the mode of rating hereditaments. It is evidently not a declaratory act, and the only way in which it can affect the rateability of personal property, is by contending that, so far, it amounts to a repeal of that statute. But that argument cannot be maintained. It merely contains a provision as to rating a certain description of property, but does not amount to a repeal of the statute of Elizabeth."—*Patteson*, J. "I am entirely of the same opinion. It is clear that under the statute of Elizabeth, personal property is rateable, provided it be visible and profitable. That was decided by Lord *Ellenborough*, in *Rex* v. *Ambleside*, 16 *East*, 308. Then as to the 6th and 7th of W. 4. c. 76, I agree that it is not a declaratory act, to the effect that personal property shall not be liable to contribute to the rate, nor does it repeal the statute of Elizabeth. Indeed I do not believe that the legislature contemplated, in the slightest degree, that it should have any such effect. The object of the statute was to establish one uniform mode of rating, and it does not affect the rateability of personal property. When the statute was passed, it was well known by the decision in *Rex* v. *Joddrell*, 1 *B. & Ad.* 403, how the law stood."—*Coleridge*, J. "I am of the same opinion. I do not see any intention expressed by the legislature, to repeal the provisions of the statute of Elizabeth. That personal property is rateable under that statute, if it be visible and profitable, cannot be doubted. Under these circumstances, if the legislature had intended to release this species of property from contributing to the rate, it might have been done by introducing two or three lines into the statute, to express that intention. We cannot therefore do that which the legislature has abstained from doing. The silence of the statute as to stock in trade, is quite consistent with the supposition, that it was only intended to provide for an uniform mode of rating one species of rateable property."

Stock in trade not to be rated.

Since that decision, however, a temporary act was passed on the 10th August, 1840, by which it was enacted, that from and after the passing of that act (3 & 4 Vic., c. 89), "it shall not be lawful for the overseers of any parish, township, or village to tax any inhabitant thereof, or such inhabitant in respect of his ability derived from the profits of stock in trade, or any other property for or towards the relief of the poor; provided always, that nothing in this act contained shall in anywise affect the liability of any parson or vicar, or of any occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods, to be taxed under the provisions of the said acts (43 Eliz. c. 2; 13 & 14 C. 2, c. 12), for and towards the relief of the poor." The act to be in force till 31st Dec. 1841.—It has been continued, but not permanently, by 6 & 7 Vic. c. 48.

The cases hereafter set out, are all decided on the statute of Elizabeth.

"Such sum as they think fit."

The statute of 43 Eliz. gives a power "to rate in such a sum as they shall think fit." This does not import that they have a power to rate arbitrarily, but to rate the occupier according to the value of his occupation, and *inhabitant* according to his *visible personal property*. *Tindal*, C. J. 9 *Bing.* 595.

Who an inhabitant.

The words "*inhabitant*, parson, vicar, and other," include all those who possess property not coming within the several species of it described in the next following part of the same clause of the act.

Who are rateable as Inhabitants.

WHO ARE RATEABLE AS INHABITANTS.

Sir *Anthony Earby's case*, 2 *Bulstr.* 354. No inhabitant is to be taxed by a parish in regard of any estate he hath *elsewhere*, but only in regard of the *visible es*

be rated for estate in another parish.

Holledge's case, 2 *Roll. Rep.* 238. The lessee of a stall in a market town, who came there weekly to the market to sell his wares, was not rateable to the repairs of the church; and that if a man take up his lodging for a week in a town, he shall not be so charged or to such like taxes.

Lodger or stall-keeper as regards church rates.

Persons carrying on a trade in, but residing out of a parish, are not rateable as inhabitants.

Rex v. *North Curry*, 4 *Barn. & Cres.* 953; 7 *D. & R.* 424. The appellants, Stuckey and Co. were partners in trade, all residing in the parish of Langport, and carried on a considerable branch of their business in coals, culm, deals, and salt, in North Curry, by means of a foreman and other servants. The foreman and his family resided there in a house on part of the premises on which the trade was carried on, belonging to the appellants, for which they were assessed, as proprietors and occupiers, in the rate appealed against, at 1*l.* 2*s.*, and they were also assessed for stock in trade 16*l.* 13*s.* 4*d.* Neither of the appellants ever slept in North Curry, but they came there for the purpose of inspecting the foreman's accounts, and to see how the business was going on. On such occasions the acting partner used a small parlour in the foreman's house as a counting-room, which the foreman, in the absence of the appellants, used when he had company. There were no sleeping conveniences kept for the appellants in the foreman's house, nor in any other part of the parish. The stock was received and sold by the foreman on the premises, and on every Friday the proceeds, with the accounts of the week, were sent to the partners at Langport, and returned, after inspection by them, to the foreman on the succeeding Monday. Accounts were also made up monthly, and sent to the partners for their inspection. The only ground of appeal relied upon was, that the appellants were not liable to be rated for their stock in trade, they not being inhabitants of North Curry. *Bayley*, J.—"If the question raised in this case were *res integra*, the argument addressed to us would deserve great consideration. But there have been cases in which it has been held that a party (not being a parson or vicar), to be rateable to the relief of the poor must either be an inhabitant or occupier of lands within the parish; and I need hardly observe, that in this branch of the law certainty is very desirable. If the appellants in this case were liable to be rated, it must be because they come within the description of the persons upon whom the liability is imposed by the statute 43 Eliz. c. 2. It has been insisted, that Stuckey and his partners are persons liable to be rated either as inhabitants or as persons coming within the meaning of the words 'and other.' In the numerous cases, however, which have come before the courts on the rateability of tolls, it has never been suggested that persons not coming within the description of the words 'inhabitants or occupiers' were liable to be rated under the words 'and other.' In *Rex* v. *Nicholson* (12 *East*, 342), Lord *Ellenborough*, after stating the words of the act, says 'that tolls do not come within any one description of occupancy described by the statute, they are not lands nor houses, &c. If, therefore, the owner be taxable for them at all, it must be as an inhabitant of the parish out of which they arise.' Lord *Ellenborough*, therefore, must have considered the words 'and other,' not to have carried the description of the persons liable to be rated further than the word 'inhabitants' did, assuming that to be the true construction of the statute; then the question in this case is, whether Stuckey and his partners were *inhabitants* within the meaning of the statute. That word may have a very extensive sense, so as to include in it all persons possessed of property in the place. Such a construction has been put upon that word in the statute of bridges, the riot act, and the black act; but in those statutes the word 'inhabitants' was the only word used as descriptive of the persons liable to be charged. From the nature of the subject-matter to which it was applied, it was considered as necessarily including in it all persons having property in the place to be

Who are rateable as Inhabitants.

taxed. It has been held, accordingly, that a person occupying land in a parish, but living out of it, is compellable to receive a parish apprentice, although the statute of 43 Eliz. c. 2, says that none but inhabitants and occupiers shall be bound to receive the same. But in this statute several words are used as description of the persons to be taxed, viz. 'every inhabitant, parson, vicar, and other, and every occupier of lands.' In *Rex* v. *Nicholson*, the court were of opinion that the word 'inhabitant' was not to be taken in the extensive sense which had been applied to it in the construction of the statute of bridges, but in a confined sense, as descriptive only of a resident within the parish." *Le Blanc*, J. said, "That the word 'inhabitant' was used as well as occupiers, and that he considered that by the former was meant a person who was resident in the place, for one might occupy without being resident, and the statute meant to include both. It is also stated in *Nolan's Poor Laws*, 3rd edit. 72, that personal property cannot be rated unless the proprietor reside in the parish. Then the question is, what is the meaning of the word 'resides?' I take it that that word, where there is nothing to show that it is used in a more extensive sense, denotes the place where an individual eats, drinks, and sleeps, or where his family or his servants eat, drink, and sleep; and if that be so, there is no ground for saying that Stuckey or his partners had a residence in the place in question. I think that according to the former decisions, the word 'inhabitants' in the 43 Eliz. c. 2, must be confined to resiants; and therefore, inasmuch as the appellants were not resiants within the parish, they were not liable to be rated in respect of their personal property."—*Holroyd*, J. "It seems to me, that consistently with the construction put upon the words of the statute of the 43 Eliz. c. 2, in several cases we must hold that the appellants in the court below were not rateable. If that construction had not already been put upon the statute, the argument in favour of the rate would be entitled to attention; but without overturning the cases where it has been held that a non-resident proprietor of tolls is not rateable, we cannot hold that the parties mentioned in this case are rateable either as coming within the word 'inhabitants,' or the words 'and other.' It seems to me that the latter words must mean 'other inhabitants.' The legislature never could intend to rate persons who were neither inhabitants nor occupiers of property within the parish; and unless inhabitants means inhabitant resiant, the subsequent word 'occupier' will have no effect whatever. On that ground, in *Rex* v. *Nicholson*, it was held that a party was not liable to be rated for tolls unless he was an inhabitant resiant. In the course of the argument, Lord *Ellenborough* says, 'The great difficulty is to bring the case within the words of the statute 43 Eliz. c. 2, conferring the authority. *The party rated must be either an inhabitant of the parish, or he must be an occupier of one or other of the descriptions of property mentioned in the statute.*" And in another place he asks 'whether the counsel were aware of any case where the word *inhabitant* in the statute of Elizabeth had been held to mean any other than *resident?*' And afterwards in giving judgment, Lord *Ellenborough* says expressly that there is no case in which the word 'inhabitant' in that statute has been held to mean any other than a resident within the parish. *Le Blanc*, J., also seems to have considered it clearly necessary that a party must be either a resident in the place, or an occupier of real property, in order to make him rateable; and *Bayley*, J., says, 'In a statute which mentions inhabitant as well as occupier, inhabitant must meant resident, otherwise it would mean the same as occupier.' In *Williams* v. *Jones*, (12 *East*, 346), it was held, on the same grounds, that a non-resident proprietor was not rateable for tolls of a ferry. The construction which it is contended ought to be put upon the words 'and other,' would have applied to those cases as well as to this; and if that be the right construction, these cases have been improperly decided. I think that according to the construction already put upon this statute, the words 'and other' in this clause of the statute must mean 'and other inhabitants,' and that being so, then, for the reasons already given, Stuckey and his partners were not rateable."

Meaning of "inhabitant."

"Resident."

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See *ante*, *Rex* v. *Pounder*, and *Rex* v. *Adlard*, as to the meaning of the word "inhabitant," when a personal trust and when a pecuniary charge is intended.

A non-resident partner is not rateable, although one of the firm is resident.

Rex v. *Fryer*, 4 *B. & C.* 961; 7 *D. & R.* 426. W. Fryer, J. Gosse, and R. Pack, appealed against a rate made for the parish of St. James, Poole, whereby they were assessed for certain ships, for exports and imports, and cooper's stock. Fryer, Gosse, and Pack were partners as merchants, and were interested in equal thirds in the partnership stock and effects, and the vessels belonging thereto. The partnership business was carried on at Poole and Newfoundland. At Poole they had a counting-house and storehouses, and a clerk used the counting-house and kept the key, but did not sleep there. Fryer also carried on the business of a banker, with third persons, in the parish of Winborne Minster, six miles from Poole, and his dwelling-house was at Winborne. The banking partnership had also a counting-house and some other rooms and a stable in Poole, and a clerk of the banking partnership lived on those premises. The furniture in the rooms belonged to him, but the furniture in the counting-house belonged to the banking firm. None of the partners in the banking firm resided in Poole. Pack resided at Newfoundland. The rate was made upon the whole partnership interest in the exports and imports, in the cooper's stock, and in each of the ships, and not upon the share of Gosse only. *Scarlett* said, "that the rate being upon the partners in respect of personal property, they were rateable only as inhabitants, and, according to the authorities, it was impossible to contend that two of them were inhabitants, inasmuch as they were not resiant within the parish. He said he would not therefore argue the case, and the rate was sent back to be amended, by striking out the names of the appellants."

A resident partner is rateable for his share only.

Rex v. *Gosse*, 9 *D. & R.* 759; 7 *B. & C.* 60. One of several partners resident in a parish could not be rated for more than his own share of the partnership personal property. Lord *Tenterden*, C. J. "It is clear that the rate must be amended. By 43 Eliz. c. 2, inhabitants are to be rated according to their ability. If this rate were to stand, Gosse would be rated according to the ability of himself and others. It is said that there will be difficulty in ascertaining the share to which any partner may be entitled: but where that is the case, the rate may easily be imposed in respect of the whole, and the party may come and discharge himself by proving the extent of his interest. Rule absolute for amending the rate.

Stock in Trade and Ships.

Stock in trade and ships.

Personal estate.

Whatever difficulties in practice may attend the rating of inhabitants in respect of their *personal estate*, it was the settled law under the statute of Elizabeth, that an inhabitant was rateable for his stock in trade, of which he made a profit within the parish, whether there was a custom in the parish to that effect or not; and therefore some of the following cases were disregarded as to the custom. See *Nightingale* v. *Marshall*, 2 *B. & C.* 318.

A farmer is not rateable for his stock.

Q. v. *Barking*, 2 *Ld. Raym.* 1280. Upon quashing several orders made relating to the poor-rates, the matter in difference was referred by K. B. to Lord C. J. *Holt;* but the parties, not satisfied with his opinion, signified their consent in writing to submit this question to the opinion of the judges of the K. B.: to wit, whether a *farmer for his stock* shall not be chargeable and taxable to the poor-rate, as well as a tradesman for his *stock in trade?* And the other three judges were of opinion that a farmer for his stock is not taxable, contrary to the opinion of *Holt*, C. J. Whereupon the following rule of court was made: "Upon mature deliberation, it is considered by the court that a farmer is not taxable to the poor-rate for his stock; and that a tradesman is taxable for his stock in trade." [Or, as it is expressed in the record, *Quod firmarius, anglicè*, a farmer, *non erit onerabilis et taxabilis ad ratus pauperum pro peculiis, anglicè*, stock; *et quod artifex, anglicè*, a tradesman, *est onerabilis et taxabilis pro peculiis, anglicè*, stock, *in arte, anglicè*, trade.]

See Vin. Ab. Poor, F.

The reason why a farmer is not liable to be rated by reason of his

Stock in Trade farming stock is, that the annual profits of the land being rated, the profits of the stock have already been assessed in those of the land. *Nolan.*

Stock in trade of tradesmen, &c. rateable.

Rex v. *Witney*, 5 *Burr.* 2634; 2 *Black*, 709. The manufacturers and traders within the parish of Witney had been assessed to the *land-tax* for their stock in trade, but never before to the *poor-rate* for such *stock*. In support of the rate, *Q.* v. *Barking*, (*supra*,) was cited. But the court were not satisfied with the authority of that case. Lord *Mansfield*, C. J., expressly called it a strange note. They observed, that the opinion of three of the judges was only said to be that a farmer for his stock was not taxable, contrary to the opinion of *Holt*, C. J. But it doth not appear that a question was directly put to them, whether a tradesman was taxable to the poor for his stock in trade? The court, however, gave no explicit opinion upon the merits of the present case, though they seemed very far from allowing that a tradesman is rateable to the poor for his stock in trade. But here, the order of sessions is clearly wrong upon the face of it; because they ought not to have quashed the whole rate, but to have added those persons and that property which it was thought were illegally omitted. Order quashed.

As to rateability of stock in trade.

Rex v. *Ringwood*, *Cowp.* 326. The sessions quashed a rate, and stated that three persons were possessed as co-partners of stock in the trade of brewers and maltsters, in the parish, to the value of 4000*l.*, for no part of which was any of them assessed; that the partners were inhabitants of the parish. It did not appear that stock in trade had ever before been rated in this parish, therefore they adjudged the rate to be quashed. Lord *Mansfield* said, "I have no doubt what is to be done with it, as the authority of *Rex* v. *Witney* (*supra*,) is precisely in point. I think the justices would not have done very wrong, if they had acquiesced in the practice which has obtained ever since the statute of 43 Eliz., of not rating this species of property. The *Rex* v. *Witney* was determined upon this single ground, that the justices in session should not have quashed the whole rate, but should have amended it by inserting the particular persons and that property which was omitted, and which they thought rateable. So here, the justices at sessions should have amended the rate, if they thought this property rateable; and then on attempting to do it, they would have discovered the wisdom of conforming to the practice, which they expressly state in the case, of not rating it. If they had tried to amend it, how would they have rated this stock? Are the hops, and the malt, and the boiler, to be rated at so much for each? Or is the trader to be rated for the gross sum which his whole stock would sell for? If the justices had considered, they would have found out the sense of not rating it at all; especially when it appears that mankind have, as it were, with one universal consent, refrained from rating it; the difficulties attending it are too great, and so the justices would have found them." Then, after adverting to some of the cases, his lordship added, "They talk of visible property; what is *visible* property? I do not know what is meant by it. If any visible thing should be determined to come under that description, in that case a lease for years, a watch in a man's pocket would be rateable. Visible property is something local in the place where a man inhabits; but that does not decide *what a man's personal property is:* consider how many tradesmen depend upon ostensible property only." Order of sessions quashed.

Stock in trade may be rated, according to usage.

Sed quære.

Rex v. *Hill*, *Cowp.* 613. The appellant Hill was a clothier, and an inhabitant of the parish of Bradford. He was charged to the poor rate in respect of his stock in trade in the parish. The sessions confirmed the rate. Lord *Mansfield*, C. J. asked, "What usage heretofore had been in this place with respect to rating stock in trade?" Unto which it was answered, that the usage was waived, and that the counsel at the sessions had agreed to bring the general question before the court. Lord *Mansfield* said, they had no right to do so, and thought it ought to be sent back to the sessions to state the usage. Afterwards, the case being sent back, and the sessions returning, that it had been the usage heretofore in the parish

of Bradford to rate persons for their stock in trade, the court ordered the rate to stand.

Stock in Trade and Ships.

Rated in Bridgewater.

Rex v. *Rodd, Cald.* 147; 1 *Bott*, 178. Rodd was rated in Bridgewater four shillings in respect of his *stock in trade*, above what he was charged for his house and shops, and other real property. The sessions confirmed the rate, and stated specially, That within the said borough it had been usual, ever since the existence of rates for the relief of the poor, to assess the inhabitants of the said borough *for and in respect of their personal property or stock in trade;* and amongst them, such as have been of the same trade and of similar circumstances with the appellant. And it was admitted that it was not possible to distinguish this from *Rex* v. *Hill.* By the court, rate affirmed.

Personal property is rateable, and the bare possession of it is evidence from which the justices may draw the conclusion, that the possessor is rateable.

Rex v. *Dursley*, 6 *T. R.* 53. J. Harris appealed against a rate for the parish of Dursley, upon the ground that Messrs. Tippots were not rated for their goods, stock in trade, and personal effects: and the court being of opinion that stock in trade and personal property ought to have been rated, quashed the rate. The usage was against the rule. The case stated that "it was not proved that any profit was made from the stock, or that it belonged to them, except from its being in their possession." By Lord *Kenyon*, C. J. "There is no doubt but that personal property is rateable; but the difficulty in this case is to know for what these persons should have been rated. They appeared, indeed, in the possession of stock in trade, some to the amount of 100*l.*, others 50*l.*, but the sessions have not stated whether or not this property belonged to the several persons whom the appellant wished to include in the rate, or, if it did, whether or not it produced profit, or was not liable to incumbrances equal to the value of the property itself. *The bare possession of personal property, is, to be sure, evidence from which the justices may draw the conclusion that the possessor should be rated;* but here the justices, after stating the possession, have raised a doubt respecting other facts, which they should have inquired into and determined upon. They have raised a mist which we cannot dispel. The facts are not sufficiently disclosed to enable us to draw the conclusion that these persons ought to be rated. Order of sessions quashed.

The sessions must find that the stock in trade is not only visible property, but productive.

Rex v. *Macdonald*, 12 *East*, 324. See case (*post.*) One ground of appeal was, that certain stock in trade was not rated. The case stated, among other things, that several persons named were inhabitants of Manchester, and possessed of visible stocks in trade, and were personally liable to be assessed, if by law such property was liable, but they were not rated, nor was any one rated in Manchester in respect of their personal property, although personal property was universally rated in that township down to 1796, and occasionally collected up to that time, but this merely at nominal prices, having no relation to the actual value, and from thence rated (but not collected) to 1807; and from 1807 it had not been rated. The appellants gave evidence of the amount of the clear surplus of stock in trade, or other personal property, as to the several persons, and called two witnesses to give this proof as to two of the persons, but the justices were not satisfied from the evidence that there was any sum of surplus by which they could amend the rate. Lord *Ellenborough*, "As to the omission of rating stock in trade. In order to include particular individuals in the rate, a case must be made out in evidence against those individuals; here there was an attempt to do it by the appellants, but they failed in satisfying the court below on these facts. We have no concern with the conclusion of fact, and I do not say I should have come to the same conclusion; but the justices have found only certain inhabitants were possessed at the time of visible stock in trade within the township, and were personally liable to be assessed to the poor's rate in respect thereof, if by law such property be liable to be rated. Now visible property in the place, such as stock in trade, merely as being *visible* is not liable to be rated; but to make it rateable, it must be also *productive:* but the justices have found that it was not productive, or, what is the same in effect, that it was not proved to be so to their satisfaction. That finding concludes the question."

Stock in Trade and Ships.

If personal estate be rateable, it must be local visible property within the parish.

Rex v. *Andover*, *Cowp.* 550. The overseers made a new rate, in which they omitted to rate tradesmen for their stock which had been formerly rated in that parish. Other inhabitants of the parish appealed. The sessions adjudged, "that Mr. J. Wakefield was a proprietor of stock in trade as draper in the parish of Andover, to the amount of 300*l.*, and that the profits of that trade are 15*l.* a-year; and that he ought to be rated, in respect of such stock and profits, 7*l.* each rate." And there was the like adjudication as to other tradesmen. And the court ordered the rate to be amended, by putting into it a rate on the said several tradesmen in respect of such their stock and profits. It was objected, that this order on the face of it was bad, as it did not appear that the persons whose names were added had notice of the appeal. The court held this to be a fatal objection; and therefore the order of sessions was quashed. Lord *Mansfield*, C. J., said "It is a very different question, whether personal estate is to be rated to the extent contended for, (*a*) or not to be rated at all. *It would make the poor-laws very oppressive, if a man were to be taxed to the extent of his whole personal estate and income. In that case every man who has money in the funds would be liable; lawyers for their fees, soldiers for their pay and the like.* But where men are occupiers of houses, and have stock in trade, whether such stock in trade may be taken into consideration, is a very different question. Some personal estates may be rateable. But it must be *local visible property* within the parish. It would be material to state what has been the custom of rating. If the usage should be to take in stock in trade, there would be a very good right to support it. Let them, therefore, try it on the special circumstances of the case." Mr. *J. Aston* said, that if upon the general question it should turn out to be the law that personal property is rateable, it must be then rated, though it was never rated before.

The order for amendment should state when the parties had notice of the appeal.

Usage.

The court will not alter the conclusion drawn by the sessions from the evidence stated.

Rex v. *Darlington*, 6 *T. R.* 468. G. Allan appealed because seven persons were not rated for their stock in trade. Rate quashed. Case:—It did not appear whether stock in trade had or had not been rated in D. prior to 1745; from 1746 to 1752, and again from 1788 to 1794 it had been rated; in August, 1794, a rate was made, which continued in force the remainder of the year, which was not appealed against, in which the above seven persons were rated for their stock in trade as yielding certain profits (stating them), and which the appellants contended was an admission that to that time those seven persons possessed stock in trade producing the profits there stated. This rate was paid by some of the traders, but not by others; to enforce payment from whom no step had been taken. The appellants then proved that those seven persons, when the rate was made in January, 1795, kept shops in Darlington, and that each possessed a visible stock in trade there, and appeared to carry on business to the same extent as in 1794. The circumstances of the ability of those seven persons, or that they respectively made profit of their stock in trade, or that it was exclusive of their debts, or that it was a clear residue after debts paid, did not appear otherwise than as above stated. Lord *Kenyon*, C. J., "The *Rex* v. *Dursley* (*ante*, 147,) has been particularly pressed upon us as a decision of our own; but the present case is clearly distinguishable from that. There the sessions had forborne to draw any conclusion from the facts proved before them, and left a mass of evidence for our consideration, but so incomplete, that we could not say upon the facts stated whether the parties ought or ought not to have been rated; whereas here the justices have drawn the conclusion. They have indeed added, that the stock was not productive 'otherwise than as thereinbefore stated.' What is stated before is, that these persons had large visible stock in trade; that they were rated in the preceding year for that stock; that they submitted to the rate—for whether paid or not at the time is immaterial, no appeal having been made against the rate. Then, their circumstances not having

(*a*) Mr. *Burrough* contended that every inhabitant was rateable according to his actual ability, and in a most learned and elaborate argument reviewed the whole common and statute law on the subject of the early relief of the poor. See also Mr. *Bott's* argument in *Rex* v. *Hill*.

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been altered, the question, whether all this was not *primâ facie* evidence for the justices to proceed upon,—and whether, as this evidence was not opposed by evidence on the other side, it was not sufficient to enable them to draw the conclusion which they have drawn. Undoubtedly it was strong *primâ facie* evidence against the persons rated; and they should have discharged themselves in such a case by evidence. I feel indeed the severity of making persons in trade disclose their circumstances. But this is not a singular case: persons appointed sheriffs in some corporations being sometimes obliged to disclose their situations in order to excuse themselves from serving the office. In this case there was some evidence before the justices in support of the rate; it was competent to them to decide on the weight of it; they have decided, and we cannot now say that the conclusion they drew was certainly wrong. With regard to the other question, this was a case in which the sessions could not alter the rate, because, by the addition of these seven persons, the proportion of every other person would have been altered, therefore they were bound to quash the rate." The other judges concurred. *Grose*, J. "There is no doubt but that generally speaking stock in trade is rateable." Order of sessions confirmed.

But a rate may now be amended, see 41 G. III. c. 23, *post*.

Goods sent to be worked are not stock of workmen.

Rex v. *Sherborne*, 8 *East*, 537. The appellants were silk-throwsters, occupying certain buildings in Sherborne, in which persons were employed by them to clean, spin, and throw silk sent them in a raw state from London for that purpose. The silk, after being so improved, was sent back, the appellants charging a certain sum for every pound returned, by which they make a profit after paying wages and every expense. They had always some silk in their possession. The rate was imposed in respect of the profits derived from the silk as *stock*. The sessions thought the appellants were not rateable; and K. B. decided at once that it was impossible "to call the silk the stock in trade of the appellants, who were employed to work it up. It was nothing like stock in the sense in which it had always been understood."

On an appeal against a rate, on the ground that *A.* is not rated for his stock in trade, the sessions ought to amend the rate, and not quash it. Stock in trade is rateable to the poor, notwithstanding it has never been rated, unless there be some circumstances to take it out of the general rule.

Rex v. *Ambleside*, 16 *East*, 380. Appeal against a poor-rate, because W. W., and other persons named in the rate, were not assessed in respect of their stock in trade. The rate was made in respect of *real* property only, and no stock in trade or other personal property was included in it. The sessions quashed the rate. The question intended to be submitted was, whether, if stock in trade produce a profit, the usage can vary its rateability? Lord *Ellenborough*, C. J., said, "Is there not another question, whether the rate ought not to have been amended, instead of being quashed? *As to the rateability of stock in trade, that has been settled in Rex* v. *Darlington*, 6 *T. R.* 468 (*ante*, 115), *if it be ascertained to be profitable.* It is then an objection applicable to one person, and the justices should have amended the rate, and not quashed it. The 41 Geo. III., U. K. c. 23 (*post*), was passed for the very purpose of enabling them so to do, in order to prevent the inconvenience of the parish being without funds for the maintenance of its poor in the meantime. We say, therefore, that this rate was not properly quashed, but ought to have been amended. If there are any circumstances to take it out of the general rule, as stated in *Rex* v. *Darlington*, they should be stated: if there are none such, the property is rateable. *Rex* v. *White*, (*infra*, 150), is also to the same effect." Order of sessions quashed.

Ships are stock in trade at their port.

A *ship* is stock in trade at her principal port (*Rex* v. *Jones*, 8 *East*, 451; *Rex* v. *Liverpool*, 8 *East*, 455; *Rex* v. *Collinson*, *ibid.*); whether such ship be within the parish at the time of making the rate or not. (*Rex* v. *Howard*, 8 *East*, 455; *Rex* v. *Shepherd*, 1 *B. & A.* 109, *post.*) An inhabitant is not rateable for the profits of a ship, unless the home of the ship is within the parish; nor can the owner of a ship be rated in the port in which the ship is *registered*, unless he is an inhabitant of such place. *Rex* v. *Collinson*.

In respect of what Personal Property an Inhabitant is not rateable.

Stock vested in the public funds

Rex v. *St. John's, Maddermarket, Norwich*, 6 *East*, 182. The rate was made by virtue of a local statute (10 Anne, c. 6), which enabled the over-

What Personal Property not rateable.

seers, &c. "to assess a certain sum upon the inhabitants, &c., and on all persons having and using stocks and personal estates in the said parish, *or having money out at interest. Money out at interest, as well without as within the said city and county of Norwich*, of the respective inhabitants within the same, had been constantly assessed to the poor's rates. The appellant was possessed of *money vested in the public funds, or on government security, and then standing in her name in the books of the Governor and Company of the Bank of England in the 5 per cent. bank annuities.* And the question was as to the rateability of this stock. *Per* Lord *Ellenborough*, C. J. "*Money* out at interest, however the lender may stipulate not to call for the principal for a given period, is still a *loan* of *money*, with forbearance for a certain time. It implies that the principal is to be repaid at some time or other, when the lender will be entitled to receive it as *money*, and not a substitute for the principal in a mere annuity. But with respect to stock, the payment of the principal can never be compelled. All that the government engage for is a perpetual annuity, redeemable at their own will and pleasure. Then can we say that stock is 'money out at interest?' Money out at interest must mean that which is capable of being recalled at some time or other; money which may or may not be out at interest, and is only rateable when so used. Is that at all applicable to the funds, where the principal is sunk in an annuity, and cannot be recalled, though in their stock parliament have reserved a power of redemption? If this then be not rateable under the local act, neither is it so under the 43 Eliz. c. 2, (the only other statute by which it could be rateable), not being local visible property within the parish. It is therefore not rateable under either statute." *Lawrence*, J. "If ability alone were the criterion of rating, all persons would be rateable in respect of their property, whether locally and visibly situated within the parish or not; but it has been determined again and again, that a person can only be rated for local visible property with the parish. The appellant was therefore not rateable under the general law; and for the reasons stated by my brothers, I am of opinion that she was not rateable for her stock as for money out at interest."

Is not rateable, as "money out at interest," under a local act.

Nor is it within statute of Eliz.

Salary not rateable

Rex v. *Shalfleet*, 4 *Burr.* 2011. The appellant inhabited a tenement at S. for superintending the saltworks there, for which he received a salary of 40*l. per ann.* from the government, and was rated for this salary. Lord *Mansfield*, C. J. "We are all of opinion that this is *not such* a species of property as can be rated to the relief of the poor, as personal estate within the parish."

Nor fees of an attorney.

Rex v. *Startifant*, 7 *T. R.* 60. Defendant was assessed in respect of his profits and fees of his profession as an attorney, according to the same usage which had prevailed since 1732. And the court, without hearing any argument, said that there was no doubt in the case, and quashed the rate.

An inhabitant not rateable for money, for salary, for household furniture, but he may be for ships and stock in trade.

Rex v. *White*, 4 *T. R.* 771. S. White was rated in 13,500*l.* for his personal property, consisting of ships employed in the Newfoundland trade from Poole, and moneys vested on real securities on lands lying out of the parish. A. White was assessed for her personal property within the parish in 1000*l.*, such personal property consisting of principal money to that amount. J. Lander was rated for his personal property in 200*l.*: he was collector of the customs at the port of Poole, and had no personal property except his salary payable as collector. T. Langharne was assessed for his personal property in 100*l.*: he was a captain in his Majesty's navy, and had no other personal property but his pay, which was paid to his agent in London: he had household goods and furniture in the parish. W. Corben was rated for his personal property in 100*l.*: he was clerk to a merchant, then an inhabitant of the parish, and had no personal property except his pay as clerk, and which he received in the parish. R. Daw was rated for his personal property in 100*l.*: he was master of a merchant-vessel trading from Poole to other parts, and had no personal property but his pay, which he earned as such master of a vessel, and which he received in the parish. W. Stansmore was rated for his personal property in 300*l.*, such personal property consisting of stock in trade as a shopkeeper. Lord *Kenyon*, C. J.

"This is a question of great difficulty, and of vast importance to the public. The statute of Elizabeth was passed to enforce (what are called) duties of imperfect obligation; for it was a duty, before that statute was made, to relieve the poor and necessitous; and the provisions of that act were adapted to the enforcing of those duties in the only way in which they could be enforced, namely, by raising a fund from those persons who are deemed competent to pay it: and in the case in *Bulstrode*, (*ante*, 110,) it was said that the rate should be on persons in respect of visible property locally situated within the parish. Then apply that rule to these cases. First, as to the ships: I think that they are rateable; this parish is their home, and must be so considered for the purposes of the register act. With regard to the money lent on real securities, I think that it cannot be rated, for it is stated that the money was lent by persons out of this parish on landed securities elsewhere: this, therefore, is not personal property in the parish, and I am not prepared to obviate the difficulty of such a person residing in two parishes. In the act of parliament which imposes a tax on horses and servants, the legislature have guarded against this difficulty by directing the person liable to the duties to give an account to the collector of the number for which he pays in any other parish; but there is no such provision for this case. I have doubted a great deal in the course of the argument on the case of the person rated for 1000*l.* in specie, but the inclination of my opinion is, that she is rateable for this, because it is stated to be property within the parish, and it may be productive if the owner choose. For the same reason I think that the household furniture is not rateable, because it produces nothing: the party might as well have been taxed for his clothes: for a house, indeed, the occupier must be taxed, because the legislature have said so in express terms. The case of the stock in trade is admitted to be rateable; but the cases of the salaries have been long at rest; those are not the subject of a rate." *Buller*, J. "I concur with my lord in all the points except that relative to the 1000*l.*, for which I think the owner is not rateable; the reason for which it was admitted that household furniture is not rateable, namely, because it does not produce any profit, must also govern this: it is stated that the owner has it in hard money, and therefore we must take it, upon this state of the case, that it does not produce profit. In the next place, I am of opinion that money is not rateable within this act of parliament. The legislature could not intend that inquiry should be made as to every guinea which a man has in his pocket. If the rate be confined to visible property yielding profit in the parish, there will be no difficulty in adhering to that rule; but it will be dangerous in the extreme to extend it farther, and to look into every man's bureau to see what money he has there. But at all events I think that this person cannot be rated, for the reason first given." *Grose*, J. "I have no difficulty upon the question respecting the ships; they are rateable, like stock in trade. But the party cannot be rated for the money at interest: and as to the 1000*l.* not at interest, I have had great doubts in my mind. But after consideration, I agree with my brother *Buller*, that the legislature did not intend to rate money. The act of parliament has enumerated all the different species of property which should be the subject of a rate, but has omitted money. Besides which, considering how much this statute has been at different times discussed, and that it has never been held that money is rateable under it, I am satisfied that this is the true construction of the act; for though, generally speaking, usage contrary to an act of parliament cannot bind us in construing it, the not rating money shows what has been the opinion of the profession upon this subject." Lord *Kenyon*, C. J., then said, "That he thought there was great weight in the reasons urged by his brethren against rating money; that he had himself expressed great doubts of his own opinion, and that he was therefore glad that part of the rate would be quashed by the opinion of the court." And on a subsequent day his lordship mentioned an expression of *Yates*, J., upon the subject of rating personal property in a case in Hil. 1769, which was not taken notice of by

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Ships.

Money on real securities.

Money in specie.

Household furniture.

Money in specie.

What Personal Property not rateable.

Sir J. Burrow in his report of it. "If personal property be rateable, it is not to be done at random, and to leave the party rated to get off as he can; but the officer making the rate must be able to support what he has done by evidence; and no personal property can be rated but the clear liquidated surplus after paying all his debts." The court ordered the rate to be confirmed as to the ships and stock in trade, and amended as to the other points.

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Who an occupier.

The occupier intended, is every person occupying that which produces profit, whether to himself or to the person under whom he holds.

Occupiers residing in another parish are rateable.

Jeffrey's case, 5 Co. 66. W. J. had and occupied or received rent for thirty acres of land in H., but was himself an inhabitant of C., in the same county, and never did inhabit in H. He was assessed to the church rate of H. at so much *per* acre for his land there. And upon application to K. B. for a prohibition to stay proceedings against J. in the spiritual court for payment of the assessment, it was resolved, that although the house he dwelt in was in another parish, yet as he had lands in H. in his proper possession and manurance, he was in law a parishioner of H. That by manuring lands in H. he was by that resident upon it, and was therefore a parishioner of H., as to this purpose. But when there is a *farmer* of the same lands, the lessor shall not be charged for them in respect of his rent; and see *Burn's Eccl. Law, 8th edit.* by *Tyrwhitt*, vol. i. p. 350, n. (9).

Mode of occupation.

The land may be occupied by pipes for gas, water, &c. (*Rex* v. *Brighton Gas Company, post*); or by the enjoyment of an *exclusive* licence in the land (*Rex* v. *Chelsea Water Works Company*, and *Rex* v. *Trent and Mersey Company, post*); but the owner of a mere easement, as of a right of navigation or ferry, who cannot maintain trespass, is not a rateable occupier (*Rex* v. *Thomas, Rex* v. *Nicolson, post.*) As to the occupiers of commons, see *post.*

A body corporate is rateable as the masters and fellows of a college.

Rex v. *Gardner, Cowp.* 79. The master and fellows of Catherine Hall, Cambridge, purchased several houses, and pulled them down, and converted part of the ground on which the said houses had stood into an area, and planted the same with trees for ornament. The parish assessed them for the same to the poor rate. The questions were, whether the master and fellows being a body corporate, were liable to be rated, and whether the ground, as it was in its converted state, could be rated. Lord *Mansfield*, C. J. "The question is, whether in law a corporation may be considered as *occupiers* or *inhabitants*? By the statute of Eliz. all lands and all real property are rateable to the poor, and must have *occupiers* and *inhabitants*, in respect of taxation; therefore, if a man have no tenant, and be seised of lands in fee, he is said to occupy them himself, or by his bailiff or agent. No case hath been instanced to show that a corporation is exempted from this tax: and I can find no authority in law which says they cannot be rated. And the authorities which have been cited tend to prove that corporations are rateable both as *inhabitants* and as *occupiers;* if they are liable in respect of the repairs of *bridges* and of *churches*, they are equally so by the statute of Elizabeth in respect of the *poor*. As to the objection that this area yields no profit, and therefore ought not to be rated, the answer is, that the value is in the judgment of the assessors; and if the college think themselves over-rated, they have their remedy by appeal."

An ornamental area is rateable.

Mr. J. *Aston*. "I have no idea but that the corporation may be occupiers; and as to the remedy of levying a duty upon a corporation, the books all agree that it can be levied, though they differ in the mode. Sheppard, in his Treatise upon Corporations, says, 'If a sum of money be to be levied upon a corporation, it may be levied upon the mayor or chief magistrate, or upon any person being a member of the corporation.' But in the case of the city of London, concerning the duty of *water-bailage*, (1 *Ventr.* 351,) it is different, and is thus: '*Note:* it was said that for a duty or charge upon a corporation, every particular member thereof is not liable; but process ought to go in their public capacity.' And this is the right law.

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In the case of *Thursfield* v. *Jones*, (*Skin.* 27,) the corporation were cited not by their proper names, but in their public capacity; and the court said 'If the company had neither land nor goods, there was no way to make them appear; but if they stood out, they must lie by the heels in their natural capacity.' Therefore, the idea that a corporation is not liable to be rated, or amenable by process in respect of a rate, is not well founded. Besides, by the act of 17 Geo. II. c. 38, the remedy of distress is extended beyond the particular parish into other precincts, and even into other counties. So that their property is answerable, though they cannot personally be punished." The other two justices concurred.

So also by a local act.

Cortis v. *The Kent Water Works Company*, 7 *B. & C.* 314. By a local act for the relief of the poor, certain commissioners were enabled to make rates upon all and every person or persons who held, occupied, or possessed land in the parish; it was held that a corporation was liable to be rated, although by a clause, giving an appeal to the quarter sessions to any party aggrieved, such party was bound to enter into a recognizance.

Rex v. *Aberavon*, 5 *East*, 453. It was admitted that a corporate body was rateable.

If the owner of a house occupy a part thereof only, but his servants (*a*) occupy other parts, and no one reside in the house but a poor person, permitted to do so out of charity, the owner is rateable as occupying the whole.

Rex v. *St. Mary the Less, Durham*, 4 *T. R.* 477. Upon an appeal for being rated for the whole instead of a part of a house, the sessions amended the rate, and also stated, that the appellant, a prebendary, purchased the premises and repaired them, but neither he nor any other person resided therein, except as hereafter mentioned, but he kept the key. In one of the rooms the appellant kept a lathe for his amusement, and had sometimes a fire in that room, and three chairs and a table; and in another room he kept corn for his horse; and he also occupied the garden, worth 40*s.* a-year, and the gardener sometimes put his flower-pots, shrubs, &c., and some of his working tools, into another part of the dwelling-house, where other lumber was also put, but no person had ever slept or lodged in the house, nor had any furniture been kept there (except as above). The appellant, out of charity, had permitted a poor man and his wife to live rent-free in the kitchen, between which and the rest of the house the door communicating was stopped up. The stable had not been, for upwards of two years, used for any purpose; previously he had used it as a dog-kennel. By the court: "As this gentleman occupied the garden and part of the house, his servants other parts, and a poor man another part, but those occupations were not distinct from his own, he ought therefore to be rated for the whole, for it would be attended with great inconvenience to have to inquire into each particular case what rooms of a house the owner occupied before he could be rated."

Assistant occupying shop in the absence of master, makes master rateable for the whole house.

In *Rex* v. *Aberystwith*, 10 *East*, 354, the appellant, being surgeon of a militia regiment, was occasionally absent from home, and left an assistant in a part of his house: his wife and daughter also were absent, and the assistant had only the use of the shop, the remainder of the house being completely parted off from it. The garden was taken care of by a person paid by the appellant, and the person with whom the key of the house was left permitted a friend of the appellant's and his servants to lodge there. The house was always ready for the appellant's return. The court decided that such person was rateable for the whole house, for that he must be taken to have been, under these circumstances, the occupier of the whole house.

Meeting house of which no profit is made is not rateable.

Rex v. *Woodward*, 5 *T. R.* 79. The appellants were rated for a Quaker's meeting-house, the basement story of which is divided into many small rooms, one of which is occupied by a person called the door-keeper, whose business it is to attend the door when necessary, and keep the meeting-house clean, for which he has a small salary. The remaining

(*a*) As to the occupation of a master by his servant, see *Rex* v. *Tynemouth*, *post*; and *Rex* v. *Morgan*, 2 *Adol. & El.* 618. In this latter case, a landlord was rated for the farm which his tenant had quitted. He did not occupy the premises in any other manner than by putting a man into the farm house to take care of it. The court thought the justices were right in refusing a warrant of distress.

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apartments are either not occupied, or are appropriated to the use of poor persons maintained by the Quakers. The meeting-house is solely appropriated to religious and charitable purposes. *The trustees, the persons rated, do not receive any rent for the same.* No pecuniary advantage whatever is made of the meeting-house. The court said it was impossible to support this rate on the trustees, who had no interest in the premises; and that there was no occupier at present, nor any profit made of it.

A private building used as a chapel (*a*) is rateable, if a profit be made of it.

Robson v. *Hyde*, *Cald.* 310; 1 *Bott*, 181. The person rated was the lessee of a chapel and vestry-room demised to him to be always used as a chapel for the service of the Church of England, and by contract never to be used for any other purpose, but not consecrated. It is, if a profit be made of it by letting out the pews or otherwise, rateable to the poor. But if it were absolutely given to the public, it might be a strong ground for saying that it was not rateable in his hands, at least out of whom his property had passed, and by whom nothing is reserved.

The trustees of a Methodist chapel receiving money annually for the rent of the pews, are rateable for the profits made of the building, though in fact they expend the whole of what they receive in making disbursements for repairs, &c., and to attendants in the chapel, and in paying the salaries of the preachers (*a*).

Rex v. *Agar*, 14 *East*, 256. In 1804, the appellants purchased a piece of ground, upon which, by voluntary contributions, they erected a chapel. The premises were conveyed to them, *upon trust*, that they should let the pews in the chapel under such payments as they might think fit, and upon other trusts; the consideration for the purchase of the ground, and the expense of erecting the chapel, were raised partly by voluntary donations and partly by sums borrowed by the appellants. The current expenses in supporting the chapel during the year 1810, were 247*l.* 7*s.*, and the pew rents for that year amounted to 221*l.* 4*s.*, which were applied towards the discharge of the insurance, of the rent and taxes of two houses occupied by the two Methodist preachers, of the chapel cleaners, of the salary and board allowed to two Methodist preachers, and of the salary for conducting the singing in the chapel; these expenses amounting to 247*l.* 7*s.* Lord *Ellenborough*, C. J. said, "The question is, whether the trustees are rateable? In what situation do they stand to the property? In 1804 they purchased the ground on which they afterwards erected the chapel; they are therefore the owners of the property. If they had gratuitously admitted persons into their chapel, and provided preachers for the congregation, without receiving anything, they would have come within *Rex* v. *Woodward.* What similitude then does this bear to *Waldo's case* (*post*, 173), who gratuitously devoted his property to the education and maintenance of paupers, but derived no profit to himself? Here profit is made of the property to the full by the trustees. If it were absolutely necessary that all the sums stated in the account of expenses should be expended, it should have been expressly found in the case that they were all *necessarily* expended in the carrying on the business of the chapel. The trustees may go on increasing their expenditure in this manner as their profits increase. I admit that it is not found that any of the items were fraudulently swelled for the purpose of this question; but it is not enough in these cases to show that the expenses laid out in any particular year absorbed the profits of that year; for the benefit of such expenses may be derived in future years, as is often the case with improvements of farms. If valuable lands in the neighbourhood of a town be covered with buildings in one year, the expenses of that year would probably exceed its profits, but the land would not cease to be valuable and rateable on that account. Whether these which are stated were necessary expenses or not, I cannot take upon me to say from the case, but it should at least have been found that they were all *necessary*, to produce the render of the rent received. This is not like the cases where persons have been held not to be rateable for property, as not being in the occupation of it; for these appellants are the original proprietors of the land on which they have

(*a*) In *Rex* v. *Liverpool*, *post*, Lord *Tenterden*, referring to this case, said, "If there had been no intervention of trustees, and the minister had received the pew-rents, he would have been rateable in respect of them." But as to churches and chapels, see now 3 & 4 W. 4, c. 30, *post.* Title "Exemption."

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erected a chapel by voluntary subscription, under no restriction as to the profits to be derived from it, and in the actual receipt of rents, which they have applied in manner stated." *Grose*, J. "The first question is, whether there is anything rateable in this case? and here is clearly rateable property; for there is land, and a building which produces profit. But it is said that it does not produce profit sufficient to warrant a rate on these defendants in respect of it. But that depends on the manner in which they choose to apply the proceeds. It does in fact produce profit, and they dispose of it as they please afterwards. How then does this differ from the case of other buildings which produce profit? If this be not rateable on account of the subsequent application of the profits by the trustees to the benefit of others, why should any estate which a man holds in trust be rateable? Then, 2dly, the trustees who receive the profits are the occupiers of the property, and therefore they are liable to be rated for it." *Le Blanc*, J. "The subject-matter of this rate is within the stat. 43 Eliz. c. 2, which directs the occupiers of lands and houses to be rated. The appellants purchased the lands and erected a chapel, and now let the seats and receive rents for them: they are therefore the occupiers of the building. Then the only question is, whether they are liable to be rated for it on the ground that it is not valuable property? It is let out on an annual rent. But it is objected, that though they receive profit for it in the first instance, they afterwards dispose of the whole on the establishment, in paying the salaries of the ministers, and in defraying other expenses of attendants and repairs. I agree that this is in substance a rate on the ministers, for if they had let out the pews and received the rents, they would only have received the surplus profit after payment of all the necessary expenses of the chapel; but the pews are let out by those who are in effect the trustees for the ministers, for they pay over to them so much as remains after defraying the expenses. The trustees, therefore, must be considered as the occupiers, because the property is in them, and they let out the pews, and they are therefore rateable for the profits in the same manner as the ministers themselves would be if these latter let out the pews." *Bayley*, J. "The property itself is rateable, and the trustees are the proper persons to be rated for it. It is a house, and the stat. of Eliz. says that occupiers of houses are rateable. It produces profit, for certain sums are annually paid into the hands of the persons rated by those who rent the pews. Then it is objected, that part of the money so received which is applied to the salaries of the preachers, is referable to them and not to the house; and that if there were no preachers, there would be no pew-rents received: I agree that the money so received is partly referable to the preachers, but a part is also referable to the house itself, in respect to the superior accommodation afforded by it to those who attend the preacher: for such large sums would not be paid to hear them in the open air. There is no hardship in saying that the trustees shall pay the rate, for they will stop *in transitu* so much as they pay for this purpose; and the ministers are not the proper persons on whom to impose the rate on the building in respect of their salaries. The trustees are not under any obligation to make the payments to the extent stated: they have paid the money in fact; but they were under no obligation to do so at all events. This, therefore, being property which in its nature is rateable, and profit being in fact made of it, and that profit passing in the first instance through the hands of the trustees, I see no doubt but they are rateable for it." Order and rate confirmed.

Where a profit is made of a building occupied by servants and lunatics, the person in receipt of the rent is rateable.

Rex v. *St. Giles's, York*, 3 *Bar. & Adol.* 573. The appellants were rated as the trustees of a lunatic asylum, which had been purchased by voluntary subscriptions, and the land and buildings were conveyed to the trustees. It was originally designed for lunatics, being parish paupers or members of indigent families; but the finances of the institution being inadequate to the maintenance of that description of persons only, a limited number of affluent patients were afterwards admitted, at rates of payment in proportion to their abilities, with a view of providing a surplus towards

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the support of the most necessitous. The asylum is now large and flourishing. The trustees receive yearly payments from 100*l.* to 20*l.*, or weekly payments from three guineas to 6*s.* Sixty-two patients pay 6*s.* per week; nearly the whole of these are parish paupers. 300*l.* per annum, arising from stock bequeathed to trustees in maintenance of lunatic parish paupers, paid to the asylum out of the Lupton fund. From 1825 to 1830, inclusive, the donations amounted only to 249*l.* The balance in the hands of the trustees in 1825 was 1579*l.*; and in 1830, it had increased to 2572*l.* The institution had also made purchases and erected buildings out of the moneys accumulated in their hands during this period, to the amount of 1000*l.*; so that the accumulation during the five years was about 2000*l.* All benefactors to this institution of 20*l.* or upwards at one time, as well as certain public functionaries for the time being, are governors, who exercise the entire control over the asylum and its funds. A committee of governors is appointed every quarter at a general meeting, and to them is delegated the power of auditing the accounts, contracting with tradesmen for provisions, hiring and discharging servants, determining what sums are to be paid by patients, and what persons are to be admitted, discharging patients, and otherwise giving such orders and directions as they think requisite. The paid officers of the institution receive salaries amounting to 986*l.* a year. The apothecary resides in the asylum, and has two furnished rooms to his separate use, in addition to his salary, which would be greater without these rooms. The house-servant and matron have no exclusive apartments except bed-rooms. The attendants, domestic servants and lunatics are the only other inmates of the house. The trustees do not derive any personal benefit from the institution. The asylum is situate in the respondent parish, and several persons, in consequence of being employed about it, have gained settlements in and become chargeable to the said parish. The trustees appealed on two grounds, first, that the asylum was not rateable; and secondly, that the trustees were not persons liable to be assessed. *C. a. v.* Lord *Tenderden*, C. J. "Upon these facts it seems to us impossible to say that this building does not produce a profit by means of the entertainment of those persons *who are able to pay for their reception;* and if any profit be made, the application of it when made is immaterial as to the question of rateability. Then supposing the building to be rateable, the next question is, who are the occupiers to be rated? Not the servants, for they cannot be considered as occupiers, and certainly not the unhappy lunatics received into the building. Then the property being subject to rate, the trustees, who are in the actual receipt of the profits, must be the persons rateable. There are no persons who can be rateable but the owners, and these are the owners. The case is not distinguishable from *Rex* v. *Agar*," (*ante*, 154.)

The trustees of a charitable institution, into which no child was admitted who did not contribute 12*l.* annually, the average annual cost being about 20*l.*, are liable to be rated. An occupation may be beneficial which is not gainful on a balance of profit and loss.

Reg. v. *Sterry*, 4 *Jurist*, 1158; 12 *A. & E.* 84; 4 *P. & D.* 122. The appellant was assessed, as representative of the managing committee of the Friends' School, for a house, exclusive of the two wings occupied by the scholars, garden, and premises in Park-lane, Croydon. Rate confirmed. Case:—"The Friends' School was instituted in 1702, by voluntary subscriptions amongst the members of the Society of Friends in London, for maintaining, educating, and employing the children of the poor of that society, and of other persons not in membership. A considerable fund was raised at the time when the establishment was first instituted, which has since from time to time been increased by bequests, donations, and voluntary subscriptions, to 30,000*l.* and upwards; and this fund has been invested in stock and landed property, in the names of trustees, in trust for the institution. The establishment is under the direction of the committee of management of the quarterly meeting of the Society of Friends in London and Middlesex. In 1823, a house and premises in Croydon were purchased by and conveyed to the trustees, and additional buildings were erected thereon as to adapt these to the accommodation of 150 children; and to defray the expenditure thus incurred, a considerable sum was raised by voluntary contributions from members of the Society of

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Friends in various parts of the country, and from other persons not members of the society. In 1825 the establishment was removed from Islington to the said house and premises, where it has since been carried on. At the time of such purchase, in 1823, the said house and premises were assessed to the poor-rate at a rental of 60*l.* per annum, and the society were, after they took possession, assessed to the same amount, and paid the rate thereon for some time, and afterwards, on a rental of 100*l.* per annum, down to the year 1835, when the assessment was raised to 140*l.* per annum. The general management of the establishment is intrusted to a committee of twenty-four men and twelve women Friends, who are appointed by the quarterly and monthly meetings of Friends in London and Middlesex. Some of the committee go out of office every other year by rotation, and such members as cease to belong to the meeting by which they were appointed, or do not attend the committee for the space of one year, are disqualified, and the vacancies so occasioned are filled up by new appointments. The committee meet at the school once in every quarter of a year; but they appoint a sub-committee who meet there once a month, and, in the interval, the management of the establishment is placed under the care of the superintendant and mistress of the family, who reside upon the premises. None of the committee or sub-committee receive any emolument or salary; but the superintendant and mistress of the family, appointed by the committee, and liable to be discharged by them at a summary notice, are paid an annual salary. The cash of the institution is kept at a banking-house approved of by the committee, in the name of the treasurer, who is nominated by the committee, and, if approved of, appointed by the quarterly meeting of the Society in London and Middlesex, and he becomes a member of the committee by virtue of his office: but the treasurer does not reside upon the premises, nor does he receive any remuneration whatever. The children received into the establishment are nominated by agents appointed by the quarterly and monthly meetings before mentioned, and are admitted if approved of by the committee. No child is eligible if its parents are able to defray the expenses of its education elsewhere. The number of children maintained and educated since the removal of the school to Croydon, has varied from 130 to 150; and at the time of the assessment there were eighty boys and seventy girls, of whom nearly thirty were the children of persons not members of the Society of Friends. The average expense of maintaining and educating each child is upwards of 20*l.* per annum. The parents and friends of each child, if of ability, pay the sum of 12*l.* per annum; but, in a great number of cases, in consequence of their inability to raise this amount, it is collected by friends, or by contributions from the meetings where they reside; and no child is admitted on the establishment without the annual contribution of 12*l.* The difference between the actual expenditure in respect of the education and maintenance of the children, and the sum thus paid by the parents or friends, is made up from the annual income derived from the interest of the stock, the rents of the landed property before mentioned, and constant annual contributions; and if these are insufficient, by extra collections from members of the society and other persons. Any surplus remaining after payment of the expenses, is treated as part of the fund for the support of the institution, and is appropriated solely to that object. The house, which is rated, contains an apartment for the superintendant, another for the matron, a kitchen for the use of the establishment, a room in which the committee and sub-committee hold their meetings, and rooms for domestic servants; but the matron, superintendant, servants, and committee have no other accommodation than is essentially requisite for the discharge of their duties connected with the school. The garden and other premises are cultivated, and used only for the children, viz., for the growth of vegetables and fruit, consumed in the household, no private advantage being derived therefrom by any officer or servant of the establishment. No other person than the children, the servants, matron, and superintendant, resides upon the premises. The question is, whether the house, garden, and premises,

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not including the two wings, are rateable to the relief of the poor." *Judgment.*—Lord *Denman* delivered the judgment. "This was a rate made upon the appellants (*a*) in respect of a house, garden, and premises in the parish of Croydon, exclusive of two wings of the house actually occupied by the scholars of the institution, which is there carried on, and two questions are made, whether there is any such beneficial occupation of the premises as will make the occupier rateable in respect thereof, and also who, if any, is such rateable occupier. The institution is in the main charitable; first taking its origin, and since for the most part maintained, by donations and subscriptions; it is devoted to the maintenance and education of children, afforded to them in a great proportion gratuitously; the trustees, managing committee and subscribers, receive no pecuniary benefit, and the servants of the institution no more than may be considered as mere wages for their services, and so far as regards the premises in question, they are found to have no other accommodation from them "than is essentially requisite for the discharge of their duties connected with the school." The premises were purchased by the society and conveyed to their trustees in 1823; at that time the occupiers were assessed to the poor-rate, and the society has continued to be so down to the present time. They have added to the buildings from the charitable funds before alluded to, and they cultivate the garden, and whatever is not built upon, devoting the produce to the use of the scholars and the household. These children are admitted on the following terms—the average expense of maintaining and educating each is estimated at 20*l.* per annum; no child is admitted whose parents are considered able to defray the expenses of its education elsewhere; nor any, whose parents or friends will not contribute annually 12*l.* of the 20*l.*, which is expected to be the cost of maintaining and educating the child. Upon these facts we are to determine the questions before stated; and no one can review the numerous decisions which cases somewhat like the present have occasioned, without regretting that the court was ever induced to depart from the simple test, which the subject matter of occupation would in every case have afforded. Whether the occupation was in respect of private, or public, or charitable purposes, it would have been, we think, wiser to have disregarded; and, wherever the subject-matter was found productive to any one, to have rated the actual occupant in respect of that produce. The court, however, would be bound by the authorities, for nothing is so important in this branch of the law as uniformity and certainty; but it will not be necessary to overrule any decision in order to support the rate in this case. There is clearly a rateable subject-matter, that is, a subject, the occupation of which, under ordinary circumstances, would make the occupier rateable. If these premises were to be let by the society, and every shilling of the rent devoted to the same purposes, as at present, in some other place, the tenant would be rateable on the amount of the rent paid, or the clear annual value of the occupation. But even in the hands of the society there is a circumstance connected with the occupation which takes it out of those cases of occupation for charitable purposes, which have been considered not rateable as not being beneficial. That circumstance is the payment of 12*l.* per annum, by or on behalf of each scholar; a sum, indeed, not adequate to the expense, and, in a popular sense, not making occupation of the premises beneficial, that is, gainful; but still it is a revenue which the building produces, and actual gain on a balance of profit and loss is not needful. It is enough if a revenue be produced. With regard to the occupiers, there is no difficulty in determining that the trustees must be considered as such. They are the owners of real property which is not demised to any one. The committee, from time to time, use certain parts of the building; the matrons and servants of the establishment, other parts at all times. In all these cases the occupation is by the permission

(*a*) It was agreed, that if any rate was payable, the trustees should be the persons rated. 4 *P. & D.* 125, n.

of the trustees, and, in point of law, must be considered as theirs. This case very much resembles that of *R.* v. *St. Giles', York, p.* 157; and *R.* v. *The Mayor of York*, (6 *Adol. & Ell.* 419), in all respects bears a very close resemblance, so strong, indeed, as hardly to be substantially distinguishable. Upon the whole, we are of opinion, that the sessions were right, and that their judgment must be affirmed."

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The General Cemetery Company are rateable for their cemetery and for their vaults, the exclusive right to which had been sold.

Reg. v. *Kensington*, 4 *P. & D.* 327; 12 *A. & E.* 824. The General Cemetery Company were rated as occupiers of lands and buildings at 2000*l.*, the sessions reduced the amount to 444*l.* 18*s.* Case:—The Company, by stat. 2 & 3 W. IV., c. cx., are empowered to purchase land and to lay out and inclose a cemetery, and to erect a chapel for the reception of the dead before interment, and for the purpose of performing the burial service according to the rites of the Established Church, and also such porches, colonnades, and catacombs and vaults for private and public burials, and other buildings, for such purposes as they might think proper. The capital requisite is directed to be raised by transferable shares, and the profits divided among the shareholders. By the 43rd sect., the Company are empowered to sell and dispose of the exclusive right of interment, either in perpetuity or for a limited period, in any of the vaults, catacombs, &c., and places of burial which may be made by the Company within the cemetery, and also the right of making any vault, catacomb, &c., or place of burial within the said cemetery, with the exclusive right of interment therein, either in perpetuity or for a limited period, and also the right and privilege of single interment in any of the vaults, &c. constructed by the Company, or in the open ground, and also the right and privilege of erecting and placing any monument or cenotaph in the said cemetery, or any tablet or monumental inscription on or against the walls of the chapel, or other place appropriated by the Company for them, and also the right and privilege of placing any gravestone, or slab of stone or marble or other material, or footstones or headstones, upon or to any grave in the cemetery. By s. 45 the conveyance of the exclusive right of burial, &c. in all such vaults, and of the right and privilege of erecting and making of any family vaults, &c., with exclusive right of burial or interment therein, either in perpetuity or for a limited period, and of the right and privilege of erecting of any monuments or cenotaphs, shall be under the common seal of the Company. A form of conveyance is given by the act, and it is declared that every such conveyance so made shall be good and sufficient both at law and in equity, without words of inheritance, limitation, or representation, to vest the exclusive right of burial or interment in the catacomb or vault described therein, or to be erected or made in pursuance thereof, in the person purchasing the same, and their personal representatives, legatees and assigns, in perpetuity or for the period agreed upon, without any faculty whatever, subject to the payment of such fees as may be by the rules of the Company payable upon the interment of any corpse in such vault or cemetery, and subject also to such rules as shall be made by the Company for the better regulation of the said cemetery and the vaults and catacombs thereof. By the 44th sect. the Company is bound to keep the cemetery and the chapel, and the several buildings therein, and the external walls and fences thereof, and all other parts of the same, in complete repair. Under this act, the Company purchased land and erected the buildings for which they are rated. They have prepared the greater portion of the ground for the purposes of a cemetery, in which interments take place as in common burial-grounds. They have also made catacombs and vaults, which are wholly unproductive until disposed of under the act; but many are annually disposed of in perpetuity, according to the form of the conveyance given by the statute, and for the uses therein set forth. Certain portions of the grounds are also annually disposed of by the statutable conveyance for family graves; the purchasers of the catacombs and vaults have had the keys of such catacombs delivered to them after closing them up as directed by the 43rd section, and they have done all necessary repairs, the Company never exercising any act of ownership in respect of

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such vaults, after such sales. But the Company, at each subsequent interment in the family vaults, thus sold, charge various fees for the services of the minister, clerk, sexton, &c. The rate in question was founded upon the principle that the Company are liable to be rated for the produce of the ground so sold or disposed of for family graves, and for the catacombs and vaults so sold or disposed of during each year for the purpose of burial, under the statute, after deducting therefrom all the expenses of building the catacombs and vaults, and family graves, and all other expenses attendant on preparing them for use, and also to be rated upon all the fees paid for the service of the clergyman, clerk, sexton, gravedigger, bell-ringer, &c. (deducting therefrom the stipends paid by the Company to them, and all other necessary expenses upon such interments), and likewise upon all fees due upon common interments where no rights in perpetuity or for a term is granted, and upon the herbage growing in the cemetery. The appellants contended that the Company were not rateable in respect of the produce of the family graves, catacombs, and vaults, sold or disposed of as aforesaid during each year, but only upon the fees paid upon all burials therein, and upon common interments (deducting the aforesaid stipends and necessary expenses) in addition to the herbage as before mentioned. If the court should be of opinion that the Company are rateable for the sums received by them in respect of the sales for family graves and of the catacombs and vaults, then the rate is to be confirmed. But if the court should be of opinion that the Company are only liable to be rated in respect of the aforesaid fees and herbage, then the rate is to stand as reduced to 444*l.* 18*s.* Lord *Denman.* "The single question is, whether the Company are occupiers. The Company have to give effect to the act, and for that purpose a general power of superintendence and control is devolved on them. The 44th section obliges them to repair. I think they are the occupiers, and liable to be rated." *Littledale*, J. "The Company may grant certain privileges in perpetuity, but the Company have to keep the cemetery in repair, and the grantees of the privileges cannot enter the cemetery whenever they please. The Company are occupiers, and make a profit by sale of the privileges." *Williams*, J. "There is abundant proof of occupation by the Company when *Rex* v. *Agar* (*a*), *Rex* v. *The Mayor of York* (*b*), and *Rex* v. *Tewkesbury* (*c*), are referred to. This is an *à fortiori* case. It is a fallacy to suppose that in this case the Company sell parcels of land. The power to sell is as to surplus land only; as to other land, nothing is sold but the right of sepulture. As soon as it is settled that they are occupiers, it requires no argument to show that they are beneficial occupiers." *Coleridge*, J. "I am of the same opinion. Whether the profit is annual or not is immaterial to the question of beneficial occupation. Some of the facts in this case, if taken alone, without reference to the statute, might lead to the conclusion that the grantees are occupiers, as they have the keys and the exclusive use of the sub-soil. But these facts must be considered with reference to the act. The Company have only power to sell such land as may not be wanted for the purposes of the act. The form grant, with respect to other land, is not of so much land, but of certain rights in that land, the Company remaining in possession." Rate affirmed.

Trustees of a lunatic hospital appropriated to the poor are not rateable, having no profit or occupation; nor a servant having no exclusive apartment (*d*).

Rex v. *St. Luke's Hospital*, 2 *Burr.* 1053. Certain lands were demised to lessees for the purpose of erecting an hospital *for lunatics:* twenty-nine houses standing upon these lands were pulled down, and the hospital erected, and divided into cells for the lunatics, offices for their sustentation, &c., and apartments for the servants who were hired to attend them; and was supported by voluntary contributions; and J. M., one of those who were rated, was the principal hired servant, living in the hospital, and the trustees who were rated had no benefit from it nor any occupation thereof. Lord *Mansfield.* "Cases of this kind depend upon the peculiar

(*a*) 14 *East*, 256, *ante*, p. 154. (*b*) 6 A. & E. 419. (*c*) *post.*

(*d*) By 9 Geo. IV. c. 40, land purchased for a county lunatic asylum shall not be rated at a higher value than the land was at the time of the rate. See *post*, "*Proportion.*"

nature of the respective hospitals: each stands upon its own distinct circumstances; therefore no *general* consequences will arise from the determination of this peculiar case. The land-tax differs from the poor's tax. The landlord who receives the rent, is to pay the land-tax: but the poor's tax is payable by the occupiers; therefore the rating hospital lands to the land-tax is not applicable to the present question. The occupier ought to be rated, regularly, by name; but in the present instance it is no more than a mere defect in form. The fault in form here arises from the essence of the thing, for if they cannot fix upon some particular person who may be rated as occupier of this building, it follows as a necessary consequence 'that no rate can at all be made upon it.' As to the argument that has been urged in support of the order, 'that a proprietor of lands or houses cannot, by his own private voluntary act, discharge such his property from payments legally due to other persons from and out of it,' it does *not* hold true in fact; for this rate, payable to the parish, as well as several other payments arising from property and chargeable upon it, do and must depend upon the *will of the proprietor*. The owner of a house may, if he pleases, pull it quite down and convert it into a loft; the owner of lands may, if he pleases, suffer them to lie barren and unoccupied: tithes and the right of them vary, according to the different species of the produce of the land; yet the land-owner may sow it or plant it or use it in the manner he likes best, or even not at all, if he so chooses. The *material* question in this case is, 'WHO can be named and charged as the *occupier?*' There are only three sorts of persons that occur to me; if they can find any others who may be properly charged as occupiers, such other persons will not be included in or affected by the evidence which we now give. The only persons that I can think of are, 1st. The five *lessees;* 2ndly. The servants attending this charity; and 3rdly. The poor mad persons who are the objects of it. First, As to the *lessees*. *Mere* NOMINAL *trustees* cannot be esteemed occupiers, or rated as such; besides, these lessees are plainly excluded, by a special proviso inserted in the lease, from converting the building to any other than this specifical use; and the lease is to determine and become void, if they do. They are so far, therefore, from being *occupiers* of it, that they are merely *nominal*—mere *instruments of conveyance*, and have no more *interest* in the thing than the crier of the court of Common Pleas has when he is named as the last voucher in a common recovery. Secondly. As to the *servants* attending this charity. They are not in a like situation with the officers of Chelsea Hospital, and of the other charitable foundations mentioned at the bar, where there are *large distinct* apartments appropriated to the use of the respective officers, wherein they and their *families* reside. Those officers are not charged as servants of such hospitals, or as inhabitants and occupiers of the ordinary rooms and lodgings therein, but as having separate and distinct apartments which are considered as *dwelling-houses*. The cases that have been considered by the judges relating to the window-tax are uniform in rating officers of hospitals for their distinct apartments; but in this hospital there are neither any such officers or any such apartments as were in those cases determined to be rateable. Thirdly, as to the poor miserable wretches who are the unhappy objects of this charity. It would be too gross to conceive them to be proper persons to be rated to the relief of the parish. And if no person can be found who is rateable to this tax, it follows by necessary consequence, 'that there can be no rate at all.'"

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Land-tax no guide for poor-rate.

Rex v. *St. Bartholomew*, 4 *Burr.* 2435. The mayor and commonalty of London, as the governors of Bartholomew Hospital, were rated to the poor. Lord *Mansfield*. "The poor-rate must be charged upon the *occupiers*. In the case of St. Luke's Hospital, and in that of Chelsea Hospital, the *officers* were rateable as *occupiers*. Here the *corporation* are not *de facto* the occupiers. The *poor* are occupiers; *but they are not rateable.*"

Neither the governors of an hospital, or the poor persons, can be rated;

Rex v. *Gardner*, *Cowp.* 79. The Master and Fellows of Catherine Hall were rated for a house erected for the butler, and for a house erected for the porter. These houses were respectively inhabited by the porter and

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butler, and their families. The butler's house had no communication with the college but through the porter's house. There was an entrance for the society to come into the college after the gates were shut. Both houses were without the college. The butler and porter had the entire use of their respective houses, without the college intermeddling therewith, and took in lodgers and boarders. The sessions confirmed the rate, and it was admitted that the rate ought to have been made upon the butler and porter personally, and not upon the college, and the Court quashed the order of sessions.

Royal palaces in the occupation of the royal family are not rateable, but servants occupying house and land belonging to the crown are rateable.

Rex v. *Matthews*, *Cald.* 1; 1 *Bott*, 170. Matthews was rated for a keeper's lodge in Windsor Park and two acres of land, which he occupied as keeper. He appealed against the rate, and the case stated that the king was rated for his Mews in New Windsor, and for his Mews in St. Martin's, Westminster. A variety of other cases are here mentioned, in which the servants of the crown had been rated for property belonging to their offices. Lord *Mansfield.* "The question is, whether this property is rateable? The royal palaces are not liable, nor have they ever been rated. As to the Mews in St. Martin's parish, that part of it only is rated which was taken in of late years, and was before that time ground belonging to some adjacent parish. It is clear that when a servant occupies house and land belonging to the crown, whether he pays for the same by rent or by service, it can make no difference as to his being rated: he is equally liable."

A beneficial occupier of the king's lands, whether by gift or for wages, is rateable for the same.

Lord Bute v. *Grindall*, 1 *T. R.* 338. On a special verdict it appeared that Lord Bute was ranger of New Park, Richmond, and had the custody of the houses, lodges, &c.; and for the better execution of his office, his Majesty granted to him the *herbage and pannage of the park*, with other privileges: some part of the park is inclosed land, some part meadow, and some arable land sown with corn and clover in the ordinary course of husbandry: the meadow has been always mowed, and the hay made by persons paid by the king, who found the seed: sixty-six loads of hay have been always carried by the king's waggons into the park for the deer, and the overplus stacked up for the king's horses, and the ranger's horses; when the arable land was sown with corn, the ranger found the seed; and when with clover, the king found the seed; and was manured, ploughed, and sown by the king's servants and horses, and reaped by the ranger, and sold for his benefit, and the king had no part; the straw was used for thatching the hayricks, and by the king's cart-horses: *the profits arising to the ranger from the said lands are worth* 100*l.* *a-year;* but the herbage and pannage of the park have yielded no profit to the ranger. Lord *Mansfield.* "The question is, whether the plaintiff is rateable at all? Not for how much or in what proportion. It is clear he is not rateable for the herbage and pannage, *because they yield no profit;* but there is a parcel of land inclosed which he sows, and afterwards reaps the corn from, and the profits arising to the ranger from the said lands amount to 100*l.* a-year: therefore he is occupier; and *quo nomine* occupier can make no difference whether by gift or for wages." *Buller*, J. "It is immaterial what interest the occupier has in the lands, whether he holds as tenant at will or at any other tenure: it is not necessary to inquire into the occupier's title."

Tenant at will is rateable.

The comptroller of Chelsea college is rateable for his apartments.

Ayre v. *Smallpiece*, 1 *Bott*, 154. The comptroller of Chelsea College, residing in the college, was rated to the poor, for apartments occupied *distinctly and separately to his own use.*

In Hampton Court Palace private individuals who occupy apartments not annexed to any office under the crown, or in discharge of any service to the crown, are liable to the poor-rate.

Reg. v. *Ponsonby*, 1 *G. & D.* 713. The defendants were assessed for apartments in Hampton Court Palace. Appeal dismissed. Case:—Hampton Court Palace was built by Wolsey in 1514, and presented by him to Henry VIII. in 1525; ever since it has constituted part of the royal demesnes appurtenant to the crown of England. After the decease of that monarch, the palace continued to be a place of occasional residence of the sovereigns of England until some time in the tenth year of King George II., who was the last sovereign who personally occupied it; from which time, and up to the present date, the palace has ceased to be a place of the actual personal residence of the crown. The palace contains a suite of rooms called "the state apartments," which contain a collection of pictures, the

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property of the crown, to which the public, under certain regulations, are permitted to have access; a room, called by the name of "the board of green cloth," and a gallery, which the public are not permitted to enter, and which are used as a depository for lumber. For the last sixty years the state apartments have not been used for any other purpose, and are not included in the present assessment. A guard of honour is always on duty at the palace, and divine service is regularly performed therein by a chaplain appointed and paid by the crown. The palace, as well as the gardens which surround it, are maintained and kept in order by the crown, and the produce of the gardens (which gardens are not assessed) is applied to her Majesty's use. Sentinels are posted at the various entrances, and those entrances are opened and closed at the pleasure of the crown. The housekeeper of the palace (who is the only officer of the royal establishment resident in the palace) formerly employed servants to show the pictures, and received a fee or gratuity for such view as a perquisite of office. Upon the decease of Lady Emily Montague, the late housekeeper, the state apartments were thrown open for the gratuitous admission and view of the public, under the superintendence of persons in the dress of police constables, but appointed and paid by the crown. There are several other apartments in the palace which are in the occupation of private individuals. Some consist of spacious drawing-rooms, dining-rooms, bed-rooms, servants' rooms, kitchens, and other domestic offices, suitable for the residence and accommodation of persons with considerable household establishments, and are now and always have been occupied by persons of rank and distinction, and others are occupied by persons of respectable station. One of the parties included in the rate appealed against is a Mr. Grundy, the husband of the housekeeper of the palace, appointed and paid by the crown, who, as such housekeeper, and for the proper performance of her duty, resides (with her husband and children) in the part of the palace set apart for her use, and in respect of which her husband is rated. (*a*) With this exception, and that of some other persons similarly situated, the several suites of apartments occupied by private individuals are not enjoyed by them as appurtenant or annexed to any office under the crown, but are occupied by virtue of a written grant or warrant, made by the lord chamberlain of her Majesty's household, in the following form:—"These are to require you to deliver or cause to be delivered unto —— the keys and possession of the following lodgings in her Majesty's palace of Hampton Court, viz., [here follows a list of the apartments, together with a description of their situation in the palace,] which lodgings are to be inhabited by —— or some part of —— family, a part of every year, or they will be considered vacant and disposed of accordingly; and, when the family are absent from Hampton Court, it is expected that one of their servants should be left in their lodgings, or that the keys thereof be left with you or the housekeeper for the time being: and for so doing this shall be your warrant. ———, lord chamberlain. To ———, housekeeper of her Majesty's palace of Hampton Court." In some cases the names of two or more individuals (members of the same family) have been included in one warrant. The occupiers of these suites of apartments provide at their own expense any kind of household furniture and fixtures requisite for the furnishing and fitting up of such apartments. Previously to occupiers taking possession of the apartments, such repairs as may be considered by the officers of the crown as necessary to be done to such apartments, are done at the expense of the crown; but in some instances, where the repairs desired for the accommodation of such occupiers have been of such a nature as to require a considerable outlay, such repairs have been effected at the joint expense of the crown and occupier; but all alterations or additional works required by the occupiers are done at their own expense, and in some instances such additional works and alterations have amounted to 1000*l.* and up-

(*a*) It was agreed that the husband of the housekeeper was not rateable, and that the case should be argued with reference to the other persons included in the rate.

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wards. Afterwards the occupiers are bound, at their own expense, to do whatever internal works, alterations and repairs may be found necessary for keeping up and preserving the apartments in a proper and tenantable condition, or which they may consider essential to their greater convenience and enjoyment; but no works, alterations and repairs are done except under the directions of the officers of her Majesty's Office of Woods, &c., and the government contracting tradesmen are employed and paid by the occupiers of the apartments. A periodical survey is made of the apartments every second year by the officers of the crown, and a report made of the repairs necessary for placing them respectively in tenantable repair; and notices (of which the following are copies) are given by the crown to the occupiers, to have such repairs done, which are done by them accordingly:—" Office of Woods. In pursuance of her Majesty's command, signified to the chief commissioner of her Majesty's Woods, &c., an inspection of the several apartments at Hampton Court Palace, held by grace and favour of her Majesty, will take place in the ensuing summer, and in the summer of every succeeding second year, of which due notice will be given to each of the several occupiers, who after such survey and inspection will be required to execute whatever internal works and repairs may be found necessary for keeping up and preserving the apartments in a proper and tenantable condition. Duncannon. A. Milne. Cha. Gore."—" Office of Woods. Referring to the notice of 20 March last, addressed to you by this board, I beg to inform you that a survey has been made of the present state of the interior of the apartments you occupy by the grace and favour of the sovereign in Hampton Court Palace, and the repairs, &c. (according to the statement on the other side) are reported as necessary for placing your apartments in tenantable repair. I am, on behalf of the commissioners of Her Majesty's Woods, &c., to request that you will, at your earliest convenience, give directions for executing the works enumerated, which must be done under the directions of the officers of this board. (Signed) A. Milne. The apartments require a general repair, painting, whitewashing," &c. (or as the case may be, varying according to circumstances.) The number of families now occupying such suites of apartments in the palace may be taken to amount to from 60 to 70, and the number of servants in their employment may be computed on an average at between 150 and 200. Instances exist in which the holders of warrants for such apartments derive considerable pecuniary emolument to themselves by accommodating other persons with the use of the same, in consideration of sums of money paid in gross; and also by way of yearly rent; and instances have occurred where others have derived emolument by taking in inmates or lodgers to board and lodge, or only to lodge, with them in such apartments, and others by carrying on or exercising their several trades or professions therein; but none of these acts have been done with the sanction or privity of the crown. Many apartments occupied by private individuals communicate with the state apartments, and the doors of communication are kept locked during such occupation; but if, in the general care of the palace, the housekeeper finds it necessary to open these doors, she exercises the power of doing so, and of passing through the apartments which are so occupied. Some of the apartments have exclusive outward entrances, opening upon the public high road and barge walk. The parishioners of Hampton, feeling themselves peculiarly aggrieved by the increased charges on the parish funds, arising from the relief of poor persons who followed the court, and by workmen then engaged in the alterations making at the palace, petitioned William and Mary for redress, when their Majesties were pleased to grant to them an annuity of 50*l.*, payable out of the receipts of the Exchequer, by writ of privy seal, of which the following is a copy:—" October, 1694. Anno Regis et Reginæ *Gulielmi* et *Mariæ* sexto. Poore of the towne of Hampton. Penson. A warrant under the Exchequer to pay out of monies (not appropriated to particular uses by act of parliament) to the churchwardens of the parish of Hampton for the time being a penson of fiftie pounds yearly during their Majesty's pleasure, for the support of the poore of that towne, at four quarterly

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payments, to commence from Michaelmas last, and to be distributed by the said churchwardens as the vicar of the said parish and the under housekeeper of their Majesties royal palace of Hampton Court shall direct. Subscribed by Sir John Nicholas, by warrant under his Majesty's royal sign manual; countersigned by the lords commissioners of the treasury." This pension has from time to time varied in its amount, by reason of the land-tax and other taxes attaching on it. For some years immediately following the time of the grant, it was received by the under housekeeper of the palace, and distributed by him at his discretion. It has for many years last past been received by the churchwardens, and applied by them in aid of the funds created and established by and with the other charitable donations given generally by the donors to the use of the poor of the said parish of Hampton. Lord *Denman.* "I agree with the sessions that the appellants are occupiers, and that they are rateable. I also agree with what has been suggested in argument, that the question referred to us is very much a question of fact. We may take it either that the sessions have formed their own opinion on the fact of occupation, and that they ask us whether there was *any* evidence to warrant their conclusion, or that they refer the whole matter to us. I think they had before them sufficient evidence that the appellants had each separate occupation; and, if I had been called upon as a juryman to pronounce upon the same evidence, I should have come to the same conclusion. It is clear that Hampton Court was once a royal residence, and equally clear that it has ceased to be so. Some of the cases as to rateable occupation are stronger than the present, particularly that of *Lord Bute* v. *Grindall,* (*a*) in which there was a joint occupation and possession, as it were, on the part of the crown, with Lord Bute, who was, notwithstanding, held rateable. In this case it is many years since the crown has taken possession. Certain apartments in the palace are kept for the public use, and the palace is guarded by sentinels; but these circumstances do not constitute personal occupation on the part of the crown. The delivery of the keys by the housekeeper does not vary the case, and is quite consistent with the notion that the appellants have an independent occupation; though at the same time it is a strong fact to show that the crown exercises a sort of paramount control and superintendence over all the apartments. The Attorney-General put it ingeniously whether, as the crown occupied part of the palace, the crown, if not exempt from rateability, would not be rateable for the whole palace; and the case of a gentleman going abroad, and leaving his house for the use of a friend, and asked whether the friend would be rateable. The same answer may be given to both the cases put; the party allowed to occupy would be rateable. Two or three cases in the opposite direction come near this. In *Rex* v. *St. Mary the Less, Durham,* (*b*) the appellant, who had a lathe in the house in question, and never resided there himself, but out of charity allowed a poor person to occupy the kitchen, was held to occupy by his lathe, and to be rateable for the whole house. But that case is not directly applicable, for it was not there held that the occupier of the kitchen was *not* rateable for his portion of the house: if he had been rated for the kitchen, and if it had been held that he ought not to have been, that case would then have been applicable. In the present case we have no doubt that the appellants have a beneficial and exclusive occupation, and that they are rateable." *Patteson,* J. "I had no doubt until the Attorney-General put it that, supposing the prerogative of the crown not to exempt it from rateability altogether, the crown would be rateable for the *whole* palace, because it is the owner of the whole, and occupies a part. But, upon consideration, I think that is not a sound argument. A person may be assessed to the poor-rate for part of a house; for the statute of Elizabeth, in directing the taxation of occupiers of houses, does not mean the occupiers of entire houses merely. Accordingly in *Ayr* v. *Smallpeace* (*c*), the comptroller of Chelsea College was held rateable for apartments, and in *Rex* v. *St. Mary the Less, Durham,* which has been commented on by my lord, it was not denied that the owner of the house was rateable for so much of the house as was occupied by himself. In a case of burglary

(*a*) P. 162.

(*b*) P. 153.

(*c*) P. 162.

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the question would be very different. A question might certainly arise in burglary, whether the apartments occupied by the appellants are their dwelling-houses; for in the case of Williams, (a) where the lodgings of Sir H. Hungate, at Whitehall, had been broken into, it was thought the indictment should be for breaking the king's mansion-house, called Whitehall. The king, however, then resided at Whitehall, so that it was certainly his dwelling-house. So in *Rex* v. *Peyton*, (b) which was an indictment for stealing in the dwelling-house of Mr. Bunbury, it appeared that the house in question was the Invalid Office, at Chelsea, that the ground-floor was used for the office of the Paymaster-General, and the whole of the upper part occupied by Mr. Bunbury, but that government paid the rent and taxes for the whole house. It was there held that the charge for stealing in the dwelling-house of Mr. Bunbury could not be sustained. But cases on the question of how the proprietorship of a dwelling-house should be laid in an indictment for burglary do not apply to establish the proposition, that different persons may not be charged to the poor, as occupiers of different parts of a house. The question here is, whether the appellants have not an exclusive occupation of the apartments for which they are rated. When they enter upon their occupation the keys of their apartments are delivered to them; they are to be inhabited by the family a part of every year, and when the family are absent a servant must be left in the occupation, or the keys delivered to the housekeeper. It is quite clear to me that the warrant assigns to each occupier the exclusive occupation of his apartments. The housekeeper may certainly enter them, if she thinks proper to do so, for the general care and superintendence of the palace, but that is merely a condition annexed to the holding, or is a reservation, which does not render the occupation otherwise than exclusive for the purposes of rating. Lord Bute's case is much stronger than the present, for the crown there had a joint occupation with him; as to the arable land, when it was sown with corn, Lord Bute furnished the seed, and, when it was sown with rye-grass or clover, the crown furnished the seed, and in either case the crown always furnished the labour necessary for cultivation." *Williams*, J. "I am of the same opinion. No doubt was raised as to one part of the case—it was not denied that the occupation is beneficial. Even if the appellants had been servants of the crown, for which supposition there is no pretence, it is clear from *Rex* v. *Terrott* (c) that any occupation, ultra that which is necessary to the performance of the service, would be considered a beneficial occupation, and would be the subject of rateability. With respect to the quantity of interest which the appellants have in their apartments, it is immaterial whether they have a permanent occupation or not; even if it be conceded, and it is a large concession, that their occupation was not permanent, they are still rateable. In *Rex* v. *The Chelsea Waterworks Company*, it was argued that there was no certain permanent or exclusive occupation. The court decided at once that the company were rateable in respect of the pipes laid down in the Green Park, and in respect of the reservoir, as to which part of the case the court took time to deliberate. Lord *Denman*, C. J., in delivering its judgment, observed, 'We are of opinion that the warrant gave to the company as much interest in the space where their reservoirs are made, as in that where their pipes are laid. It is impossible to distinguish the one from the other. Their interest, indeed, in the former is expressly, in the latter by implication, at will only; but a tenant at will is, until the will be determined, an occupier of the land.' 'They appear to us to have the exclusive right in a portion of the soil in both cases, though for a limited purpose only.' Conceding, therefore, that the appellants in this case were not permanent occupiers, there still remains the beneficial occupation of rateable property. Is then the palace to be deemed a place of royal residence? If it is, there is an end of the question. But no presumption of such a fact arises upon this case; but rather of the contrary. The housekeeper is the only servant of the crown who occupies any part of the palace, and she has the power of entering certain apartments, besides the state apartments, for the purpose of taking

(a) 1 Hale, P. C. 522.

(b) 1 Leach, 324.

(c) P. 167.

care of the palace. But her power of so entering them has merely the effect of diminishing the quantity of the interest enjoyed by the appellants, and they are not the less occupiers. Lord Bute's case is quite *ad idem* with the present case, or rather the present is an *à fortiori* case. It is quite right to concede that the housekeeper is not rateable."

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A master gunner appointed by the crown, and *stated* to be occupier of the king's battery-house, is rateable.

Rex v. *Hurdis*, 3 *T. R.* 497. The appellant objected to the rate because one Wood, gunner of the king's fort and battery at S., who was a servant to his Majesty, and not in his own right the occupier of the dwelling-house thereto belonging, and who therefore ought not to have been charged in the rate, was charged as the occupier of the battery-house. Wood was a gunner at the fort of S. The fort and battery-house are the property of the crown, and a master gunner is an officer appointed by the crown, and removable at pleasure. Wood being so employed, *occupied* the whole of the house, except one room; the furniture belonging to him. The inhabitants of the parish paying to the poor-rate have a right to vote in the election of members of parliament. Lord *Kenyon*. "I do not feel that my opinion upon this subject militates against any decided case, but I shall determine upon the ground of positive law, as it is laid down in the 43 Eliz., which subjects *every occupier* of lands, houses, &c., to be rated. Now it is expressly stated in the case, that *Wood was the occupier of the battery-house;* and though perhaps it might have been contended below that he was not the occupier, in the legal sense of the word, yet the finding of the sessions precludes that question here. It is not, however, a general position, that a servant of the crown occupying a house in respect of his office is not rateable for it. I was always rated for the house I had as Master of the Rolls. Soldiers, indeed, cannot be said to be the *occupiers* of their barracks, in the legal sense of the word; they are no more than mere servants. Therefore Wood was properly rated."

Soldiers are not occupiers in the legal sense of the word.

Stables rated by order of the crown for the use of a regiment, are not rateable, where the lessee himself does not occupy them on his own particular account.

Lord Amherst v. *Lord Somers*, 2 *T. R.* 372. By warrant under the king's sign-manual, a lease was entered into by Lord R. Bertie for himself and for the colonel of the said horse, for the stables, with one A., by which certain buildings were covenanted by A. to be built by him as stables, &c., for the use of a troop of the horse guards. Lord Amherst succeeded Lord R. Bertie, and had possession given him of the stables, &c., and the buildings were used always for the purposes of the troop, and never in any manner for the private benefit of Lord Amherst. The rent was paid by stoppages from the pay of the troop. By *Ashhurst*, J. "It is admitted that neither the possessions of the crown, nor of the public, are liable to be rated to the poor; and as this property falls within one or the other of these descriptions, it is not rateable to the poor." And by *Buller*, J. "In this case the plaintiff did not contract as general lessee, but merely for the benefit of the public, by order of the crown; and he made no use whatever of the stables. Therefore he cannot be considered as the occupier."

Officers supplied with accommodation not strictly necessary are rateable.

Rex v. *Terrott*, 3 *East*, 506. The appellant was an artillery officer, and had his quarters at a building fitted up at the expense of the crown. There were several apartments beyond what were necessary for the regimental business, and he resided in them with his family; the usual barrack furniture was provided by the crown. He was rated in respect of these apartments. By Lord *Ellenborough*, C. J. "The principle of the subject is, that if the party have the use of the building, or other subject of the rate, as a mere servant of the crown, or of any public body, or in any other respect for the mere exercise of public duty therein, and have no beneficial occupation of or emolument resulting from it in any personal and private respect, then he is not rateable. The property of the crown *in the beneficial occupation* of a subject, whether he be a civil or a military officer of the crown, is equally rateable. But if the use of, or residence upon, the property, be either as *the servant* of the crown, and for public purposes only, or as a mere public officer or servant, such as the trustees of a meeting-house, the servants at St. Luke's, the Masters in Chancery in respect of their public offices, in all such cases, the parties having the use of the property merely for such purposes are not rateable; because the occupation is throughout that of the public, and of which public occupation

The rule as to public servants.

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the individuals are only the means and instruments. I am not aware that private soldiers have any accommodation in barracks beyond what are required for sleeping, eating, and the like; but if their barracks should supply them with any accommodation of a beneficial and valuable, and not strictly of a necessary nature, the analogy between the two cases would afford perhaps a ground for including them in the rate rather than for excluding an occupier of the present description from it." Rate confirmed.

The servant of a brewery occupying a house which he took of a third person, but for which the brewers paid the rent, is liable to be rated.

Reg v. *Wall Lynn*, 3 *N. & P.* 411, 8 *A. & E.* 379. This was an appeal against a rate for Sheffield. Rate confirmed. Case:—C. Eyre and H. Rawson are the proprietors of a brewery in Sheffield, and the appellant, Wall Lynn, is their servant and head brewer. From 1828, down to February, 1833, the appellant resided in a house situate in the brewery yard, under an agreement, dated the 1st of November, 1828, made between him and the said Hannah Rawson, and a copy of which is annexed to this case. In February, 1833, the health of the appellant being impaired, he removed from the house in the brewery yard to one with a garden attached to it, at Farm Bank, a quarter or half a mile from it, belonging to one E. W. Drury, who, upon the trial of the appeal, stated that he made the agreement with the appellant, and saw no one else upon the matter, and that the rent was 35*l.* per annum, but that he considered Rawson and Co. as his tenants. Upon the sale of the said house and garden by Drury to one George Rodgers, the same tenancy was continued. When the appellant removed from the house in the brewery yard to the house at Farm Bank, the furniture, which belonged to the proprietors of the brewery, was then removed to the house at Farm Bank, and another servant of Rawson and Co. was then put by them into the occupation of that house in the brewery yard, which up to that time had been occupied by the appellant. The appellant's salary was at the same time increased; the rent and rates were paid by Rawson and Co. at the brewery. The assessment for window duty for the house at Farm Bank was regularly made in the name of the appellant, from the time of his entering upon the house down to the trial of this appeal, and paid at the brewery without any objection to the form of assessment. The appellant had also been assessed to the poor's rate in every rate since his entry upon the house and garden at Farm Bank, in respect of those premises. An objection was made to the last rate but two before that appealed against, on the ground that Rawson and Co., and not the appellant, ought to have been rated, but the two last rates had been made in the same name as before, and they had been paid without objection. In 1833, the appellant was summoned for the payment of the registration shilling, under the provisions of the Reform Act, which he paid, together with the costs of the summons. In 1832 and 1833, when the name of the said appellant was inserted in the list of voters for the election of members of parliament for the borough of Sheffield, as the occupier of the house at Farm Bank, the appellant objected to his name being inserted in the list: no formal objection, however, had been made according to the Reform Act, and the name of the appellant remained upon the register. In 1834, the name of the appellant was again inserted in the list of borough voters; a regular objection was made to his name being inserted there, which was disallowed by the revising barrister, after hearing evidence on the subject, and the appellant's name was retained. At the election for borough members in January, 1836, the appellant tendered his vote, and on being asked whether he voted for the house in Shrewsbury Road, Farm Bank, replied that he did, and voted accordingly. The appellant, on the appeal, insisted that he lived in the house at Farm Bank as a servant only, and was not liable to be rated to the relief of the poor, but that Rawson and Co. ought to have been rated. Upon the appeal, Rawson and Co. appeared by counsel, and contended that they were the parties liable to be rated, and that the appellant occupied the premises as their servant only. The sessions decided that the appellant was liable to be rated as the occupier. By the agreement of 1st of November, 1828, after an undertaking by Wall Lynn to serve Rawson and her copartner in the capacity of a clerk and brewer, Rawson promised to pay

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Lynn 150*l.* yearly, and to permit him to occupy and enjoy the house adjoining the buildings and brewery, as and for the place of his residence, free and clear of all rent, rates, and taxes; Bicks, another clerk in the said brewery, being also provided with board and lodging in the house, if required by Rawson, Bicks also paying the expenses of his board; which salary and house accommodation were to be in full satisfaction and compensation for all other perquisites of every description, and for any expenses incurred by him in the business. If either party should be desirous of determining the service, such party was to give three months' notice in writing. Lord *Denman.* "The case does not involve any doubtful doctrine. The appellant rents and occupies a house, and is rated to all the burdens consequent on such occupation. None of the cases cited come into question, for in all of them the tenement occupied was the property of the master. It would hardly be contended that the payment of rent and taxes by a master for a house occupied by his servant makes the occupation auxiliary to the service. The cases cited where the occupation has been held to bear this character, are the cases of a butler occupying a pantry, a coachman the offices, and similar cases, between which and the present there is no analogy." *Littledale*, J. "Wall Lynn was, without any doubt, in law the tenant of the person from whom he took the house. The house was also occupied by him as absolute owner, for his employers had no right whatever to put any one in, or any authority over his occupation. The mere payment of rent by them gave them no control over it, any more than any other gratuity to him which they might be pleased to allow." *Patteson*, J. "Our decision in this case does not touch any of the other cases on the subject. The appellant here is the actual tenant of the house, and his employers had nothing whatever to do with it. By the agreement they were to give him a house near the brewery, but if he left it they were under no obligation to find him another house." *Williams*, J. "In *Rex* v. *Field*, the matron of the Philanthropic Society had no distinct apartment in the house, except a bed-chamber; her services were required there at any moment, and she was dismissable on a month's notice." Order confirmed.

See also *Holford* v. *Copeland*, 3 *Bos. & Pul.* 139, in which the principle of the above decisions is fully discussed and elucidated.

Premises in the parish of A., taken by the overseers of B., and used by them in the employment of the poor of B., are rateable to the relief of the poor of A.

The Governor of the Poor of Bristol v. *Wait*, 6 *N. & M.* 383; 5 *A. & E.* 1. *Replevin.*—Avowry by the defendants, as overseers of St. Philip and St. Jacob, Gloucester, under a distress for poor-rates made on the plaintiffs as occupiers of certain premises in the parish. The plaintiffs had taken certain premises out of the limits of the city of Bristol, and situate in St. Philip and St. Jacob, for the purpose of putting out their poor, either simply to lodge them, or to employ them, at their discretion. In some parts of the premises the poor had been employed in the manufacture of lace, which was a losing concern, and in other parts the poor had been merely lodged. One question was, whether the occupation contemplated by the act of 43 Eliz. was *profitable;* and if it was, whether that question could be raised in the court. Lord *Denman*, C. J., said, "We are quite clearly of opinion that the question, whether the occupier actually made a profit, cannot be raised;" and afterwards Lord *Denman* C. J., delivered the judgment. "The material question is, whether the goods had been properly taken under a distress for a poor-rate; or, in other words, whether the plaintiffs were the occupiers of rateable property. It appeared that the plaintiffs (being governors of the poor of the city of Bristol) had taken certain property out of the limits of the city and within the parish of St. Philip and St. Jacob, for the purpose of putting out their poor, either simply to lodge them, or to employ them, at their discretion. In some part of the property (houses and buildings) the poor had been employed in a manufacture which was stated to have been a losing concern, and in other parts they had been merely lodged. This property would have been rateable unless the kind of occupation in this particular case exempted it. It therefore became a question, whether the managers of the poor (whether governors, as in this instance, or overseers ordinarily)

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renting rateable property out of the limits of their district, city, parish, township, or place, are exempt from rateability, because such property is applied solely to the purpose of disposing of their own poor, with which, upon the statement already made, the place in which the property is situated has no concern. Upon this question we were referred to and pressed by the cases well known, and so often referred to, of property held merely for public purposes, as stables taken by the colonel of a regiment for the use of that regiment, *Lord Amherst* v. *Lord Sommers;* (*a*) of property devoted to charitable purposes, as apartments held by the matron of the Philanthropic Society, merely to superintend the children, *Rex* v. *Field*, 5 *T. R.* 587; or the like in the case of the superintendant of St. Luke's, *Rex* v. *St. Luke's Hospital*, (*b*) in each of which instances there was no occupation beyond the public purpose in the former, and the charitable in the latter; with respect to which cases it is enough to say, that we agree fully and without hesitation to the principle and authority of them all; observing at the same time, that as soon as any independent occupation for private advantage is discoverable, rateability immediately attaches. The case of the commanding officer of barracks, *Rex* v. *Terrott*, (*c*) furnishes a full illustration and confirmation of the latter remark. The absence of 'beneficial occupation' was also much insisted upon, and it was contended that *that* is the true criterion to ascertain whether property be rateable or not. It is not to be denied that this phrase 'beneficial occupation' has been in frequent use, and, generally speaking, it serves tolerably well to convey rather a popular notion than to give a certain rule for deciding the question of rateability in every instance; because, if by 'beneficial' be meant *profitable*, or any thing like it, the expression is obviously fallacious. And upon this point all discussion is superfluous, because the case of an unprofitable and losing occupation (expressly so found) of a coal mine, has been held not a case of exemption from rateability,—a coal mine, by the words of the statute of Elizabeth, being subject to a rate. Without affecting the precision of an exact definition, it would probably be nearer the truth to say, that the *presumptive* liability arising from occupation is to be explained away in each case. Why is the coachman living in apartments by permission of his master not rateable, according to Lord *Kenyon* in the case of *Rex* v. *Field?* It is his master's occupation. Why were not the matron and the superintendant, in the cases above referred to, rateable for the apartments they occupied? Because, as they had no more than was necessary to carry into effect the object of the establishment in each instance, to rate them would in reality be to rate the charity children in the one case and the lunatics in the other. It cannot be said that *no benefit* is derived. By the occupation of the portion of the building in each of the cases alluded to, the expense of a house or lodging elsewhere is saved. But, moreover, the question here does not arise upon a rate imposed by the managers of the poor of Bristol, upon premises occupied by their own poor within their own city. On the contrary, the rate in question was imposed by foreign overseers upon property situated in their own parish, and which, in the hands of an ordinary individual, would clearly be rateable to the relief of their poor. How does it concern the overseers and rate-payers of the parish of St. Philip and St. Jacob, in what manner any person or persons manage the property taken and held in that parish? Suppose the governors of the poor of Bristol to have taken 100 acres of land, and to have brought such of their paupers as were capable of labour from a poor-house in Bristol, to employ them upon the land, as a beneficial mode, according to their opinion, of disposing of the poor:—suppose also that the return, whatever it might be, was applied solely towards the maintenance of the poor who had laboured upon the farm, or of those who were unfit for labour and had been left behind,—how can this constitute a better claim to exemption from rateability in the parish where the property lies than a *losing* occupation, which it is quite certain does not affect the question of liability? The same rule must of course apply to every species of property. We are, therefore, upon the whole of opinion that the buildings so held by the plaintiffs were rateable, and that a verdict be entered for the defendants."

Occupation for public purposes not rateable.

(*a*) P. 167.

(*b*) P. 160.

Secus if any independent occupation for private advantage.

(*c*) P. 167.

Losing occupation constitutes no exemption.

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Reg. v. *Wallingford Union* 2 *P. & D.* 226. This was an appeal against a rate for the parish of St. Mary the More. Rate confirmed. Case:—The respondent parish is part of the Wallingford Union formed under the provisions of the 4 & 5 W. 4, c. 76, and the appellants are the guardians. The property in respect of which they are rated consists of the workhouse of the union, together with two acres of ground used as a garden to the workhouse, and adjoining the same, but not being a distinct property. Previous to the formation of the said union the respondent parish, together with the parishes of St. Peter and St. Leonard, in the borough of Wallingford, were jointly possessed of a workhouse for the reception of paupers of the three united parishes, on the site of which the said union workhouse has been erected. After the formation of the Wallingford Union the old union of the united parishes was declared void by the Poor Law Commissioners, and the old workhouse belonging to the three united parishes was, with the concurrence of the commissioners, and in pursuance of the statutes relating thereto, sold to the guardians of the Wallingford Union. A piece of ground containing about two acres, adjacent to the workhouse, was also purchased by the guardians for 190*l.* 10*s.*, and conveyed to them. The union workhouse was erected partly on the ground belonging to the old workhouse, and partly on a portion of the two acres, by the said guardians, at the cost of 5150*l.* The old workhouse was not rated to the poor, but the two acres were so rated before the union, but the produce thereof is now applied to the maintenance of the pauper inmates. The union workhouse is situate in the respondent parish, and is applied solely to the reception and maintenance of the poor of the union, including therein as well poor persons falling sick or otherwise becoming destitute in the union, although not settled therein, as the settled inhabitants of the union. In addition to the apartments occupied by poor persons and appropriated solely to their use, the building contains apartments occupied by the master and matron; but such apartments are necessary for the purposes of the union to carry on the work of, and to superintend the paupers. The workhouse also contains a board-room, where the guardians meet once in every week to transact the business of the union, and which board-room is used solely for that purpose. The workhouse contains a mill affixed to the freehold, whereat the pauper inmates are employed to grind flour for hire, but only four men can work at the said mill at a time; and all the money so earned is solely applied in discharge of the expenses of the workhouse and the maintenance of the paupers. A piece of garden ground is attached to the workhouse, and cultivated by the paupers who are inmates of the house, but the produce of the garden is consumed by the pauper inmates. The occupiers are described in the rate as "Board of Guardians of Wallingford Union." The name of the owner is described in the said rate, viz. "Parishes comprising the Union." The premises intended to be rated are described in the rate, viz. "Union Workhouse, Board Room, Officers' Apartments, Yard, Garden, and Premises." The question for the court is, whether the union workhouse or any of the premises were liable to be rated. Lord *Denman*, C. J. delivered the judgment: "The question is, whether a workhouse, situate in one of many parishes which have been formed into a union is rateable, in the hands of the guardians, towards the relief of the poor of the parish in which it is. To show that it is not so rateable the class of cases was referred to in which the court has held property exempt from rating by reason of its being wholly unproductive to the occupiers, commencing with the *Salter's Load Sluice* case, (*a*) and ending with the late decision in favour of the corporation of Liverpool. The great leading principle of these cases I take to be this—that when that person who must be deemed the actual occupier is merely a trustee for others, and is prevented by the law from deriving any benefit whatever from the occupation, that person cannot be considered as the occupier for the purpose of being rated: the act of Elizabeth plainly supposing both control over the property and the power of enjoying it. Thus in the *Salter's Load Sluice* case, where tolls were to be applied for the several purposes of the act, and for no other whatever, Lord *Kenyon*

(*a*) P. 175.

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said, 'Here is property which is the subject of the rate, but no occupier of it.' The *Liverpool* case (*a*) may be considered as the same with that just cited, which it expressly follows, and the *Weaver Navigation* case, (*b*) in the same volume, agrees with them entirely. *Rex* v. *Sculcoates* (*c*) fully acknowledges the principle, on which also we lately decided; *Reg.* v. *Beverley Gas Works*, (*d*) and the very important case of *Reg.* v. *The Corporation of Liverpool.* (*e*) Under the circumstances which appeared on all these occasions, there is no impropriety in saying that the public was the occupier, made such by act of parliament, and receiving by the same authority all the profits of the property, while those who would otherwise have been the occupiers are in the situation of public servants, receivers, and managers for the public benefit, without any interest of their own. So it was argued here—the workhouse is hired by the guardians under authority of the late statute for the public purpose of maintaining the poor, and with no private advantage to the occupiers. But though the maintenance of the poor be a public purpose, the maintenance of the poor of this particular district is a burden on that district alone. The occupation is not beneficial to the guardians individually, but the most advantageous mode of relieving their poor is an advantage to that body. We decided accordingly, in *The Governors of the Poor of Bristol* v. *Wait*, which can only be distinguished from the case before us by the local situation of this property, which is within one of the parishes composing the union. But one parish is not more a separate body from another than the parish of St. Mary the More in Wallingford is from the union which annexes it to twenty-eight other parishes. It is not necessary to make any observation on the intermediate cases of property voluntarily appropriated to religious and charitable purposes. We decide on the ground that this property, not being devoted to a public purpose, and being beneficially occupied, is subject to the poor-rate." Order of sessions confirmed.

(*a*) P. 176.
(*b*) P. 180.
(*c*) P. .
(*d*) P. 180.
(*e*) P. 182.

The treasurer of the London Missionary Society is not rateable for the house taken by the society, no person deriving any profit from the occupation.

Reg. v. *Wilson*, 4 *P. & D.* 130; 12 *A & E.* 94. The appellant was assessed in St. Botolph. Rate confirmed. Case:—The rate was made under the authority of an act, 35 Geo. III. c. 61, which by the 16th section enacted, that the rector, churchwardens, overseers of the poor, and inhabitants of the said parish, shall make such rate for the relief of the poor, upon every person who shall inhabit, hold, occupy, possess or enjoy any land, house, shop, warehouse, coachhouse, stable, cellar, vault, or any other building, tenement, or hereditaments within the said parish, and on every other person who by law is liable to be assessed towards the relief of the poor, as they shall think necessary and proper to be rated. The appellant, at the time when he was assessed to the said poor-rate, was and still is the honorary treasurer of the London Missionary Society, which was founded entirely for religious and charitable purposes, and is wholly supported by voluntary and charitable contributions. The premises, in respect of which the society are assessed, are situate in the parish of St. Botolph, and consist of a building erected at the expense of the society, and by them occupied merely for conducting the affairs of the institution, under an agreement for a building lease from the corporation of London. (*a*) The building comprises various apartments, namely, a board-room, in which the board of management and subscribers to the society are accustomed to assemble, a secretary's room, a museum, several clerks' offices, and several store-rooms, in which various articles intended for exportation in furtherance of the society's objects are deposited. No person has ever slept upon any part of the premises. The clerks and officers of the establishment attend during a portion of the day only, and leave the premises in the evening, locking them up and taking the keys away with them. The appellant attends on the premises about one day in a week, for a few hours only, in his capacity of treasurer, and for the purpose of superintending the society's affairs, which are there carried on by the society's clerks. He receives no remuneration from the society, but on the contrary contributes largely to their funds, nor does he or any other

(*a*) A copy of which was annexed. See it at length, 12 *A. & E.* 96.

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person connected with the society derive any pecuniary profits or personal emolument in any way from their occupation of the premises; the clerks, who receive salaries, being mere servants of the society, who are paid as such for their daily services performed on the premises. Neither the appellant nor any other person connected with the society, and occupying their premises as above described, was at the time the said poor-rate was made, or now is, resident within the parish of St. Botolph, or possessed of or in any manner interested in any property situate within that parish, except as above mentioned. Lord *Denman.* "There were *two cases* (*a*) argued during the present term, in which the defendant was rated to the poor, and to a rate raised under a local act for certain purposes connected with the church, in respect to the occupation of a house devoted entirely to charitable and religious purposes, that is, to the uses of the London Missionary Society. It was argued that, though the sessions had found that general fact, the charity being evidently all administered in foreign parts, was not such as our law could recognise. But, supposing this to be so, we think this appellant is protected from liability to a poor-rate by the authority of those decisions which require it to be imposed on the beneficial occupier. Here is neither benefit nor occupation, according to the language of those cases, and particularly the case of *Rex* v. *Waldo*, which has frequently been recognised, and is in its circumstances extremely like the present. The order of sessions must therefore be quashed.

A person who builds an almshouse is not rateable, if no profit be made of it.

Rex v. *S. Waldo*, 1 *Bott*, 182; *Cald.* 338. Mr. Waldo, about six years before, pulled down a house, for which he was rated to the poor at eight guineas a year, and built on the same spot a new one, in which ten poor girls were educated, maintained, and brought up on his charity; he provided a woman to superintend and instruct them. She and the ten girls were the only inhabitants, and the house was solely appropriated for this purpose; Mr. W. was rated for this house. Lord *Mansfield*, C. J., after some angry expressions, said, "Mr. W. makes no profit of this building; and it is sufficient that this is so in fact, and the profit is in fact here applied to public and charitable uses."

Poor persons under a charitable trust occupying almshouses and land, are rateable.

Rex v. *Munday*, 1 *East*, 583. The appellants were poor persons appointed under a charitable deed to certain almshouses and privileges therein mentioned. In 7 Eliz. Lord Rich founded a corporation in Felsted, called Chaplains, Parochians, and Wardens of Felsted, and granted to them a messuage, twenty acres of land, and four acres of wood in the parish. He appointed the messuage to be used for an almshouse for poor and infirm persons, to be placed there by him and his heirs for life, subject to removal for misbehaviour. They were to occupy the almshouse, and such lodgings therein as the patron should appoint, and to have the kitchen, cellars, barns, &c., and all profits and commodities to the said house belonging. And the said chaplain, &c., were to permit them to have and occupy and use the land and wood, and to take fuel from it, and to lop the trees, and fence the wood. He also gave six good kine to be kept on the land for their relief, of which they were to sell one yearly and bring up one calf. At the time of the rate the poor persons were the occupiers of the messuage and the land and wood, and they paid for making the hay and cutting their wood, and disposed of the same for their own use. They kept six cows, reared one calf annually, and sold one cow, and the other calves and the milk they disposed of at their pleasure. Previous to their appointment, they were not parishioners of Felsted. The premises were not rated before, and the visitor frequently granted them additional relief. Lord

(*a*) The other rate stands upon different ground. It is made under an act for extinguishing tithes in St. Botolph. That act gives the rector a regular stipend in lieu of tithes; and for raising that sum directs that the vestry shall once a-year make a rate upon all persons inhabitants and occupiers of land, tenements, or hereditaments and premises within the parish, except the rector. The defendant in this case represents the London Missionary Society, who are unquestionably the occupiers of premises within the parish, and come directly within the words and meaning of the act in question. The cases respecting beneficial occupation with regard to poor-rates do not apply to this act.

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Kenyon. "The words of the 43 Eliz. are general. There is no exception made of hospital or other lands devoted to charitable purposes; and, in comparing that statute with the land-tax acts, it seems that where the legislature intended to exempt property of this description, they have done so in the latter by express words. The property comes within the description of rateable property, and the only question is, whether these persons can be said to be occupiers of it for their own benefit. They plough, sow, reap, and have every sort of occupation in fact which any other person can have, and all this for their own benefit. If this be not an occupation under the statute, I do not know how far the exemption claimed may extend. Surely the smallness of the benefit cannot constitute an exemption. Suppose an hospital endowed with lands for a certain number of persons who have a provision there; at first, perhaps, it might have afforded a small pittance to each member. Shall it be said that they were not rateable then, and would only become so when the revenues increased?—where is the line to be drawn? But supposing that at times it afforded an income of 70 or 80 pounds a year to each individual: shall it be said that they are not bound to contribute anything because they derive that benefit from a charitable institution? Then it is said, that cases have decided that property of this kind is not rateable, because no occupier could be found; but no case has decided that where persons are found in the actual occupation, and having a beneficial enjoyment of it, they are not within the statute."

The master of a free school is rateable.

Rex v. *Catt*, 6 *T. R.* 332. This was an appeal against the rate, on account of the omission of Rev. T. Dyce. Rate confirmed. Case:—Mr. Dyce occupied a house and garden of the value of 10*l.*, which he held as master of a free school in the parish, by the appointment of the minister and inhabitants of the parish, under an indenture of the 2nd September, 1662, by which the house, &c. were assigned for the habitation of the master, and for the use of him and his family, freely, without payment of any rent for the same, together with two and a half acres of pasture land, called Willard's Charity in the same parish; and also certain rent-charges on lands in different parishes, for the teaching of ten boys, sons of the meaner inhabitants of the parish. Dyce became the master in 1775. No rates have ever been paid for the house and garden. Dyce let the pasture for which the occupiers are rated. In support of the rate, *Rex* v. *Waldo*, and *Rex* v. *Scott*, 3 *T. R.* 606, were cited. In limitation an exemption in a private statute of lands given for charitable purposes, free from all public taxes, &c. was held to extend to the poor-rate. Lord *Kenyon* said, "To the authority of the cases cited I subscribe my assent. They proceeded on the grounds that there was no occupier. In *Rex* v. *Waldo*, (*ante*,) the rate was held to be bad, because there was no occupier; the poor children who were placed there for education could not be considered as occupiers, neither could the women-servants who superintended them. That case could not be distinguished from that of St. Luke's Hospital, where the rate was also quashed, because there was no beneficial occupier. *But when a case arises where a person is found to be the beneficial occupier of a house, he must be rated, though the house be appropriated to charitable purposes.* As long as Richmond Park continued in the hands of the king, it was not rateable; but when the ranger made profits of it, and beneficially occupied it, it was held to be rateable in his hands. So, if this person had been put in merely to look after the pupils, and had not occupied the house, he would not have been rateable; but it appears that he is the beneficial occupier of this house and garden. By the old land-tax act, certain property given for charitable purposes is exempted from that tax; but there is no such exemption in the acts respecting the relief of the poor. If the argument against the rate were to prevail, I do not know how far it might be extended. Those lands that are appropriated for the establishment of the religion of the country are in one sense of the word lands given for charitable purposes; but parsonage-houses, glebe lands, &c., are rateable as the lands of the occupier. It is properly admitted that there cannot be a prescription against a poor-rate. If every individual in the parish had agreed not to take advantage of the omission of this person

Property in hands of the king not rateable.

No prescription against poor-rate.

from the rate, perhaps no one could afterwards have objected to it; but that is not the case. The persons who made the rate seem to have acted honourably as far as respected themselves; but if there be any individual in the parish who objects to the omission of the defendant, the objection must prevail. This is not like *Rex* v. *Scott*, where it was held that the master of the school was exempted under an act of parliament, by which the legislature has a right to bind every person; for this defendant was appointed by deed, and only those who are parties to a deed are bound by it." The other judges concurred. Order quashed.

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Poor widows occupying almshouses are rateable.

Rex v. *Green*, 9 *B. & C.* 203; 4 *Man. & R.* 164, S. C. An appeal against a poor-rate confirmed. Case:—The Merchant Tailors Company are patrons of a charitable establishment for the relief of the widows of poor freemen of the company. About three years ago, the company purchased land in the parish of Lee, whereon they erected almshouses for such poor widows. The appellants are poor women resident in the almshouses as alms-women and objects of the charitable establishment, and pay no rent for the same, and are removable at pleasure. The almshouses were erected at the sole expense of the company, upon the freehold property of the company. Before the purchase of the land the same was rated on the occupier at the rate of 2*l.* 5*s.* per annum. The question was, whether the appellants were liable to be rated? *Bayley*, J. "I have no difficulty in coming to the conclusion that this property is rateable. The 43 Eliz. c. 2, enacts, 'that the rate shall be imposed upon every occupier of lands, houses, &c.' It has been made a question in several cases, whether a person residing in a house used for charitable purposes is liable to contribute to the relief of the poor. In *Rex* v. *Catt*, (*a*) it was decided that the master of a free school was rateable;" and, after referring to that case, at length added, "In *Rex* v. *Munday*, (*b*) the objects of a charitable foundation, in the actual occupation of an almshouse, were held to be rateable. That case is not distinguished from the present in point of principle. There they were rated for the almshouse and lands in the sum of 2*l.* 5*s.*, and the court held that they were rateable for the house and lands; they must, therefore, have been considered as occupying that house rent-free. It is true, that in this case the objects of the charity are described as poor persons, but there is no distinction in the statute between poor persons and others. If they are occupiers of property from which they derive a benefit, they are rateable. Mr. *Nolan*, p.188, after stating the authorities upon this subject, says '*The distinction, therefore, as to where charities are rateable, and where they are not so, seems to depend upon this: whether there is anybody who can be rated as beneficial occupier.*' There was therefore no ground for the appeal." *Littledale* and *Parke*, J., concurred. Order confirmed.

(*a*) P. 174.

(*b*) P. 173.

Where profits are applicable to public purposes they are not rateable.

Rex v. *Commissioners of Salter's Load Sluice*, 4 *T. R.* 730. (*a*) The defendants were commissioners for improving the navigation of the Neve, and certain tolls were payable at Salter's Sluice from the persons carrying goods there. They were assessed for the tolls of the sluice, which, by the act, were "to be applied for the several purposes of the said act, and for no other whatever." Per Lord *Kenyon*, C. J. "It is not sufficient to point out property within the parish, but there must also be some person in the beneficial occupation of it. I say person, because corporations may unquestionably be rated, though it was once thrown out, by *Yates*, J., that they could not. Now, in the present case there is property which is the subject of a rate, but there is no occupier of it. The trustees have a bare naked trust, not coupled with any interest. If any interest resulted either to the commissioners or owners of adjoining land, after the public purposes of the act were answered, these tolls might have been rated; but all the money collected under the act must be expended for the purposes of the act; and, therefore, upon the ground upon which the court proceeded in *Rex* v. *St. Luke's Hospital*, namely, that there were no occupier, these commissioners are not liable to be rated. This case is distinguishable from the others, on the ground that the commissioners are mere trustees to

(*a*) As to this case see *R.* v. *York*, *ante*.

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superintend the execution of this act, without any personal advantage. In the *Hull* case owners of shares received great profits. In the *Hampton Court* case there was a surplus value belonging to the Corporation of London, which was rateable on their lands."

Dock dues, if expended pursuant to the act, entirely in making and keeping the docks, &c., in repair, are not rateable.

Rex v. *Liverpool*, 7 *B.* & *C.* 61; 9 *D.* & *R.* 780, S.C. This was a rate on the trustees of the docks of Liverpool. Case:—The dock estates within the parish of Liverpool are vested in the mayor, aldermen, bailiffs, and common council of Liverpool, as trustees of the docks and harbour of Liverpool, by virtue of several acts of parliament, (viz. 8 Anne, c. 12, 3 Geo. I. and 11 Geo. II. c. 32, 2 Geo. III. c. 86, 25 Geo. III. c. 15, 39 Geo. III. c. 59, and 51 Geo. III. c. 143, all of which, excepting the second, are public acts,) and consist of a large quantity of land, to the extent of 100 acres. Part of those estates was granted voluntarily by the corporation of Liverpool, part was sold by that body to the trustees for a pecuniary consideration, and other parts have been purchased by the trustees from private individuals, according to the powers given to them by the said acts. Before the construction of the present works part of the land was waste, both above and below high-water mark, but other parts consisted of lands and buildings in the occupation of individuals who were rated. The dock estates at present consist of several wet docks, in which vessels may be constantly afloat, dry basins, that is to say, dry at low water, wharfs, piers, slips, cranes, weighing machines, offices, and yards for storing goods, and other conveniences requisite to form a complete dock; and the trustees are authorised by these acts to receive large sums, under the name of dock-rates and duties, for the accommodation of vessels in the docks. The trustees manage the dock estates by their servants and agents, who receive and account to them for the dues and profits; and no part of the estates and premises above assessed is let off to other persons. By 8 Anne the dues were to be applied to the building the docks, &c., and to the securing, preserving, and maintaining the dock and harbour, *and to no other use or purpose whatever*. These dues are now regulated by the 51 Geo. III., which enacts that they shall be applied, among other things, to the discharge of the present bond debt of 114,705*l.*, and the debt of 67,406*l.* owing by the trustess to the corporation for the purchase of the land, and the surplus to the maintenance of the harbour. The duties have been applied as the act directs, and the trustees derive no private advantage or emolument from the execution of the trusts. The engine-house is used for the purpose of keeping a fire-engine, which the trustees have provided out of the public funds for the security of the shipping, as empowered by the statute, and no rent is charged to or paid by any one for the same. Of the different offices enumerated in the schedule some are for the accommodation of the dock-masters and gate-men at the various docks, as places of shelter, and merely for the despatch of public business; others are occupied by the collector of the dock-rates, the harbour-master, and other public officers of the trustees, solely for the purposes of the dock business. No rent is charged to them for the use of these offices, and no part of them is occupied as a residence by any one. The two yards mentioned in the schedule are hired by the trustees at an annual rent, as a place necessary for the deposit of the various articles used in the erection and maintenance of the docks, and from the occupation of which they derive no personal benefit. Lord *Tenterden*. "It seems to me that there is no solid ground for the distinction which has been taken as to those parts of the property rated, which are *rented* by the dock company; for if there be no beneficial occupation, it can make no difference whether the occupier be the owner or not. As to the main question, *Rex* v. *The Commissioners of Salter's Load Sluice* is decisive. There the tolls were by act of parliament directed to be applied 'to the purposes of the act, and to and for no other use or purpose whatsoever.' The statute under which the dock-rates in question are levied does not indeed contain an express direction that the rates shall be applied to the purposes specified, and no other; but it directs that certain burdens shall be discharged, and that then the rates shall be lowered; and, therefore, any application of those rates to

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other purposes not specified would be a direct violation of the statute. Nothing of that kind is suggested, and, therefore, there is not, in reality, any difference between this case and the former. The principle of not rating property of which no person has a beneficial occupation, is not confined to canals or docks, or property of that nature. A quakers' meeting-house, if the pews are not let, is not rateable, as was decided in *Rex* v. *Woodward* (*ante;* as to Chapels, &c. see 3 & 4 W. 4. c. 30, *post*); and the same would be applicable to a chapel with the rites of the Church of England, or to a dissenting meeting-house. On the other hand, it was held in *Rex* v. *Agar* (*ante*), that when the pews of such a meeting-house were let, the trustees were rateable in respect of the rents, although not received to their own use, but for the benefit of the minister. Here the trustees were not occupiers in the ordinary sense of the word, and no profit was received for the use of any person. It is said that the docks were made by the corporation of Liverpool, in order to improve their private property; if such an effect is produced, that property will be rateable for the improved value." *Bayley* and *Littledale*, Js., concurred.

The Justices of the county are not rateable for the assize hall and other public buildings used by the judges of assize and justices at sessions.

Reg. v. *Just. Worcestershire*, 3 *P. & D.* 8; 11 *A. & E.* 57. In an appeal by the justices of the county, to the quarter sessions of the county, against a poor-rate, the rate was confirmed. Case:—For years prior to 1804, a mansion-house, with some land in St. Nicholas, Worcester, had been rated. The mansion-house and land had been purchased in 1834, on behalf of the county of Worcester, for county purposes. The house had been taken down, under a local act for erecting a county hall and courts of justice, and also for providing accommodation for his Majesty's justices of assize. A county hall and courts and judges' lodgings, had been erected upon the land in 1837. By this act the justices were authorised to purchase land, and erect thereon a county hall, courts of justice, offices, and lodgings for the justices of assize, and also to furnish the same. And by the said act, the buildings, furniture, &c. were vested in "the justices of the peace for the county of Worcester for the time being," upon trust, to permit courts to be holden therein, and for the accommodation of the justices of assize; purposes for which the same might respectively be designed. The justices were empowered to bring actions and prosecute indictments in respect of these buildings and furniture in the name of the clerk of the peace. The building was to be supported and furnished by the county, and the magistrates were authorised to appoint a person to take care of it at a salary. They were allowed to let the building when not used for county purposes, and to take from the sheriff such a sum for the use of the judges' lodging at each assize, as had theretofore been allowed or should thereafter be allowed by or out of the exchequer to the sheriff for providing such lodgings. The county hall and courts are under one roof. The courts are used at the county assizes and sessions for the trial of causes, prisoners, appeals, &c. There are also within the same building a grand jury room, a room for the clerk of indictments, two rooms for holding the county records, with other rooms for the accommodation of the judges, magistrates, and counsel at the assizes and sessions. The hall is used for county meetings, and is also occasionally used as a ball-room, and is at the command of the county for county meetings, either of business or pleasure, for which it may be required, such as the nomination of knights of the shire to serve in parliament, elections of county coroners, and for taking the poll at any election, &c. At the back of the courts, under a separate roof, but communicating with the courts by covered passages, is a house called the Judges' Lodgings, erected under the powers of the said act, for the use of the judges and their suite during the assizes, and the magistrates during the sessions, and containing many sleeping and other apartments employed for the purposes aforesaid by the judges and magistrates. The whole of the buildings and furniture have been paid for out of the county rates. A quantity of plate and wine, the former paid for by the county, and the latter by subscription amongst the magistrates, is kept in this part of the building; the plate is used by the judges at the assizes, and the magistrates at sessions. The wine is exclusively for the use of the magistrates at the

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sessions' dinners. They also furnish themselves with their own provisions, but nothing is paid by them to the county for the use of the house and furniture. The judges' lodgings are at all times occupied by and are under the care of a man and his wife, who are called the hall-keeper and the housekeeper, who are paid a salary, and have the care of the whole building, both courts and lodgings; they have no child, and have no accommodation beyond what is necessary to enable them to discharge the duties of their stations. The house has not yet been let, nor is such letting contemplated, but the county treasurer has received from the sheriff 140*l.* for the use of the lodgings by the judges during the assizes of 1838, and the same yearly sum, or whatever the sum may be, which is allowed the sheriff by the Court of Exchequer, will be demanded in future. There are nine bedrooms in the house, besides servants' apartments, and at the sessions these nine bedrooms are occupied by the magistrates, those having the preference who give previous notice to the hall-keeper. Prior to the house being built, the magistrates who attended the quarter sessions always slept at inns at their own expense. The whole of the premises were rated in the following form:—"The justices of the peace for the county of Worcester, for the time being, for judges' lodgings situate in Foregate-street; gross estimate rental 140*l.*, rateable value 119*l.*, amount of rate 2*l.* 9*s.* 7*d.*" Lord *Denman*, C. J. "I am of opinion that this property is not rateable; the justices at large cannot be said to have any beneficial interest in it, and what is done by a few of them for their own convenience cannot make a rate valid on the whole body, who only hold the premises for public purposes." *Patteson*, J. "It is only by the local act that these justices possess anything like a corporate character. Their duties are prescribed to them in that statute in express terms, and these buildings are appropriated to certain specified purposes. If these individual justices choose to use the building for their own private convenience, how can it be said that this makes the whole body liable?" *Williams*, J. "The question has been well put on both sides. It is said, on the one hand, that the justices enjoy a beneficial interest in the premises *ultrà* the public uses to which the building is dedicated; on the other, that no benefit accrues to the justices at large, but only to a few individuals of the body. The latter proposition is clearly made out, and therefore it disposes of the case." *Coleridge*, J. "The legal estate in these premises is in the justices of the county, but the *beneficial* occupation is only in those justices who subscribe to the wine fund and attend at the sessions. It is impossible, therefore, to hold that the whole body are rateable." Order of sessions quashed.

The governor of a house of correction not rateable, nor the matrons and turnkeys, nor the justices.

Reg. v. *Shepherd*, 4 *P. & D.* 534; 1 *Q. B.* 170. On appeal by E. Shepherd, keeper of the house of correction at Wakefield, against a poor-rate, the sessions amended the rate, by substituting the West Riding justices in the place of John Tolson and of all persons named in the rate, as occupiers of houses, &c. within the said house of correction, except E. Shepherd, and in all other respects confirmed the rate. The magistrates of the West Riding were assessed in the rate as occupiers of a corn-mill, tread-mill rooms, work rooms, and warehouse, which are within and form part of the house of correction. The tread-mill, which is of 7½ horse-power, is annexed to the corn-mill, and both have been erected and are maintained for the purpose of employing the prisoners, and corn is ground there by them; part of it is ground there for hire, and produces 5*l.* or 10*l.* per year in money, but the greater part is ground for the use of the jail, and is consumed within it. In like manner the work-rooms and warehouses are used exclusively for the prisoners to work in. They make clothing there, and do all the blacksmith's work, joiner's work, bricklayer's work, and washing required for the jail. They also pick wool and oakum there for hire, and the women wash and sew for hire. The money earned amounts to about 480*l.* a year, and is paid over to the treasurer of the Riding, and goes in diminution of the expenses of the establishment. The expenditure over and above these earnings amounts to 5000*l.* a year, or thereabouts. There are within the jail from time to time prisoners from the boroughs of Leeds and Doncaster. These boroughs, having no convenient

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prison of their own, pay the magistrates for the maintenance of their respective prisoners. The boroughs are respectively charged with the cost price of such maintenance, and the earnings of their respective prisoners are deducted from the amount the boroughs would otherwise have to pay for it. E. Shepherd is the governor of the house, and the house and garden for which he is assessed are within and parcel of the house of correction. The house consists of ten apartments, nine of which are in the occupation of Mr. Shepherd, the tenth is used as a committee-room for the magistrates. The house is in the centre of the jail, and built on the panopticon principle, so as to be suitable for the occupation of the governor: as such, he is obliged by the rules to live always within the walls, and the accommodation provided for him is such only as and no more than is necessary for his convenient accommodation. The garden is rather more than half an acre in extent; it contains fruit, flowers, and a greenhouse, and is chiefly used, the magistrates permitting it, by the governor; but it is not specially appropriated to his use, the object of such an area being the health of the prisoners, to which it is not only conducive but essential. This garden was used by the jailer solely as a pleasure-garden for his family. The several other persons, whose names are struck out, and in whose stead the magistrates of the West Riding are substituted, are matrons and turnkeys of the prison. By the rules of the prison these persons are obliged always to sleep within its walls, and it is absolutely necessary for the safety and good conduct of the establishment, that they should do so. They occupy dwellings within the walls, and distinct from those of the governor. The accommodation they enjoy is provided for them by the Riding, and is no more than is necessary and convenient for the purposes for which they are placed there. The questions are, whether Shepherd, as such governor, was liable to be rated; whether the other persons, whose names were inserted in the rate as it originally stood, but struck out by the sessions, were liable to be rated; and whether the magistrates are liable to be rated for the corn-mill, tread-wheel rooms and ten-horse power, work-rooms, warehouses, porter's lodge, dwelling houses, and other premises, or any part thereof. Lord *Denman*, C. J. "I think these persons are clearly not rateable. They are compelled to reside in the jail; it is their duty to do so, and it is found by the case that the accommodation provided is not greater than is necessary to enable them to reside and perform the duties for which they are placed there." *Littledale* and *Patteson*, Js., concurred. *Coleridge*, J. "This case is very different from that of *The Governors of the Bristol Poor* v. *Wait*," (5 *A. & E.* 1.)

When the surplus tolls of a navigation were directed by statute to be expended in repairing public bridges and highways, it was held that they were not rateable to the poor.

Rex v. *The River Weaver Navigation*, 7 *B. & C.* 70; 9 *D. & R.* 788, S. C. Rate in Moulton upon the trustees of the river Weaver Navigation confirmed. Case:—By 7 Geo. I., for making the river Weaver navigable, it was enacted, that after the work shall be finished, and the charges paid, the clear produce of the rates and duties shall be employed towards repairing the public bridges within the county of Chester, and such other public charges upon the county as the justices at quarter sessions shall direct. If any surplus remained, it should be expended in repairing certain highways. The tonnage rates upon the Weaver are not charged by the mile, but one shilling per ton is charged upon the whole line of river; and a vessel navigating the whole, or any part of the said navigation, is subject to the same charge. This tonnage is paid quarterly at the Navigation Office at Northwich, which is a distinct township from Moulton. The annual accounts are regularly audited by the clerk of the peace, and filed at the sessions, when the balance, arising from the rates above the necessary charges for the maintenance of the navigation, is by direction of the magistrates paid to the county treasurer, for the general purposes of the county, and to none others. *Bayley*, J., said, "We think that as there is not any clause in the statutes set out, which vests the soil of the river Weaver in the trustees, they cannot be rateable to the relief of the poor in respect of the tolls." It was then suggested that the trustees were rated in several parishes through which the river Weaver runs, and that in some of them they might be considered as the occupiers of land; it was

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therefore important to have the opinion of the court as to their liability to be rated under such circumstances. Upon this point the court deferred their judgment until *Rex* v. *Liverpool* (*ante*, 127), had been decided, upon which occasion *Bayley*, J., said, " The principle of this decision is applicable to this case. There the surplus tolls remaining over and above the expenses of supporting the navigation were to be applied to the repairing and maintaining of bridges and highways. Those were public purposes; and as no part of the moneys received could be applied to private purposes, those moneys were not rateable in the hands of the trustees. The order confirming the rate must therefore be quashed upon this ground, as well as that which was mentioned by the court at the time of the argument."

Same point.

Reg. v. *Beverley Gas Company*, 6 *A. & E.* 645; 1 *N. & P.* 646. Paving commissioners authorised to erect gas-works, and let out and grant lights, were directed to apply the surplus of their rents to the public purposes of the acts. They are not rateable.

The Members of the Royal Academy are not rateable for the National Gallery.

Reg. v. *Shee*, 7 *Jurist*, 811. The origin and constitution of the Royal Academy, as well as the rights of the academicians and the public, are fully set forth in the case; but enough is stated in the judgment for the point of law involved in decision. Lord *Denman*. " This was an appeal against an assessment for the relief of the poor of the parish of St. Martin, duly made on the president, freemen, and other members of the Royal Academy of Arts, in respect of a portion of the National Gallery, used for the purposes of that society. The question of rateability will depend on the nature and character of that property, and the purposes for which it is used; and that independently of the local act, because, though that act contains some more general words than the stat. 43 Eliz. c. 2, it may, we think, be considered as coming within the earlier statute or neither. The principles upon which the rateability of any person or persons occupying any portion of the property of the crown or the public depend, are now well understood; the only difficulty is in applying the law to the circumstances of each case. *R.* v. *Terrott*, (p. 167,) has settled this branch of the law. There a lieutenant-colonel was rated in respect of apartments allotted to him in barracks, stated to be the property of the crown; and this court thought properly rated for what he occupied beyond what was necessary for the discharge of his public duty. Lord *Ellenborough* there says, ' The principle to be collected from all the cases on this subject is, that, if the party rated have the use of the building, or other subject of the rate as a mere servant of the crown, or of any public body, or in any other respect for the mere exercise of public duty therein, and have no beneficial occupation of or emolument resulting from it in any personal and private respect, then he is not rateable.' *R.* v. *Ponsonby*, (p. 162,) which lately came before us, was decided in conformity with this view of the law; the residence was not distinguishable from that in the chambers of an inn of court, or in any street or square. In the present case there is no beneficial occupation in the shape of actual residence on the premises rated, or any part of them, by the appellants, to assimilate this case to *R.* v. *Terrott*. If, therefore, this is the property of the crown or of the public, and is used for public purposes, it must come within the principle of exemption laid down by Lord *Ellenborough* as above cited. Now this society, which is not a corporation, was instituted by his Majesty Geo. III, in 1768, to promote instruction in painting, sculpture, and architecture; the place of meeting was formerly in part of the royal palace of Somerset House. The present place is the property of the crown. The officers are appointed by the sovereign, or elected by the society, subject to the approval of the sovereign, and hold their places during his pleasure. The treasurer is appointed by the queen, and his accounts are finally submitted to the keeper of the privy purse. The king formerly supplied the deficiency in the funds of the society, and now, if there should be any deficiency, the society must probably fall to the ground if not supported by the bounty of the crown. The society has no lease of the premises, but the crown might resume possession at any time. There is no beneficial occupation by actual

residence of the members, and no beneficial occupation at all apart from the purposes of the institution; the appellants may therefore well be considered as agents of the crown for furthering the object for which the property of the crown is employed, that object being merely national and public. For these reasons, we are of opinion that the order of sessions confirming the rate must be quashed."

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Reg. v. *Blackfriars' Bridge Company*, 1 *P. & D.* 603; 9 *A. & E.* 828. Case:—The Company of Proprietors of Blackfriars' Bridge appealed against a poor's rate for the township of Salford, upon the ground, that they were not beneficial occupiers. By an act passed in 1817, for building a bridge across the Irwell, from the township of Salford to the township of Manchester, and reciting, that it would be of great utility, not only to the numerous inhabitants of Manchester, but to the public, if the old bridge were taken down and another bridge erected in lieu thereof, for the passage of horses, carriages, &c.; certain persons were incorporated by the name of "The Company of Proprietors of the Blackfriars' Bridge;" and they were empowered to raise and contribute among themselves any sum not exceeding 17,700*l.*, to be divided into shares of 50*l.* each: and if that should be insufficient, they might raise 12,000*l.*, either by fresh contributions amongst themselves, or by mortgage of the bridge, or by granting annuities out of the tolls: the tolls to be applied, in the first place, in discharging the expenses of obtaining the act, and carrying the same into execution, and of keeping the bridge in repair; and, in the next place, in paying to the mortgagees and annuitants the interest and annuities, &c.; *and the surplus thereof should be divided amongst the proprietors in proportion to their shares*, viz., the proprietors to receive out of the tolls 5*l.* per cent. interest upon the sum paid upon the respective shares, the interest to commence from the time of payment of such sum, or of the instalments; and when the bridge should be opened for the passage of horses, &c., the proprietors should, instead of such interest, receive a dividend upon their shares out of the tolls, but not exceeding 7*l.* 10*s.* per annum; and when such surplus should be more than sufficient to pay such dividend of 7*l.* 10*s.* per annum, the excess was to be applied in discharge of the principal sum paid by the proprietors rateably, until the 17,700*l.* should have been paid off, and from thenceforth the proprietors should cease to receive any further share of the tolls, and the tolls should be accumulated to pay off the mortgages, and to form a fund for the repairs of the bridge, and then the tolls should wholly cease. The Company purchased land for making the bridge, raised among themselves 17,700*l.*, and borrowed on mortgage 12,000*l.* They did not grant any annuities. These sums were not sufficient for the building and completing the bridge, &c., and they incurred a further debt, a balance of which debt, viz. 3225*l.*, still remains unpaid. The bridge was opened to the public about 1822. The tolls received by the Company have been by them applied, after defraying the necessary expenses incidental to the undertaking, in paying and keeping down the interest of the mortgages, and in the liquidation of the debt, as aforesaid. No surplus has hitherto existed, after making such payment for a dividend, and none has been declared; and the Company have not yet received any dividend or interest upon the subscribed sum of 17,700*l.*, or any part thereof. The tolls are let in the current year for 1500*l.*, and in the preceding year were let for 1130*l.* During the argument, *Coleridge*, J., asked, "Do not the Company stand in the position of a mortgagor in possession, who still has a beneficial interest in the estate, although a great part of the proceeds goes towards paying off the interest?" *Littledale*, J., observed: "Suppose a public-spirited individual with a large capital should determine to build a bridge for the benefit of the public, and should obtain an act like the present to enable him to take tolls until his capital were repaid, would not he have a beneficial interest in the property?" He afterwards added, "I cannot distinguish this case from the one which I have just put, where an individual should build a bridge at his own expense, and get an act drawn like the present, enabling him to take tolls to reimburse himself.

A local act of parliament recited that it would be of great utility to the public to build a bridge, and empowered a company to raise a capital sum amongst themselves by shares, and to borrow a further sum, by mortgage or annuity, for the building thereof, and authorised tolls to be taken, and enacted that the tolls should be applied first in discharging the expenses of the act and paying the mortgagees their interest, and that the surplus should be divided among the proprietors, not exceeding 7½ per cent. on their shares. The excess arising from the tolls beyond the dividend was to be applied in paying off the capital advanced by the proprietors: afterwards to pay off the mortgage debt, afterwards to form a fund for the repairs of the bridge, and then the tolls to cease altogether. The Company raised money by shares and mortgage to build a public bridge. The tolls, amounting to 1500*l.* a year, were applied in discharging the debt and the interest. This debt had not been wholly discharged, and no dividend to the proprietors of shares had ever been made. The Company were rateable having a beneficial interest in the tolls till their capital was paid off. See *Rex* v. *Exminster*, *post*.

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Here is land, on which by an act of parliament tolls are allowed to be taken, and therefore, *primâ facie*, there is a beneficial occupation. But it is said that no profit is made, as the tolls pay only a fair interest on the money laid out. That, however, is exactly what might be contemplated by an individual in the case supposed; he might be perfectly satisfied with a fair interest arising out of the tolls. It is immaterial whether profit is realised. Here it is enacted that, after the opening of the bridge, the proprietors shall receive a dividend not exceeding 7½ per cent. on their shares. But it is contended that there will be a time when that will cease, as on the paying off the capital of the Company, no more tolls are to be taken. But both in the case of the private individual which I have supposed, and of the Company, there is clearly a beneficial interest up to that time, and that whether it be a gaining or a losing concern. It seems to me, therefore, that the land produces a profit which is rateable, and that the defendants have not got rid of their liability, by showing, as in *Rex* v. *Liverpool*, 7 *B. & C.* 61, that it is applied to public purposes only." *Williams*, J.—"The application of the profits in this case distinguishes it from those in which it has been held, that property of this kind is not rateable. In *Rex* v. *Salter's Load Sluice*, 4 *T. R.* 730, which is the foundation of all the subsequent cases, it was found that by no possibility could the profits ever be diverted from purposes strictly public. That also was eminently the case in *Rex* v. *Liverpool*, for there the act of parliament expressed the purposes for which the dock dues were to be used. That case was followed in terms by *Rex* v. *River Weaver*, 7 *B. & C.* 70, *n.* The late case of *Reg.* v. *The Mayor of Liverpool*, 1 *P. & D.* 334, has been alluded to, where the rateability of borough property was under discussion; but the decision there went entirely upon the same principle, that property *cujuscumque generis* was to be rated, except that which was entirely devoted to public purposes." *Coleridge*, J. "This is a clear case. There is in the first instance a rateable property producing profits. The question is, whether there is a beneficial occupation or not; but that must be determined by inquiring whether the profits are applied to public purposes only, or whether there are any private interests mixed up with the general scope of the act." Order of sessions confirmed.

Corporation property of a borough within the Municipal Corporation Act, the rents and profits of which are received by the treasurer of the borough was not rateable to the poor. See now 4 & 5 V. c. 4, *post.*

Reg. v. *The Mayor of Liverpool*, 1 *P. & D.* 334. On an appeal against a rate for the borough of Liverpool, in the nature of a borough rate, the sessions confirmed the rate. Case:—The several properties rated are the revenue of the municipal corporation of the borough of Liverpool, collected by their officers, who are paid by salaries, and by them paid over to the treasurer of the borough, to the account of the borough fund. Prior to the passing of the Municipal Corporation Act, these properties were rated to the relief of the poor, which rating was always acquiesced in; and these properties are now rateable to the poor, unless they are exempt under the new circumstances enacted by that act. Lord *Denman*, C. J., delivered the judgment. "This was an appeal against a rate made for the relief of the poor of the parish of Liverpool, upon certain properties which are the revenue of the municipal corporation of the borough of Liverpool, and which, before the passing of the Municipal Corporation Act (5 & 6 Will. 4, c. 76), were rated to the relief of the poor, and as the case states, are still liable to be so, unless they are exempted by the operation of that act. This question, which now comes before us for the first time, depends upon the construction of the 92d section, and the effect to be properly attributed thereto. By that section it is enacted, that 'the rents and profits of all hereditaments, and the interest, dividends, and annual proceeds of all moneys, dues, chattels, and valuable securities, belonging or payable to any body corporate, named in conjunction with the said borough in the said schedules (A and B), or to any member or officer thereof in his corporate capacity, and every fine or penalty for any offence against this act (the application of which has not been already provided for), shall be paid to the treasurer of such borough, and all the moneys which he shall so receive shall be carried by him to the account of a fund, to be called The Borough Fund.' Such is the description of that which is to constitute the fund;

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and upon the language of it, and more particularly upon the meaning of the word 'profits,' much criticism was employed in the course of the argument. We, however, attribute little importance to those remarks; first, because the particular meaning which may have been attached to it in the instruments to which reference was made, probably depended entirely upon the context; and, further, we are perfectly satisfied that the language is used in its ordinary and popular sense, and that the meaning is, that the whole *income* of the corporation, from whatever sources arising, shall constitute 'the borough fund.' Then comes the direction as to the uses and purposes for which the fund is to be applied; and it is declared that the same, subject to the payment of the debts owing by the corporation at the time when the act passed, or of so much as the council (*i. e.* the new council) should think it expedient to redeem, and to the interest of such debt, was to be applied to the payment of the salaries of certain officers, expenses of borough elections, sessions, and prosecutions, gaols and corporate buildings, police, and all other expenses incident to carrying the act into effect; and in case of a surplus, that such surplus was to be applied, under the direction of the council, *for the public benefit of the inhabitants and the improvement of the borough.* Then follows a provision, in case of a deficiency for the purposes aforesaid, that the town council may raise the deficiency by a borough rate in the nature of a county rate. The question, therefore, comes to this: What is the state of the law as to the rateability of property similarly circumstanced?—because if we find the principle settled by decisions already made, we feel it to be our duty to act upon them, and not, upon the apprehension of any inconvenient or unforeseen consequences, to question or weaken their authority. Now, in *Rex* v. *Liverpool*, 7 *B. & C.* 61, certain trustees, in whom 'the dock estates' within the same parish were vested, were rated in respect of 'the annual value and profits' of the same; and property (*otherwise rateable*) was there held not to be so, because the rates and duties payable by act of parliament were to be applied to the payment of debts, and to the 'making, erecting, building, finishing, and maintaining docks, basins, piers, and other works and buildings in the port of Liverpool.' In that case, therefore, the application of the tolls or rates (which otherwise, as we have just observed, must have been as much rateable as a mileage rate upon a canal), in the manner above described, exempted them from rateability. And in *Rex* v. *The Trustees of the River Weaver Navigation*, 7 *B. & C.* 70 *n*, which was under the consideration of the court at the same time as the case just cited, property (as in that case clearly rateable) was held to be exempt, on account of the uses and purposes to which the profits were applicable. There the rates and duties, after payment of expenses, &c., were directed to be 'employed in the repair of bridges and in aid of other public charges upon the county.' And the court decided that the principle of the former disposed also of the latter case. They held that the repairing and maintaining of bridges and highways were *public purposes*, and that, as no part of the moneys received could be applied to *private purposes*, they were therefore not rateable in the hands of the trustees. We feel it to be impossible substantially to distinguish these cases, and especially the latter, from the present. The extent and approximation to something like national benefit, are in kind, and almost in degree, the same. The *public* in the one case is the same town of Liverpool; in the other, the county of Chester. *The Attorney-General* v. *Aspinall*, 2 *M. & C.* 613, in which this very borough fund was under consideration, was cited by the learned counsel on both sides. The main question, however, seems there to have been, whether the corporate property was *trust* property, so as to come under the jurisdiction of the Court of Chancery: and it is probable (though it is wholly unnecessary to express any opinion) the same decision might have been given if the property had been comparatively of a much more *private* nature. But we have the satisfaction of observing that the view which we have taken of the earlier part of the 92d section, is expressly adopted by the Lord Chancellor; for his lordship, in describing (not giving the words of) that section, comprehends 'the rents, profits,' and other sources of reve-

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nue therein enumerated, by the general expression of 'all the *income* of the corporate property.' In coming to the conclusion to which we have arrived, we certainly feel that whatever may be the effect in the present instance, in many boroughs, consisting of several parishes, the proportion and rate of contribution may be materially disturbed. We think it also extremely probable that the effect of this section upon the rateability of corporate property was overlooked altogether. Our business, however, is with the construction of the statute, and not with consequences; and the remedy, if any be requisite, must be by the legislature. The result of our opinion is, that the order of sessions must be quashed as far as relates to the rate upon the corporation."

A corporation is not rateable to the relief of the poor in respect of lands of which the profits are payable to the borough fund, under 5 & 6 Will. IV., c. 76, s. 92, although the land is situate in a parish without the limits of the borough.

Reg. v. *Exminster*, 4 *P. & D.* 69. Case:—The mayor, aldermen, and burgesses of the city and borough of Exeter, which is a county of itself, are assessed as the occupiers of a canal in the parish of Exminster. The canal passes through the several parishes of Exminster, Alphington, and St. Thomas, in the county of Devon, no part thereof being in the city of Exeter, but communicating with that city by the navigable river Exe, and the canal and towing-paths adjoining, belonging to the corporation, and are in their own actual occupation. The tolls arising therefrom are payable under a statute passed in 1829, for "altering, extending, and improving" the canal: and the annual income produced by them is more than sufficient to pay the interest of a mortgage to which they are subject. No mention is made in the act of any purpose to which the surplus income should be applied, nor any provision whereby the tolls should at any time be discontinued, but they are parts of the income and general resources of the corporation, and are collected by their officers, who are paid by salaries, and by them paid over to the treasurer to the borough fund. These properties were formerly rated to the relief of the poor of the city of Exeter, but for several years prior to 5 & 6 Will. 4, c. 76, they had been rated in Exminster, which rating had been acquiesced in, and the rates paid. The question is, whether the mayor, aldermen, and burgesses of the city of Exeter are rateable in Exminster. Lord *Denman*. "The question in this case was, whether the corporation of Exeter was rateable for tolls received by them in a different parish from any in which the city is situate. A distinction was attempted to be drawn between this case and that of *Reg.* v. *Liverpool* (*a*), on the ground of this property being in a parish out of the borough. We are of opinion that there is no ground for the distinction. In *Reg.* v. *Liverpool* (*a*), the court held that, under the Municipal Reform Act, property held by a corporation for corporate purposes is not rateable. After reconsidering the provisions of that statute, and after examination of all the authorities, we consider the principle there laid down to be a right principle, and that it applies whether the property is in the same parish in which the city, or any part of it, is, or in any other parish."

(*a*) p. 182.

Corporate property now rateable.

But now, by 4 & 5 V. c. 4, the Municipal Corporations in schedules A and B, shall be rated to the poor for lands and hereditaments being the property and in the occupation of the corporation, as if such lands were not corporate property. Provided that, where such property lies in any parish wholly within the limits of the city or borough, and in which the poor are relieved by an entire rate, or in which the poor within the limits existing for municipal purposes at the time of the Municipal Act were relieved by an entire rate, the exemption shall continue. The corporation in the occupation shall be deemed to be beneficial owners for the purposes of rating, as if they occupied for their private advantage, and not for public purposes, and be rated in their corporate style."

The tenant of a farm may be rated for the whole farm although he lets a dairy. The dairyman might have been rated, but the rating of the tenant for the whole and the omission of the

Rex v. *Brown*, 8 *East*, 532. The farmer let cows to be exclusively depastured on the farm. The farmer was rated for the whole (*a*). Lord *Ellenborough*, C. J. "The appellant complains of the rate, without showing any grievance; because the farmer having been rated, as we must presume for the full profits of the farm, it matters not to the appellant whether or not the rate in respect of that farm could have been better distributed by lay-

(*a*) The dairyman makes a profit independently of the profit made by the tenant.

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ing one portion of it on the farmer and another portion on the dairyman: the appellant's proportion of the rate would remain the same in either case. It is said that the interest which the dairyman takes under such agreement is a tenement in law, and gives him an interest in the land by which he may gain a settlement, and that I do not dispute; and, therefore, if the dairyman, considering him and not the farmer as the occupier of so much of the farm as the cows were depastured upon, had been rated as such for it, I do not see what objection could have been made. But here the objection is, that the farmer is rated for the whole farm, the profits of which arise principally from the stock upon it, and a part of those profits are again required to be subjected to another rate in the hands of the dairyman. But there is no objection to the rate as it now stands, and great inconvenience would ensue if the profits of different persons out of the same farm were subdivided and a proportionable rate laid upon each, instead of one general rate for the whole on the general occupier of the whole. A farmer may make a bargain with one man to let him have a field of grass to cut, or he may let the aftermath of his meadow, some to one and some to another, and this may not only vary every year, but every month or oftener, in the neighbourhood of populous towns. These are substantially the tenants of the land while their subordinate interests subsist, and either might be rated for it during such holding; but if there be one general rate, made on the general occupier of the whole farm, including all these particular profits and subdivisions of interest, by which, in fact, he is benefited, who can say he is injured by the rating of one for the whole, rather than the several subtenants of those partial interests for their respective proportions, [deducting the value of them from the rate upon the general occupier? And as to the convenience of the general rate for the whole, there can be no question of it. Other cases may be put: the owner of a house and garden may let the profits of his garden to his gardener, retaining the use of it in other respects, upon condition of the latter supplying his table with certain articles, or upon a rent; and though the gardener might be rated for this interest, yet, if the owner were rated for his house and garden, what objection could any other person make to the rate on that account? The principle is, that the estate which has once paid shall not be made to pay again: and yet in all these cases it may be truly said that some profit is made by the subholder beyond what the general occupier receives. What was said by Lord *Mansfield* (*a*) does not contradict this, that where there was a proportion of the profits of the land rateable in the hands of the tenant, which was not rateable in the hands of the crown, the tenant was assessable for it. But here the whole having been rated in the hands of the farmer, nothing remained to be assessed in the hands of the undertenant. It would be a different question if a farmer derived profit from stock kept upon his farm, but not connected with the management of it; as if he kept a large flock of cattle there, which he fed with oil-cake for sale. There he would be separately rateable for it; not as stock of his farm, but as stock generally, from which he derived a separate and distinct profit. But here the dairy cows are, properly speaking, the stock of the farm, and as to any separate profit derived from them to the dairyman distinct from the farmer, the same might be said of a man to whom the farmer sold the milk by pailsful on the premises, and who after mixing it with water retailed it again at a profit." *Grose*, J. "The question is, whether the appellant has any ground of complaint. He complains of being rated too much because certain persons renting dairies in the parish have been omitted in the rate. But it appears that though those persons be not rated, others are so for the same subject-matter; because the profits derived from the stock of cows on the farm have in effect been once rated, being included in the rate upon the farmer for the profits of the whole farm, of which they constitute a part." *Lawrence*, J. "It is contended that the dairymen are liable to be rated for their dairies on two grounds: 1st, That a dairy is a tenement, the taking and occupying of which is capable of conferring a settlement, and that every occupier of a tenement is liable to be rated in respect of it.

Dairyman, is no ground of appeal for a third person.

(*a*) Bute v. Grindall, p. 162.

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That may be so, but the ground of appeal is, that the appellant is injured by the omission of these persons in the rate. But if it appear that others are rated for the whole value of the farms, including the profits of the cows depastured on them, and that the appellant sustains no injury in any way, the ground of appeal fails. Then, secondly, it is said that the cows are personal property, and that the dairymen are liable to be rated for the profits made by such stock. But this is the stock by which the farm is rendered productive, and having been once taxed in effect in respect of the produce in the hands of the farmer, is the produce to be rated again as milk in the hands of the dairyman? By the same rule might it not be rated again as butter, and again as cheese, in the hands of the same person, on account of the additional profit which may be made of it in either of these stages? This would be carrying the principle of rating much further than it has gone before. It would be very inconvenient to parishes to subdivide the rate in the manner proposed. If a person, taking the aftermath of a meadow, is to be rated for it instead of including it in the rate for the whole farm, what is to be done when this is taken, as it frequently is, by drovers of cattle passing along the road, who depart again in a few days and are nowhere to be heard of? Experiments of this sort, if carried into effect, would only introduce confusion. The amount of the rate would be the same; for if by underletting the aftermath the original renter make more of the land, he is rateable in proportion; and it will be found much more advantageous to the parishioners at large to abide by the old practice, and to lay one entire rate on the whole farm in the hands of the general occupier." *Le Blanc*, J. "I am surprised that the sessions should have reserved any case upon the application of this appellant, when the only question was, whether with respect to him this were an equal rate, or whether injustice had been done to him by the omission of the dairyman in the rate. For, supposing it to be a question whether the farmer or the dairyman were in possession of the property to be rated, and that it were a case of doubtful occupation, yet when it appears that one of them has been assessed for the whole property, and that neither of them complained of the rate, what pretence can there be for setting aside or altering the rate at the instance of a third person, who has no interest in that question, in order to decide a question of doubtful possession between the other two? Taking it, however, as a case between the farmer and the dairyman, it is true that the taking of a dairy in this manner has been held to give a settlement as upon the taking of a tenement; but it has only been held to be a tenement in respect of the interest in the land on which the cows are agreed to be depastured. But here the farmer has the general interest in the whole of the land out of which the other interest is carved: the cows fed upon it are his own, they are his stock; the dairyman is to have the care of them, and the trouble of milking them, and the profits arising from the produce of the cows, in consideration of a certain sum which he agrees to give the farmer. Then what is this in effect more than the farmer making this profit of his land and of his stock by this general agreement with the dairyman, instead of employing his own dairyman to milk the cows, and afterwards disposing of the produce when made into butter or cheese? It is a mode of selling the milk of his cows. Then it is said that the dairyman is rateable as for his personal stock; but he is not the owner of the cows, they are not his personal stock, he has no capital of his own, but he only makes a profit by his personal labour out of the capital of another person." Rate confirmed.

One who occupies a house as surveyor to the trustees of a navigation is rateable although the tolls are exempt, and the trustees have no beneficial interest.

—— v. *Armstrong*, 2 *Stark.* c. 543. The plaintiff was rated for a house which he occupied under the trustees of the navigation of the river Lee. It was situated on the river, and had been built out of the tolls arising from the navigation, and he occupied it for the purpose of superintending the business of the trustees. The act of parliament expressly directs that the tolls arising from the navigation should not be subject to the poor's rates. It was contended that as the plaintiff was the servant of the trustees, who had no beneficial interest in the navigation of the river or in the tolls, he was to be considered as the servant of the public, and as

exempted from the poor's rate: if the trustees had not built the house they must have paid for one out of the rates and duties collected on the river. *Abbott*, C. J. was of opinion, "that the plaintiff was rateable in respect of this house. If he had received a salary out of the tolls, and had rented another house, he would clearly have been liable to be rated for it." Verdict for the defendants.

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Rex v. *Aberavon*, 5 *East*, 460. Lord *Ellenborough* said, "I have great difficulty in deciding that a person who has mere permission to turn his cattle on another's land is rateable." *R.* v. *Sudbury*, *post*. 207, 8.

Agistor of cattle not rateable.

However *poor* the occupier may be, he ought to be put on the rate (*a*), but a power is given to the justices, with the consent of overseers, to have the name struck off. See *post*. In some cases, the owner may be rated instead of the occupier; for by the 59 Geo. III. c. 12, s. 19, which recites, that "Whereas in many parishes, and more especially in large and populous towns, the payment of the poor's rates is greatly evaded, by reason that great numbers of houses within such parishes are let out in lodgings, or in separate apartments, or for short terms, or are let to tenants who quit their residences, or become insolvent, before the rates charged on them can be collected; and it hath been found that in many instances the persons letting such houses do actually charge and receive much higher rents for the same, upon the ground and expectation that the occupiers thereof cannot be effectually assessed to the poor's rates, and will not be charged with or required to pay such rate, and do thus obtain an undue advantage to themselves; and by means of the premises the other inhabitants of such parishes are unjustly compelled to pay much more than their fair and due proportions of the charges of relieving and maintaining the poor;" it is enacted, "that after the 1st of January, 1820, it shall be lawful for the inhabitants of any parish, in vestry assembled, and they are hereby empowered, to resolve and direct, that the owner or owners of all houses, apartments, or dwellings in such parishes, being the immediate lessor or lessors of the actual occupier or occupiers, which shall respectively be let to the occupiers thereof at any rent or rate not exceeding 20*l.* nor less than 6*l.* by the year, for any less term than one year; or on any agreement by which the rent shall be reserved or made payable at any shorter period than three months, shall be assessed to the rates for the relief of the poor, for and in respect of such houses, apartments, or dwellings, and the out-houses and curtilages thereof, instead of the actual occupiers; and the inhabitants so assembled in vestry may, and they are hereby authorised from time to time to rescind, renew, vary, and amend every resolution and direction as they shall see occasion, so as no such resolution or direction shall extend to assess or charge the owner of any house, apartment, or dwelling, which shall, with the out-houses and curtilages thereof, be let at a greater rent than 20*l.*, or less than 6*l.*, as aforesaid; and the churchwardens and overseers of the poor of every such parish are hereby empowered and required to carry into effect all such resolutions and directions of the inhabitants in vestry assembled; and in pursuance and execution thereof, in all rates to be by them made for the relief of the poor, to assess by a fair and equal pound rate the owner or owners being the immediate lessor or lessors of the actual occupier or occupiers, of every house, apartment, or dwelling to which such resolution and direction shall extend, for or in respect of the same, according to the actual rent at which every such house, apartment, or dwelling shall be let, after making a reasonable deduction from such rent, not exceeding in any case one-half of the same; and upon non-payment of the sum or sums so to be assessed, the same may and shall be levied upon, and the payment thereof be enforced against, such owner and owners, lessor and lessors, so to be assessed, and his and their goods and chattels, in like manner as rates for the relief of the poor may by law be

Owners of certain houses may be rated, instead of the occupiers.

(*a*) Many examples are adduced in the Report of the beneficial effect of rating all the cottages in a parish, and thereby giving the occupiers of them an interest in the expenditure of the rate, p. 255.

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levied and recovered, and the payment thereof enforced, upon and against any actual occupier on whom the same are charged."

Goods of occupiers may be distrained for rates to the amount of the rent actually due.

Sect. 20. Provides that the goods and chattels of every occupier of any such house, apartment, or dwelling, which shall be found in and about the same, shall be liable to be distrained and sold for raising so much of any such rate or assessment being in arrear, as shall have become due during the occupancy of the person or persons whose goods and chattels shall be so distrained (to be ascertained in a summary way by the justices granting the warrant of distress), so that in no case any greater sum be raised by distress of the goods and chattels of any such occupiers, than shall, at the time of making such distress, be actually due from such occupier for rent of the premises on which such distress shall be made: Provided also, that every occupier who shall pay any such rate or rates, or upon whose goods or chattels the same or any part thereof shall be levied, shall and may deduct the amount of the sum which shall be so paid or levied, out of the rent by him or them payable; and such payment shall be a sufficient discharge to every such occupier for so much of the rent payable by him as he shall have paid, or as shall have been levied on his goods and chattels, of such rate, and for the costs of levying the same.

Occupiers paying rates empowered to deduct the amount out of their rent.

Receivers in certain cases may be rated as owners.

Sect. 21. Provides, that every person receiving or claiming the rent of any such house, apartment, or dwelling, for his or her own use, or receiving the same for the use of any corporation aggregate, or of any landlord or lessor who shall be a minor, under coverture, or insane, or for the use of any person who shall not be usually resident within twenty miles from the parish in which any such house, apartment, or dwelling shall be situated, shall for this purpose be deemed and taken to be and shall be rateable as the owner thereof.

Persons rated as owners may appeal;

Sect. 22. Provides, that every person to be rated as the owner of any such house, apartment, or dwelling, who shall think himself or herself aggrieved by any such rate, shall have such and the like remedy by appeal against the same as any other person thereby rated; and every person so rated shall be entitled, as an inhabitant of the parish in and for which he shall be assessed, to be present and to vote in every vestry or meeting of the inhabitants thereof for the execution of the laws for the relief of the poor, or for the consideration of any matter or question in relation thereto, in like manner as the inhabitants of the said parish.

and may vote in vestries.

No owner, not being an occupier, to be rated, in places where the right of voting for members to serve in parliament depends on the rating.

Sect. 23. Provides, that nothing in this act contained shall extend to give any power or authority to assess the owner (not being the occupier) of any house, apartment, or dwelling, in any city, borough, or town corporate, in which the right of voting for the election of members to serve in parliament, shall depend upon the assessment of the voter to the poor's rate, or to vary or affect the manner of assessing and charging any of the inhabitants or occupiers of houses, lands, or tenements, within any such city, borough, or town corporate. Similar clause in 2 Will. IV. c. 45, s. 50.

If the tenant is excused, the landlord cannot be rated.

Rex v. *Hull Dock Company*, 3 *B. & C.* 516; 5 *D. & R.* 359. This was an appeal by the Company against a rate; and one ground stated in the notice was, that the overseers had not rated the lessee of houses, who underlet the same at an improved rent, the occupiers of which had been rated, but excused from payment on account of poverty. Upon this point, during the argument, as reported in *D. & R.*, C. J. *Abbott* said, "If the principle is established that the landlords are liable to be rated in consequence of the inability of their tenants to pay rates, it will have the effect of depriving poor persons of their habitations, for no landlord will let small tenements to persons of that description if they are to be liable as sureties for their tenants." And again, in giving the judgment of the court, he said, "As to the question of the lessee, whose under-tenants have been excused from poverty, the point was not very much pressed upon our consideration in the argument, and we think the lessee not liable. The 9 & 10 Will. III. (local act) imposes the rate indeed upon the lands, houses, &c. without mentioning either occupier or owner; but as this is a burthen commonly falling on the occupier, we think the owner not compellable to bear it. The owner fixes his rent upon the supposition that this is his

tenant's burthen; and without very clear words to show that such was the intention, we think we cannot make the landlord surety for the tenant."

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Under the Local Act, (11 Geo. IV., c. 10) for regulating the parishes of St. Giles in the Fields and St. George, Bloomsbury, the landlord of certain houses may be rated, and in an action is not necessary to aver that he had notice of the rate; nor the tenant's default in payment, or not a sufficient distress on the premises.

Robinson v. *James*, 7 *Jur.* 715. *Coleridge, J.* "In this case a motion has been made to arrest the judgment on three grounds of objection to the declaration. The action was for the recovery of poor-rates assessed on the landlord of two houses, under the authority of the 11 Geo. IV. c. x., the local act, which regulates the affairs of the joint parishes of St. Giles in the Fields, and St. George, Bloomsbury, and the declaration is said not to be framed so as to satisfy the requisitions of that statute. First, it is said, that the declaration does not allege that the rate was made by a majority of the vestry assembled at the time of its being made. By the 19th section no order or proceeding shall be made or taken, unless the majority of the vestrymen present shall concur, and the whole number present must not be less than thirteen; and by sect. 86, the vestrymen are to make the poor-rate, which shall be entered in a book and signed by the vestrymen present, or by any thirteen or more of them. The declaration states 'that the vestrymen made the rate, that it was entered in a book provided for the purpose, and signed' by more than thirteen of the vestrymen present at such meeting of Thomas Vowler Short, and seventeen others, who were named, these respectively being vestrymen. It therefore shows, with sufficient certainty, that the rate was made at a vestry at which more than thirteen were present, and signed by more than thirteen. It is not, indeed, stated in terms in the declaration that a majority of those present concurred, but that is not necessary, as the act of the majority is the act of the whole vestry. Unless a majority concurred, it is not true that the vestrymen made the rate; and the form adopted is the correct mode of stating in pleading that the majority, or whatever number were necessary to make a valid rate, have in fact concurred in making it. Secondly, it is objected that it is not averred that the defendant was the landlord of the houses at the time of the notice of making the rate, and of the default in payment, or of the action brought. I am of opinion that this was not necessary. The objection is founded, as it seems to me, upon a misconstruction of the 96th and 101st sections of this act. Two classes of persons are made liable to be rated by the statute, the occupiers generally, and the owners in certain cases; and the present defendant, falling within these terms, has been accordingly rated; provisions are made by the 88th and 89th sections, for the recovery of rates in arrear from both classes, by distress and imprisonment; the 90th and 91st sections provide, in respect of the former class, (the occupiers), for cases in which they may be quitting their tenements, or where change of tenants may take place during the period for which any rate may be imposed on the latter class, (the owners), but do not, in terms, contemplate the case of any change in the ownership during the period for which the rate shall be imposed. The 95th section provides, that although in these cases the tenant be not rated, his goods shall be liable to be distrained to the extent of the rent due from him to his landlord, and he shall be entitled to deduct from his rent, or to re-payment from his landlord, an equal amount. The 96th section, on which this declaration is founded, must be received with reference to the 95th section. Its object is to give a fair remedy in the same cases against the landlord; the remedy by distress would often be insufficient and oppressive on the tenant, always inconvenient to the collector; and therefore it is enacted, that in default of payment by the landlord, the same shall be and remain a charge on the land, and after fourteen days' notice, left on the premises, may be recovered in an action of debt against the landlord. The argument raised on the words 'be and remain a charge' on the land, is, that the action is to be brought against the owner for the time being, whether rated or not. If this had been the intention of the act, I should have expected much clearer words to express it, and provisions analogous to those in the 91st section, that the owner on a change of ownership should be answerable only *pro ratâ* according to the time for which each shall be the owner. But, in truth, such an intention would have been very unreasonable. The case supposed, is that of an

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owner rated and making default, the remedy is on something independent of the seizable effects on the land, that is, on the general property of the defaulter, by action of debt. Why then should not he who has made the default be liable to the action, the right to which has accrued by his default, whether he continue the owner or not? I can see no reason, therefore, for engrafting this restriction on the words of the act, which would obviously lead to the most difficult questions in applying it. The last objection is, that there is no allegation of a want of sufficient distress on the premises, in respect of which the rate is imposed; and this I am of opinion is not necessary. In the cases to which the 101st section applies, no action can be brought to recover arrears of rates, unless when a sufficient distress cannot be found; but this section applies to cases other than those provided by the 96th section, on which this action is brought. The two sections are quite distinct, and each complete in itself. Some confusion at first sight is introduced by the order of the several sections; if the 100th and 101st sections had been placed immediately after the 91st, it would have been seen that this naturally follows on those which give the remedy by distress, and point out the manner and form of pursuing it. The 92nd to the 97th, inclusive, provide for the liability of the landlords, and the 96th gives an action against them, quite irrespective of there being or not being a sufficiency of distress on the rated premises, the object in this being to look primarily to them and their general property, and not to the goods of the tenants on the premises. Thinking, therefore, that there is no foundation for any of the objections, this rule must be refused."

Landlords liable by local acts.

In some local acts the landlord is made liable, as in St. Pancras. So also by the local act for St. Giles's and St. George's, Middlesex; lessors, landlords, and owners of all lands, houses, &c., "the yearly assessment or valuation whereof should be less than 30*l.*, may be rated. Some houses which were let for more than 30*l.*, were assessed at less than 30*l.* It is questionable whether the assessment, if not fairly made in the rent, creates a liability on the landlord, even although the words are "assessment or valuation," Mandamus to compel a distress refused. *Rex* v. *Dyer*, 2 *A. & E.* 606. It has been held a valid custom to rate all persons in a parish according to their *apparent ability*, without regard to visible property in their possession. *Nightingale* v. *Marshall*, 2 *Bar. & Cres.* 313; 3 *D. & R.* 549, S. C.

6. What Property is Rateable.

1. *Land, Houses, &c.*
a. *Canals.*
b. *Pipes.*
c. *Easements.*
d. *Docks.*
f. *Commons, Rights of Pasture, &c.*
g. *Tolls, Fisheries, Ferries, Bridges.*
h. *Tithes.*
i. *Mines.*
j. *Underwoods.*

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6. *What property is rateable.*

By the 43 Eliz., besides the inhabitants, "the parson, vicar, and occupier of lands, houses, tithes impropriate, propriator of tithes, coal mines, and saleable underwoods," are to be taxed; and in some local acts, property not included within 43 Eliz. is rendered liable. See "Rating under Local Acts."

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The first kind of *real property* named in the 43 Eliz. c. 2, is "*lands and houses.*"

"All things which are real and in yearly revenue must be taxed to the poor." Resolution of the judges of assize in 1633.—*Dalt.* F. 235.

General definition of "Land."

"*Land* hath in its legal significations an indefinite extent, upwards as well as downwards. *Cujus est solum, ejus est usque ad cœlum*, is the maxim of the law, upwards; and downwards, whatever is in a direct line between

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the surface of any land and the centre of the earth, belongs to the owner of the surface. The word '*land*' includes not only the face of the earth, but everything under it or over it."—2 *Bla. Com.* 18.

Its acceptation in this statute.

This is the legal signification of "land," when it is used by itself; but when it is accompanied with other words, which can have no meaning, if the word is understood in its general sense, then there is reason for taking the word in a less comprehensive sense, as in a grant of "lands, meadows, and pastures;" the former word means any "arable lands." (*Barton Com.* 194.) So here, if land is used in its general sense, no effect can be given to the words "houses, woods, or coal mines;" and it would comprehend *all* woods, and *all* mines, and make that rateable which, by repeated decisions, have been held not to be included in the statute.

(*a*.) Canals.

(*a*) Canals.

The occupier of land covered by water is rateable.

Where a river navigation extended through several parishes, and tonnage dues became payable in respect of goods carried along the line of navigation, and landed at a wharf locally situate within the parish of B., a rate on the proprietor of those dues for their whole amount in the parish of B., stated to be for river tonnage, could not be considered as a rate upon that part of the river locally situate within the parish of B., but as a rate upon the parts of the river within as without the parish, and cannot be supported.

The 41 Geo. III. c.23, s. 1, does not give the *Court of K. B.* the power of amending a poor-rate.

Rex v. *Milton*, 3 *B & A.* 112. Milton was rated for "river tonnage" in Bengworth. Case:—The appellant was a tenant of part of the navigation of the river Avon, called the "Lower Navigation," which runs through the counties of Worcester and Gloucester, from the lock above the bridge at Evesham to the junction of the Avon with the Severn at Tewkesbury. The conveyance under which Mr. Perrot's family held this property conveyed to them "all that the navigation and profits of navigation, and passage for boats, upon the Avon, situate in the counties of Worcester, Warwick, and Gloucester, to and from the Severn, up and down the Avon, unto and from the lock and sluice next above the bridge at Evesham: and also all storehouses, sluices, locks, &c., belonging to the river Avon, and the navigation thereupon to and from the Severn, up and down the Avon, unto and from the lock and sluice next above the bridge at Evesham, together with all the tolls, rates of tonnage, &c., to the navigation belonging." By the 24 Geo. II., 1751, "An Act for the regulating the navigation of the river Avon, and for ascertaining the rates of water-carriage," it was enacted, "that the river Avon shall be a free river, and all persons shall have liberty of passing down the river with boats laden with goods, paying the proprietors of the navigation certain rates of tonnage." The appellant was not an inhabitant or occupier of any messuage or tenement in Bengworth, but he resided in the parish of All Saints, Evesham, in which parish part of the river was, and which was used by vessels passing along the river. In Bengworth was a wharf communicating with the river, belonging to one Day, where goods were landed annually, yielding tonnage dues to the amount in the rate assessed; but no tonnage dues were received by the appellant in Bengworth, nor any account given of them in that parish; but, as a check upon the boatmen, an account was taken at the wharf by Day's servant of all the goods landed there, which was sent over to the appellant at his house in Evesham, where the boatmen accounted to him; and he usually received tonnage dues on goods in Evesham, but sometimes at Pershore; there was no lock within Bengworth, and when the tonnage dues were paid at Evesham, the boatman took back with him a certificate from the appellant of his having paid the dues at Evesham, in order to enable him to repass the sluice through which he came up loaded, which was situate at Pershore, and which was kept locked. The same amount of tonnage was payable by every vessel which passed Pershore sluice in its way to Evesham or Bengworth, whether it proceeded as high as either of those places, or unloaded and delivered at any intermediate place, which was frequently the case, and which distance included eight different parishes where goods might be landed. *Abbott*, C. J. "I am of opinion that this rate, which has been made on the river tonnage, cannot be sustained. It has been contended, that by the words 'river tonnage,' we may understand the profits arising only from that part of the river which lies within the parish of Bengworth. It seems to me, however, that we cannot so understand those words, for they are explained to us by the subsequent facts stated in the case. From these facts it clearly appears that the profits accrued in respect, not only of the use of that part

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of the navigation which was within the parish of Bengworth, but also from the use of the other parts of the navigation, situate in the different parishes through which the goods had passed. This is, therefore, in substance, not a rate upon the profits of that part of the river only which is situated within the parish of Bengworth, but a rate upon the tonnage dues payable at the wharf there, in respect of the carriage of the goods through the other parishes. Unless, therefore, we are to supersede all the late cases by which it has been held that tolls *per se* are not rateable, we are bound to say that these tonnage dues are not subject to this rate." *Bayley*, J. "Since *Rex* v. *Nicholson*, the court have held themselves bound to see clearly that the property rated comes within the words of the 43 Eliz., by which the rate is directed to be 'by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods, in the parish.' Now the party here, not being an inhabitant, must be brought within some of the other words, and the only other words applicable to this case are 'occupier of lands.' *Rex* v. *The Aire and Calder Navigation*, and *Rex* v. *Page*, certainly do not admit of that distinction. In *Rex* v. *Nicholson* those decisions, however, were expressly overruled by this court. In *Rex* v. *Macdonald* the rate was for the Rochdale Canal Lock Tunnel dues or rates. Now, if those dues or rates had arisen from property partly within the parish and partly without, it would have been like the present case. The only dues which the party was entitled to receive in that case were dues in respect of vessels passing through the lock, *which lock lay within the parish;* and, therefore, all the tolls and dues there arose from what may be called parish property. The rate in this case is for tonnage dues, and it would be a good rate, provided it could be shown that the tonnage arose wholly from the use of rateable property within the parish. It is stated, however, that the canal passes through several parishes. The tolls, therefore, which are collected for goods landed at the wharf in the parish of Bengworth, are payable to the proprietor as a compensation for the use of the whole line of the canal through which the goods pass, and not merely for the use of that part of the canal which lies within the parish of Bengworth. It is a rate, therefore, upon profits arising partly within and partly without the parish; and upon that ground, I think that the rate cannot be supported; and if it cannot, the case of *Rex* v. *The Mayor of Bath* is an authority to show that the rate must be quashed. This is not a mere objection to the *quantum* of the rate." *Holroyd*, J. "It is now to be considered as an established rule, that tolls *qua* tolls are not rateable. I do not mean to say, however, that a rate may not be made on rateable property under the denomination of tolls, provided that the property from which the tolls arises be within the parish, and the rate be confined to that property. Here the rate is upon tonnage-dues. It is said that the property rated is rateable property within the parish where the tonnage-dues became payable, and that, therefore, this is to be considered as a rate upon that rateable property. I think, however, that this is a rate, not only on rateable property within the parish, but on other property, which, though rateable, is rateable in another parish, and not in this. The case states, that within the parish there is a wharf, communicating with the river, where goods to the amount assessed are annually landed. It must be taken, therefore, that the rate was made upon *all* those tonnage-dues. It is also stated, that part of the navigation lies in other parishes, in the passage through which the tonnage-dues arise, as well as for the passage through the part of the river which lies within the parish. Now, if the rate on the tonnage-dues be, in fact, a rate on the rateable property, that is, on the whole part of the navigation in respect of which those dues are payable, it must be considered as a rate upon the profits arising, not only from that part of the navigation which is within the parish, but from that also which is not within the parish. The objection, therefore, is not merely to the *quantum*, but to the rate itself, viz. that it is a rate upon property without as well as within the parish. I think, therefore, that this rate is bad." *Best*, J. "The only mode by which the tolls of a canal

Tonnage dues, like tolls, are not rateable *per se*.

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become rateable is by rating the land itself, or that part of the land occupied by the canal, which is locally situate within the parish; the tolls then are the profits arising from that part of the land; and the statute of Elizabeth authorises the rating of such property locally situate within the parish; but it does not authorise the rating of property not situate within the parish. I think that the rate here is upon property partly within and partly without the parish, and that it is, therefore, bad; and that, being so, I think the order of sessions ought to be quashed."

Tolls are not rateable *per se;* but *contra*, when mixed with a rate upon other property, which, as having substance and locality within the parish, is properly rateable there.

Rex v. *Macdonald*, 12, *East*, 324. Case:—The property was described in the assessment *as the Rochdale canal, lock, tunnel dues or rates;* and certain warehouses were named; and the assessment was made upon Sir Archibald Macdonald (and others), trustees of the late Duke of Bridgewater. The appellants were not inhabitants of Manchester, but were in the receipt of the tonnage in respect of vessels passing through the lock built upon the Rochdale canal, under the 34 Geo. III. The 2nd section, after reciting, that "whereas the Duke of Bridgewater hath expended a considerable sum in making wharfs for the convenience of the public near his canal at Manchester, and when the proposed junction is made with his canal, the profits of the Duke arising from his wharfs will be considerably diminished; he nevertheless consents to such junction on being authorised to build a lock upon the Rochdale canal, near the junction, and to collect rates as a compensation" for the diminution in the profits of his wharfage, authorises the Duke, &c. at his expense, to build a lock upon the Rochdale canal, at Castle Field, &c. and to take at the said lock for his benefit the following rates, viz. (naming rates for goods carried from the Rochdale canal to the dock,) which rates shall be paid at or near the lock to the Duke, &c. The lock was built in pursuance of this act. The tonnage amounts to as much as is charged in the assessment. The appellants were and *still are in the occupation* of the lock, warehouses and wharfs. No inhabitants of Manchester or other persons were rated in respect of their personal property in the township. There were owners of annual chief or ground-rents payable from lands in Manchester, and the owners were also inhabitants, but not rated in respect of these rents. Lord *Ellenborough*, C. J. "The question stands on the rateability of the property of the trustees. The case states that they are the occupiers of *the lock*, and of the several wharfs and warehouses mentioned in the rate; and it is not disputed that the property rated yields profit; but it is objected that they are rated for *dues* or *rates*, that is, for the tolls payable at the lock under the act of parliament; and that the court have held tolls not to be rateable. But the court have only said that tolls are not rateable *per se*, but only when connected and rated conjunctively with real and substantial property, situated in the parish; which, as yielding profit there by means of the tolls, is the proper subject of rating within the act of Elizabeth. Now here the lock itself is rated, which is something real and substantial, locally situated in the township, and producing profit; and the addition of the *dues* or *rates* is merely giving other names for the same thing. These dues or rates are given by the act of parliament as a compensation to the Duke of Bridgewater, for the loss of his profits of certain wharfs adjoining to his canal at Manchester; which wharfs were before clearly rateable in respect of those profits: the rates, therefore, made payable at the lock were substituted as a compensation for and in lieu of the wharfage before enjoyed: they are the substituted medium of profit arising, as the act describes it, from those wharfs. The court, therefore, by this decision, will not break in upon that which they have recently decided, that tolls *per se*, and when not mixed with a rate upon other property, which, as having substance and locality within the parish, is properly rateable there, are not liable to be rated." The other judges concurring, the rate and order of sessions were confirmed.

Tolls taken upon a river for passing a sluice are rateable.

Rex v. *Cardington*, 2 *Cowp.* 581. Case:—A. Palmer was seised in fee of the right of navigation of that part of the river Ouse which lies between Erith, in Huntingdon, and the town of Bedford, and of all the tolls arising

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from the carriage of goods upon that part; he had power to erect sluices and staunches for keeping up the water, tolls were paid for passing every sluice, and in a different rate for different sluices: one sluice was erected in the parish of Cardington, at which the toll was 3*d.* a chaldron. Mr. Palmer did not reside in Cardington, nor was any person resident at that sluice to receive the tolls; the tolls for that sluice were received at Barford or Eaton; neither Mr. Palmer, nor any former proprietor of that navigation, were assessed to the poor-rates for their sluices or for the tolls, but they had for many years been assessed to the land-tax. The court ordered it to stand over, that inquiry might be made as to the custom of rating this description of property in other places. In answer to the inquiries, it was returned, that out of fourteen sluices, being the whole number erected upon this navigation, one only was rated to the poor; that the river Ivil, near Bury, the Northampton river, Larke, Ouse, and Stower, were none of them taxed. The tolls at Marlow, Oxford, Reading, and several others on the river Thames, were all rated to the poor. Upon the whole, the court was of opinion that these tolls were rateable.

Custom of rating.

The proprietors are rateable in each parish for the profits earned by the canal there, unless by the Canal Act there is a special exemption. See *post*.

b. Pipes.

Occupiers of land by means of pipes are rateable.

A company is rateable as occupiers of land in the parish wherein their pipes are laid, for the entire profits of that land.

Rex v. *Brighton Gas Company*, 5 *B. & C.* 466; 8 *D. & R.* 308. The company was established by act of parliament, for lighting Brighton with gas. The buildings and manufactory are in the parish of Rottingdean, the mains or pipes, forming the subject of appeal, are placed in the ground in the parish of Brighton, where the gas is sold and consumed; the company being authorised, with the consent of certain commissioners, to open the ground in the streets of Brighton. The mains or pipes were assessed at 40*l.* per annum, being a ninth part of the estimated value of 360*l.*, that being the proportion in which other rateable property is there rated. Personal property is not rated in Brighton. The mains and pipes were worth 360*l.* a-year at the least, to any person who could use them for the purpose for which they were laid down. *Bayley*, J. "The only question is, whether the company can be deemed occupiers of land, and to the extent to which they are rated. If it were doubtful in this case, whether the pipes constituted part of the freehold, the company would, at all events, be liable to be rated for an occupation way; but I think that we may collect from the case that the pipes are fixed in the soil; and if so, then *Rex* v. *The Corporation of Bath* establishes that they are to be deemed occupiers of that land in which the pipes are fixed. *Rex* v. *The Rochdale Water Works Company* (*infra*), and *Rex* v. *The Birmingham Gas Light Company*, establish the same principle. In the case of a canal the proprietors are rateable, not only in the parish where the tolls are collected, but in each parish where they occupy land for that purpose. In many acts of parliament, authorising the making of a canal, it is provided that the company shall not be rated at a higher rate than the adjoining land; but if there be no such provision, then they must be rated in respect of the value which the land has acquired from its having been used for the purposes of the canal. There is no such provision in this case; and as the pipes are laid down so as to become part and parcel of the land for the time they remain, they thereby improve the value of the land, in the same manner as buildings erected upon the land, and the whole must be rated accordingly. I entertained some doubt at one time whether the right of the company to remove the pipes might not prevent their being rateable in respect of the increased value of the land; but upon reflection it appears to me that that makes no difference, because they must be rateable upon the same principles as buildings are which may be removed at the end of the term. There are cases which in principle are similar to the present. Thus a person who had the exclusive occupation of a waggon way, and not a mere right of pas-

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sage, has been held to be rateable. Upon these grounds I am of opinion that the property is rateable. Secondly, that it is rateable to the extent of the value of that which, for the time, constitutes part of the freehold. Thirdly, I am of opinion that the rate is properly made in Brighton, and not in Rottingdean, because the rate must be upon the land occupied by the company, and here the land occupied is in the parish of Brighton." *Holroyd*, J. "The first point is decided by many cases which are similar in principle to the present." [He then referred to *Rex* v. *St. Nicholas, Gloucester*, and *Rex* v. *Hogg, post.*] "I think, therefore, that so long as the company use the land for the purpose of their pipes, they are rateable, for they have the exclusive occupation of that part of the land in which their pipes lie; and that they are rateable for the entire profits of that land, part of them arising from the gas pipes placed in the land." *Littledale*, J. "The rate must be upon the land. Here the pipes being fixed to the land, the land and pipes are to be considered as one thing. The only difficulty in the case is, whether the company are to be considered as occupiers of land. They are authorised, with the consent of the commissioners, to break the soil for the purpose of laying their pipes. Now in *Dyson* v. *Collick*, (5 *B. & A.* 600,) it was held that the contractors for making a navigable canal, having, with the permission of the owner of the soil, erected a dam of earth and wood upon his close, across a stream there, for the purpose of completing their works, had a possession sufficient to entitle them to maintain trespass against a wrong doer. This is an authority to show that the company were virtually in the occupation of this land, and being in the exclusive occupation of that portion of land in which their pipes lay, they are rateable within the principle laid down in *Rex* v. *The Corporation of Bath*, and *Rex* v. *The Rochdale Waterworks Company*."

A company empowered to lay under ground through the streets of a town main pipes for the conveyance of water, are rateable in the parish where the main pipes lay.

Rex v. *Rochdale Waterworks Company*, 1 *M. & S.* 634. The proprietors of Rochdale Waterworks were rated in the township of Spotland for main pipes for the conveyance of water belonging to the company, and being fixed in the ground in the township, and the profits arising therefrom within the township. By 49 Geo. III. intituled, "An Act for the better supplying the Inhabitants of the Town of Rochdale and the neighbourhood with Water," the appellants are incorporated and empowered to lay under ground, along the streets and highways, in the township of Spotland, main pipes for the conveyance of water; and authorises the inhabitants of the township, with the consent of the company, to lay down pipes, communicating with such main pipes, to their respective houses, paying to the company rates for such privilege and water. In pursuance of this act, main pipes and branches are laid and used in the township, and divers of the inhabitants pay rates to the said company. The company were assessed for the pipes. Lord *Ellenborough*. "Whether the occupiers of the houses are or are not rateable in respect of the advantages derived to them from the use of these collateral pipes, does not affect the present question. The question here is, whether the company, as occupiers of the main pipes, are rateable? What difference does it make whether it be a reservoir of so many feet square, or a pipe of so many inches in diameter? I own I cannot distinguish this case from *Rex* v. *The Corporation of Bath*." *Le Blanc*, J. "If this rate on the company had been simply on the leaders which carry the water to each house, the argument might have been of weight; but the rate is imposed in respect of the main pipes and the profits arising from them." Rate confirmed.

A company, who occupy lands by their pipes, is rateable, although another person is rated for the herbage of the surface.

A warrant from the crown to use a pond in a royal park, for limited

Rex v. *Chelsea Waterworks Company*, 5 *Bar. & Adol.* 156; 2 *Nev. & M.* 765. Part of the pipes, reservoir, &c., belonging to this company are situate in the Green Park, and are laid in the ground for the conveyance of water to persons paying the company for the same. The herbage growing on the surface, including that under which the pipes pass, is rated in the hands of the ranger of the park. The reservoir is situated in the Green Park, and was formerly a pond. It communicates with the pipes and with the water trunks, and forms part of the company's works. In 1725 permission was given to the company, by a warrant from the king, to use the

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purposes, and as tenants at will, gives the grantee an interest in the soil, which makes him rateable.

pond and the park as a reservoir, and to dig the ground for laying pipes. Under this warrant the company have ever since used the pond, and have made the reservoir, and laid the pipes in the Green Park, and have conveyed water into the reservoir, and through it in its progress to the houses they supply. The tanks are a part of the reservoir. About two years ago, when improvements were made in that vicinity, the company were required by the crown to cleanse and reconstruct the reservoir, and to brick the sides and bottom, which they did under the superintendence of the crown surveyor; at the same time they erected other works for cleansing the surface of the water while in the reservoir, and keeping it at a proper level. The company have no interest in the basin, or in the soil, other than is conveyed by the royal warrant, nor do they occupy it further than as above stated. The use of it is not essential to their purposes, but it is beneficial to them by enabling them to charge their main pipes without working their engines at the head of their works (*a*), and the company are by this means better enabled to use the engines when they think proper for the supply of other districts than those communicating with the reservoir, and for other purposes, and in particular, it may be useful in case of fire. The fish in the reservoir have been taken by the deputy ranger, the company not objecting; and the company have been always restrained from making alterations in or doing repairs to the basin, unless by the express permission of the crown surveyor, and under his inspection. They pay no rent, and are paid for supplying the palace. The question was, whether any of the works in the Green Park were rateable. *Cur. adv. vult.—Denman*, C. J. "With respect to the pipes laid in the park it was admitted by the learned counsel for the appellants, that unless he could distinguish this case from those in which it was decided that pipes of similar companies laid in the streets were rateable, the rate in the present instance in that respect must be confirmed. The ground of distinction was, that here another person was rated for the surface of the land under which the pipes were placed. But we are clearly of opinion that this makes no difference. That part of the soil which the company occupied was not included in that rate. Upon this question the court expressed a clear opinion in the course of the argument. The only reason for deferring our judgment was, that we might have an opportunity of more attentively considering the effect of the royal warrant under which the reservoirs were made. We have done so, and we are of opinion that it gave to the company as much interest in the space where their reservoirs are made as in that where the pipes are laid. It is impossible to distinguish one from the other. Their interest, indeed, in the former is expressly, in the latter by implication at will only; but a tenant at will is, until the will be determined, an occupier of the land; and as the company are, on the authority of the decided cases, the occupiers of the land filled by the pipes, they must be considered as the occupiers of that where the reservoirs are constructed. They appear to us to have the exclusive right in a portion of the soil in both cases, though for a limited purpose only." Rate confirmed.

But such company must have an interest in the soil, and not merely an easement.

It is necessary to distinguish between an *easement*, and an *interest* in the soil. The grantee of the former is not rateable. A power given by statute to render a river navigable, does not necessarily give the undertaker any interest in the soil, except in the land which they purchase. So also the grant of a right of way, of a right of common, of the privilege, not exclusive, of taking stone from the quarry, does not constitute the grantee an occupier. In all such cases the person in possession of the land is deemed the occupier, and liable to be rated for the value of the land increased by the use of it.

Mere licence to get stones from a quarry is insufficient.

Rex v. *Trent and Mersey Navigation Company*, 4 *B. & C.* 57; 6 *D. & R.* 47, in which case the proprietors of certain limestone quarries agreed to deliver to a canal company, yearly, such quantities of good limestone as the latter should direct, at the rate of 7*d.* per ton, and if they should at any

(*a*) The water is brought from the Thames. See the act 8 Geo. I. c. 26.

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time neglect to deliver the quantities required, it should be lawful for the company to enter upon the lands, or limestone quarries, of any of the proprietors, and to take such quantities of limestone as they should think proper, paying 2*d.* per ton. The proprietors having failed to make the supply, the company entered, and worked the quarries for more than twenty years, according to the contract, and they were, therefore, rated as occupiers. Rate confirmed. *Abbott*, C. J., having adverted to the fact, that no one beside the company had got stone from the quarries, since they first entered to work them for themselves, proceeded—" But the right of the company was merely to get what stone they might think fit: there was nothing in the contract to prevent the owner from giving to others also the privilege of getting stone in the same quarry. The company, therefore, had not the sole and *exclusive occupation, but a mere privilege,* and consequently were not liable to be rated."—Order of sessions quashed.

A company authorised to make a river navigable, and to build bridges, sluices, locks, &c., and to levy tolls, have only an *easement* in the river, and are not rateable as *occupiers* of the river, though they are rateable for the locks, &c.

Rex v. *The Mersey and Irwell Navigation Company*, 9 *B. & C.* 95; 4 *Man. & R.* 84. By 7 Geo. I. certain persons, therein nominated undertakers, were authorised, at their own cost, to make the rivers Mersey and Irwell navigable from Liverpool to Manchester, and to maintain such navigation; and for those purposes to open, scour, enlarge, or straighten the said rivers, and to dig or cut the banks thereof; and to make any new cuts, trenches, or passages for water in the adjoining lands, as should be necessary for the navigation of boats and other vessels, and if necessary, to cut and remove trees, gravel beds, &c., which might hinder the navigation; and to erect such bridges, sluices, locks, &c., as should be necessary where they should think fit, and to turn any highways, and make towing-paths near the rivers, and do all other things necessary for the maintenance and improvement of the navigation of the said rivers, first giving satisfaction to the owners of property taken or destroyed for the purposes of the act. In consideration thereof, the undertakers and no others were to take certain tolls *for their own proper use and behoof;* and that the said rivers should for ever thereafter be deemed navigable from L. to M., and that all the king's subjects with their goods, &c., might have free passage thereon, with boats and other vessels, &c., without hindrance, paying such rates or duties as were appointed by the act. The company was incorporated by 4 Geo. III. The sessions held that the company were rateable for the whole line of navigation within the township to which they were in this instance assessed, in respect of the land *taken and used by them for the Mersey* and *Irwell Navigation*, the towing-paths, wears, locks, cuts and sluices, and assessed the annual value of the profits at 2,600*l.*, and ordered the rate to be reduced accordingly, being of opinion that the amount of the tonnage as originally stated in the rate (2,908*l.* 7*s.* 6*d.*) was overvalued. Lord *Tenterden*, C. J. " I am of opinion that the company of proprietors are not rateable for the ancient bed of the navigable part of the river; and inasmuch as the rate, which the sessions have affirmed, is made on them as occupiers of that part of the navigable ancient bed of the river which is situate in the township of Barton-upon-Irwell, the order of sessions must be quashed. It does not follow, however, that the whole rate ought to be quashed by this court, even on these proprietors, much less the whole rate on the whole parish. Some matters there are which, according to the present state of the case, appear to be rateable; such as the new cuts, which are made through the soil of which the proprietors were actual purchasers. They must be considered, in respect of those cuts, in the same light as the proprietors of any ordinary canal. So of the locks; and the only question will be as to the amount. I say nothing about the towing-paths; for there seems to be some question whether the facts as to the length of those in the township are correctly stated. But inasmuch as there is one sum now applied to a subject for which the company are not rateable, joined with a subject-matter for which I think they are rateable, the inclination of my mind is to quash the order of sessions, and send the case to them that they may rate such parts as are rateable according to their own judgment, if they can come to any proper conclusion upon the question." *Bayley*, J.

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"When this question was first presented to my consideration in *Rex* v. *Thomas*, it struck me that the company were liable to be rated in respect of the navigation and the other property; but on further consideration, I think that with reference to the navigation, viz. the navigable bed of the river, I was wrong. In order to make them rateable, they must be within the words of the 43 Eliz. 'occupiers of land or houses,' and it struck me at first, that inasmuch as they had a right to have the bed and banks of the river upheld, to hold the water, which water they were to use, they might, perhaps, be called the occupiers of that land which was so covered with water, and which held the water so afterwards to be used. But when, after considering the subject, I find that they can maintain no description of action which an occupier is capable of maintaining, I am now disposed to think that the correct view of the case is not that they are occupiers of the land covered with water, but that they had an easement only in the land. Where the proprietors of a canal purchase the land, and are themselves owners of the soil, they are rateable, on the principle that they are the occupiers of the soil which belongs to them; but in this case, the soil, as far as we can form any judgment, does not belong to this company. They have only a qualified right to use the land, to deepen the channel of the river, and make the soil fit for the purpose of holding the water, which water they are afterwards to use; but subject to the right of navigation being vested in them, and subject to the right they have that the soil shall continue to hold the water in which the navigation is to take place, the soil remains in the ownership and occupation of those persons to whom that soil originally belonged. When the company make cuts under the powers of the act of parliament, which authorises them to buy the land for the purpose of making these cuts, they are, with reference to those cuts, proprietors and occupiers of land, and therefore rateable in respect of that land. As they have a right also to erect wears, and dams, and locks, those wears, and dams, and locks, being on their own land, become their own real property; and they are the occupiers of that land on which those wears, dams, and locks, respectively are, and they are therefore rateable in respect of them. But, for the reasons I have given, (which I have thought right to state, having, on a former occasion, expressed an opinion that the navigation was rateable,) I am of opinion that they are not liable to be rated for the navigation. It seems to me, therefore, that the proper course is to send the rate down to the session for amendment. For, if the rate be quashed, this consequence will ensue; namely, that a rate will be levied in respect of a bygone time, and the former overseers of the parish will be reimbursed by rates to be levied, not on the persons who were occupiers at the time when the expenditure took place, but by a rate on those persons who have become occupiers since that time. For these reasons I think the case ought to go back to the sessions, that they may rate those parts of this property which ought to be rated."—*Littledale*, J. "I am entirely of the same opinion, that the principal subject of this rate, viz. the navigation, is not rateable, and I think the case ought to go back to the sessions to have the rate amended. The inconvenience mentioned by my brother *Bayley*, would certainly arise if the rate were quashed entirely, but for that I should have thought it more convenient that this part of the rate should have been quashed altogether. It seems to me there may be some difficulty, but we have nothing to do with that, in ascertaining how those locks and towing-paths are to be rated. The rate is an entire rate on the whole profits, and I do not see how it is possible to say how much a lock or a towing-path produces. Suppose they were to make 2,000*l.* annual tolls, how can it be ascertained what proportion of that sum is contributed by the locks and towing-paths? That, however, is a question for the sessions." *Parke*, J. "I agree with the rest of the court, in thinking that the order of sessions should be quashed. The question has been argued with much ability, and at last is reduced to a very simple point, namely, whether we can pronounce that these defendants are, on this finding, 'occupiers of lands.' If they are occupiers of lands, they are rateable; if they are not

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occupiers of lands, they are not rateable. Many of the early cases of rateability seem to have proceeded upon a disposition of the court, (pardonable, but, perhaps, not strictly correct,) to extend the operation of the statute of Elizabeth, so as to include as large a fund as possible in the rate. The law on this subject was at length settled in *Williams* v. *Jones*, 12 *East*, 346. It is clear, from that case, that no one can be rated unless he be an inhabitant or occupier, and these defendants are not inhabitants. The question then is, whether they are occupiers of land? If they have a mere easement, they are not rateable. Persons who have a right of common, a right of way-leave, or a right of ferry, are not rateable. This subject-matter of rate cannot be well distinguished from the case of a ferry, from which the owner of the ferry derives a particular benefit, and from the use of which the public also derive a benefit. In *Williams* v. *Jones*, the owner of the ferry had repaired the landing-place, which was parcel of a highway on the bank of the river, and had a post fixed in the ground there, to which the boats were usually moored, and yet he was held not to be the occupier of the highway, though he had a special power and privilege as to a part of it. Now in this case it is quite clear that as to the bed of the river, this company had only a special power; they had not the exclusive occupation of any part of it. It seems to me, therefore, they are not rateable for the bed of the river. No person can be an occupier unless he has the exclusive right to enjoy some portion of the soil. It will be found that that obtains in the case of the gas companies. There the companies who have gas pipes have the exclusive right to enjoy a portion of the soil; they have the exclusive right of occupying, by means of these pipes, that portion of the soil in which the main is. But in this case the company have no exclusive right to occupy any part of the soil of the bed of the river. As to the locks, if it shall appear that the property of the soil (where the locks are made) is in the company, they will be rateable. As to the cuts made at the outset of the navigation, (the property being in the company,) they are rateable in respect of them. There may be a difficulty in affixing the quantum of rate; that, however, is not for us, but for the sessions to settle. They will fix that according to the degree of productive value which they may ascertain to arise from the occupation of this particular part of the soil. It seems clear, on the whole, that in this case the company are not rateable for the bed of the river, for they have merely an easement in it. Probably, certain acts which they have exercised might be *primâ facie* evidence of their being owners of the soil; but the moment the statute is looked at, it is quite clear that those acts are referable to the powers they have under the statute, and not to any exclusive right to the possession of the soil. It seems to me, therefore, that they are not liable to be rated for the bed of the river, having only an easement in it, but that they are liable to be rated for the cuts, for they are owners of the soil of them, and derive a benefit from them, either directly in the shape of toll, which they receive from other persons, or indirectly in respect of what they receive from their own customers; and whether they receive it from other persons who pay toll, or receive it from their own customers at the end of the voyage, makes no difference, as the enjoyment of that land is profitable to them in both cases, and for that profit they ought to be rated. As to the remaining question, it will be whether they are owners of the soil on which the locks are placed; if they are, and if they have the land on which the locks are placed in their own use, if they have the right of possession, and receive the profit arising on that, they will be rateable." Lord *Tenterden*, C. J. "All that we can pronounce is, that we quash the order of sessions; the rate is not brought up before us." Order of sessions quashed.

Exclusive right test of occupation.

Rex v. *Thomas*, 9 *B. & C.* 114; *nom. Rex* v. *Avon Company*, 4 *Man. & R.* 23. By an act of parliament certain persons were authorised to make the river Avon navigable from B. to H., and to maintain such navigation; and, for those purposes, to clear, scour, open, enlarge, or straighten the river; to dig and cut the banks, to make new cuts, trenches, or passages for water

Same point.

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through lands adjoining; and to build bridges, sluices, locks, &c., and to do all other things necessary for making and maintaining the navigable passage, first giving satisfaction to the owners of lands; and commissioners were appointed to settle what satisfaction every person should have for such proportion of his lands as should be cut, dug, removed, or made use of for carrying on the undertaking, and to settle what proportion of such purchase money or satisfaction every person, having a particular estate or interest in any of the premises, should have for his respective interest; and, in consideration of the expenses to be incurred, the undertakers were authorised to take, for their own proper use and behoof, certain tolls. The undertakers made the river navigable. A cut and lock were made in the respondent parish at the expense of the proprietors, who still continue to cleanse the river. No specific toll is payable for passing the lock or cut, but for this purpose they form part of the navigation of the river, and are substituted for the natural river. None of the appellants reside in this parish. The navigation is eleven miles in length; three of which are in the respondent parish. The length of the cut, &c. in that parish is 300 yards. The clear annual income of the whole is 4,000*l.* The river was rated at 100*l.* and the cut at 5*l.* This case was argued before *Rex* v. *Mersey*, and after giving judgment in that case, Lord *Tenterden* said, "The question is precisely the same as in *Rex* v. *Mersey;* and we are of opinion, that the proprietors of this navigation are not occupiers of land covered with water by part of the river Avon, and are not liable to be rated for the same. We agree with the sessions in deciding that the cut or navigable canal which was actually made by this company upon land purchased by them, and the lock which is erected on such land, are, according to all the authorities, fit subjects to be rated to the poor." (*a*)

But the company have such an exclusive occupation of the cuts and towing-path as to make them rateable.

When the verdict of a compensation jury has been made a record of sessions by statute, and the company take possession, no conveyance is necessary.

See statute of Anne, *Rex* v. *Thomas, supra.*

Bruce v. *Willis*, 3 *P. & D.* 220; 11 *A. & E.* 463. The plaintiffs were rated in Hanham, a hamlet of Bitton, to a poor-rate; in replevin it appeared they, the proprietors of the navigation of the river Avon, under the 10 Ann. c. 8, and of the 47 Geo. III. c. cxxix. had purchased lands, &c., made the navigation and works, but the 10 Ann. c. 8, not containing any power to make a horse towing-path, 47 Geo. III. empowered them to make a horse towing-path, and for that purpose to take the lands over which the towing-path was set out, and to repair it, and build bridges and culverts for the better making of it; and by the same act they were enabled to purchase the necessary lands, or to treat with the owners for the damages to be done in the execution of the act. By virtue of the 10 Ann. the predecessors of the plaintiffs made the river Avon navigable, and the plaintiffs have so continued the same, and have made new cuts, and also set out a towing-path for men along the river and cuts. Part of these new cuts, and also a lock and a towing-path for men, were made by the company in the hamlet of Hanham, and are the subject of the rate. After the 47 Geo. III. the plaintiffs made a horse towing-path, and have repaired it, and put up for the convenience of the landowners, and persons using the navigation, gates and bridges. Part of this towing-path, about two miles in length, running partly by the river and partly by the side of the cut and locks, is situate in Hanham. A public footway runs for about 1,518 yards along the same line, and was used as such before the 47 Geo. III. Of the land taken for the towing-path, about six feet in width is used for that purpose; the remainder is depastured or otherwise occupied by the occupiers adjoining the pathway. There are gates across the towing-path, which are the property of and are repaired by the plaintiffs, who also repair the towing-path. That part of the towing-path in the hamlet is for the greater portion not fenced off from the adjoining lands, so that the cattle of the adjoining occupiers

(*a*) In this case Lord *Tenterden*, in giving the judgment of the court, observed, "that if there should happen to be in any parish no new cut made, or any profitable building erected, but land should be bought for locks and wears, which are in themselves unprofitable, it might be contended that the company would not be rateable at all for the land so taken."

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may stray upon it, but such occupiers have never been rated fo it. The towing-path is used by plaintiffs and by such persons as are authorised to use the same by the above acts, and by no other persons whatsoever. The plaintiffs have paid to the owners of the said lands annual sums for the same, taking receipts in this form :—"23rd March, 1822. Received, &c., for two years' towing-path rent, &c." The 47 Geo. III. gives power to purchase such lands, but no conveyance was ever made to the company for that purpose of any lands in Hanham; but two inquisitions were taken under the above acts, and the company, previous to the making of the said towing-paths, gave a satisfaction to the respective owners of such lands as were required for the navigation, for damage done to them, by payment to some of them respectively of a general sum or annual payment, and to others such a sum in gross by way of damages as a full recompense for the same. The plaintiffs receive the tolls to their own use, and the undertaking is profitable. Ever since the completion of the towing-path for horses, the plaintiffs have been rated in Hanham for the cuts and towing-path in the hamlet, and have paid the said rates. By one of the inquisitions taken on 25th August, 1720, it appeared that the jurors having viewed certain lands in Bitton, and having heard evidence on the part of the landowners and of the undertakers, found that for making the said river Avon navigable a cut and lock were necessary, and that for the said cut and lock the undertakers had occasion for the ground there staked over; and they assessed damages as a full recompense to be paid by the undertakers for the same thirty years' purchase, at and after the rate of 40*s.* an acre, viz. to every lord or owner of the land wherein no other person hath any term the full number of thirty years' purchase, and to such termors as have estates depending on one life ten years' purchase out of the said thirty years, and in like manner fifteen years' purchase to termors for two lives, and eighteen years' purchase to termors for three lives. Like compensation was assessed for lands necessary to be taken for a towing-path; (which was the old towing-path for men.) The jurors also assessed damages to B. S. for the tithe of hay and corn which would be lost by the new cut and towing-path, and the sum of 18*l.* to the churchwardens of Bitton towards the relief of the poor, in satisfaction of the loss sustained by persons having right of common in the grounds so to be made use of. The second inquisition was taken in 1813, under 10 Ann. c. 8, and without a jury under 47 Geo. III.; and by that it appears that "H. Creswick, of Hanham, having attended in pursuance of a notice, &c., and it appearing that he is the owner, &c., of freehold ground in the said parish, adjoining to the said river, a part of which is also required by the proprietors of the said navigation for making a horse towing-path; and we having heard evidence as to the value of the said land, and the damage that will be done thereto, do adjudge, settle and determine, that the said proprietors pay unto H. Creswick, his heirs and assigns, thirty years' purchase, at 5*l.* 5*s.* per annum for every acre of land in Bitton which he holds discharged of commonable rights, and so in proportion, &c.; and also that he be paid by the said proprietors the sum of 5*l.* 5*s.* per annum per acre, and so in proportion, &c., for any other land belonging to him in Bitton which shall be taken and used by the proprietors for the purpose aforesaid, which annual payment is to be considered as a satisfaction and remuneration to all persons having any interest or claim whatever to such last-mentioned land or any part thereof;" and the question was, if the proprietors were liable to be rated as occupiers. Lord *Denman*, C. J. "More facts have been stated in this case than were necessary, as the question is whether, on the construction of these two acts of parliament, and on what has been done under them, the company have not such an occupation of the cuts and towing-paths as to make them liable to a rate? I entertain no doubt that they have such an occupation. Suppose a person to trespass on the land of another, who thereupon brought his action,—if the jury gave damages amounting to the whole value of the land, and the trespasser continued in possession, although there would be no conveyance,—can it be doubted that

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he would have such an occupation as would render him liable to be rated? But that case is much weaker than the present; for here, by the 10 Ann., upon payment of the sum of money agreed on between the parties or assessed by a jury, the Company are authorised to enter upon the lands, and 'use and enjoy the same to and for their own proper use and benefit.' It seems that by an inquisition in 1720, the jury have assessed thirty years' purchase for lands then taken by the company, on which the cuts now rated were made, and the latter have accordingly entered upon and enjoyed the land. The jury then awarded compensation, parcelling out the amount among the different lifeowners. There can be no doubt, therefore, that on this transaction the fee passed to the company. With regard to the towing-path also, I think that the company have such an occupation as makes them rateable. It is true that the adjoining landowners have a qualified right of way upon it also; but what part of the country is there in which the most powerful proprietor can claim the sole and exclusive occupation of all his land?" *Littledale*, J. "By the 10 Ann. c. 8, s. 2, in order to carry the act into effect, certain commissioners are named for settling all differences which may arise between the undertakers and the proprietors of lands adjoining to the Avon, and to determine what satisfaction such persons shall have for the lands made use of by the navigation, and to adjust and settle what share of *such purchase-money* or satisfaction the tenants of such landowners should have. It seems to me, therefore, that under this act, although not so explicitly expressed as in more modern statutes, the company had full power to purchase lands. The section then goes on to enact that, if the landowners refuse to agree with the undertakers, the commissioners may impanel a jury, who are to assess 'such damages and recompense as they think fit,' and 'the value and recompense so to be assessed and decreed' shall be binding, and the orders, sentences, or decrees so made shall be set down in writing, and be kept upon record amongst the records of the sessions of Somersetshire and Gloucestershire. It is very true that in this case there has been no conveyance of the land on which the cut and locks have been made; but that appears to me to be unnecessary, because, where a jury have assessed compensation, and the inquisition is made a record, that of itself is sufficient title. With regard to the towing-path, the 47 Geo. III. contains more express powers than the 10 Ann. for the purchase of the land required, and it enacts, like the 10 Ann., that every judgment of the commissioners acquiesced in by the parties concerned, and every verdict of a jury, shall be made a record of quarter sessions; as to the towing-path, therefore, also no conveyance would be necessary. The question then is, what was done by the inquisition under 47 Geo. III.? The inquisition certainly does not speak distinctly as to the purchase of the land; but, when thirty years' purchase is directed to be given for it, there can be little doubt what that means. With regard to other land taken, a perpetual rent is directed to be paid of 5*l.* 5*s.* per acre; and upon the whole it seems to me that under both acts land was purchased by the company. It is, however, not necessary to investigate whether the company have the fee or not; for, even if there ought to have been a conveyance, and they have been erroneously let into possession, they are still liable to the rate. I think it therefore unnecessary to go into the numerous cases that have been cited." *Williams*, J. "I have never doubted that, when a company makes a cut for the purpose of improving the navigation of an ancient navigable river, they are as much rateable as if they had made a canal, and in all such cases it is clear that the soil of the cut is vested in the company, and never could be intended to remain in the original owners. Here, then, the company make the cut and enjoy the land; and I entirely agree with my brother *Littledale* that, even if they have not the legal title, they are liable to be rated. The argument of the attorney-general appears to have been more directed to the towing-path than to the cuts, as he contends that there was no exclusive occupation of the former; but sect. 17 of 47 Geo. III. only gives the right of way over so much of the towing-path to the landowners as adjoins to their respective

lands, and then only for watering their cattle, and enacts 'that no other person shall use the same except for purposes relating to the said navigation, and except in such places as the course of the said towing-path hath been of right used as a common or private way.' It is clear, therefore, that but for this section the company would have had the exclusive occupation even against the adjoining landowners, who by the act now enjoy a mere easement. I think, therefore, that the company have clearly a rateable occupation." *Coleridge*, J. "I entirely concur with the rest of the court, and think that the Company were the exclusive occupiers both of the cuts and the towing-path. A great deal of discussion has taken place on the point, whether they were owners of the soil or not. I do not at all hold they were not so, and think the absence of any conveyance immaterial; but that question is only important as showing whether they have exclusive occupation of the land or not. Abundant evidence is furnished here to show that they have such an occupation. Besides which, the two statutes explain the whole matter; those acts authorise the company to take land for the purposes of their navigation, and they have done so: if so, they are rateable." Judgment for the defendants.

The grant of the "navigation" passes only an easement.

Aire and Calder, trustees, not rateable for it.

Rex v. *Aire and Calder Navigation*, 9 *B. & C.* 820; 4 *Man. & R.* 728. The 9 & 10 Will. III. gave to certain undertakers authority to make navigable the river Aire, and for that purpose to cleanse and scour the same, and dig and cut the banks. By a subsequent act reciting that the legal estate and interest in the navigation of the said river, and divers messuages, mills, warehouses, buildings, lands, tenements, and hereditaments, were vested in trustees, they were authorised by deed to sell and convey in fee such messuages, mills, lands, or tenements, belonging to the undertakers, or to convey in fee, by way of mortgage, as well the said navigation as also all or any messuages, mills, lands, tenements, and hereditaments, being the property of the undertakers: Held, that the word "navigation" imported an *incorporeal* hereditament, and that it authorised the trustees to mortgage in fee that incorporeal hereditament, and the first act having given the undertakers an *incorporeal hereditament only* in the bed of the river, they were not rateable to the poor as occupiers of the river Aire.

Nor are the company rateable for a dam erected to make the river navigable.

Rex v. *Aire and Calder Navigation*, 3 *B. & Ad.* 139. The company were rated for a dam, and the case stated that the rivers Aire and Calder were rendered navigable by 10 & 11 W. III. c. 19; 14 Geo. III. c. 96; 1 Geo. IV. c. xxxix; and 9 Geo. IV. c. xcviii. The river Aire forms the boundary between the respondent townships and those of Ferrybridge and Knottingley, as far as the mills after mentioned. Opposite these it divides itself into two branches, the northern branch separating Brotherton from Knottingley, the southern passing through Knottingley. On the Brotherton side of the northern branch is an ancient mill called Brotherton Mill, with a mill-dam across that branch of the river, forming in part the head and fall of water by which the mill, when in operation, was worked. Half of the dam is in Brotherton, and half in Knottingley, abutting on one side upon the mill, on the other side upon land held to the use of the undertakers. The mill and dam existed before the navigation, and were leased to trustees for the undertakers of the navigation, fifty years ago, but are now dilapidated, out of use, and unoccupied. On the Knottingley branch of the river are other ancient mills (vested in trustees for the undertakers in fee), to which belongs a second dam, extending across the southern division of the river. This, the Knottingley dam, lies near the Brotherton dam before described, and the two together form a pond or head of water. Since the Brotherton mills were dilapidated, the Knottingley dam has been substantially repaired by the appellants, for the use of the Knottingley mill, and of the navigation in common. A side cut mentioned in the rate, but concerning which no dispute arose, was made by the undertakers, with a lock in the respondent parish, for passing vessels from the level above to that below the Brotherton and Knottingley dams. There is a similar cut for the same purpose on the Knottingley side. The water of the river Aire is

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held up, and the river rendered navigable, by the above-mentioned dams, from the lock in the side cut in Brotherton township, for 9,823 yards upwards, within which distance it runs through six townships (including Brotherton), each maintaining its own poor. No tolls or dues are specifically taken for passing a dam or lock: the only toll is an equal mileage toll, charged according to the length of the river or canal, or both actually navigated, and whether any locks or dams be passed or not. No tolls are actually received in the respondent township. The appellants contended that they were rateable only in respect of the canal and lock in Brotherton. The respondents maintained that as the water of the river was upheld, and the river made navigable for 9,823 yards, by the two dams above mentioned; and as one-half of one of the dams was in the respondent township, they were entitled to rate the undertakers for one-fourth of the tolls on the whole line so made navigable, or at least upon that portion of the line which lay within their township. The sessions considered the appellants rateable for a fourth of the tolls upon the whole line, as well as for the cut and lock at Brotherton." Lord *Tenterden*, C. J. "I am of opinion that this rate must be amended by reducing it to the amount assessed upon the cut and lock. This is an attempt to evade the decision of the court in a former case of *Rex* v. *The Aire and Calder Navigation* (*supra*). We there held, that the undertakers were not rateable as occupiers of the bed of the river, having merely an easement in it. No rate then could be laid upon them for the water of the river made navigable by them; and if so, none could be imposed in respect of the dam; for to rate the dam because it keeps up the water, would be equivalent to rating the water itself. If the water cannot be rated, neither can the dam which holds it up." *Littledale*, J. "It has been held, that the company were not rateable for the river, and I therefore think they are not so for the dam." *Taunton*, J. "It has been contended, that the water of this river was holden up and made navigable for 9,823 yards by dams, one of which was partly situate in the respondent township; the undertaker might, therefore, be rated upon the dam for a proportion at least of the tolls accruing upon the water so upheld. But I think that this is a vicious principle, and at variance with decided cases. It might as well be said, that a reservoir which supplies water to a district nine or ten miles in extent, or a lock which acts as a dam or a steam-engine employed to raise water from a lower to a higher level, is rateable in respect to the whole distance to which water is supplied by any of these contrivances, and the profits accruing from that supply; propositions which cannot now be maintained." *Patteson*, J. "It is very clear that such a rate as this, if it may be imposed, is in effect the same as rating the water. Suppose this were a canal, it would then be rateable all along the line of navigation to the parishes through which it passed, and in that case the rate evidently could not be laid upon the dam. Can it then be imposed upon the dam here, because the line of navigation is not rateable? I agree with my lord, that it is merely an attempt to evade the former decision of the court." Rate sent back to be amended, by reducing it from 150*l.* to 15*l.* 16*s.*, the amount chargeable upon the canal and lock.

Blackwater River

Rex v. *Chelmer and Blackwater Navigation*, 2 *B. & Ad.* 14. The soil of the river Blackwater is not by the statute vested in the proprietors, but only the privilege of using it in the nature of an easement. See *Case, post.*

Commons.—Rights of Pasture.

Commons, rights of pasture, &c.

Land, over which there exists a right of common, which affords a *beneficial occupation*, is rateable; but the party to be rated must not only be the beneficial occupier, but he must have such a *possession* as will enable him to maintain an action of *trespass*, which a mere commoner cannot sustain. In most cases, therefore, where the common belongs to a corporate body, the corporation, and not the members individually, must be rated. A *mere right* of *common* is not rateable.

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A commoner is not rateable for his right of common.

Rex v. *Churchill and Booth*, 4 *B. & C.* 750; 6 *D. & R.* 635. In the parish of St. Mary, Nottingham, are about 280 acres of meadow, to the pasturage of which the burgesses resident in the three parishes of Nottingham, even if they are inmates not renting or holding any tenement, are exclusively entitled, and to turn in three head of large cattle each at certain periods of the year. There are also 650 acres in the sand and clay fields, fenced off into different closes, belonging to different individuals. The burgesses resident in the three parishes, and also the occupiers of ancient messuages in the three parishes, and who, as such occupiers, are severally rated for their messuages, but not for such common right, claim, and such of them as choose exercise, the right to turn in three head of large cattle from Old Lammas-day to Old Martinmas-day in every year, during which period neither the owner of the freehold nor the tenants have, as such, any right to turn in cattle therein; and during that period the pasturage of the fields are of the value of 10*s.* per acre. The several persons named in the notice of appeal had each of them cattle, in either the fields or meadows, during some part of the time the same were commonable, and at the time of making the rate; but none of them were rated for so depasturing their cattle, nor has it ever been usual to rate them. The sessions refused to quash or amend the rate on account of such burgesses and occupiers of ancient messuages being omitted to be rated, from the impossibility of ascertaining and rating the whole of such persons so turning into the said fields and meadows for their actual occupation and enjoyment, there being upwards of 2,000 burgesses entitled so to turn in, besides the occupiers of many hundred messuages, many of whom exercise such right in different modes and at different times, as by turning in one or more head of cattle for a night or a day, and in other ways, and there being no coin small enough to assess some of them, if they were liable to be rated only for their actual occupation and enjoyment. *Bayley*, J. "In order to prove a person liable to be rated, it is necessary to show that he is an inhabitant, or an occupier of lands, houses, &c. The question here is, whether the persons whose names are alleged to have been improperly omitted out of the rate, were individually occupiers of land? The word common is well known to the law, and Lord *Coke* says there are four kinds of common of pasture: common appendant, which is appendant to arable land; common appurtenant, for which one must prescribe (in a *que* estate); common *per cause de vicinage*, which is but an excuse for trespass; and common in gross, which is so called for that it appertaineth to no land, and must be by writing or prescription. Land lies in livery, but a right of common in grant. Does that for which it is attempted to rate the burgesses of Nottingham lie in grant or in livery? Each has a right to turn three cattle upon certain fields during a certain portion of the year. It is claimed by them as burgesses, and as occupiers of ancient houses. Could they be infeoffed of such a privilege? If not, it is plain they have no right to the soil, but merely an incorporeal hereditament, a right of common by prescription, which is not rateable. The order of sessions was therefore right." *Holroyd*, J. "It appears to me that the right is vested in the corporation for the benefit of its members. Supposing that there was a possession in law of those fields, so that trespass might have been maintained either by the corporation or the burgesses, I think it must have been by the corporation. But this appears to me a mere incorporeal right, and not within any of the words in the statute 43 Eliz. c. 2. Land to which a right of common is attached may, on that account, be rated at a higher value, but the right of common is not rateable *per se*." *Littledale*, J. "The burgesses had a mere right of common, and, according to the decided cases, that is not the subject of rating. It is said that the exclusive pasture gave them the exclusive interest. I think it had not that effect, and that they could not maintain trespass as persons having the *primam vesturam*. The right enjoyed by these burgesses could only be claimed by prescription in the name of the corporation. According to *Com. Dig. Prescription* (H.) there may be a prescription for sole and several pasture, so as to exclude the owner of the

Land, to which such right belongs, may be rated higher. See *Kemp* v. *Spence*, *post*.

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soil, as appears also by *Hoskins* v. *Robins*, 2 *Saund.* 324, and under such circumstances the persons enjoying the right may grant it to others. But in this case no such grant to others could be made by the burgesses; the exclusive right was in the corporation, and they had it but for a limited time, and could only take it by grant or prescription. The burgesses could not take it by either of those modes, which shows that they had a mere privilege of turning on cattle, in respect of which they were not rateable. The order of sessions must therefore be confirmed."

Members of a corporate body, which holds in fee certain common lands, exercising their right of common on such lands, are rateable. (*a*).

Rex v. *Watson*, 5 *East*, 480. Appeal against a rate for omitting to rate certain persons, who were resident burgesses, and who stocked the common. Case:—The mayor, &c. of Huntingdon were the owners in fee of lands, which were used as a common of pasture, and stocked by such resident burgesses as thought proper to stock, under certain restrictions. Some stocked fully, others did not, and some not at all. In the latter case, an annual payment was made by those who did stock to those who did not. It was observed by *Lawrence*, J., that "*occupation*," properly speaking, implies "*possession*." Lord *Ellenborough*, C. J. "This is not an incorporeal hereditament. The corporation are the owners in fee of the land, and they dole it out annually, according to the custom, to certain of the burgesses, such of them as take it paying a certain sum to those who do not turn on any stock. Then when the number of those who stock is ascertained, what is there to distinguish them from other tenants in common? Each of them might maintain *trespass* for any injury done to his occupation in common. It has been decided that a common in gross is a tenement, and *it should seem from thence that it is rateable;* (*b*) but without considering that this case steers clear of all difficulty, for I do not consider this as an incorporeal hereditament, but as a corporeal tenement, of which the several burgesses who stock are tenants in common. And we cannot say that an enjoyment of land, which is of such value as that those who do not actually enjoy it, but who might if they so pleased, are entitled to a compensation from those who do, is not something which is rateable: and being rateable, it must be rated in the hands of those who have the beneficial possession." *Le Blanc*, J., added, "It is improper, therefore, to call it a right of common; because it is holden in fee by the corporation for the benefit of the resident burgesses. The corporation themselves, as a corporation, have no benefit from the land, but the resident burgesses, to whom it is meted out annually by the leet jury. This view of the case avoids the difficulty stated in the argument of rating persons having a right of common running into several parishes; for this is a case of persons having an equitable right to the land, the fee of which is vested in the corporation for their benefit." The rate sent back to be amended by the insertion of the burgesses occupying the land.

Rex v. *Churchill*, *ante*, 205.

The trustees of aftermath are rateable where the aftermath was vested in them, and by them let out in pastures at so much per head.

Rex v. *The Trustees of Tewkesbury*, 13 *East*, 155. Before the 48 Geo. III. for inclosing lands in Tewkesbury, and for vesting the after or latter math of a meadow called Severn Ham in trustees, the burgesses or freemen of the borough of Tewkesbury, resident within the borough for the time being, and the occupiers for the time being of certain houses situate within the borough, were entitled to a right of common for a limited number of their own cattle only in the Severn Ham, for a certain period in every year, which right of common was, according to the act, afterwards suspended by order of the commissioners, and the after or lattermath of the Severn Ham was by the act declared to be vested in certain trustees, for the burgesses or freemen and principal householders of the borough of

(*a*) On this case being cited in *Rex* v. *Tewkesbury*, *infra*, 145, Lord *Ellenborough* said, "There each was in possession of a distinct interest in the land, as in the case of a cattle gate, for which he might have maintained an ejectment." And as to cattle gates, see *Rex* v. *Whixley*, *post*.

(*b*) This is not a legal inference, for though a common in gross is a *tenement*, it is an *incorporeal* tenement. It is not "land," or susceptible of occupation,

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Tewkesbury, for ever discharged from all right, &c. which any person could have in the same. By the act, the trustees might *let and set annually the after or latter math of Severn Ham, or any part thereof*, to any persons at the most improved yearly rent; and also might *let the lattermath of Severn Ham in pastures* for horses, cattle, and sheep, to different persons, in such manner as they should appoint; or they might lease for term of years; and the rents arising from the lattermath of the said meadow should every year be paid and divided between such burgesses or freemen of Tewkesbury, and such occupiers of houses within the said borough as would have been entitled to rights of common upon the meadow, if that act had not passed, according to their respective rights and interests. On the 12th of August, 1809, the trustees not being able to let the said aftermath together for a sum equal to its value, *let it out in pastures at a certain sum per head for horses, cattle, and sheep, to various persons*, for 295*l.*, but subject to expenses of between 30*l.* and 40*l.* The several persons who took the aftermath in pastures, enjoyed the same by turning in their cattle from the 12th of August, 1809, to the 13th of February, 1810, and the trustees did not occupy it, unless such letting, &c. amount in law to an occupation by them. No alteration has been made since the passing of the act in the proportion of the poor-rates of the parish assessed on the occupiers of the houses there, who were previously entitled to such right of common on the Severn Ham, nor has any deduction been made from the assessments in consequence of the alterations introduced by the act. The question was, whether the trustees were liable to be rated in respect of the after or latter math? When *Rex* v. *Watson* was cited, Lord *Ellenborough*, C. J., said, "There the corporation could not take in the cattle of a stranger, but here the trustees may contract with any persons to take in their cattle by the year, or by the month, or week; and here not being able to let it altogether, they took in the cattle of different persons at so much a head. Who then can be said to be the occupiers, if they are not in this case?" And afterwards, in giving judgment, he said, "The letting is at so much a head, without any definitive time, or for any definitive portion of the aftermath, nor were the trustees bound to limit the number of cattle, though they might have done so." *Grose*, J., agreed. *Le Blanc*, J. "The persons whose cattle were taken in had no definitive portion of the aftermath let to them." *Bayley*, J. "In the *Huntingdon case* the portions of those who had a right to stock were ascertained, but here there was nothing to limit the trustees from taking in others." Order of sessions confirmed for rating the trustees.

Where a corporation was seised of certain pasture lands, and appointed a ranger to keep the keys of the gates, clean the ditches, preserve the fences, and impound cattle trespassing thereon; and, at a court held annually, made such regulations concerning their pastures, and the number of cattle each burgess was to turn on, and the sum to be paid in respect thereof, which money after deducting the expenses of management of the land, was distributed among the burgesses who did not turn on. Held, that the corporation were

Rex v. *Sudbury*, 1 *B. & C.* 389; 2 *D. & R.* 651. Appeal against rate. Case:—Richard de Clare, about the year 1250, granted certain pasture land, called Portman's Croft, in the hamlet of Ballingdon, to "his burgesses and whole commonalty of Sudbury;" and Charles the Second, by his charter, under which the corporation now exists, confirmed the said grant to the mayor, aldermen, and burgesses. The land is inclosed; and the corporation, consisting of a mayor, six aldermen, and twenty-four capital burgesses, appoint the ranger of the commons, to keep the keys of the gates, clean the ditches, preserve the fences, and impound cattle trespassing. They, at a Court of Orders and Decrees, annually make such regulations concerning their commons as they think proper, and give a public notice of them by the common crier; and for the year when the rate in question was imposed, the order declared that every burgess who had a right to turn on his cattle to feed on the commons, should put two head of cattle, and no more, on Portman's Croft. It then appointed the day when the cattle should be turned on, and fixed the price of each head of cattle, which price is always paid by the freemen exercising this right (who amount to more than 100), to the treasurer of the corporation. The mayor, aldermen, and capital burgesses (being resident) enjoy the same right upon the same terms, and some of them exercised it during the year for which the rate was made. The cattle are branded by the ranger when turned on. The whole of the money thus paid to the treasurer, after

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Liable to be rated to the poor, as the beneficial occupiers of these pastures.

deducting the expenses incident to the management of the land, is distributed among the poorer burgesses, who have, but do not, on account of their poverty, exercise a right of depasturing cattle. The mayor, aldermen, and capital burgesses were rated, in their corporate capacity, as the occupiers of Portman's Croft; and the questions for the opinion of this court were, whether there was any rateable occupation of Portman's Croft; and if there were, whether the corporation, or individuals who depastured their cattle upon it, were liable to be rated? *Bayley*, J. "I am of opinion that the corporation were the beneficial occupiers of the land in question. We have been pressed strongly with *Rex* v. *Watson*, but that case differs from the present in two important particulars. There the individuals who turned on had the exclusive enjoyment of the land, for the purpose of turning on their cattle. No payment was made by them to the corporation, but to those resident burgesses who had the right to stock and did not exercise it. Here it is clear, from the facts stated in the case, that the corporation retained the exclusive right to the possession of the land. They appointed a ranger—he was their servant, and paid out of their funds; his duty was to keep the keys of the gates, clean the ditches, repair the fences, and impound cattle: all these acts are usually done by the occupiers of land. The commoners could not insist upon having the keys from him. If the occupation, however, was in them, they would be entitled to have the control of the gates, and they would be bound to do the several acts in respect of their occupation, which the corporation did by their servant. The corporation received the agistment money paid in respect of the cattle turned on the land; they therefore occupied the land as agisters of cattle. The present case appears to me to fall within the principle of the decision in *Rex* v. *Tewkesbury*. The only difference is, that there the common was fed by the cattle of strangers, and here, by the cattle of the members of the corporation. If, however, the exclusive occupation of the land is in the corporation, the principle upon which that case was decided is applicable to the present. The trustees were there considered as taking in cattle to agist, and particular stress was laid by the court upon the circumstance, that there was no letting of any definite portion of the aftermath. Now, in this case, no definite portion of the land is let to any one individual. The corporation do nothing more than take in cattle to agist; they do not even know, in the first instance, how many cattle will come in. For these reasons it seems to me that this case falls within the principle of *Rex* v. *Tewkesbury*, and is distinguishable from *Rex* v. *Watson*. If it were necessary to overrule either case, I should adhere to the decision pronounced in the former case, which seems to me to furnish a more reasonable rule of construction than *Rex* v. *Watson*." *Holroyd*, J. "This case differs from *Rex* v. *Watson* in several particulars. In that case it did not appear that the corporation did any acts upon the land. The temporary ownership seems to have been given up to the three persons mentioned in the case. Here the right of soil is in the corporation; they have the management of the land by the ranger, their servant, who keeps the keys of the gates, and cleans the ditches; at the court mentioned in the case, they annually make regulations with respect to the mode of enjoyment of the commons by the burgesses. The money paid in respect of the cattle turned on, is received by the corporation, though it be afterwards distributed among the poorer burgesses. Many of these acts done by them could only be done in respect of their being in possession of the land. That is perfectly consistent with the exercise of subordinate rights by the burgesses. In respect of any injury done to the land itself, trespass would lie by the corporation, but in respect of any injury done to the right of common, the burgesses could only maintain an action on the case. In *Rex* v. *Watson*, the part of the common situated in the parish of St. Mary seems to have been in the exclusive occupation of the three persons mentioned in the case. The objection to the rate was, that those persons were not rated for certain lands in the parish of St. Mary, over which they had commonable rights, which said lands, in the notice of appeal, was stated to be in the

Agistors not liable to be rated.

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respective occupation of the said three persons. The case stated that the mayor, aldermen, &c. of Huntingdon, were the owners and proprietors of large tracts of land within the borough, used as a common of pasture, and stocked by the burgesses, part of which lands, viz. those mentioned in the notice of appeal, was in the parish of St. Mary. Now that part in the parish of St. Mary was stated in the notice of appeal to be in the occupation of three persons named in the case. Those persons appear, therefore, to have had the exclusive occupation of those lands at the time when the rate was made. During that time the corporation could not do any act upon the land; they could not maintain trespass for any injury done to the land. Here the possession is in the corporation, although there be a subordinate right in others. There was no letting of any definite part of the common to the burgesses, there was no rent reserved, but merely something paid for the agisting of the cattle. For these reasons I am of opinion that this case differs from that of *Rex* v. *Watson*, and that the order of sessions must be affirmed." *Best*, J. "I think *Rex* v. *Tewkesbury* furnishes a more just principle of construction than *Rex* v. *Watson*, and I should be disposed to overrule the latter case, if it were necessary to do so in the present instance. If A. occupies for the benefit of B., C., and D., A. is to be rated. Here the corporation are the owners as well as the actual occupiers of the common, although they occupy for the benefit of individual corporators, viz. first, for the benefit of the burgesses who put in their cattle; and secondly, for the benefit of the poorer sort, among whom the money received is afterwards to be distributed. The burgesses are nothing like tenants in common: they have no interest whatever in the soil; it is clear that the corporation retained possession by their officer; he could not otherwise impound cattle damage feasant, that being an injury done to the occupier of the land. The corporation are even to decide how many cattle each burgess is to turn on. This shows, clearly, the right of occupation to be in the corporation, although the right of turning on be in different members. It seems to me that this is not distinguishable from the case of persons taking in cattle to agist. The corporation must be considered as the owners, for it is impossible to rate any other person; for before the orders of the court are issued, the individuals who are likely to have any interest are unknown." Order of sessions confirming the rate affirmed.—See also *Reg.* v. *Mayor of York*, *ante*.

The corporation of Alnwick are not the occupiers of Haydon Forest, so as to render them rateable, nor the freemen.

Reg. v. *Common Council of Alnwick*, 1 *P. & D.* 343. A rate for the parish of Alnwick, was confirmed by the sessions. Case:—The town of Alnwick is an ancient borough, and the freemen are a body corporate by prescription, by the name of "The Chamberlains, Common Council, and Freemen of Alnwick," (the appellants). The common council consists of twenty-four freemen elected for life, from whom four chamberlains are annually chosen. The management of the affairs of the corporation is vested in the chamberlains and common council. Adjacent to the town of Alnwick is a large tract of uninclosed ground, called Haydon Forest or Alnwick Moor, upon which the freemen of Alnwick, and widows of deceased freemen resident within the parish of Alnwick, have from time immemorial been entitled to certain rights or privileges. The appellants were assessed for land as the alleged occupiers of the said moor; and objection that they did not occupy any land in the parish that was common of pasture; it was not properly described; and that common of pasture was not rateable; and, even if rateable *per se*, was not in the beneficial occupation of the appellants. The most ancient documents in the possession of the corporation relating to the borough, are three charters from the De Vescis, formerly lords of the manor of Alnwick; the first of which, supposed to be of the reign of Henry II., stated, that William de Vesci "granted and confirmed to the men, my burgesses of Alnwick, to hold of me and my heirs, &c., to them, &c., as freely as the burgesses of Newcastle hold of the lord the King of England, and also to have common of pasture in Haydon, and in the moor of Haydon." The second charter, by the

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grandson of William, confirmed the said common of pasture; and the third charter, by his son in 1290, also confirmed to the burgesses of Alnwick all their liberties, &c. "with common in Haydon, and with all the privileges in Haydon Moor, in the marshes, feeding, and pasture grounds, with liberty to get peat, turves, and brush-wood, as well in the forbidden month as in others; and the burgesses, for the privileges which they are to have in Haydon in the forbidden month, with their liberties, shall give me and my heirs 2*s*. annually." About the year 1700, the corporation inclosed about 700 acres from Alnwick Moor, which are divided into several farms. On March 6th, 1762, by an agreement between the Earl of Northumberland and Elizabeth, his wife, and the then chamberlains and twenty-four common councilmen, on behalf of themselves and the freemen; after reciting a bill filed in Chancery by Lord and Lady Northumberland against the corporation of Alnwick, praying that the rights of the plaintiffs in Alnwick Moor might be settled and declared, and that the corporation might be prevented from demising or inclosing any more of the moor; in order to put an end to all differences, it was mutually agreed (*inter alia*) that Lord and Lady Northumberland were lord and lady of the manor of Alnwick, and that Alnwick Moor was parcel of the manor. That the freemen of Alnwick were entitled to common of pasture upon Alnwick Moor, upon payment of the rent of 2*s*. per annum for the liberty of depasturing their cattle thereon in the fence-month, and that the freemen of Alnwick have a right to dig as well as cut peats, furzes, turves, and bushes growing thereon, for their own use; and that the lord and lady of the said manor have no right to grant the herbage or vesture of the said moor to their tenants holding by burgage tenure, or any other person whatsoever. That the present inclosures (being part of the moor) should be established to the corporation, but that no new inclosures should be made, and that the soil and royalties of Alnwick manor should be vested in the said earl and countess. That the freemen and freemen's widows should have liberty to get limestones, slates, and freestone, in any of the present quarries, and to dig clay and burn bricks in such parts of the said moor as the lord's bailiff and the chamberlains should think fit, for the use of themselves or the use of any other freeman; and in like manner to dig and take away sand, gravel, clay, and marl for their own use. By an indenture, 30th July, 1811, between the Duke of Northumberland and the chamberlains and common council in behalf of the other freemen, reciting that the freemen of Alnwick were entitled to common of pasture and other rights upon Haydon Moor, the Duke granted a right of common, on two pieces of freehold land, to the freemen of Alnwick, in exchange of their right of common and other rights on a certain portion of Haydon. The Duke of Northumberland is lord of the soil and royalties of the said moor, granting licence to make bricks, get clay, and of making washpools, winning stones, coals, and limestones. About three years ago, the Duke, as lord of the manor, granted to the corporation his licence in writing, for a permanent washpool of stone-work upon the said moor. By a lease of the present Duke to the corporation, dated 29th July, 1833, (after reciting the articles of 1762,) he, as the impropriator of the tithes of the manor, demised to them for ten years, at the rent of 1*s*., the agistment tithes payable in respect of cattle depastured on the inclosed lands of the corporation, and also in respect of the cattle of the freemen depasturing the said moor, on which the freemen were stated in the lease to be entitled to common of pasture. The rent of 2*s*. per annum, reserved for the liberty of depasturing the said moor in the fence month, is regularly paid to the Duke. The inclosures made from the moor previously to 1762, are let to tenants, and the rents paid to and applied by the common council for the benefit of the corporation. The freemen do not ask any permission to turn their cattle on the moor; they know the regulations, and put on their cattle accordingly, without making any payment whatsoever to the corporation for the exercise of their right.

No cattle belonging to the corporation are turned upon the moor, nor is there any occupation thereof by the chamberlain and twenty-four council-

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lors, except by their own cattle, as individual freemen. No profit whatever arises to the corporation, in their corporate capacity, from the moor. The chamberlains and common council exercise the power of making by-laws, regulating the number of stints to be depastured by the freemen, and by the by-laws the moor-grieves are authorised to distrain all cattle depasturing the moor contrary to the by-laws, and the number of stints is regulated by the herd. The chamberlains and common council appoint both the moor-grieves and the herd; the latter of whom, in addition to his salary paid by the corporation, has four stints on the moor, his right to put on which was established in a replevin suit at the assizes. The corporation have frequently employed persons in hoeing up and burning the whins and furzes growing upon the uninclosed part of the moor, and in draining the same for the improvement of the herbage, and in sowing grass seeds where the whins and furzes have been removed. Upon the foregoing evidence, the sessions were of opinion that the corporation were in such occupation of the herbage of the said moor, as trustees for the freemen, and for their benefit. Lord *Denman*, C. J. delivered the judgment. "This was an appeal by the chamberlains, common council, and freemen of the borough of Alnwick, against a rate for the relief of the poor of the parish of Alnwick, whereby the appellants were assessed as occupiers of land valued at 350*l*. The sessions confirmed the rate, subject to a case which states the facts hereinafter noticed, and at the conclusion, 'that the sessions were of opinion that the corporation were in the occupation of the herbage of Alnwick Moor, as trustees for the said freemen, and for their benefit, so as to render them liable to be assessed to the said rate.' We notice this at the outset, because, generally speaking, this finding of the sessions would have been conclusive upon the question. In this instance, however, from the long statement of facts submitted to our consideration, it is impossible not to perceive that the finding of the sessions was merely formal, and that their real object was to procure our opinion—whether the facts stated warrant their conclusion or not. The principal question accordingly (and into which alone it is necessary for us to enter) is, whether the interest of the appellants in the district (of from 2000 to 3000 acres) called Aydon or Haydon Forest, or Alnwick Moor, in the neighbourhood of the town of Alnwick, be of such a nature as to make them liable to be rated. It is material to observe thus early, that it is found as a fact that the Duke of Northumberland is *lord of the soil and royalties of the said moor;* and if that finding needed any confirmation, it would have received it from the fact of his having recently granted a written licence to erect a permanent washpool thereon. It is obvious, also, that the original grants to the burgesses of Alnwick were plainly of a right of common, and of that right only. Hence this important consideration arises—that the burthen is clearly cast upon those, who contend that some larger interest in the soil than a mere right of common is vested in the appellants, to show how and when such enlarged interest accrued. The two first grants are from the family of De Vesci, then lords of the manor of Alnwick, and supposed to be about the dates of Henry II. and Edward I. respectively, 'of common of pasture' in Haydon, in the manor of Haydon, to their burgesses of Alnwick. The third grant to the said burgesses, of the date of 1290, by the son of the second grantor, is of certain lands (not material to the present purpose) 'with common in Haydon, and with all the privileges in Haydon Moor, in the marshes, feeding and pasture grounds, with liberty to cut peats, turves, and brushwood, and with all other their free appurtenances and privileges which they were wont to have and use in the times of my ancestors, as well in the forbidden month, as in others;' for which enlarged privilege, during the fence month, 2*s*. annually were to be paid, and the same (as the case states) is regularly paid to the lord at this day. From the two earlier grants, therefore, common of pasture only, and by the third, common of turbary in addition, with an extension of all the privileges over the fence month, were given to the burgesses. And the payment of the 2*s*. annually, as already mentioned,

The judgment.

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amounts to a distinct acknowledgment of the force and validity of the grant of 1290, by which unquestionably no right in the soil, of a higher nature than that of common of pasture and turbary, passed to the burgesses. Nor do we think that, from the more modern deeds and instruments introduced into the case, any inference of a contrary tendency can be fairly deduced. That of 1811 was for the purpose of effecting an exchange between the Duke of Northumberland and the chamberlains, common council, and freemen of Alnwick, 'of a certain portion of inclosed land belonging to the Duke, adjoining to Aydon Forest or Alnwick Moor, for a certain portion of the said forest or moor;' and it is to be observed, that what is thereby professed to be relinquished to his grace, is not *land*, but '*all the right of common and depasturage*, and other right, title, claim, and interest of the said chamberlains, &c., of, in, and to the piece of ground in question.' The last in order, and the most recent in date, is the deed of 1833, whereby the Duke, as impropriator of the tithes of the manor and borough of Alnwick, for a rent of 2*s*. leased, during a term of ten years, the agistment tithe payable in respect of cattle depastured (amongst other places) upon the said moor, on which the freemen of Alnwick are therein stated *to be entitled to common of pasture*. We have purposely omitted the articles of agreement of March 1762, though of earlier date than the two deeds lastly noticed, because they have reference especially to the inclosure of upwards of 700 acres of the moor, about the year 1700,—a fact to which considerable importance seems to have been attached, though, with the accompanying explanation, it appears rather to operate in favour of the appellants. That such inclosure was made upon any exercise or claim of right, is certainly not shown;—that it originated in encroachment and usurpation, there is every reason to conclude. The said articles of agreement made between the Earl and Countess of Northumberland and the chamberlains, &c., of Alnwick, after reciting that a bill had been filed by the said Earl and Countess against the said chamberlains, (amongst other things) to establish the right of the former to the soil and inheritance in the place in question, and to restrain the latter from letting or inclosing any part of the same, went on to adjust between the parties that the said inclosure of 700 acres should stand, but that no further inclosure should be made; and that the soil and freehold *were to be vested* in the said Earl and Countess, as from the earlier documents it is quite clear that they were before. Since, therefore, the Duke is stated expressly to be lord of the soil, and that there is no reason for concluding that the part of the moor inclosed was under different circumstances from the rest, and the chamberlains, &c., formerly sitpulate to inclose no more, it seems clearly to follow that they had no right to inclose at all; for if they had, why should they renounce it? It must certainly be conceded (as was pointed out in the argument) that very large, and with reference to commons generally, unusual rights are by these same articles conceded or admitted to belong to the freemen, such as the liberty to disturb the surface, by digging for clay and gravel, and to cut down whins, wattels, &c., upon the surface; and in other respects also (as appears by the case) they have interfered with it. Seeing, however, as we think we do distinctly, the original relation of these parties to each other, to have been that of lord and commoner, and that there is nothing in any subsequent deed or instrument to satisfy us that the quality and extent of the interest of the freemen has since been varied, we think that the nature of their rights is still, as at first it is shown to have been, that of commoners, though with large and (as we have before observed) unusual enjoyments upon this moor. In coming to this conclusion upon the facts of this case, we have in effect disposed of it, because it was not contended in argument (and could not have been with any prospect of success) that, unless the interest of the appellants in this tract of land was something more than an incorporeal hereditament, the rate could be sustained. It is not needful, therefore, to do more than to observe generally, as to all the cases cited in the argument, *Rex* v. *Watson*, *Rex* v. *Aberavon*, *Rex* v. *Tewkesbury*,

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Rex v. *Sudbury*, and the recent case of *The Mayor of York*, that there was, undoubtedly, *rateable property*, and the only question was, whether there was a *rateable occupation*. Thinking, therefore, as we do, that the first point is in favour of the appellants, we do not enter into the second, and upon that express no opinion. The result is, that the order of sessions must be quashed."

The mayor and commonalty of York are liable to be rated for lands allotted to them in lieu of certain common rights previously vested in the freemen, although the freemen only had the agistment of such lands; but they are not rateable for lands purchased by trustees for the same purpose.

Rex v. *Mayor of York*, 1 *N. & P.* 539; 6 *A. & E.* 419. The appellants were assessed in the township of Heworth for Monk Ward Stray. Rate confirmed. Case:—The lands called Monk Ward Stray, consist of 131 acres and 38 perches of land, situate near the city of York, and in the township of Heworth. Before the 57 Geo. III. the freemen of the city of York, who were occupiers of houses within Monk Ward, were, with other persons, entitled to a common of pasture and right of stray or average, and had immemorially used the same on Heworth Moor, of which G. A. T., lord of the manor of Heworth, was then seised in fee; and also over a farm called Heworth Grange, of which the king was then seised in fee; and also over certain closes called Hall Fields, the Groves Turnstile Close, and Margery Close, of which E. P. esq. and others were then seised in fee. By the said act, commissioners were appointed to settle the value of the right of stray and average, and to award, to the mayor and commonalty, so much and such parts of the parcels of ground respectively as should be a compensation for the rights of stray and average of the freemen; and from and after the execution of the award, the right of stray and average should cease and be for ever extinguished, and the parts so awarded to the mayor and commonalty should be thereafter held by them, exclusively of any manorial rights or interests of G. A. T. and the other owners and proprietors before mentioned, to be exclusively enjoyed by such freemen of the city residing in Monk Ward as for the time being would have been entitled to right of common, stray or average, over the several parcels of land, in case the act had not been passed, and for the same cattle, and under the same regulations as such freemen respectively did or were entitled to enjoy the same. By another act (the 58 Geo. III.) the commissioners were further authorised and required to apply certain surplus moneys arising from the exoneration of the several parcels of land, the subject of the inclosure, from the right of common, stray or average, to the purchase of a further allotment to the mayor and commonalty, to be for ever exclusively enjoyed by such freemen as aforesaid, in the same manner as their previous rights of stray or average had been held and enjoyed. The commissioners, by their award of the 16th day of January, 1822, did award unto the mayor and commonalty, to be exclusively enjoyed by such freemen of the city residing in Monk Ward as for the time being would have been entitled to right of common, stray or average, over the several parcels of grounds by the acts intended to be allotted, in case the same had not been passed, and for the same cattle, and under the same regulations as such freemen respectively did or were entitled to enjoy the same, the following allotments, viz.:—An allotment from the common, containing 68 acres, 3 roods; another do., 18 acres, 18 perches; another do., 31 acres; as purchasers from the devisees of Thomas Withors 8 acres, 1 rood, 20 perches; total, 126 acres, 38 perches. The city of York is divided into four wards, of which Monk Ward is one. The freemen of each of the other wards respectively have rights of common or stray and average over certain other several parcels of land situate near the said several wards respectively, in the same manner as the freemen of Monk Ward had and have over the lands in question. By the immemorial custom of the city of York, a wardmote court of the mayor and aldermen is held annually, at which court four officers are appointed for each ward, who are called pasture-masters, and who enforce the regulations under which the freemen of the wards exercise their respective rights. The pasture-masters perform the duties of their office with the assistance, and under the superintendence, of certain officers called wardens. The mayor and aldermen are *ex officio* wardens, and the custom is, for three of the

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aldermen to act as wardens of each of the said wards severally, the mayor being, during his mayoralty, a warden of all the wards. In matters of more than ordinary importance, relating to the several rights of stray, reference is made by the several wardens to the select body of the corporation, called the upper house, and consisting of the mayor, aldermen, sheriffs, and those who have been sheriffs, who possess a general control over the wardens and pasture-masters with respect to the several rights of stray. Pasture-masters have accordingly been annually appointed for Monk Ward since these acts of parliament, in the same manner as before, who, together with the wardens of Monk Ward, have, both before and since the acts and inclosure, appointed a person to be herdsman. The pasture-masters direct all the repairs of gates, fences, bridges, &c. The herdsman's duties are to look after the cattle of the freemen, impound any found trespassing contrary to the regulations, and to prevent cattle straying, &c. The herdsman resides on the lands, in a cottage built for him thereon by the pasture-masters, and for which the herdsman, in all previous assessments previously, has been assessed to the poor-rates, but these assessments have been paid by the pasture-masters. The wages of the herdsman, and all other expenses attendant upon the care and management of the Monk Ward Stray, were before, and are since the passing of the acts of parliament, and the inclosure, defrayed by an annual sum paid by such freemen of the ward for each head of cattle depastured; the amount so paid has been fixed by the pasture-masters, and paid to them by the freemen. That sum has varied according to the annual expenses, from 7*s.* to 15*s.* for each head of cattle per annum, but during 1834, and for the six or seven years preceding, 10*s.* only has been paid annually for each head of cattle turned upon Monk Ward Stray. The pasture-masters render every year an account of their receipts and disbursements for the Monk Ward Stray to the wardens of the ward, by whom such accounts have been audited. The wardens do not receive or pay any money on account of the Monk Ward Stray, nor turn any cattle thereon, nor derive any benefit whatsoever therefrom, nor do the mayor and commonalty receive any money on account of the Stray, nor turn any cattle thereon, nor derive any profit or benefit whatsoever therefrom in their corporate capacity, nor in any other manner, except as any of them may be entitled as freemen of Monk Ward. For several years subsequent to the acts and the inclosure of the allotted lands called Monk Ward Stray, large expenses were incurred by the pasture-masters in the necessary annual expenses of maintaining and improving the same, for the exclusive enjoyment of the freemen; and for raising funds requisite for such expenses, without imposing heavy burdens on the freemen, the wardens and pasture-masters did from time to time lease certain portions of the allotted lands to different persons for short terms of years, at adequate rents reserved to the wardens and pasture-masters; but no such leases have existed since 1829, the rents so reserved and received during the existence of the leases amounting in the whole to at least 2,000*l.*; and all other moneys received by the pasture-masters on account of the Monk Ward Stray have been laid out in maintaining and improving the Monk Ward Stray, except that in 1826 the pasture-masters having a balance in hand exceeding 1,000*l.* which did not seem to be then wanted for those purposes, 498*l.*, part of it, was laid out in the purchase of 5 acres of old inclosed land belonging to Mr. T., and lying contiguous to Monk Ward Stray, in the township, which 5 acres were conveyed by lease and release to the individuals who were at that time wardens and pasture-masters of Monk Ward, and to their heirs, as trustees for the freemen, and for their exclusive enjoyment; and the 5 acres were accordingly added to, and now form part of Monk Ward Stray, and are enjoyed by the freemen in the same manner as the rest; and also the sum of 279*l.*, other part of the balance, was expended in building a cottage for the herdsman, and in erecting a penfold upon and for the purposes of the Monk Ward Stray. Before the acts of parliament and inclosure, neither the mayor and commonalty, nor the pasture-masters

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or wardens, nor the freemen of Monk Ward Stray, nor any other persons, were ever rated to the poor in respect of the common of pasture and rights of stray or average over the lands, the subject of the acts and inclosure, nor were such parts as formed the open and uninclosed common called Heworth Moor, from which the said 117 acres, three roods, and 18 perches were allotted to the corporation, and now forming part of Monk Ward Stray, ever the subject of rate, but the allotment of 8 acres, 1 rood, and 20 perches to the mayor and commonalty, as purchasers from the devisees of T. W., was rated and paid rates to Heworth township previously to the purchase and allotment. Since the acts, and inclosure and allotment, no rate has ever been paid to the township in respect of Monk Ward Stray, by either the mayor and commonalty, or the wardens, or the pasture-masters, or the freemen of Monk Ward, but during the continuance of the leases above mentioned, the lessees or occupiers thereunder for the time being were assessed towards the relief of the poor in Heworth, the rates in respect thereof being always paid by the pasture-masters, and also the 5 acres purchased of P. T., were, previously to the purchase, rated and paid rates to Heworth. The freemen of the city of York, who are occupiers of houses within Monk Ward, have, since the acts and inclosure, had the exclusive enjoyment of the lands in question so allotted and purchased as aforesaid, called Monk Ward Stray, subject to the same regulations under which they previously exercised and enjoyed their rights of stray or average, so far as such regulations were not rendered inapplicable by the inclosure; and in the exercise and enjoyment of the rights, the freemen did, during the year 1834, turn upon the Monk Ward Stray their cattle, to the number of 200 head. In auditing the accounts of the pasture-masters by the wardens, the balance has generally been in their favour, though in two or three years, on account of the extraordinary expenses, the balance has been against them, but in either case the balance has always been carried forward to the account of the succeeding year. The ordinary expense of the care and management of Monk Ward Stray does not, however, at present exceed 50*l.* a year. The lands adjoining Monk Ward Stray, and before the inclosure forming part of Heworth Moor, have, since their inclosure, let at rates varying from 3*l.* to 5*l.* an acre, as the same are remote from or near to the city of York; and the 131 acres, 28 perches of land, comprised in Monk Ward Stray, are, as pasture land, worth to let by the year from 27*s.* to 3*l.* an acre, and would, in their present condition, let for an entire rent of at least 250*l.* by the year; but the right of common of pasture, and right of stray or average, exercised by the freemen over Monk Stray, by turning on yearly about 200 head of cattle, is worth, for every head of cattle, to each freeman turning upon the same, at least 2*l.* by the year. The questions were, whether there is such a beneficial occupation of the lands called Monk Ward Stray, or any part thereof, in the mayor and commonalty of the city of York, as to render them liable to the rate; and if there be such a beneficial occupation in the mayor and commonalty, in what amount ought they to be rated? Lord *Denman*, C. J., delivered the judgment. "It appears in substance, that before the passing of the 57 Geo. III. the freemen of the city of York, who were occupiers of houses in Monk Ward, were entitled to the right of stray and average over a parcel of ground called Heworth Moor, and some other parcels of ground, of which certain persons in the said act named were seised in fee. And by the said act commissioners were empowered to extinguish the said right of stray and average, and to assign in lieu thereof a parcel of land to the mayor and commonalty of the city of York, free of all manorial rights, to be exclusively enjoyed by such freemen of the said city as were before entitled to such the right of stray and average before mentioned, and in the same manner as the said right of stray and average was enjoyed. The said commissioners, by their award bearing date the 16th January, 1822, did accordingly set out to the said mayor and commonalty 117 acres, 3 roods, and 20 perches, which, together with 8 acres, 1 rood, and 20 perches, and 5 acres, (which fall under a different consideration from the rest,) amount-

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ing to 131 acres and 28 perches of land, form the subject of the present rate. These lands, it is stated, are worth 250*l.* a year to let, but in the exercise of the said right of stray and average by the said freemen, 200 head of cattle are yearly turned on the said lands, and the right in respect of each head of cattle is worth 2*l.* a year. It must be observed, therefore, in passing, that there exists in this case property clearly rateable in its nature, although it may still turn out, upon the further examination of the case, either that no person is rateable, or, as has been contended, that at all events the mayor and commonalty are not rateable. It further appears from the statement, that for the regulation of the rights of the freemen of Monk Ward, officers are appointed at the wardmote of the mayor and aldermen, called pasture-masters, who are themselves subject to other officers, called wardens, of whom the lord mayor is always one, the rest being aldermen. Then follows the statement upon which the whole question turns,—'that the said mayor and commonalty receive no money on account of the said stray, nor turn any cattle thereon, nor derive any benefit in their corporate capacity, nor in any other manner, except as any of them may be entitled as such freemen of Monk Ward as aforesaid.' Founded upon this statement, the argument addressed to us has been, that whatever may be the case with the individuals deriving benefit from turning cattle on the lands in question, the corporation is not rateable: and in support of it various cases have been cited, which, whether distinguishable from the present or not, (we think they are,) furnish instances of exemption from rateability. The cases referred to were *Rex* v. *St. Luke's Hospital*, *Rex* v. *Field*, *Rex* v. *St. Bartholomew's Hospital*, *Rex* v. *Waldow*, *Lord Amherst* v. *Lord Somers*, and *Rex v. Salter's Load Sluice;* to which latter might have been added *Rex* v. *Sculcoates*, *Rex* v. *Liverpool*, and *Rev* v. *Trustees of the River Weaver*, in a note to the same case. Of these cases the last mentioned seem to have the strongest bearing upon the present; the others very slightly, if at all, resembling it. The hospitals and the charitable institutions, which were the subject of consideration in the cases first alluded to, are wholly distinguishable from one where, beyond dispute, rateable property is beneficially occupied. In *The King* v. *St. Luke's Hospital* and *The King* v. *Field*, an attempt was made to rate persons occupying apartments, for the purposes of the establishment in each instance, but the attempt failed, with some warmth of expression on the part of Lord Kenyon in the latter case, because the residence of the persons being necessary, and there being no accommodation beyond that necessity, it must be considered on the same footing as that of the unhappy inmates in the one case, and the charity children in the other. The *Rex* v. *St. Bartholomew's Hospital* and *Rex* v. *Waldow*, fall under the same consideration. In *Lord Amherst* v. *Lord Somers*, the only point decided was, that the occupation of property for the public service cannot become the subject of a rate; and such was the case there, because the property in question (stables) was applied to the use of a regiment of horse guards exclusively, the plaintiff not having had a single horse kept in it. It is to be observed, however, that when in any case the accommodations are more than requisite for the due performance of public duty, such extra occupation is rateable: *Rex* v. *Terrott*. The *Rex* v. *Salter's Load Sluice*, which is the foundation upon which the others above referred to rest, if this subject had now for the first time been considered, might have created some doubt in the present case; for it is certainly true that Lord Kenyon in his judgment, and indeed very much as the reason for it, relies upon the fact that the parties rated 'were bare trustees, without any interest,' and he refers to the case *Rex* v. *St. Luke's Hospital*, as similar in principle. The *Rex* v. *Liverpool*, and *Rex* v. *The Trustees of the River Weaver*, may be considered as depending upon that case. In *Rex* v. *Sculcoates* there was the further difficulty, that no profit appeared to arise in the place where the rate was imposed. In these cases, however, the tolls or dues received were, by the acts of parliament, in each case directly applied to certain specific purposes, and diverted from the

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control and management of the trustees. Neither the trustees or anybody else derived any benefit from the money received. They, therefore, (the trustees) in each of those cases neither derived any benefit, nor could be considered as trustees for others who did;—a circumstance which distinguishes those cases from this now under consideration. But if the authorities to which we have lastly been referring had borne more directly upon the present case, and had admitted of still less distinction, it would have been impossible to have acted upon them without overturning others, equally well considered, as we think, and decided upon this very subject. And we are clearly of opinion, when we bear in mind the importance of abiding by those decisions, when once made and recognised, so that a corresponding practice may probably have grown up through the country, and, moreover, consider the ease and convenience of this mode of rating, when compared with the assessment of the individuals benefited, that we ought not, except under the pressure of the strongest arguments and the clearest reasons, to depart from what has been decided and done already. We shall doubtless be understood as now alluding to the cases of *Rex* v. *Tewkesbury*, and *Rex* v. *Mayor of Sudbury*, cited in the argument, and from which we think the present case cannot substantially be distinguished. In the former case the rate was imposed upon the trustees of the Sevorn Harn, a meadow in the borough of Tewkesbury, over which, before the passing of an act of 48 Geo. III., the burgesses and certain occupiers within the borough had a right of common for a portion of the year. By the said act this right was suspended, and the aftermath, over which the said right had been exercised, was vested in trustees, who were empowered to let the aftermath, and they had taken in cattle to agist at so much a head. The profits were to be divided amongst those persons who would have been entitled to right of common before the passing of the act. The trustees, therefore, in that case, received no benefit; but this court held that they were properly rated. In the latter case the rate was upon the mayor, aldermen, and burgesses of Sudbury, in respect of a piece of pasture land called Portman's Croft. There, also, as in the present instance, the land was vested in the corporation, and the enjoyment of it resembled, in many particulars, what takes place with respect to the land in question. Persons entitled to turn on cattle paid a stipulated fine, according to regulations from time to time made, for each head of cattle. This payment was made to the treasurer of the corporation, and the profits, after deductions, were distributed among poorer burgesses, who had, but did not, on account of poverty, exercise a right of depasturing cattle. In that case, therefore, the trustees received money, not for their own use or benefit, but expressly for the benefit of others. This court, however, fully approving of and acting upon the authority of *Rex* v. *Tewkesbury*, confirmed the order of sessions, confirming the rate made upon the corporation. The *Rex* v. *Watson* was then, as it has now been, strongly pressed in argument; but it was there distinguished, and we think properly, because in *Rex* v. *Watson*, the decision proceeded upon the ground that the temporary ownership seemed to have been given up to the three persons mentioned in that case, and that therefore they were properly rateable, as the exclusive occupiers of a certain portion of the land. The occupation of the appellants, though not the same precisely, is similar to that in the two cases cited. The pasture-masters are appointed at a court of the mayor and aldermen. The wardens are the mayor and three aldermen. The pasture-masters regulate the enjoyment of the stray, and direct the repairs of bridges, gates, and the like: they hire a herdsman, and have paid the poor-rate for the house in which he lived. It also appears that, during the time that the stray, or part of it, was let to tenants, such tenants were assessed to the poor-rates, and the same were paid by the pasture-masters. Upon the whole, we are of opinion that the mayor and commonalty of the city of York are properly rated for the relief of the poor in the township of Heworth, within which the lands lie, except, as before mentioned, the 5 acres mentioned in the case, which are not, like the rest, vested in the corporation, and from an

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Allotments in lieu of rights of common were to be deemed to be situate within the townships in which the commonable lands lay, but nothing in the act was to affect the right to coal mines under them: Held, that the coal mines were rateable the same as before the act passed.

assessment upon which they ought to be relieved by an amendment of the rate in that respect. The question of amount is entirely for the sessions."

Rex v. *Pitt*, 5 *B. & Ad.* 565. Rate for Kyo confirmed. Case: By the 40 Geo. III. c. 25, An Act for inclosing Tanfield Moor, in the parish of Chester-le-Street, it was recited that the Marquisses of Bute and Hertford, and the Earl of Windsor, were entitled to the soil of the common, and to the quarries of stone, and all mines and minerals, except the coal mines, and that W. M. Pitt was entitled to coal mines, opened or not opened, lying and being within and under the said common, together with certain liberties for working, &c., and carrying on the collieries, and carrying away the coals, and that other persons were entitled to rights of common; and it was enacted that the commissioners, after deducting so much of the common as was directed to be set out for public highways and drains, and for a common quarry, common watering-places or wells, should set out and allot unto the Marquisses of Bute and Hertford, and Earl of Windsor, one sixteenth part of the residue of the common as a compensation for their right to the soil, which said sixteenth should be deemed, and was thereby declared, to be within the township of Tanfield; and should set out and allot the remaining part of the common among the several persons having right of common upon, in proportion to the value of their respective messuages, &c. And it was enacted, that all the allotments to be set out to the several persons having right of common upon the said moor, should be deemed and were thereby declared to be situate within and parcel of the same townships and places respectively wherein the lands or estates lie in respect of which such allotments should be made. And the lands allotted to any person or persons for or in right of their respective messuages, mills, lands, or tenements, should be held in the same manner, and be of the same nature and tenure as their respective messuages, &c., in right of which such allotments should be made. The act was not to defeat, lessen, prejudice, or anywise affect the right of W. M. Pitt, in the coal mines opened or not opened, within and under the said common, but W. M. Pitt should for ever hold, work, and enjoy them. Pursuant to the said act, the common was divided, allotted, and inclosed. At the time of the passing of the act, the whole of the common was situated within the chapelry of Tanfield. The lands or estates in respect of which allotments were set out are of various tenures, some being freehold, some copyhold, and some leasehold; and several of such lands or estates are situate within the township of Kyo, and other adjoining townships; and by the clauses in the said act before stated, such allotments became and now form part of the respective townships in which the lands or estates, in respect of which such allotments were set out, are situated, and are of the same natures and tenures as such lands or estates in right or respect of which they are respectively holden. Previous to and for some time after the said division, the coal under the said common was rated to the relief of the poor of the chapelry of Tanfield; but some time ago, the coal under the allotments set out in respect of estates in the township of Kyo, and also in another adjoining township, was rated to the poor-rates for those townships. The coal mines for which the appellant was rated are within and under allotments of the said common, allotted in respect of lands situate within the township of Kyo. *Denman*, C. J. "The allotments to be set out to the several persons having right of common are to be transferred to the townships and places wherein the lands lie, in respect of which such allotments are made. Now, first, it does not appear that Pitt had any right of common. The soil is reserved to him in all respects as it was before the act, and his coals were then in the chapelry of Tanfield. Then the words of the enacting clause cannot have the operation contended for." *Parke*, J. "Before the act, the coal and soil were all in the township of Tanfield. By the act of parliament, the allotments set out to the several persons having right of common are taken out of that parish, and are to be deemed situate in the townships and places where the lands lie, in respect of which the allotments are made: what is allotted to the

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commoners, and no more, passes out of the township. The coals were not allotted to the commoners; the commissioners only set out the surface of the soil, which does not include the coals. It is expressly enacted that Pitt's right in them shall not be affected; but it would be so by the transfer contended for." *Taunton*, J. "The land substituted for the right of common is made of the same tenure and quality, and is to be deemed as having such local situation, as the land in respect of which such right of common originally existed; that is the whole enactment; and it has nothing to do with the coal. Pitt's right is expressly reserved in all particulars. I have not the smallest doubt that the coals are rateable in the same place as they were before the act. This was the construction first put upon the act, for the coals were rated in Tanfield. Why that was changed, I cannot say. The first construction was right." *Patteson*, J. "I agree in the general doctrine, that the owner of the surface is the owner of the soil, down to the centre; but the question here turns on the meaning of the word allotment. The act says that the allotments to the commoners shall be deemed to be situate in the place wherein the land lies, in respect of which they are made. Now what is allotted? Not Mr. Pitt's coal mines, for his rights in them are expressly reserved. It is quite clear, therefore, that the locality of his coal mines is not operated upon by the act."

Ranger of a park rateable for herbage, and the water company for their pipes under it.

Rex v. *Chelsea Waterworks* (*ante*). The company were rated for their pipes, and the ranger of the park for the herbage.

Wayleave when not rateable.

Wayleaves not.

Wayleave (being a bare easement) not rateable.

Rex v. *Jolliffe*, 2 *T. R.* 90. The lessee of a right of way (*i. e.* a way-leave) over the land of another, paying for it so much *per* ton for the goods carried over it, is not rateable as an occupier, such way-leave being a bare right of passage, which is an easement and not a grant of the profits of the land, and an easement is not rateable; the land having been before rated in the hands of the occupier of that land.

Wagon-way, with exclusive occupation of the ground, is rateable.

Rex v. *Bell*, 7 *T. R.* 598. The dean and chapter of Durham granted certain leases of lands for twenty-one years, reserving to themselves the right of granting wagon-ways over the demised premises, paying damages for the spoil of ground. The chapter then leased to the appellants, &c., certain wagon-ways over these premises, making satisfaction to the original lessee for spoil of ground; they constructed these ways as most convenient to themselves, and prevented all persons, excepting such as were authorised by themselves, from using or going upon these ways; built bridges, put timber all along the way, built two houses by the sides, erected gates, which they locked and opened only when their wagons were travelling. The ground through which the way was made had been let to tenants, who received an annual compensation from the appellants, and these tenants are rated in amount as they were before the way was made. Lord *Kenyon*, C. J. "I entirely agree with the opinion given in the case of *Rex* v. *Jolliffe*, but this case is very distinguishable from that. The question here is not respecting the quantum of the rate, but merely whether the defendants are or are not possessed of property that is rateable to the poor, and on that point there can be no doubt. One ground of argument is, that because the dean and chapter could only grant a way-leave, therefore nothing more than a wayleave passed to the defendants; but we are not to inquire into the titles of the occupiers. If a disseisor obtain possession of land, he is rateable as the occupier of it, without going through the different parts of the case, which show an occupation of the ground by the defendants; it is sufficient to say generally that they clearly appear to be the occupiers." The order confirming the rate must be confirmed. *Grose*, J. "It is impossible to read this case without seeing that the defendants have the exclusive occupation of this ground. It is stated in the case, that the defendants have inclosed the ground of the extent of five or six acres, thereby excluding 'the lessees of the dean and chapter and their under-tenants, as well as all other persons;' that they have placed gates across the way, erected a bridge, and built two houses on

Wayleave not rateable.

it, which are occupied by the servants of the defendants. They were therefore properly rated as the occupiers of this ground."—*Ashurst* and *Lawrence*, J. agreed.

A barge-way rateable, and the tolls taken, are a criterion of value.

Rex v. *The Mayor of London*, 4 *T. R.* 21. The defendants were rated *for the barge-way and toll-gate* in Hampton Wick, Middlesex. The appellants, by an act of parliament, purchased an ancient barge-way or towing-path within H. W. upon the Thames bank, and certain ancient tolls payable in respect of horses drawing barges along the same. The appellants leased the herbage of the way and path for a sum which was appropriated to the navigation; the lessee occupied and paid rates for the herbage. The old tolls were discontinued, and new tolls were taken for all barges navigating between London Bridge and the City Stone, according to the quantity of tonnage; 1½*d. per* ton was payable and paid to the appellants for every barge towed along a certain part of the barge-way, and H. W. is within that limit, and the tolls were collected elsewhere, and not at H. W. Lord *Kenyon*, C. J. "The difficulty has arisen from not considering *what* is rated. It is not a rate on the tolls, but the close of land called the barge-way, and the toll-gate. Now the questions are, first, 'whether the property be or be not rateable?' second, 'who should be rated for it?' First, the subject-matter of the rate is real property; it is land, tenement, or hereditament, and it is liable to be rated unless it be so circumstanced that there is no occupier on whom the rate can be imposed. But here the city of London are occupiers; for the lessee's interest is confined to the herbage and pasture. And there is no doubt that they are in possession of the actual occupation of this towing-path."

Ferries.

The occupier of an ancient and exclusive ferry, not being an *inhabitant resiant* within the township in which one of the *termini* of the ferry is situated, is not liable to be rated there for any share of the tolls of such ferry.

If a ferry be real property, it is not within the 43 Eliz. c. 2.

Parties rateable in respect of tolls have occupied real visible property connected with such tolls.

Ferry and Tolls.

Rex v. *Nicholson*, 12 *East*, 330. Case:—The appellant is an inhabitant of Sunderland, which town lies close to the sea, at the mouth of the river Wear, which divides Sunderland from Monkwearmouth-shore. An ancient ferry crosses the river from Sunderland to Monkwearmoth-shore. This ferry, in 1795, was purchased by the commissioners of Wearmouth Bridge; and the ferry and the tolls thereof are leased to the appellant at a yearly rent. Two boats ply all the day, and the fare paid for a person passing in the ferry is a halfpenny each way; and of late years for convenience it has been accustomed to collect the money of the passengers as they enter the boat on either side of the river, instead of when they go out, as done formerly. There is a small boat goes during the night; and the inhabitants of Monkwearmouth-shore, who are accustomed as aftermentioned, pay the same fare of a halfpenny as persons not accustomed do, if they go over in this night-boat. The boats, when not used, have always been locked up on the Sunderland side of the water, close to the place where the passengers get in on that side. The ferry has always, until 1802, (when it was let to T. Wandless, who lived in Monkwearmouth-shore,) been let to persons living in Sunderland, and been rated in Sunderland for the whole of the ferry dues: it has at different times been also rated in Monkwearmouth-shore; but nothing was ever paid to that township until Wandless took the ferry, when the parish of Sunderland having raised his rate, in consequence of his having given an additional rent, he objected to pay, and appealed to the sessions in July, 1805, but the case was abandoned by the respondents, and Wandless's rate was amended, and reduced to half of the tolls of the ferry; and the ferry has since been continued to be rated to Monkwearmouth-shore for *one-half of the tolls or ferry dues.* The place where the ferry lands in Monkwearmouth-shore is of little or no value of itself, in case it was not used in the ferry-landing. Lord *Ellenborough*, C. J., (first stating that the case of *Williams* v. *Jones* was governed by this,) said, "The rate is here imposed on the *tolls* merely of the ferry: and the question is, 'whether the proprietor of the ferry, who is not an inhabitant of the township in which he is rated, be liable to be rated for such tolls received by him there?' And this being a question upon the construction of the stat. 43 Eliz. c. 2, it is

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material to look to the words of it. By that statute the parish officers, by consent of two justices of peace, are directed to raise a competent sum for the relief of the poor by taxation of 'every *inhabitant*, parson, vicar, and other, and of every *occupier* of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods in the said parish.' Now *tolls* (*a*) do not come within any one specification of occupancy described by the statute: they are not *lands*, nor houses, &c. If, therefore, the owner be taxable for them at all, it must be as an *inhabitant* of the parish out of which they arise: but there is no case in which the word *inhabitant* in that statute has been held to mean any other than a resident within the parish. In the cases which have occurred of rating in respect of personal property, such as *Rex* v. *Liverpool*, and *Rex* v. *Collison*, cited in *Rex* v. *Jones*, (8 *East*, 451, 455 (n), 457 (n),) residence was considered necessary to constitute inhabitancy. But we are reminded of cases where *tolls* arising from navigable canals, to which the tolls of a ferry are assimilated, have been held rateable, without any reference to the question of inhabitancy: and the *Wickham case* is much relied on, where a corporation was held rateable for market-tolls: but they were the lords of the soil where the market was held, in respect of which they were rated for the tolls. In *Rex* v. *Cardington*, the rate was specifically upon the sluices, on that which was local and visible property, and producing profit within the parish; and all the cases where tolls have been held to be rateable, when they are examined, will be found to have proceeded on that ground. But there is no case where tolls detached altogether from local real property have been held to be rateable *per se*. When, therefore, we are called upon to decide such a question for the first time, I am always disposed to go to the fountain-head, which is the act of 43 Eliz.; and looking at the words of that act, I do not find any of them which extend to rate any person not being an inhabitant of the place, nor the occupier of any of the specific kinds of property mentioned in the act. And not finding any description in the statute which applies to the case of this appellant, I cannot hold him to be rateable for these tolls." *Grose*, J., of the same opinion. *Le Blanc*, J. "The appellant is rated specifically as the lessee of the ferry for *half of the tolls or ferry-dues* in the township of Monkwearmouth-shore; and it is found he is an inhabitant of, and lives in Sunderland: and it is not stated that he is the occupier of any property in Monkwearmouth-shore: and that brings it to the simple question, 'whether a person residing out of the township be rateable there for the tolls of a ferry, which tolls arise and become due to him for carrying passengers and cattle from the one shore to the other, one of which lies in the township?' The origin of his rateability, if it exists at all, must be sought for in the 43 Eliz., which does not extend in terms to this case. It is contended that he is an inhabitant of that township within the act, and that he is also within it as an occupier of real property. Now when the word *inhabitant* is used as well as occupier, I must consider that by the former was meant a person who was *resident* in the place; for one might occupy without being resident, and the statute meant to include both; but this appellant is found to have been resident in Sunderland, and in that sense is not an inhabitant of Monkwearmouth. Then, as to his occupation of real property in the latter township; if this ferry and the tolls be real property, still the appellant is not the occupier of such real property, as is mentioned in the stat. 43 Eliz. But they are compared to the tolls of a canal: but in all these cases the parties claiming the tolls for which they were rated had an interest in some local and visible property within the parish, connected with their interest in the tolls. The case of the owner of the packet-boats, *Rex* v. *Jones*, comes very near to that of a person who has an exclusive right of carrying passengers and goods in a ferry-boat; but the packet owner was only held to be rateable for his

Tolls not within the words of 43 Eliz.

(*a*) There had been an opinion expressed by *Holt*, C. J., (3 *Keb.* 540,) that tolls were rateable.

Ferry and Tolls.

profits in the parish where he resided, and where the boats were kept, and produced the profit to him; and he was considered not to be rateable in any other place to which the boats sailed where he was not resident. The appellant is not, therefore, rateable either as an inhabitant or occupier. *Bayley*, J. "This person is neither an inhabitant of the township within the meaning of the statute, nor an occupier of any of the species of property mentioned in it. In a statute which mentions *inhabitant* as well as *occupier*, inhabitant must mean *resident*, otherwise it would for this purpose mean the same as occupier. In all the cases of tolls, it will be found that the persons rated were the occupiers of *lands* within the place, in respect of which the tolls in the whole or in part were payable. In *Rex* v. *Cardington*, the party was rated for the sluice, of which he was the occupier, which sluice was real property; and canals are real property: they are land applied to a particular purpose, and the tolls are the profits arising from that use of the land, and are given to the proprietors as a compensation for the use of it in that manner. Here the appellant was not an inhabitant of Monkwearmouth-shore, and he was not an occupier there of any real property, for which he was rateable." Order of sessions quashed.

The owner of a ferry, residing in a different parish, but taking the profits of the ferry on the spot by his servants and agents, is not rateable for such tolls in the parish where they were so collected and where one of the *termini* of the ferry was situated, and on which shore the ferry-boats were secured by means of a post in the ground; the soil itself at the landing-places being the king's common highway; and the owner of the ferry having no property in or exclusive possession of it.

Williams v. *Jones*, 12 *East*, 346. Williams was the proprietor of Porthacthwy Ferry, and of the tolls thereof. It was an ancient ferry across an arm of the sea, the Straits of Menai, and the king's highway from London to Holyhead. There are five landing-places in the parish of Llandysilio, used by the ferry-boats on landing; which landing-places have, for four years, been repaired by Williams, and there is a post fixed in the ground at one of them, to which the ferry-boats are usually moored. The arm of the sea is navigable for all the king's subjects: and they have always of right landed at the several landing-places at their pleasure: and the proprietor of the ferry never had the exclusive use of any of the said landing-places; but has the exclusive right of conveying by his boats, persons, cattle, and carriages, for hire, from a part of the king's highway lying in the parish of Bangor, to another part of the king's highway, lying in Llandysilio. The ferry-boats have been worked by the proprietor's servants; and the tolls paid to his servants, sometimes upon the arm of the sea, a little before the arrival at the landing-places, and at other times upon the landing-places in Llandysilio, after the person paying the same have landed; and the proprietor's servants have paid over the tolls to his agent, residing in Llandysilio. This agent has never been rated; and has paid over such tolls to another agent at Beaumaris, out of Llandysilio. Williams never inhabited Llandysilio. Some observation was made upon the post driven into the soil; but the court considered that this did not essentially vary the question; for the owner of the ferry was not found to have any property in the soil of the highway; and supposing that he had a right to make such a special use of the highway, for the purpose of securing his ferry-boats, that did not make him the occupier of the highway, nor give him any exclusive possession of it; nor could he maintain trespass for any injury done to the soil at the landing-places, which were common to all the king's subjects to land and pass upon. Lord *Ellenborough*, C. J. "The decision of this case necessarily follows that of *R.* v. *Nicholson*, the question in both being substantially the same."

Lessee of tolls not rateable as such *per se*.

Rex v. *Eyre*, 12 *East*, 416. The defendant was assessed as "lessee of the tolls of the Key Bridge" at Tewkesbury, at the rent *bonâ fide* paid. Case:—By 48 Geo. III. c. 62, trustees are appointed for rebuilding the Key Bridge across the Avon in Tewkesbury, and for making convenient roads thereto. It enacts, that out of the first moneys arising by the tolls, or out of the first money which should be borrowed upon the credit thereof, the trustees shall repay sums advanced thereon with interest; and all the money which should come to their hands for the purposes of the act should be applied in erecting the toll-houses, and to other purposes relating entirely to the bridge and its avenues, and for no other purpose. "That as soon as the purposes of the act should be carried into execution, and the principal

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and interest borrowed be repaid, all the tolls imposed should cease, and the new bridge and the approaches leading thereto should thereafter be repaired by such persons as were by law liable to repair the same." The tolls are leased to the appellant. It was not proved that the appellant made any profit on the tolls; on the contrary, *it is believed*, that the lessee has a most unprofitable taking, and that he will not even clear his present rent. The court observed that the case was imperfect, in not stating either that the lessee was the *occupier* of any toll-house or dwelling-house within the parish, which was the proper subject-matter of a rate, or that he was an *inhabitant* of the parish, and in not finding whether the lessee did receive any profit from the tolls beyond the rent which was applicable to public purposes, but merely stating that *it was believed* that he did not. Lord *Ellenborough*, C. J. "As the court had so recently decided that tolls *per se* were not rateable, and as the appellant was rated merely as lessee of the tolls, and for nothing else which might have given them a corporeal quality and locality within the parish, such as for a sluice or the like; and as it did not appear that he was an *inhabitant* of the parish, or made any profit of the tolls, there was nothing stated in the case to raise any question. And though it should turn out to be the fact (which was suggested from the bar) that there was a toll-house (*a*) attached to the bridge where the appellant dwelt, yet as the sending the case back to the sessions to be re-stated would probably only lead to their inserting as a fact what at present they only stated as matter of belief, that the lessee derived no profit to himself from the tolls, it was better for all parties to quash this rate, and if at any future time the parish thought they could make out a better case against the lessee, they might rate him again."

(*a*) *Rex* v. *Snowdon*, p. 224.

Fishery.

Fishery.

The lessee of halves with fishings in the river Severn is rateable, as possessing an interest in the soil.

Rex v. *Ellis*, 1 *M. & Sel.* 652. The defendant was rated in Westbury-upon-Severn, as lessee of all those fishings of the halves and halven-doles, with the appurtenances to the halves due and accustomed within the river Severn, between certain limits within a manor bordering on the said river, under an annual rent. Lord *Ellenborough*, C. J. "The rate has been confirmed by the sessions; we must therefore see that they have done wrong before that we determine that their adjudication ought to be quashed. I will not assume that a fishery, as an incorporeal hereditament, is the subject of a rate. The question then is, whether there be any land connected with this fishery so as to be the subject of rate. What is the thing granted? In 1625, the king grants 'all that our fishery of the halves and halven-doles with the fishings called Unlawater, with the appurtenances to the halves due and accustomed.' I could have wished that the sessions had explained to us, if any lights were afforded by the evidence, the meaning of the term 'halves and halven-doles,' which is not very familiar to us. It has been treated in argument as if it related to half of the river, and the grant being 'with the appurtenance to the halves due and accustomed,' is in favour of the construction of the half *ad filum aquæ*, which, according to Lord Hale, belongs, by the constant custom of the country, to the lords of the manors on either side of the river; in support of which custom he cites the Lord *Barklay's case*. But whatever its meaning may be, I think from the grant of 'the fishings with the appurtenances to the halves and dues accustomed,' it appears distinctly that these halves and halven-doles are of the nature of land, or some local limit within which the fishery connected with the soil is to be exercised. I cannot consider it otherwise than as a grant of something territorial. I do not found my opinion on this being a sole right of fishery, or coming within any particular description of fishery under which the soil must pass: but I think that under the circumstances we ought not to quash the order of sessions, unless we are satisfied that the sessions could not, upon any reasonable ground, conclude that by this grant of halves and halven-doles, &c., some territorial right was conveyed. A grant of soil was also inferred

Fishery.

Secus, a mere incorporeal fishery.

from the grant of royal fisheries, as the right to them is in general appurtenant to the soil, and also of the reservation of a rent, and the manner in which the right had been enjoyed." *Bayley*, J. added, "A mere incorporeal fishery is not within the statute."

Market Tolls.

Market Tolls.

The lessee of market tolls in gross not incident to the soil, is not rateable.

Rex v. *Bell*, 3 *M. & Sel.* 221. The Earl of Egremont is lord of the manor of Cockermouth, and owner of the soil of the streets of the town of Cockermouth. He, or his lessees, have from time immemorial collected and received certain tolls of corn sold in the market; the toll has, however, been hitherto collected at the commencement of the market out of every sack brought and exposed for sale. The earl, or his lessees, also receive payments or stallage there from persons using stalls, and exposing upon them such things for sale as are usually sold on stalls; and the earl, or his lessees, take the sweepings of the streets. The market is a market by prescription, and is holden in the public street and highway in the town of Cockermouth, where the sacks of corn are set down for sale, and the tolls are there taken. The tolls of corn are a handful out of each sack; Bell is the present lessee of them, and pays a yearly rent of 50*l.* to the earl, and as such lessee takes the tolls of corn in the market; but he is not an inhabitant of the township of Cockermouth, nor possessed of any property except these tolls. He is rated for "corn tolls." He is not the lessee of the stallage or sweepings; other persons are, who are rated for them. Lord *Ellenborough*. "I cannot say, upon this statement, that the appellant is an occupier of land. Would he not be equally entitled to the toll, although the sacks were not set down in the market, but were upheld on the shoulders of those who exposed the corn to sale? There is nothing to give this toll a corporeal quality." *Bayley*, J. "Bell is assessed in the rate for corn tolls, which, it is plain from the statement of the case, were mere market tolls, and not incident to the soil. In *Heddey* v. *Welhouse*, (*Moor*, 474, *cited in* 2 *Str.* 1239,) the distinction is well taken; for it is said, if the king grant a fair or market with toll certain to one and his heirs, to be holden in land, which is borough English, and the grantee die, the heir at common law shall have the market and the toll, but the youngest son shall have the stallage and pickage with the soil, by the custom." *Holroyd*, J. "These tolls would be equally payable if the soil had belonged to another."

The lessee of toll traverse and of a toll-house (which he occupies), is not rateable for the tolls, but for the toll-house only.

Rex v. *Snowdon*, 4 *Bar. & Adol.* 713; 1 *Nev. & Man.* 459. The mayor and burgesses of Newcastle claim a toll for goods brought into the town in consideration of repairing the streets and bridge. The appellant, who was not an inhabitant of St. Nicholas, was the lessee of the toll-house in that parish, at the north end of Tyne Bridge,—one of the ancient avenues of the town. The toll-house is occupied by the appellant's collector, who receives the tolls in the street, and not in the house. The appellant was rated for the "toll-house and tolls collected there." It was contended that this was a toll traverse. *Parke*, J. "Assuming it to be a toll traverse, the lessee is not the occupier of any part of the soil in respect of which the toll arises." As to his liability, as occupier of the toll-house, *Parke*, J. said, "that occupation makes him liable to be rated in respect of the profits of the toll-house; but if that were pulled down, or he did not occupy it, he would be entitled to receive the tolls. Assuming this to be a toll traverse, it would be paid for passing over the soil of another: he is rateable for the house but not for the tolls."—See *Rex* v. *Barnes*, *post*.

The owner of a bridge resting on piles driven into the soil, one end of which was in the parish of A., and the other in the parish of B., in which parish was situate the

Reg. v. *The Marquis of Salisbury*, 3 *N. & P.* 476; 8 *A. & E.* 716. The Marquis of Salisbury was rated as the owner and occupier of Ware Bridge. Rate confirmed. Case:—Ware Bridge is situated on a public highway, across the navigable river Lea, connecting the town of Ware with a street partly in the parish of Ware, and partly in the parish of Great Amwell, and is itself in the several parishes of Ware and Great Amwell. It is a wooden and very ancient structure, resting upon piles driven into the soil of the

Market Tolls.

bottom of the river, and on abutments of brick-work on the bank on either side. Attached to the bridge, and resting on piles driven also into the bed of the river, is a house used by the person who collects the tolls. The house is in the parish of Great Amwell. The occasional repairs necessary to the wood-work and frame of the bridge have, during the last twenty years, been executed by the orders and at the costs of the Marquis of Salisbury, amongst which have been excavations of the soil in the bed and banks of the river, for the purpose of driving piles and strengthening the abutments and land-ties. The planking of the carriage-way has in the same manner been repaired by the order of the Marquis; but the road itself has never been repaired by him. The tolls are regulated according to a fixed scale set out in the deeds. They are collected by J. Kent (who resides in the toll-house) on behalf of Robert Everett, who, by a parol agreement with the Marquis, has contracted for the receipt of these and certain other tolls for one year, from 1st April, 1835, at the rent of 261*l.*; one-twelfth part of which was paid at the time of the contract, and the residue of that sum was secured to be paid to the Marquis, by equal monthly instalments of 19*l.* 18*s.* 9*d.*, by a warrant of attorney duly executed by the said R. Everett and two sureties; but no grant or demise of the tolls had been made or executed to R. Everett. Lord Salisbury is entitled to the tolls under a grant of 6 Car. I. They are of very ancient origin. The case then set out several inquisitions, numerous ancient and other documents, the whole of which are noticed in the judgment and fully detailed in the report.—*Cur. adv. vult.* Lord *Denman* delivered the judgment. "This is an appeal against a poor-rate, to which Lord Salisbury is assessed as the occupier of land in the parish of Ware, and the land so occupied is described in the rate as Ware Bridge. It appears that Ware Bridge is partly in the parish of Ware, and partly in that of Great Amwell. It is a wooden structure, resting on piles driven into the bed of the river, and on abutments of brick-work on the banks. Attached to the bridge, and resting on piles driven into the bed of the river, but in the parish of Great Amwell, is a stand or house occupied by the person who collects the bridge tolls. The repairs of the bridge for the last twenty years have been done by the late and present Marquis; and in doing them, excavations have been made in the soil of the bed and banks of the river for the purpose of driving piles, and strengthening the abutments and land-ties. The planking of the carriage-way has been in the same manner repaired by them from time to time, but not the road itself upon the bridge. The Marquis is the grantee from the Crown, in right of the Duchy of Lancaster, of the bridge tolls, in the manner more particularly described hereafter. Upon these facts, if there were nothing more in the case, there would be clearly quite enough to warrant the sessions in finding that there was an occupation of land in the parish of Ware by the Marquis, and an occupation beneficial in respect of the tolls. The actual perception of the tolls in the parish of Great Amwell alone would be immaterial, because the land in Ware would appear to contribute towards the earning them; and the case would seem to be almost identical with that of *Rex* v. *Barnes*. (*a*) the difference that a road-way was placed upon the planking of the bridge, and kept in repair by others than the Marquis, whereas in the case cited, the Bridge Company made and repaired the carriage-way as well as the bridge, could not be considered material, because it would not rebut the presumption of ownership and occupation of the bridge itself and the land on which it stands, arising from the facts before stated. Two circumstances, however, were relied on to relieve the Marquis from the present assessment; the first, that by reason of a demise another person was the occupier; the second, that the nature of the toll itself, and the title under which the Marquis held it, when examined into, showed conclusively that he was not the owner of the bridge or land on which it stands, but that he had repaired the bridge only in respect of the tolls granted to him. With regard to the former, the case states the tolls to be collected by J. Kent, who resides in the toll-

toll-house, is rateable in A. *pro rata*, although the road over the bridge was repaired by other persons.

Where the toll-traverse of a bridge is let at a yearly rent, but not by deed, the owner of the bridge is rateable.

(*a*) 1 B. & Ad. 113.

Market Tolls. house, on behalf of Everett, and that Everett receives them under a parol agreement with the Marquis for one year, at a yearly rent or sum to be paid by monthly instalments, secured by a warrant of attorney; and that the Marquis has executed no grant or demise of the tolls. Assuming then that the tolls are claimable in respect of the ownership of the land, there is no evidence here that the land *eo nomine* is professed to be demised at all; there is nothing to show that at this moment the Marquis is not in the possession of the land for the purpose of doing the repairs, indeed for every purpose consistent with the bare collection of the tolls by Everett, at the toll-house. On the other hand, though there is an agreement for a demise of the tolls *eo nomine*, yet, as by their nature they can only pass by deed, no interest at law has passed out of the Marquis, who must therefore be still considered in possession of them; his intended tenant being in truth only his bailiff for the collection of them. We pass to the consideration of the remaining point of the case. The question intended here to be raised is, whether the toll claimed by the Marquis be toll-traverse, or toll-thorough; in the former case, it would imply the ownership of the land, and then the repairs before mentioned would still be referable, as before they appeared to be to the ownership of the bridge and land; in the latter, no such inference would arise, and the repairs of the bridge would be explainable, as done in respect only of the toll, and as the necessary consideration to render the grant of it valid. The sessions have not found all the facts from which we might draw the legal inference, but, in addition to some facts stated, have supplied us with a considerable portion of documentary evidence. This is not the proper mode of submitting a case for our consideration, and it must not be assumed, because we enter into the examination of these documents, that we will, upon all occasions, inquire into matters of fact properly cognizable by the sessions only. From the documentary evidence it appears that the Marquis derives title to this toll under a grant from the Crown of the reversion expectant on a lease, of the honor, castle, lordship, manor, town, &c. of Hertford. Among the parcels of the grant specially set forth, are these, 'all that toll and all those tolls called traverse, and customs of the lordship and honor of Hertford, in the said county of Hertford, to be taken in manner accustomed; that is to say, of all saleable things passing through the town of Hertford, and also through the town of Ware, Bishop's Hatfield, Thele otherwise Therle, Belbar, and elsewhere in diverse places, in the said county; that is to say, for every cart, &c.,' passing over the bridges aforesaid, &c. The Marquis therefore takes this by the description of a toll called traverse, and belonging to the lordship and honor of Hertford. This grant is of the date 6 Car. I. We are also supplied with an inquisition after the death of Aymar de Valence, Earl of Pembroke, in which the toll is connected with the castle and town of Hertford, and called 'the traverse at the Bridge of Ware.' A minister's account for Hertford of the 35 and 36 Hen. VIII. describes it as 'the toll traverse of the Bridge of Ware;' and in another account of the 1 and 2 Car. I, the minister answers for 16*l.* from the farm 'of the toll travers and customs of the lordship, castle, and honor of Hertford, of all things for sale passing over the bridges of Hertford, Ware,' &c. It cannot be denied that this is strong evidence to show that the toll in question is in its nature toll traverse; it raises a strong probability that Ware is a manor within the honor of Hertford, and that the Marquis is the owner of the wastes in it: the soil therefore may well be in him, and that it is so, is consistent with the facts of repairs before stated. We think that, after this evidence, the burthen was cast upon the Marquis of meeting it by contrary evidence, and that in default of his doing so, the sessions were well warranted in considering it a toll traverse, and in confirming the rate upon him."

Whether toll-traverse, or toll-thorough.

Manor and Quit Rents.

Fines for renewal, and quit-rents, are not rateable.

Rex v. *Vandewall*, 2 *Burr.* 991. The lord of the manor was charged for the *manor* itself, (exclusive of the demesne lands,) consisting of *quit-rents,*

fines for renewal of copyhold, and other *casual fruits and profits*. The lord was not an inhabitant of the parish. Lord *Mansfield*. "The rents and profits of the manor are not rateable to the poor, which," he said, "was so clear that there was no need to enter into any reasoning about it." Lord *Kenyon*, in *Rex* v. *Alderbury*, *post*, observed—"The case of the *quit-rents* went upon the objection of double rating the same property, in the hands of the landlord as well as the tenant."—See *Carlt.* 14, and *Comb.* 264.

Manor and Quit Rents.

TITHES. (*a*)

Tithes.

The 43 Eliz. enacts, that *the parson, vicar, and occupiers of "tithes impropriate, and propriations of tithes,"* shall be rated. If it were not for this express enactment it would be otherwise, because in general *no incorporeal hereditament or mere easement*, however valuable, is rateable to the poor. *Chanter* v. *Glubb*, 4 *Man. & Ryl.* 334; 9 *Bar. & Cres.* 479. And no legal interest in an incorporeal hereditament will pass by demise or contract not under seal, *Bird* v. *Higginson*, 2 *A. & El.* 596.

Rent-charge liable to poor-rates.

Where the tithes have been commuted under the Tithe Commutation Act, "the rent-charge payable instead of tithes shall be subject to the same parochial, county, and other rates, &c., in like manner as the tithes commuted have heretofore been subject."—6 & 7 Will. IV. c. 71, s. 69.

The occupier must be rated.

The occupier of the tithes is to be rated; and when they have been granted or demised to another by deed under seal or by statute, the grantee is such occupier. If tithes have been extinguished by statute, then the vicar is rateable in his character *as vicar*, the rent in lieu of tithes being part of his local visible personal property in the parish. And this differs from rent paid to an inhabitant landlord, because it is not previously assessed in the hand of the tenant, as the rack-rent generally is.

The vicar.

Rex v. *Turner*, 1 *Str.* 77. The vicar appealed against a rate for tithes, from which the sessions discharged him. By the Court: "The vicar is chargeable by 43 Eliz., and the sessions hath only power to moderate, not discharge." Order of sessions quashed.

Parson who lets his tithes by parol should be rated.

A parson who lets by contract, not under seal, to each parishioner his own tithes, is properly the occupier, and ought to be rated. 16 *Vin. Abr.* 427.

The farmer of tithes, who holds the same under a deed, and lets the tithes again, is *primâ facie* rateable.

Rex v. *Lambeth*, 1 *Str.* 525; 8 *Mod.* 61. The parson *lets his* tithes to farm: the farmer agrees with the tenant of the land that, in consideration of his paying so much, he shall retain the tithe and gather in the whole crop without dividing. Which of the two is chargeable to the poor-rate, as occupier of the tithes? was the question. The sessions discharge the lessee of the parson, and tax the tenant of the land. By the Court: "The order must be quashed. The farmer of the tithes is *primâ facie* liable to the poor-rates; and therefore, unless he can throw that charge over upon another, the tax must be made upon him. The tenant of the land in this case can never be said to be the occupier of the tithes; for he is either a person who buys the tithes, or else he is to be taken as only excused from paying any; and nobody can say, but that though the parson thinks fit to excuse a parishioner, he will still remain in point of law the occupier of the tithes. *This agreement being only by parol, cannot enure as an underlease of a thing that lies only in grant.* Suppose it was the case of underwoods, which are sold standing, and the vendee grubs them up; can it be imagined that makes him the occupier? Or suppose the tenant sells the whole crop standing, will that make him less the occupier of the land? If it should, it would be impossible for the officers of the parish to know whom to charge. We must take this tenant of the land to be like any other buyer of the tithes, since he has no more title to them than any stranger whatsoever; and when the parson or his farmer receives a sum

(*a*) Where a local act empowered trustees to raise money for rebuilding a parish church, and to make a rate for defraying the principal and interest of the sum borrowed, on the "houses, warehouses, shops, buildings, lands, tenements, and hereditaments, *rated or rateable to the poor*," the tithes are rateable, *Rex* v. *J. of Buckinghamshire*, 1 *N. & P.* 503.

Tithes.

of money in lieu of tithe, that is in law a receipt of the tithe: with this only difference, that it is not tithe in kind. In the case of a composition (as this is) or a *modus*, it was never thought but that the parson was chargeable as occupier of the tithe; therefore, there being no colour to charge the tenant of the land, the order of sessions must be quashed."

The lessee by deed of lay impropriator is rateable, though the occupiers retain their tithes.

Chanter v. *Glubb*, 9 *B. & C.* 479; 4 *Man. & Ry.* 434, S. C. The plaintiff was lessee for years of the tithes of the parish of Haillard, under a grant by deed from the impropriator. He agreed by parol with the respective occupiers of lands from year to year, and they retained their tithes. The agreement was prospective, and had no reference to the produce of the year. The plaintiff was assessed upon a highway-rate in respect of his occupation of the tithes. During the argument, Lord *Tenterden* said, "The case of *Rex* v. *Lambeth*, (*supra*,) shows that the parson, though he agrees that the tenants shall retain the tithes, is the occupier within the 43 Eliz. c. 2. If there is no distinction between the words of that statute and the highway acts, that authority is decisive against the plaintiff." And his lordship afterwards added, "In strictness of language there cannot be an occupier of tithe, tithe in its nature not being the subject-matter of occupation. Giving, however, a reasonable construction to these words as used in the highway acts, we must understand the occupier of tithes to be the person who receives the tenth part of the produce of the land. Here the plaintiff was that person, and was therefore properly assessed for the repair of the highway." *Bayley*, J. "It is very desirable that in questions of this description there should be certainty, and that nice distinctions should not prevail. Here the money payment is the substitute for the tithe. Where the owner of the tithe grants out and conveys any of the tithe to another, that other is the occupier. Where the right continues in himself, he is the occupier. The plaintiff was therefore the occupier in the present instance." *Littledale* and *Parke*, Js. concurred. Judgment for defendant.

Lessee by deed is rateable, and not the vicar.

In *Rex* v. *Wilson*, 5 *Nev. & Man.* 119, *Patteson* J. observed, "That a vicar who has made a lease of his tithes (i. e. *under seal*) is not rateable."

A rector is assessable in respect of a sum of money payable on tithes in lieu of an allotment.

Loundes v. *Home*, 2 *Bl.* 1252. The rector of Crawley was rated for his tithes, payable under an inclosure act, which gave to the rector an allotment in lieu of the tithes of the old inclosures; and where the old inclosures had none, or not sufficient to make such allotment, "they should pay such *annual sum* to the rector as the commissioners should award, with power to distrain for the same as a landlord. The commissioners awarded that certain owners of land should pay in the whole 42*l.*; and on this sum the assessment was made. *De Grey*, C. J. "Nothing can be clearer than the law in this case. This is a sum payable in lieu of the tithes of the old inclosures, on account of the inability of the owners to furnish land sufficient to make an allotment. The tithes were before subject to the poor-rates, so would have allotments if made. Why then, in justice, should this sum of money be excused? It is said to be a rent; but the act has indistinctly avoided calling it by that name. It is a mere composition for tithes, and the superadding a power of distress does not turn it into a rent, but rather proves the contrary; for if it were for a rent, the distress would be incident to it, without any special provision in the act." *Blackstone*, J. "I do not know that it has ever been determined that no rents are assessable to the poor. *The King and Vandevald* extends only to quit-rents of a manor. But, admitting it to be so, this is clearly no rent, but a parliamentary *modus* or composition for tithes, for which the parson is liable to the poor's rate. *The Queen* v. *Bartlett*, 7 *Anne*, *Viner. tit. Poor*, 427; *The King* v. *Lambeth*, *Stra.* 525. The act does not say it shall issue out of the lands; but that in lieu of the tithes issuing out of the lands, the owner shall pay a sum of money, and superadd a power of distress by way of remedy. The land-owner, who pays this sum, is entitled to a rateable abatement for himself or tenant out of the poor-rate, in like manner as if he annually compounded for his tithes." Judgment for defendant.

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Such exemption must be express; not implied from extinguishment.

Where by an inclosure act it was provided that the tithes of a certain parish should be abolished, and that in lieu of them the commissioners should award to the rector a certain annual rent, equal in value to a certain portion of the lands in the parish, to be paid by the owners of those lands in such proportions as the commissioners should award; it was held that the rector was liable to be rated to the poor, in respect of this rent or annual payment, the act not having expressly exempted it from that burden. (*Rex* v. *Boldero*, 4 *B. & C.* 467; 6 *D. & Ryl.* 557.) As to the proportion, see *Rex* v. *Joddrell*, *post*.

Where the tithes were "to be deemed equal in value to one-fifth part of the annual *net* value of the arable lands," and a corn-rent was to be settled and charged in such proportions, the rector is liable to be rated, the tithes being extinguished.

Rex v. *Wistow*, 6 *N. & M.* 567; 5 *A. & E.* 250. The rector of Wistow appealed against a rate which the sessions quashed. Case:—Before 1830, the rector was entitled to the tithes of corn, grain, hay, and all other great and small tithes arising within the parish. On the 3rd May, 1830, an act passed for inclosing lands in the parish, and for extinguishing the tithes therein. Sect. 25 enacts "that the commissioner shall ascertain and distinguish *the yearly value of all the tithes*, and of all moduses and compositions in lieu of tithes, arising out of the lands divided, allotted, and inclosed, and out of the inclosed lands, and payable to the rector; and in making such valuation, *the tithes* of all such lands hereby directed to be divided, &c., and of all the ancient and inclosed lands (except the inclosed fen lands) as shall be arable, shall be *deemed equal in value to one-fifth part of the annual net value of the said lands*, and *the tithes* of all such inclosed fen lands shall be deemed *equal in value to one-seventh part of the annual net value of such inclosed fen lands*; and *the tithes* of all other lands in the said parish shall be deemed equal *in value to one-eighth part of the annual net value of all such other lands*; and the commissioner shall ascertain the average price of a bushel of good marketable wheat, in the county of Huntingdon, for seven years next before the passing of this act, and shall ascertain and distinctly set forth how many bushels of such wheat will in his judgment be equal to *the annual value of the said tithes*; and after such valuation and ascertainment, the commissioner shall determine what sum of money shall be equal to the value of the quantity of wheat so ascertained by him, and such sum of money shall be charged and apportioned by the commissioner, upon such lands and tenements of each and every proprietor, and in such manner as he shall think equitable; and such sum of money, when so apportioned and charged, shall be issuing out of the lands, &c., which shall be charged therewith by the commissioner, and shall be paid and payable by the person or persons who for the time being shall be in the occupation of such lands, &c., to the said rector and his successors for ever, unless altered by the means hereinafter provided, by four equal quarterly payments, (that is to say,) on &c., the first payment whereof shall be made on 25th March, next after the execution of the award, or such earlier quarterly day of payment as the commissioner shall by such award or previous writing as aforesaid direct or appoint; and *the said rent* hereinbefore made payable, shall be *in lieu and full satisfaction and discharge of all and all manner of tithes*, both great and small, moduses, &c., arising out of all lands, tenements, and hereditaments whatsoever, in the parish of Wistow. And from and after the apportionment of the said rent, all manner of tithes, and all former moduses, &c., within the said parish, shall cease, determine, and be for ever extinguished; but in the meantime the rector shall be entitled to such tithes as he would have been entitled to if this act had not been passed." The commissioner, on 3rd October, 1832, duly ascertained and set forth the quantity of wheat equal to the annual value of the tithes, and determined the sum equal to the quantity of such wheat, and charged such sum upon the lands of every proprietor in due proportions. And he directed the first quarterly payment of such rent or sum to be made on 25th December then next, and appointed that all tithes, and all moduses, &c., within the parish, had ceased, determined, and were for ever *extinguished*, as and from the 29th of September then last past. The commissioner's general award was signed on the 17th of January, 1833, the previous writing of 3rd October,

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1832, being annexed thereto; and they are now both inrolled with the clerk of the peace for the county of Huntingdon, pursuant to the directions of the act. The rector of the parish has ever since been, and is now, in receipt of the amount of the said corn-rent, in lieu of his former tithes, and in October, 1834, was rated to the poor in respect of such corn-rent. The question was, whether the rector is liable to be rated for such corn-rent? Lord *Denman*. "I am of opinion that the objection to this order is well founded. The value of the tithe may, indeed, depend upon the meaning of the words used in the statute, 'annual net value of the house and grounds;' but it does not follow that it will affect the question of rateability, whether the land be valued with or without the deduction of the poor-rate. I do not know whether the legislature, if they had meant such a deduction to be made, would have estimated the tithe in this proportion. But I think it better to rest the decision on the more general ground, by the adoption of which, we may hope to prevent future controversy. The proper principle is to be found in *Rex* v. *Boldero;* that, if a sum of money be given to the parson in lieu of tithes which were rateable, 'that money will also be rateable, unless the liability is taken away by express words in the statute.' That furnishes a safe rule; and, applying the rule to the present case, the corn-rent, not being expressly exempted from liability, is rateable to the poor." *Littledale*, J. "The question turns on the expression, 'annual net value.' The poor-rate is to be deducted from the gross value of the land; but the parson's proportion of the net value will be still rateable. Suppose two parties to occupy land of precisely the same quantity and quality, requiring the same expense of cultivation, but the land of the one being tithe-free, and that of the other not. In making a poor-rate, the occupier of the tithe-free land would be assessed higher than the other; but the same quantity of poor-rate would be obtained from each land, because the tithe would also be rated, which is obtained from the land not tithe-free. There the parson has one-tenth of the gross produce, which he finds in the fields after it has been cultivated; that tenth goes to his stack-yard, and he must pay the poor-rate on it. Here, instead of that tenth, he gets a certain proportion of the net annual value; that is, of the value of the land to the occupier. The occupier has to lay out so much in cultivation before he gets the produce; this, and the poor-rate which he pays on his titheable land, will be deducted; then the question is, what he gets ultimately of the gross produce; that is, the 'annual net value.' The parson, therefore, is not rated twice over. In general, net value would be that which is left after deducting, besides the deductions I have mentioned, the tithes also; but that construction cannot be adopted here. The poor-rate, therefore, if the parson be rated for the rate which he receives in lieu of the tenth of the gross produce, will be the same on the farm which is tithe-free, and on that which is not tithe-free, as it ought to be." *Patteson*, J. "The last case on this question is (*a*) *Mitchell* v. *Fordham*. There the question was, whether the enactment, that the corn-rent should be 'free from all taxes and other deductions whatsoever, except the land-tax' exempted it from parochial taxes; and it was held that it did. That was in accordance with *Rex* v. *Boldero*, where it was decided that whatever is substituted for tithe shall be rated, unless the liability be taken away by express words. Here it is said that the 25th section does take away the liability, by the words 'annual net value of the said lands and grounds.' Let us, therefore, consider the effect of the word 'net,' as here used. It is connected with the annual value of the land only, not of the tithe. The tithe is to be deemed to bear certain proportions to the annual net values of the several kinds of land. But it is not said that the net tithe is to be deemed to be in those proportions; and, as the legislature uses the word net in one case and not in the other, I must suppose that different things are meant. Therefore the fifths, sevenths, and eighths of the annual net value of the respective sorts of land are made equivalent to the tenth of the gross annual produce of such lands. How far such an estimate is just, I will not discuss. But if this was

(*a*) P. 231.

not the meaning of the legislature, the expression should have been 'net annual value of the tithes.' It is said that the intention of the legislature was to exclude the risk of collision between the parson and parishioners. In *Rex* v. *Lacy*, *Bayley*, J., places some reliance upon the circumstance that the rectors' allotments were not exempted from rate. Here the same argument arises; for the rector has, by sect. 24, an allotment in lieu of the glebe, which is not exempted. In respect of that allotment, therefore, there must be the risk of collision." *Williams*, J. "The question turns on a certain, and, if you please, an arbitrary mode laid down by the legislature for ascertaining the value of the tithe. Its yearly value is to be deemed to be in a certain proportion to the annual net value of the lands. If the proportion be too small, that is the fault of the legislature; unless there be words expressly showing that what is received in lieu of the tithe is to be exempt from rate, many cases have decided that the composition is to follow the fate of the tithe. Here there are no such words." Order of sessions quashed.

Where tithes are not extinguished, but the owner of the land pays rent in lieu thereof, the vicar is not rateable.

Rex v. *Great Hambleton*, 1 *Ad. & E.* 14. The vicar appealed against an assessment on him "for a money payment in lieu of tithes." Rate quashed. Case:—By a local act the tithes were to be held in fee by the owner of part of the lands in the parish, and his lands were to be charged with an annuity payable to the vicar: the interest in the said title and land had now vested in Mr. Nuich, the appellant. *Littledale*, J. "It is plain that these tithes are not extinguished. No distinction can be taken between the lands belonging to Mr. Nuich, and those in the rest of the parish. If the tithes were extinguished, and a rent was paid in lieu of them, it would be difficult to say the vicar was not rateable for the rent. But here is no extinguishment." *Patteson*, J. "There is no difficulty or doubt in the question." Order of sessions confirmed.

The rector is not liable, when the rent is to be paid "free of all taxes."

The rector is in some instances exonerated from this burthen by an arrangement for the extinguishment of tithes in an inclosure act. Thus, where by such an act it was provided that a certain corn-rent, "free from all taxes and deductions whatsoever, except land-tax," should be issuing out of the lands to be inclosed and other lands in the parish, and be paid to the rector in lieu of all great and small tithes, &c., it was held that this corn-rent was not liable to be assessed to the relief of the poor. *Mitchell*, v. *Fordham*, 9 *D. & R.* 335; 6 *B. & C.* 274.

So where a private inclosure act enacted that there should be issuing and payable to the vicar out of the lands a yearly sum, "free and clear of all rates, taxes, and deductions whatsoever," it was likewise held that the vicar was not rateable to the poor in respect of the yearly sum paid to him. *Chatfield*, v. *Ruston*, 5 *D. & R.* 675; 3 *B. & C.* 863.

If tithes are extinguished the vicar is liable for the rent.

Rex v. *Joddrell*, 1 *Bar. & Adol.* 403. The tithes of a parish had been extinguished by an act of parliament, and a corn-rent given to the rector in lieu of it; and it was held that the rector was rateable for the tithes.

If one be entitled to the *tithe* of all *fish* caught in the parish, he is rateable in respect thereof.

Rex v. *T. Carlyon*, 3 *T. R.* 385. The appellants were the proprietors of one-tenth of all fish caught and brought on shore within the parish of St. Paul, for which they and their tenants were rated. The only question made was concerning the rateability of fish, being a property *yielding a certain annual profit*. Lord *Kenyon*, C. J. "This question is decided by the express terms of 43 Eliz. c. 2, s. 1, which, after mentioning parsons and vicars in the number of the persons who are to contribute to the relief of the poor, enumerates (among other things) *tithes impropriate and propriations of tithes*, in respect of which the rate is to be made, and indeed the spirit of the law coincides with the words of this statute; for the legislature intended that when rates were made, every person should contribute according to the benefit which he received within the parish. Here the parties receive a certain benefit arising from the tithe of fish in this parish, and run no risk whatever. Then it is said that only property which is *visible* should be rated; but I think it is carrying the rule of exemption too far; for oblations and other offerings which constitute the rectorial or vicarial

Oblations and other offerings are rateable.

Tithes.

dues are rateable." *Buller*, J. "Supposing the fishermen are not rateable, *Rowls* v. *Gell* (*post*), governs this, for here the persons entitled to the tithe of fish run no risk, and their profits are certain, and for that they are rateable."

Mines.

9. Mines.—*Coal.*

By the express words of 43 Eliz. c. 2. s. 1, *every occupier of lands, &c. "and coal mines," is rateable.* The express mention in this statute of "*coal mines*" has been considered to be a *virtual exception* of *all other* mines. The *adventurers* or occupiers of metallic mines, &c., are therefore not rateable. Nor the *owner*, though an inhabitant of the parish, if he receives a *money* rent, or sometimes ore; but *when he receives a portion of the raw mineral without incurring expense or risk, he is then rateable*, and it seems as the occupier of so much *land*. It is difficult to understand how the owner could be said in this case to be the *occupier* of *land;* and even if he be the occupier of land, he is the occupier of a mine, which is virtually excepted out of the statute.

Whether a *particular excavation* is a *mine* or a *quarry*, depends on the mode of working, and not on the mineral produced. *Rex* v. *Dunsford*, *post*.

The lessee of a *coal mine* rateable, although he derive no profit from the mine.

Rex v. *Parrott*, 5 *T. R.* 593. Case:—The *appellants* are *in possession* of the colliery (for which they are rated), *under a lease*, by which they were bound to work the colliery, and to pay a sixth part of the money produced by the sale of the coals, without any deduction for the expense of working; upon an average of the last three years, the appellants paid 3001*l.* 15*s.* 7½*d.* as a sixth part of the produce of the coals sold, and that they lost two and a half farthings on every ton of coals; the colliery always was and still is a losing adventure from the first of their taking it; and they must have known it at the time they took it; and their inducement for taking it was that when they had worked out the coal in this colliery, they would be able to get at coal of their own, which was adjoining; and this was a cheaper way of getting at it than any other which they could have adopted. Lord *Kenyon*, C. J. "It is said that this burthen is to be laid where the benefit arises; but that rule cannot hold in a variety of instances that might be put. Suppose a landlord makes so hard a bargain with his tenant, that the latter derives no benefit from the farm, must not the tenant be rated to the poor? The landlord certainly is not liable. This case differs from *Rowls* v. *Gell* in this respect, that was the case of *lead* mines, which are not rateable under the statute of Elizabeth; and there the question was, whether or not the lessee were rateable for certain annual profits which he received without any risk on his part? Of the decision in that case it is not necessary for me to say anything at present. I will form my opinion upon that question when it arises again. But here the property is rateable under the express words of 43 Eliz. c. 2. It appears in the case that there has been a clear profit of 1000*l.* a year since the lease was granted; and the question is, whether the appellants, who are occupiers of these mines, which it is admitted are rateable property, are or are not liable to be rated in respect of this property? Their objection is, that they have made an unprofitable bargain with the lessors; but we cannot examine into that; it being sufficient to make them liable, that they are the occupiers of rateable property." Order of sessions confirmed.

Coal mine ceasing to be productive, is not rateable.

Rex v. *Bedworth*, 8 *East*, 387. J. W. was assessed for a colliery, as of the annual value of 200*l.*, at 5*l.* Case:—The colliery was demised for a term of years to W., at 200*l.* annual rent, whether coal should be gotten or not: and the coals were totally exhausted, and the mines ceased to be worked. Lord *Ellenborough*, C. J. "In *Rex* v. *Parrott*, the subject-matter itself was profitable, *and produced value to the owner*, though the immediate occupiers derived no profit from it. But here the mine itself is exhausted, the subject-matter of profit is gone, although the rent, which was no doubt calculated upon the probable average produce of the whole term, be still payable. But with respect to the parish, he is only rateable for the

concurrent annual value during the period for which the rate is made; and when the thing which he occupies no longer affords any such concurrent value, the subject-matter of the rating is gone."

Other Mines.

Iron mines are not rateable.

Rex v. *Cunningham*, 5 *East*, 478. A rate upon "*iron* and coal mines" was quashed, because *iron* mines are not rateable, and ought not to have been rated jointly with coal mines.

Nor the machinery of an iron mine.

Rex v. *Bilston*, 5 *B. & C.* 851. The case stated that the mine engine and pit (the subject of the rate) were erected, sunk, and used by the appellants for the purpose of drawing water from iron-stone mines in their occupation. Nothing was raised from these mines except iron-stone. *Bayley*, J. "Here a person working his own mine has erected an engine for the purpose of working that mine, and which is of no other use: the occupier of the mine, as such, is not rateable under 43 Eliz. c. 2. In many such mines there are rail-roads which greatly enhance the value of the mine, and therefore of the land, but they cannot be rated; and in principle they are on the same footing as this engine. Suppose a conveyance or lease of this mine with the machinery had been made; it is clear the engine would have passed to the grantee or lessee: it must, therefore, be considered as part and parcel of the mine." *Holroyd*, J. "The engine was not profitable, but burthensome, except as it respects the mine itself: the profits of the mine are exempt from taxation under 43 Eliz. c. 2. The engine therefore is, in like manner, exempt.

Lead mines and the machinery are not rateable.

Governor and Company for smelting Lead v. *Richardson*, 3 *Burr.* 1341; 1 *Bla. Rep.* 389. The defendant had distrained for the poor-rate assessed on the occupiers of the *lead* mines lying in Alston. The plaintiffs were lessees from Greenwich Hospital; they worked the mine, but did not live in Alston; the profits of the hospital that year amounted to 1900*l.*, but those to the plaintiffs were precarious and uncertain, and some years they gained nothing; no lead mines had ever been assessed, except in an instance or two since making this distress. Lord *Mansfield*, C. J. "The question is no more than this: whether a lessee of lead mines, whereon no rent is reserved, other than a certain proportion of the ore to be raised, is rateable to the poor under the 43 Elizabeth? Now, nothing can be clearer than that these mines are not within the *letter* of the statute; for the legislature could never intend by the word *coal* mines to comprehend other species of mines. If they had meant to include them, they would either have enumerated them, or used the general word *mines*. So that the expression *coal mines* expressly excludes mines of any other sort, as much as if they had been excepted. And there was a very good ground of exempting them; as from the nature of working them they are liable to more hazard and expense than coal mines are. And at that time, all copper, lead, and tin mines in Derbyshire, Cornwall, and Mendip in Somersetshire (which are the only counties where works of that kind were then established), were governed by particular laws; whereby any stranger, conforming to the ceremonies thereby required, was at liberty to work those mines without any reward to the owner of the soil. And as all these undertakings were attended with infinite hazard and expense, and often ruined the projectors, it is no improbable conjecture that the legislature meant for this reason, and in order to encourage them to proceed in undertakings of this public utility, to except them from any other burthen or imposition than those that the miners' law had imposed. Indeed, *if a man has taken a lease of land, with privilege to dig for mines, he may be rated for the land.* But that is not the present case. And where the legislature have not imposed a tax, this court cannot do it by construction. For example, the fees of a physician or lawyer are not made liable by the act, and therefore cannot be rated. Upon the whole, as there might be a very good reason for not making these mines liable, which is fortified by usage, and they are not within the letter of the act, I am clear they are not rateable." Mr. Justice *Denison* was of the same opinion. By Mr. Justice *Wilmot*.

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"There is a material difference between coals and other mineral works. Coals are easily found, but a vast deal of time and money is often spent in discovering other mines. The legislature, therefore, considered how dangerous it would be to discourage adventurers by subjecting them to a tax. (*a*) Another thing which convinces me that the legislature meant only to include *coal mines* is, that in stat. 31 Eliz. c. 7, concerning cottages, they have used the words *coal mines and all other mineral works;* which plainly shows they never understood that coal mines would comprehend other sorts of mines."

Landlords not resident within the parish, having leased lead mines, reserving a certain annual rent, are not assessable for such rent.

Rex v. *The Bishop of Rochester*, 12 *East*, 353. A lease of the 30th of May, 1805, was made between the Bishop of Rochester and other trustees, and A. Surtees, whereby the trustees demised "all the mines, veins, &c., parcels and wastes of lead ore and other minerals, and also all the seams of coal then open or discovered, or which should or might, during the time therein mentioned, be opened or discovered, in the township lands called Nuckton, in the parish of Hunstonworth, with full liberty to dig and search for pits, &c.; to hold the demised premises for 21 years, *yielding and paying therefor yearly, during the said term, unto the said lessors,* their heirs, &c., for and in respect of the said *lead ore and other minerals,* the clear yearly rent of 100*l.*" There were also reserved, by way of rent, certain proportions of such lead ore as should be gotten from and out of the said mining grounds. There was also a separate rent reserved for the coals when wrought, and a rent for damages done to the ground tenants. The lessees were bound to pay all taxes, parliamentary or parochial. No coal mines had been wrought within these grounds. The lessees had other lead mines in the neighbourhood, but had gotten no ore from under the grounds mentioned in the lease, and consequently no proportion of lead ore had been rendered or become due to the lessors. The lessors were rated in 50*l.*, being a moiety of the rent of 100*l.* reserved by the lease, and which was a fair proportion for that part of the mining ground which is in the parish of Hunstonworth; and the lessors, if liable at all, did not object to the fairness of the apportionment. The rate was: "Lord Crewe's trustees for certain annual rent paid them by Easterby, Hall and Co., *for the liberty of opening the mines within their lands, spoil of ground,* &c., 50*l.* Rate, 8*l.* 15*s.*" None of the lessors reside or have any dwelling-house in the parish. The lessees were not rated in respect of the demised mines. Lord *Ellenborough.* "The trustees can only be rated as inhabitants or as occupiers within the parish. We have so recently (*Rex* v. *Nicholson, ante*, 220; *Williams* v. *Jones, ante*, 222;) put a construction upon the word *inhabitant* in the statute of Elizabeth, as meaning a *resident* within the parish, that it is unnecessary to discuss the matter again; and the fact of such inhabitancy is negatived by the case. Neither are they *occupiers* of the property for which they are rated: so far from it, that they cannot maintain trespass for any injury done to property which they are supposed to occupy: and even if they were the actual occupiers of coal mines, they would not be rateable for them before they were worked and productive. (See *Rex* v. *Bedworth, ante*, 158.) But this is no more than a contract with tenants for the payment of a certain rent for ores supposed to lie under the surface; and if the tenants should open the ground and raise the ore, reserving a certain proportion of ore to the ground landlords, there is no occupation of anything, within the statute. If hereafter the tenants should open the ground and raise the ore, the trustees will then be entitled to certain proportions; and such profits may come within a different rule, as lot and cope: upon which no question at present arises." *Grose* and *Bayley*, Js., agreed. *Le Blanc*, J. "If the trustees were rateable at all, it must be as occupiers of the mines, or some proportion of them; but here they are rated as for a *rent, eo nomine*, for which, if they were rateable, every landlord might by the same rule be rated for his rent." Order quashed.

See *Rex* v. *Tremayne, post.*

(*a*) In the report of this case in Blackstone, nothing is mentioned as to these reasons, &c.; and there Lord *Mansfield* is reported to have said, "In Cornwall there never was a supposition that mines were rateable."

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Nor where *smelted ore* is reserved as rent.

Rex v. *The Earl of Pomfret*, 5 *Maule & S.* 139. Lord *Ellenborough*, C. J., delivered judgment. "The appellants were the owners of the lead ore in certain lead mines within the township; not owners of the soil of the wastes in which the mines are situate, but merely entitled to the lead, copper, and iron contained in the veins below the soil. By a lease of the 31st of July, 1811, the appellants leased to Messrs. Alderson all their mines of lead and lead ore, with certain smelting mills and other premises therein described, and with proper powers for working the mines for twenty-one years, yielding and paying to the appellants a certain pecuniary rent therein mentioned, and also yielding and paying, rendering and delivering, at or in the smelting-mill or place situate within the manor of Healaugh Old Land and Healaugh New Land, where the same should have been smelted, *one full fifth part, dole, or share of all the best ore, earth, lead, and one full fifth part, dole, or share of all the slag or slag earth lead* that should be smelted from the ore raised from the mines and premises, the same to be delivered to the appellants free and clear of all dues, duties, costs, charges, and expenses, and from the poor-rates, and all other parliamentary and parochial taxes, &c., or in respect of the said lead or lead ore so to be delivered as aforesaid, or in respect of the said mines and premises. The lease contained a covenant on the part of the lessees to deliver the fifth dole or share *as often as the quantity smelted should amount to* 400 *pieces*, or at the end of every four weeks, at the option of the lessors. The rate was imposed upon the appellants in respect of the duty lead reserved by the above lease. This case was argued before us with great ingenuity and learning, and all the authorities that bear upon the point were cited in the course of the argument. The counsel in support of the order of sessions relied on *Rowls* v. *Gell*, *Rex* v. *St. Agnes*, and *Rex* v. *The Baptist Mill Company*, and contended that this case was not substantially different from that of *Rowls* v. *Gell*, which had been recognised and followed in the two other cases, and that we ought not to depart from the principle there established upon nice and subtle distinctions. We are of opinion, however, that the present case is substantially different from all of them, and that a decision against the present rate will not break in upon the principle or overturn the authority of any one of them. In all those cases the rights of the parties rated, who were the owners or lessees of the mines, and of the adventurers or miners by whom the mines were worked, depended upon the particular custom of the place; and by that custom the parties rated were entitled to and received a certain portion of the mine or mineral in its primitive mineral state; and the court, with perhaps some degree of refinement, considered the parties entitled to and receiving such portions of the minerals as being occupiers of a portion of the mines, that is, occupiers of land within the terms of the statute of Elizabeth; and in the case of the *Baptist Mill Company*, made, in part of the foundation of their judgment, that the adventurers did not stand in the relation of tenants to the owner of the mine, but in that of mere workmen. It is true that in *Rowls* v. *Gell*, the mineral underwent some sort of process before it was delivered to the plantiff, for the case states that the duty of lot was the 13th dish or measure of lead or ore got, dressed and made merchantable, which we understand to mean, made merchantable by scouring or dressing, a process thereby separating the ore from the other matters dug up with it from the mine, but not altering in any degree its original and native quality or character. The plaintiff in that case was also rated for cope, which is explained to be a small pecuniary payment; but no notice was taken of that circumstance in the argument or judgment, nor could it have been effectually taken, because if the plaintiff was rateable for the lot, he would of course have some rateable property within the parish, and consequently his action of trespass could not be maintainable. In *Rex* v. *St. Agnes* (*post*), the party was entitled to toll and farm tin, which are stated to be certain portions of the tin gotten. In the case of the *Baptist Mill Company* (*post*), the party was entitled to a definite portion of the calamine stone found or gotten within his district. In the present case, the rights of the

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parties rated, who are the appellants, and those of the persons by whom the mines are worked, depend upon the terms of a written contract, a lease; by the terms whereof the appellants have demised to others the whole of their mines and veins of lead and lead ore; and therefore they cannot be said to be the occupiers of any part, unless the render or reservation of one-fifth part of the lead to be smelted from the ore raised from the mines, can operate as an exception of a portion of the mines, or of the ore raised from them. A reservation of a part of the thing demised cannot properly operate as a render, and it may be admitted that it operates as an exception. See *Co. Litt.* 47 *a*, 142 *a*. But this is not a reservation of any part of the thing demised; it is not a reservation of any part of the ore, or of the mineral, in its natural and primitive state, but of something of a quality, name, and character, entirely different,—of a metal, produced from that mineral, by the laborious and expensive process of smelting, in which the native mineral is mixed with another matter, viz., with coal or charcoal; and by the effect of fire upon both, a metal is obtained, which is to be considered, for this purpose at least, as entirely different from either of the two, and rather as a manufacture of art and labour, resulting from the use and application of those materials, than the original earth itself. This lease puts the parties unequivocally in the character of landlords and tenants. The reasons upon which the court relied in *Rev.* v. *The Baptist Mill Company*, do not apply to this case; but it is brought substantially within the principle of *Rex* v. *The Bishop of Rochester*. For these reasons, we are of opinion that the appellants were not liable to be rated for the lead rendered to them under the lease."

Nor where the rent received is for every ton of manganese raised.

Rex v. *Tremayne*, 4 *B. & Ad.* 162; 1 *Nev. & Man.* 194. The owners of certain lands granted to adventurers for twenty-one years a liberty to dig for manganese, and drive adits, &c., receiving 1*l.* 15*s.* for every ton of manganese raised during the term, free of all expense of raising and dressing: all other mines and quarries were excepted. The adventurers opened a mine, and erected buildings, &c., at their own risk and expense; and they are in the exclusive occupation of them. Considerable quantities of manganese had been raised and sold by the adventurers, and 1*l.* 15*s.* regularly paid to Mr. Tremayne, the owner, for every ton so raised; and for this Mr. Tremayne was assessed. The form was: "For manganese dues." During the argument in support of the rate, it was urged that Tremayne had reserved everything but a liberty to dig. [*Parke*, J. "What portion of the soil does Tremayne occupy?"] He occupies the land that produces the ore. [*Parke*, J. "He has no right to any portion of the rude ore;" and afterwards added, "The decisions relied on, proceeded on the ground that a certain portion of rude ore was reserved to the lord. *If Tremayne, as is contended, is the occupier of the mine, then as such he is not rateable.*"] Argument: In *Rowls* v. *Gell* (*post*), part was a pecuniary rent. [*Parke*, J. "That distinction was not pressed on the attention of the court, and the principles on which such property is rateable were not so well understood as they are now."] Without hearing the counsel on the other side, *Denman*, C. J. said, "The rate cannot be supported. Here the landlord receives a rent, and is not the occupier of the soil, as in *Rowls* v. *Gell*. In *Rex* v. *St. Austell* the landlord, by the express terms of the grant, was to be paid, not by money, but by the produce of a part of the mine, unless he elected to be paid in money: here he is paid by a sum of money in proportion to the weight of manganese raised, but he has no right to any portion of the ore. If we had any doubt we would permit the rate to stand, that the party rated might bring an action; but we have no doubt whatever: the order of sessions must therefore be quashed." *Parke*, J. "A party can only be rateable as the occupier of land. Here Mr. Tremayne is not the occupier of the soil; he receives a money rent. The case falls within *Rex* v. *The Earl of Pomfret*. It is said that no interest in the land passed, but a mere authority to the grantee to dig. That may be so; and in that respect the case resembles *Rex* v. *St. Austell* (*post*, 165); but then it would follow that Tremayne is

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himself the occupier by his agents; and if so, as the owner of mines, he is exempt from rateability by the statute of Elizabeth and the nature of the property, and he could not be rated unless for dues. The case is distinguishable from *Rowls* v. *Gells*, *Rex* v. *The Baptist Mill Company*, and *Rex* v. *St. Austell*, because here the owner is not entitled to any portion of what may be called the soil. The ground of the decisions in those cases was, that the reserved ore was a portion of the soil, and that the party entitled to it was therefore the occupier; but here, if he was not entitled to that portion of the soil, he is not the occupier; and then this is like the case of *Rex* v. *The Earl of Pomfret*, where the reservation was not of a part of the soil, but of something different; and is distinguishable on that ground from *Rex* v. *St. Austell*, and the other cases, where a portion of the mineral was received." *Taunton*, J. "I entirely concur. The distinction is very subtle; but the cases may perhaps be reconciled by distinguishing between a reservation of a rent and a reservation of part of the soil itself. In the latter case the lessor has been considered as occupying that part of the soil which he has so reserved. Here there is a pecuniary rent reserved, and no reservation of any part of the soil. If we were to hold that Mr. Tremayne was rateable here, we should be shaking a well-established principle, that a landlord is not rateable for his rent. And, again: if Mr. Tremayne is to be considered as the occupier of the soil of the mine, and the lessees as his agents, he is not liable to be rated, because coal mines are the only mines mentioned in the statute of Elizabeth, which has therefore been construed to exclude all others." *Patteson*, J. "I am of the same opinion. The rule is very clearly laid down by *Le Blanc*, J. in *Rex* v. *The Baptist Mill Company*, (*post*, 242): 'Where a person receives without risk part of the produce extracted from the bowels of the earth, he is an occupier of land; but where he merely receives a rent or money payment, there he is not an occupier.' Here Mr. Tremayne is not the receiver of what is extracted from the bowels of the earth, but of money; he is not liable therefore to be rated as an occupier of land." Order of sessions quashed. S. P. in *Rex* v. *Wellbank*, 4 *M. & S.* 222, *post*.

Nor the duchy lessee who has leased all his interest and reserved a money payment.

Reg. v. *Crease*, 3 *P. & D.* 434; 11 *A. & E.* 677. Mr. Crease was rated in St. Austell, in 40*l.*, upon an amount of 1600*l.*, as the occupier of tolls of tin. On an appeal the sessions amended the rate, by reducing the amount to 1400*l.*, and the amount of his rate to 35*l.* Case:—By indenture of the 1st August, 1815, between the Prince of Wales (Duke of Cornwall) of the one part, and Edward Smith, Esq., his royal highness "demised, granted, and to farm let unto E. Smith, &c., all that the toll and farm of tin, or tin toll, which should be gained, arise or be due in any place or places whatsoever, within the several lordships, manors, precincts, or territories, belonging to or being part or parcel of the duchy of Cornwall, in the county of Cornwall, and all profits, advantages, &c., to the said toll and farm of tin, or tin toll, within the several lordships, &c., belonging, with their rights and appurtenances, &c.; and also all the tin mines found or to be found within the several inclosed lands of the said several lordships, &c., with their appurtenances, &c.; and also all that the toll and farm of tin, or tin toll, which should be gained, arise or to be due in any place or places whatsoever within all and every the manors, boroughs, tenements and premises, thereinafter particularly mentioned, parcel of the ancient or annexed possessions of the duchy of Cornwall, in the county of Cornwall, which (with the exception of all mines and minerals) had been sold to different persons, under the authority of the Land-tax Act of the 38 Geo. III.; that is to say, within the manor of Tewington, with its members and appurtenances, whereof different parts were separately sold and conveyed on the 26th November, 1798, to &c. (mentioning the different purchasers), and within several other manors, for a term of ninety-nine years, determinable on lives, rendering a yearly rent. E. Smith covenanted that he, E. Smith, would pay all taxes, rates, &c., wherewith the demised premises were or should be charged. Then he would enter upon the premises demised, and within the same dig and search for tin, and the same tin so to be found, at

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his free will take and carry away, and do all things necessary to the digging and searching for, and carrying away of tin, and filling up the tin pits and shafts according to the custom of the tin works in Cornwall." The residue of the term granted by this lease is now vested in the appellant, subject to any setts or licenses granted by E. Smith. Within the parish of St. Austell are situate two of the manors mentioned in the above lease, namely, the manor of Treverbyn Courtnay, parcel of the annexed possessions of the duchy, and the manor of Tewington, late parcel of the ancient duchy of Cornwall. Within these manors respectively there are several tin stream works and tin mines, some within parts which are bounded according to the custom of the stannaries, and others within others parts which are not bounded. By the custom of the stannaries, the right of searching and working for tin is vested in the owner of the tin bounds, he paying to the lord of the manor or his lessee the customary toll, which in the manor of Treverbyn Courtnay is $\frac{1}{15}$th, and in Tewington $\frac{1}{10}$th part of the tin gained, free and clear of all risk and deductions. The yearly value derived to the appellant in the parish of St. Austell, under the above lease, is 1,516*l.* The mine from which the principal part of the 1,516*l.* is derived, is called Buckler's mine, and is situate on Boscundle Common, the whole of which is under tin bounds, and is within the manor of Tewington. This is a very ancient tin mine, and has been worked by the present adventurers since the year 1831. The remainder of the 1,516*l.* is derived from mines from which the appellant receives toll tin from the adventurers in kind. On the 17th September, 1835, an indenture was executed, by which the appellant demised to J. Rundle and J. Taylor, the adventurers in the said mine (called Buckler's mine), for the term of twenty-one years from the date thereof, the full and free liberty, licence and authority to enter into and upon all that land and ground comprised within the limits thereinafter mentioned, with full power and liberty to break and open the soil and ground, and to drive any adits and levels, and to sink any shafts, and to make any erections or buildings for digging and searching for tin and tin ore in the said premises, according to the custom of tin works in the said county of Cornwall; and also with liberty, at their or any of their free wills and pleasure, to take and carry away the same, reserving, nevertheless, unto the said appellant the liberty from time to time to enter and inspect the workings of the said mine, and to take up any adits for the purpose of working any adjoining mine, and to keep open, repair and use the same, making reasonable compensation to Taylor and Rundle for so doing, yielding, paying and delivering, during the term thereby granted unto the appellant, his executors, &c., from time to time, within six weeks after the return or sale of every parcel of tin or tin ore gotten in the said demised premises, the clear sum of 1*s.* in the pound on the gross value, according to the price of the day, of all tin and tin ore, which shall from time to time be digged, raised and gotten out of, from and in the said premises thereinbefore mentioned and described; such 1*s.* in the pound to be paid clear and free from all charges, poor-rates (if any should be payable), and all other rates, &c. The lease is still existing, and the lands and mines therein demised, including Buckler's mine, are, and were at the time of making the rate, in the possession and occupation of the said lessees, but they are not rated in respect thereof. Considerable quantities of tin have been raised by them, the whole of which has been disposed of, and sold by them as they thought fit. Since the date of the above-mentioned lease or sett, the appellant has not received any tin or tin ore in kind from the said lessees, but payment in money from Buckler's mine, according to the above reservation. All the property in the parish is assessed according to the rule prescribed by the 6 & 7 Will. IV. c. 96, and in the manner therein described. The appellant is not an inhabitant of the parish of St. Austell, nor the occupier of any land or other property therein, unless he is deemed to be such under the circumstances stated in this case. The mines in respect of which the appellant is rated are well known by distinct names, and are situated at different parts of the parish, at distances from

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each other, and are worked under different setts by different adventurers. If the court should be of opinion that the appellant is not liable to be rated at all in respect of his toll tin, the rate is to be further amended by striking out his name altogether from the said rate; or if the court should think he is not so rateable in respect of Buckler's mine, the rate is to be amended by further reducing the sum of 1,400*l.* to 100*l.*, and the sum of 35*l.* to 5*l.* If the court should be of opinion that the objection to the form of the rate, in not stating the names and situations of the mines, is valid, then the rate to be sent back to be amended. Lord *Denman*, C. J. delivered the judgment, and after stating the facts and the lease, proceeded :—"This lease is still existing, and the lands and mines therein demised (including Buckler's mine) are, and were at the time of making the rate, in the possession and occupation of the said lessees, who are not rated in respect thereof. Considerable quantities of tin have been raised, but the appellant, since the date of the said lease, *has received no tin or ore in kind but payment in money*, according to the said reservation. Lastly, it is stated that the appellant is not an inhabitant of the said parish of St. Austell, nor the occupier of any land, or other property, unless he is to be deemed such under the circumstances above detailed. Upon this state of facts it was contended in argument that (without reference to the lease above set forth) the toll tin is not rateable, and we were called upon again to examine the cases of *Rowls* v. *Gells*, *Rex* v. *St. Agnes*, *Rex* v. *Baptist Mill Company*, and *Rex* v. *St. Austell*, which, it was admitted, have decided that such property is rateable. Upon this point, which does not in truth affect the principal subject now in dispute, as our judgment proceeds upon another ground, we think it unnecessary to say more than that, whilst they remained unreversed by a court of error, we feel ourselves bound by the authority of cases considered and reconsidered so often and so deliberately. The conclusion therefore on this point is, that the form of the rate is right, and that in substance it is correct, at all events to the extent of 5*l.* With respect to the effect of the lease, which raises the principal point, it was urged, in support of the rate, that in truth nothing passed by it; that the whole transaction was merely colourable, and intended to exempt the property from rateability. When, however, we find it expressly stated that from the date of the lease the appellant has received no part of the produce of the mine, but *a money payment only*, and further bear in mind that it is not the province of this court to presume or infer fraud where none is found by the sessions, we think that this circumstance (the money payment) distinguishes this case from those above referred to, and brings it directly within the principle of *Rex* v. *The Earl of Pomfret*, and *Rex* v. *Tremayne*, which distinction is plainly pointed out by *Le Blanc*, J. in *Rex* v. *Baptist Mill Company*, in the following words :—'Where a person receives without risk part of the produce extracted from the bowels of the earth he is an occupier of land, but where he merely receives a rent or money payment, he is not an occupier.' The consequence is, from the form in which the question is submitted to us in the case, that the assessment upon the appellant must be reduced from the sum of 35*l.* to 5*l.*" Rate to be reduced to 5*l.*

First point.

Second point.

Crease v. *Sawle*, 20 *L. J. M. C.* 62. The facts stated in *Reg.* v. *Crease* formed, afterwards, the subject of a special verdict, which was heard in the Court of Exchequer; and the following judgment was delivered by *Tindal*, C. J. "The question raised by the special verdict in this case is, whether the plaintiff, who was the lessee under the duke of Cornwall, and was entitled to the toll of tin in a mine belonging to and parcel of the duchy, was rateable to the poor in respect of that toll. The toll was a certain portion of tin ore, raised within the tin bounds, and paid for by the workmen as tin in kind, without deduction or charge, or risk to the receiver. If the plaintiff was rateable, it is not material, in this action of trespass, to consider whether he was actually rated, as the occupier of the toll of tin, for a larger sum than he ought to have been rated at: the sole question in this action being, whether he was rateable in respect of the

The lessee of the tin-toll is rateable.

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subject of the rate. The Court of Queen's Bench, in giving their judgment in favour of his liability, referring to the cases of *Rowls* v. *Gells*, *The King* v. *St. Agnes*; *The King* v. *Baptist Mill Company*, and *The King* v. *St. Austell*, expressed their opinion, that they were bound by the authority of cases so often and so deliberately considered, so long as they remained unreversed by a court of error. We feel that we are equally bound by the same authorities; and, important as it is in all branches of the law to abide by previous decisions, in none is it more important than it is in these cases. The rules which apply to the rateability of property are everywhere daily acted upon in the management of parochial affairs, and materially affect the value of estates. It would be extremely inconvenient, and indeed mischievous, to overrule a class of cases which have been much discussed and sanctioned by many eminent judges, and which are constantly acted upon, because we might not feel perfectly satisfied with the reasons assigned for their decision; and if we could permit ourselves to disregard those authorities on that account, we might feel disposed, on the same ground, to reject others who have put a construction on the statute which we might by no means be certain it ought to bear. If we were now, for the first time, called upon to explain the meaning of this statute, which would seem to have been framed with a view of rendering rateable occupiers of every description of real estate, it might be very questionable whether the occupier of mines of any description was exempt. But we think it wiser to abstain from the discussion of such questions, and to abide by the construction which the numerous decisions have given to the words of the statute, and which have been, for a length of time, constantly acted upon; and, according to those decisions, unless we were to hold that the occupier of every mine, except coal mines, is exempt, we feel ourselves equally bound to hold, that he who receives a portion of the ore in an unmanufactured state is liable to be rated. The judgment must, therefore, be affirmed."

The owner who reserves one full fifth part of the ore gotten, to be dressed, and fit for smelting at the costs of the tenant, is rateable.

Reg. v. *Todd*, 4 *P.* & *D.* 335; 12 *A.* & *E.* 816. The Duke of Cleveland is not an inhabitant of the township, is seised of waste therein, and of the mines and minerals within and under the same, as tenant for life, with power to lease for twenty-one years. By indenture of lease, bearing date 21st June, 1836, he demised unto a company all the lead mines or groves, veins, &c., and other ore opened or to be opened, within or under certain specified districts, together with all houses, buildings thereto belonging or otherwise occupied or enjoyed therewith, together with full power to the company, with miners and other workmen, to enter into and upon the land, and there to search for, dig, work, &c., and to do all other things necessary for winning and working the mines and premises; and also sufficient ground-room for the laying of earth, rubbish, or ore raised, and full right of way, &c., and also liberty to build on the wastes of inclosed lands adjoining the demised premises, houses, &c., for the use of the workmen, and for cleansing, washing, and dressing the ore found and raised, reserving to the duke, his heirs and assigns, full liberty, power, and authority to enter into and upon the mines and premises thereby demised, and every part thereof, by the ways after mentioned, to view the same; the mines, &c., were demised for twenty-one years, yielding, paying, rendering, and delivering during the continuance of the demise unto the duke, one full fifth part, share, and proportion of all the lead or other ore which should from time to time, and at all times thereinafter during the continuance of the demise, be won, wrought, raised, or gotten out of and from the said demised premises, or any part thereof, well and sufficiently cleansed, dressed, washed, and made merchantable, and fit for the smelting-mill, at the costs and charges of the said company, and then to be delivered at the ringsteads upon the premises, when the same should be dressed and washed as aforesaid, clear of all deductions or abatements on any account whatsoever; and that before any part or parcel of the other four-fifth parts of the said lead or other ore should be removed, carried away, smelted, or converted into any other use whatsoever without the consent of the duke, &c.

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During the period for which the rate was made, the duke received in the township from the company, one-fifth part of all the ore raised by the company from the mines in the township demised to them. The ore, previously to delivery, underwent a very laborious and expensive process, in being bruised, dressed, and made merchantable and fit for smelting, by which all foreign substances were separated from it; but the character of the ore was not otherwise altered. Lord *Denman*, C. J. "We are of opinion that the Duke of Cleveland is an occupier of the ore."

But the owner of the lot and cope payable from lead mines is rateable.

Rowls v. *Gell*, *Cowp.* 451. Rowls was lessee under the crown of all lead mines, with their appurtenances, within Wirksworth, with the *lot* or *cope*, and was assessed for the same in the rate of 500*l.* a-year. The duty of *lot* payable to the plaintiff, as lessee of the crown, is the thirteenth dish or measure of lead ore, got, dressed, and made merchantable, at all the lead mines within the soke; and *cope* is sixpence for every load or nine dishes of lead ore raised at such mines. These duties are paid to and received by the plaintiff without any risk or expense in working the mines, and, in that year wherein they were assessed, amounted to the clear sum of 500*l.*; but they are uncertain, and vary every year. All persons have a right to dig for and get lead ore in the said soke and wapentake, conforming to the custom there; and the miners are entitled to a certain quantity of land above and on each side of such mine. Lord *Mansfield*, C. J., delivered the resolution of the court. "The poor's-rate is not a tax on the land, but a personal charge in respect of the land. The present is a personal charge by reason of the annual profits which the lessee of the crown receives out of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and not the landlord, is liable to this tax. For it arises by reason of the land in the parish, and the landlord is never assessed for his rent, because that would be a double assessment, as his lessee had paid before. *Lead mines* are not within the statute of the 43 Eliz. They are in themselves uncertain, and may prove unsuccessful to the adventurers. Taxes, therefore, upon the adventurers, would be hard, and they are, therefore, excused. But he, who in case they do prove of value, receives a stipulated benefit from the profit or value of them, is not excusable on the same ground, and therefore is expressly charged to the land-tax, as that falls upon the landlord. He is alike liable to the poor-rate for his visible real property in the parish; though, where the poor-tax is a charge on the lessee, the landord doth not pay in respect of his rent. Where the adventurer or lessee of the mine pays nothing, it is no double tax in any light, because the lord pays, not for that which the lessee or adventurer is excused from paying for, but the lord pays for his own. It is not a mere casual profit, but an annual revenue, if any, and very different from the casual profits of a manor, which are not annual; for there may be none for years. But if the mine produces profit to the miner, the lord's share is certain, annual, and an annual rent is paid for it constantly. The miner is obliged to pay certain proportions to the owner of the land. What reason then is there to exempt these proportionable revenues? It makes no difference to the adventurer; it doth not prejudice or benefit him. But as such obligatory payment is in respect to the land, the landowner ought not to receive it clearer or neater than any other part of his estate, when he is at no trouble, expense, or possible risk. Therefore, we are all of opinion that the plaintiff is liable to be rated for this property."

A reason conjectured why mines are not in general rateable.

So also the owner of toll of tin, farm tin and dues.

Rex v. *St. Agnes*, 3 *T. R.* 480. This was an appeal against a rate, because Andrews and Donnithorne were not rated for their tolls of tin. The sessions quashed the rate. J. P. Andrews, as trustee of J. Enys, is entitled to a certain dish or measure arising out of certain lands and tin bounds in St. Agnes, called *toll and farm tin;* which toll is one-fifteenth part of all the tin gotten in the lands of J. Enys, within the parish of St. Agnes, and which said *farm tin or due* is one-twelfth part, after the said fifteenth part is deducted *for toll of all such tin so gotten within the tin bounds* in the parish; and which said dues or duties are due and payable by the laws and customs of the Stannaries of Cornwall, free and clear of all

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risk and deductions whatsoever; but they are uncertain, and vary every year; yet for many years last past have produced a considerable sum annually. And N. Donnithorne is entitled to a certain dish or measure called *toll tin or dues*, arising out of certain lands in St. Agnes, and due and payable in the manner before stated, and which toll varies, and is uncertain, but also produces a considerable sum annually. Lord *Kenyon*, C. J., said "he approved of *Rowls* v. *Gell*, and *Rex* v. *Maddern*, though these two persons would not be precluded from objecting to their being charged in any future rate on any ground they might think proper. But they were not parties to this case, and could not make any objection to the order of sessions, which was confirmed."

So also the owner of the lot and free share of calamine.

Rex v. *Baptist Mill Company*, 1 *M. & S.* 612. The defendants were rated in the parish of Rowberrow, for "lot, toll, and free share of the calamine, and for calamine yard and barn;—amount 9*l.*" The sessions amended the rate by expunging "the calamine yard and barn," and assessing the "lot, toll, and free share of the calamine." They were lessees of a lot, toll, or free share of all calamine, or *lapis calaminaris*, raised in the parish of Rowberrow, in the proportion of one part in four; they *are not, nor were at the time of making the rate, in the occupation of any land or buildings whatsoever within the parish of Rowberrow, unless the court shall be of opinion, as the sessions were, that the lot, toll, and free share above mentioned, are to be considered as land;* all the lessees reside in Bristol; they run no risk, nor incur any expense whatever, and have, since the commencement of the lease, received a quantity of calamine, of considerable value, as the lord's lot, toll, or free share. Lord *Ellenborough*, C. J. "If these lessees of lot, toll, and free share are rateable at all, it appears to me they must be rateable as for property falling under the description of land. There appears to me to be a demise of a specific portion of the produce of the land, or in other words, land itself, free from risk or uncertainty; it is by the express terms of the finding stated to be an interest without risk. We might, otherwise, have been pressed with the question, whether the naming coal mines in the statute, was, according to the rule, *expressio unius exclusio alterius*, to all intents an exclusion of other mines; or was only put for example, as the naming a class in the statute of *circumspecte agatis* (2 *Inst.* 487): for certainly the judges who have held it to amount to the exclusion of other mines, have generally coupled it with this reason, that other mines are subject to risk. Now here the portion of calamine is divested of risk; it is the clear profit to which the lord is entitled, independent of any contingency. It is not stated whether it is by agreement or custom, that the person who works the mine is bound to yield to the lord a portion. It is merely stated that the lord is entitled to one part in four. The whole is raised by the labour of the adventurer, and, when raised, the lord may be considered as working with the adventurers by the hands of the labourers; but, when raised, the lord's share redounds to him. That constitutes land, and may be fairly construed as such within the meaning of this statute. The case of *Rowls* v. *Gell* (*ante*, p. 241), and the other cases, do not admit of any distinction comprehending this case. This is not merely a demise of a personal chattel, of the ore after it is gotten, but of the ore which is to be gotten, and which is part of the solid mass of the land; therefore, under that description, it is assessable in the hands of the occupier." *Le Blanc*, J. "I concur in opinion with my lord, that this property is rateable to the poor. In *Rowls* v. *Gell*, and *Rex* v. *St. Agnes* (*ante*, p. 241), the rate was confined to the person in respect to the toll-dish of lead and tin raised; here the owner of the land is entitled to a certain portion of the ore when raised, which he lets, or allows persons to stand in his place as to that share; and we will not inquire whether this were a legal demise, for he authorises them to receive, and they do receive it. They stand, therefore, in the situation of the lessee in *Rowls* v. *Gell*, and the person entitled in *Rex* v. *St. Agnes*. But subsequent cases have been cited, in which it is supposed that the authority of *Rowls* v. *Gell*, and *Rex* v. *St. Agnes* has been disturbed; which supposition is only raised by laying hold of particular

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expressions of the court to be found there. The cases of *Williams* v. *Jones*, and *Rex* v. *Nicholson*, are totally different; for those were the profits of a ferry, arising out of a right to convey passengers over a river: it was impossible in those cases to say that the persons were occupiers of anything but the boat and tackle in which the passengers were conveyed, in the same manner as a stage-coachman is the owner of his coach; it was, therefore, impossible to make the doctrine of *Rowls* v. *Gell* bear on those cases. Viewing all the cases on the subject, and the principle upon which *Rowls* v. *Gell* was decided, and likewise the public convenience, as it regards this species of property, and not seeing that the original construction on the words 'occupier of land' may not comprehend a person so far an occupier as to receive a portion of the land discharged of any risk, I cannot say that this company is not rateable." *Bayley*, J. "I am of the same opinion. I cannot distinguish this from the case of granting a share in the land, which is not co-extensive with the entire interest. It is not doing any violence to this lease to consider the lessees under it as occupiers of land. I lay out of consideration all the cases in which it has been holden that adventurers are not liable." Order of sessions confirmed.

So also the owner *of one full eighth share of all tin, tin ore, &c.*; the same having been first spalled, picked, or otherwise made merchantable, and *fit to be smelted.*

Rex v. *St. Austell*, 5 *B. & Ald.* 693; 1 *D. & Ryl.* 351. T. Carlyon, Esq., appealed against the following assessments:—Rates on tin and copper dues, and water-courses: T. C. for Crinnis copper dues—annual return, 4080*l.*; amount taken at two-fifths, 1632*l.*; assessment at 3*s.* in the pound, 244*l.* 16*s.* The sessions struck out this assessment. Mr. Carlyon was not an inhabitant of St. Austell, nor the occupier of any land or other property therein, unless he was deemed to be such occupier in respect of the dues; by indenture made 12th January, 1811, he granted unto Rowe, &c., full and free liberty to dig, work, mine, and search for tin, tin ore, copper, copper ore, and all other metals and minerals whatsoever, in that part of his lands called Crinnis, in the parish of St. Austell, and the same to take to their own use: and within the limits of the set thereby granted, to make adits, shafts, &c., and to erect sheds, &c.: *habendum* for twenty-one years: yielding and delivering upon the grass, unto T. Carlyon, one full eighth part or share, or dish, of all tin, tin ore, copper, copper ore, lead, lead ore, and other metals and minerals which should, by virtue of the said indenture, be found and brought to grass within the limits thereby granted; the same having been first made merchantable and fit to be smelted and fairly divided, and laid out upon the grass at their cost and charges. It contained a covenant to pay or deliver unto T. Carlyon, or his teller or agent, the full and just one-eighth part, share, or dish, therein reserved; or pay the same in money, at the election of T. Carlyon, at such best price as the same could be sold for, within two months at farthest, after such metals should be returned and sold. The lessees were to pay all rates and taxes imposed upon the tin, &c.; and the money which should arise from the sale thereof, or the dues thereby reserved, or upon T. Carlyon, in respect thereof, and indemnify him from the same; and would effectually work the premises in the most proper and effectual manner, with a sufficient number of labouring miners, unless prevented by water or other inevitable impediment. By virtue of this grant, the mine had been worked ever since the date thereof, by Rowe, without expense or risk on the part of T. Carlyon. Works had been made, and houses built by the adventurers at a great expense; and the mine and all workings had always been, and still are, in the sole occupation of the adventurers. The mine is now declining; but considerable quantities of copper ores had, from time to time, been raised from it: the whole of which, after undergoing several processes at an expense varying from 1*s.* to 6*s.* and 7*s.* in the pound, and even to 15*s.* when cleansed for the purpose of separating them from earth and other substances, and rendering them fit to be smelted, but by which process the original and native quality of the ores themselves is not altered, had from time to time, before the same were calcined or smelted, been sold or disposed of by the adventurers, without any control or interference by Carlyon. *No part of the ores raised had ever been ren-*

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dered to Carlyon in kind; but in lieu thereof, one-eighth part of the money, arising from the sales of the ores, had been hitherto paid to him. He had been from time to time rated to the poor of St. Austell in respect of such one-eighth part of the money, and had paid the several assessments. *Abbott*, C. J. "I am of opinion that in this case Mr. Carlyon is liable to be rated for the dues in question. I am unable to distinguish this case from *Rowls* v. *Gell* (*ante*, 241), and *Rex* v. *The Baptist Mill Company* (*ante*, 242), and I think, therefore, that we ought to decide conformably to those authorities. Notwithstanding all that has been urged upon this subject, I cannot distinguish between the cases where a party takes an interest under a specific contract, as in this case, and where the adventurers work under a custom previously existing throughout a district. The case is distinguishable from *Rex* v. *The Earl of Pomfret* (*ante*, 235), in two respects; first, because there was an actual demise in that case of all the mines, under which the possession, both of that part which was worked and that which was not worked, passed to the lessees; but here there is an express reservation of part. In the second place, the share reserved to the lord in *Rex* v. *Earl of Pomfret* was of smelted lead; but here the reservation is of part of the native mineral. On these grounds, it seems to me that we ought to decide in favour of the rate; and I do that with the less reluctance, because it is still open to the party to institute an action against the person who may levy for the rate, and so to bring the question before a higher tribunal." *Bayley*, J. "We ought to lay out of the question the circumstance of this being a failing mine. For it is a beneficial and useful property to the person on whom this rate has been made; and it was held in *Rex* v. *Parrott*, that a coal mine, whether profitable or not, is still rateable. In *Rowls* v. *Gell* it was first decided that a party was rateable for lot and cope. It is said, indeed, that the party rated there was a lessee. That distinction makes no difference, for if the lot and cope had not been rateable in the hands of the original proprietor, it would not have been so in the hands of his lessee. The true ground of that decision was, that the party was there considered as an occupier of the land. *Rex* v. *St. Agnes* (*ante*, 241), proceeded on the same ground; and in *Rex* v. *The Baptist Mill Company*, (at the time of which decision this court were peculiarly familiar with the words of the act of parliament,) it was determined that the lessees under the lord of the manor of his lot and free share of calamine were liable to be rated as occupiers of land; and the decision went on the ground that the lord of the manor would, but for the lease, have been rateable for it also, for the court considered him as occupying the land by the hands of the adventurers. The latter were to work the mine, and he was to receive part of the ore gotten, and the court considered him as joint occupier with them. In *Rex* v. *The Bishop of Rochester* (*ante*, 234), the mine was let; and whether it was worked or not, still the bishop was completely out of possession of it, and the adventurers worked for their own exclusive profit. There the rent reserved was a money-rent, and the relation between the parties to the contract was that of landlord and tenant, and all that the bishop of Rochester had was the reversion of the land. But in this case the adventurers have not the sole and exclusive occupation of the mine; they have only the sole and exclusive privilege of working it. This is not the conveyance of any interest in the mine till it is actually worked. It is a privilege only to dig for ore, and then on the terms of leaving a certain portion of that ore in a fit state for the landlord. It seems to me, therefore, that, according to the authorities to which I have referred, Mr. Carlyon must, in this case, be considered as the occupier of land, and therefore, that he is liable to the present rate." *Holroyd*, J. "In the view I have taken of this case, I entirely agree with the rest of the court. The case of *Rowls* v. *Gell*, although it was doubted by Lord *Kenyon* in *Rex* v. *Parrott*, seems to me to have been well decided. It was confirmed by *Rex* v. *The Baptist Mill Company*, from which I cannot distinguish this case." *Best*, J. "If it were true that we must either overrule *Rex* v. *The Baptist Mill Company*, and the cases confirming the decision,

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or the case of *Rex* v. *The Earl of Pomfret*, I should be inclined to support the former. But it is not necessary, inasmuch as there is a material distinction between them. Here it seems to me to be clear that Mr. Carlyon is an occupier of land. All that the adventurers take under the indenture, is a licence to enter and dig and take away the minerals. But when they have so done, and the minerals are brought to grass, a division of the ore between them and the landlord takes place. This, then, is the same as if, instead of working for wages, they worked on condition of being paid by a certain share of the produce." Order of sessions quashed.

Quarries.

Quarries.

Limestone mines are not rateable.

Rex v. *Sedgeley*, 2 *B. & Ad.* 65. The Earl of Dudley was rated as the owner and occupier of lands in Sedgeley, containing *strata of limestone*, and also of the works by and out of which the limestone is raised. The strata of limestone under these lands lie in a sloping position, and one stratum distinct and a considerable distance from the other, in the same manner as coal, ironstone, &c. The strata frequently crop out or terminate at the surface, and deepen in the opposite direction. Those parts of the strata which cropped out or terminated at the surface were worked by the appellant and his predecessors, in quarries, by day-light or open work, following the course of the strata as far as was practicable. The continuation of these strata, which were being worked at the time the rate was made, lie forty or fifty yards below the surface of the ground, and are worked in large excavations by means of pit shafts, steam engines, &c., in the same way as coal, ironstone, and other minerals, and no part of the limestone is now gotten in quarries or by open work. The produce is in part drawn up the pit shafts and in part sent off by an underground level or tunnel. The only difference between these lime-works, and coal and ironstone mines, is the position of the strata, the material gotten out, and the greater excavations in the former than in the latter. The only way into these mines or works is down the shafts or through the tunnel, which is wholly underground, a great part of it being upwards of fifty yards below the surface of the ground, the deepest part being at its junction with that part where the limestone is gotten. The limestone is gotten in large excavations made in the direction in which the strata run, which excavations communicate by headways or gate roads with the bottom of the shafts, and the works are lighted by candles or lamps, no part being open to daylight. The working requires experience, and is carried on by persons who are brought up to the occupation, and are called limestone miners or limestone getters, as often one as the other. The limestone is conveyed along railroads from the part of the works where it is gotten, through the gate roads, one part to the bottom of the pit shafts, and the other part to the level or tunnel. That which is taken to the bottom of the pit shafts is drawn up by the steam engines, and the other part is sent off in boats along the tunnel. By far the greater portion of the limestone gotten by the appellant, is sold in its raw state to the iron-founder for smelting iron, but a small portion (which by agreement is taken at a hundredth part of the whole) is burnt into lime by the appellant on his own land. There is no difficulty in finding the limestone, the pits being sunk, engines erected, and levels and tunnels made, and the mines or works opened and in operation. The profits of the appellant are certain, though subject to variations in consequence of frequent breakings off of the strata, and their being thrown into different directions: these increase the difficulty and expense of working, and render a fresh opening necessary. Limestone strata were lately found and worked in an adjoining parish to Sedgeley, at a depth of more than a hundred yards below the mines of coal and ironstone. The coal and ironstone in that case were first gotten, and afterwards the limestone was worked by means of the same pit shafts which were sunk down to it. "Mines of limestone" are expressly mentioned in local acts of parliament in the neighbourhood. Lord *Tenterden*, C. J. "We are of opinion that this property is rateable. I take it to be now established

A mine is distinguished from a quarry by the mode of working.

Quarries.

as law, that the expression of 'coal mines' in the 43 Eliz. has the effect of excluding all other mines, according to the maxim '*expressio unius.*'" And then, after adverting to the dicta by which this rule was established, and the inconvenience of departing from it, unless positively wrong, his lordship added, "The only remaining question will be whether the property in limestone, which has been rated, is properly a limestone mine; and this perhaps is rather a question of fact than of law. The description of the manner in which this stone is obtained and raised, namely, by sinking shafts perpendicularly down to the stratum, which lies considerably below the surface of the ground, and then working the stratum by roads and gate-heads, with the necessary provision for air, and raising the stone to the surface by machinery, or carrying it underground to a tunnel, is the exact description of the present usual mode of mining, of the mode used in obtaining coal, and of the mode used in obtaining ironstone. Ironstone obtained in this manner has been held not to be rateable: why then should limestone be? What difference is there between the two? The only difference that has been suggested is, that ironstone contains a quantity of metal and is procured for the sake of the metal it contains. But, if the existence of metal be necessary to constitute a mine, salt-works, from which salt is obtained in the way that this stone was obtained, will not be mines; nor indeed will coal-works be mines, though in the statute itself they are so called. And to deny the character of a mine to the works in question, would, as it appears to us, be to depart from the ordinary and proper meaning of that word in the English language." Order of sessions confirmed.

Salt works.

Whether a mine or quarry is a question of fact for the sessions only.

Rex v. *Dunsford*, 4 *N. & M.* 349; 2 *A. & E.* 568. The appellant was rated for a stone quarry; it was freestone, and brought out through a level; the stone was raised by cranes and rollers; no steam engine was used, nor are there any air-tunnels. Lord *Denman* said, "The case of *Rex* v. *Sedgeley* is quite binding; but the question here is whether the sessions have taken it as a guide. It is a question of fact. The principle of law is that the mode of getting, and not the nature of the article, constitutes mine or no mine. But it seems to follow that the application of the principle to the facts must be made by the sessions. If they had said this was a mine, I should have considered myself bound by the finding. They have confirmed the rate and called the property a quarry, but have also stated the facts, and put the question whether this excavation is exempt. They have studiously avoided any finding. The answer of the court is—we will not decide the question of fact. The sessions must decide whether, applying the rule of *Rex* v. *Sedgeley*, this excavation is a mine or not." *Littledale*, J., concurred that this was a question for the sessions. "I do not see how a court, as a matter of law, can say whether the mode of operation is such as to constitute the excavation a mine; that depends on a variety of circumstances. I see no difference between this quarry (for it seems to me to be clearly a quarry, though doubtful whether it is a mine) and a common open quarry, except that it is underground and approached by a level; and I do not know how we, as a *matter of law*, can say this is a mine." *Williams*, J., concurred. Case sent back to the sessions.

Lime-works, slate, potter's-clay, held to be rateable.

Lime-works, in *Rex* v. *Alderbury*, 1 *East*, 534, slate-works, in *Rex* v. *Woodland*, 2 *East*, 16, potters' clay-pits, in *Rex* v. *Brown*, 8 *East*, 528, were held rateable, but no question was made whether these excavations were mines or not. In *Rex* v. *Brown*, there were strata of potter's clay, in the parish of Church Knabe, in Dorsetshire. They had been opened for more than a century, and potters' clay dug and exported from them for the supply of different potteries. The clay is found at a considerable depth under the surface of the ground. The clay-pits are in some instances worked by the owner of the land, and sometimes they are deemed distinct from the lands, at a rent.

Clay-pits worked as Mines not rateable.

Clay-pits *worked* as mines are not rateable.

Rex v. *Brettell*, 3 *Bar. & Adol.* 424. Appellants were rated to the poor for clay pits, which were excavations underground, from whence glass-

Clay-pits, &c.

house, pot clay, and fire-brick clay were extracted. A perpendicular shaft was sunk from the surface of the land, for the purpose of raising the clay out of the strata, which was done by a steam engine and other mining apparatus. The excavations were like those which are made for working coal and metallic mines, and the mode of raising the clay was the same as that used in a coal mine. Held, that the pits so assessed were clay mines, and therefore not rateable. Lord *Tenterden*. "I see no reason for departing from the opinion which I delivered in *Rex* v. *Sedgeley* (*ante*, 245). The only difference between that and the present case consists in the character of the commodity obtained; the mode of obtaining it is the same. Now that case establishes, that in order to determine whether an excavation in the earth constitutes a mine or not, we are to look to the mode in which the article is obtained, and not into its chemical or geological character. Here, as in *Rex* v. *Sedgeley*, the substance is obtained by what in the ordinary, and indeed in every sense of the word, is mining. That being so, these clay pits are mines, and consequently are not rateable to the relief of the poor." *Littledale*, J. "I think we are bound by *Rex* v. *Sedgeley*, and that the mode in which the substance is obtained decides the question." *Parke* and *Patteson*, Js., concurred.

Underwoods, saleable.

UNDERWOODS, SALEABLE.

The occupier of "saleable underwoods" is rateable. 43 Eliz. c 2, s. 1.

Saleable Underwoods are rateable at all times, and not only when they are cut.

Rex v. *Mirfield*, 10 *East*, 219. The woods which were the subject of the rate were underwoods, which were usually sold and cut down once in twenty-one years, and then, and not before, were profitable to the appellant. These underwoods had not been cut for ten years, and were then standing to complete the twenty-one years' growth; and the question was, whether these woods were *saleable underwoods*, and liable to be rated every year according to the annual average, or only *when cut down and sold?* Lord *Ellenborough*, C. J. "The question is, whether these are saleable underwoods, except in the year in which they are cut down? The word *saleable* has not a very definite meaning. It may mean when they are in a fit state for sale, referring to the time when they are cut, or it may mean such as are intended or destined for sale, in contradistinction to such as are to supply the land with estovers for fuel, and other purposes of the estate. In the former of these cases they would be rateable only in the year in which they were cut; in the latter, they would be rateable at all times; and, we think, after a full consideration of the subject, that the latter is the true meaning. If they are rateable at all times, they will contribute according to their value, in exact proportion with the rest of the property in the parish. But if they were rateable only in the year in which they are cut, they will contribute a very different sum from what they would do by contributing annually." His lordship here illustrated it by figures, and added, "As to the rating it annually, the objection to this is, that the property ought not to be rated until the produce of it has been severed from the land, and until it has supplied the occupier with the means of paying. But it is not necessary that any of the profits should have been actually reaped or taken from the property during the period for which the rate is made; but the property is at all times rateable according to the improvement in its value, or in the rent which might fairly be expected from it. Instances continually occur in which the occupier is rated, though he has derived no profit during the period for which the rate is made. A new tenant upon an arable farm reaps none of the produce till the autumn, and yet he must pay up to that autumn, according to the value of his estate. He must pay beforehand for the future probable produce. His farm is constantly in a progressive state towards producing profit, and he pays for that progress. So underwoods are annually improving in value, and the rates the occupier pays is for that profit. This may, probably, be hard upon tenants for life; but if the law has thrown this burthen on the property, they must take it with that burthen. We think the law has so thrown it, and the property is liable to be rated at all times when rates are made."

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Firs and larch planted with oaks for the purpose of sheltering the latter, and cut from time to time, as the oaks grow larger and require more space, but when once cut not growing again, and some of them yielding a profit by sale, are not *saleable underwoods*, the primary object of planting them being to protect the oaks, and not derive a profit from them *per se* by sale. *Semble.* That they are not underwood at all.

Rex v. *Ferrybridge*, 2 *D. & Ryl.* 634; 1 *B. & C.* 375. Appeal against a rate in respect of woods and plantations. The appellant is the occupier of 650 acres of land. In 1785 and 1786, 340 acres of it were planted with oak and ash closely intermixed with Scotch firs and larches. At different periods portions of the firs and larches were cut down for the purpose of thinning the plantations, and some of these thinnings were sold under the name of fir and larch poles, but the greater part were used in the erection of buildings. Considerable thinnings of the firs and larches have been made within the last four years, and produced a profit; many of them were of the height of from thirty to forty feet, and contain from ten to twelve cubic feet of wood, and were thirty years old. This wood is cut without reference to size, in order to allow room for the ash and oak to spread: the purpose of introducing firs and larches into those plantations being to keep the same thick and sheltered, and to make a profit by cutting the firs and larches from time to time, when the oak and ash, by reason of their growth, require more space. Fifteen years ago, eighteen other acres, and five years ago, seventeen other acres of the said land were planted in a like manner. The eighteen acres have been thinned by cutting out a portion of the firs and larches, but no profit was derived by such thinning. The seventeen acres have not yet been thinned. The roots of the firs and larches which are cut die in the ground and produce no shoots. The whole of the land so planted hath been always rated to the relief of the poor. *Bayley*, J. "The st. 43 Eliz. does not throw the charge of maintaining the poor on the occupiers of every species of property, but only on the occupiers of property of certain particular descriptions there specified, and amongst others it speaks of the occupiers of saleable underwoods. The legislature does not use the word 'underwoods' (*a*) *per se*, but 'saleable underwoods:' and they have not in this or any former statute affixed any definite meaning to the term 'underwood.' If they had done so, we should feel ourselves bound to adopt that as the meaning of the word in construing the present act. It has been said that all wood comes within the description either of timber or underwood, and therefore, that as firs and larches are not timber, they must be considered as underwood. It is not necessary to decide whether this be correct, because by the statute of Eliz. saleable underwoods only are subject to be rated to the relief of the poor. It may, however, be observed, that if all wood which is not timber be underwood, it would follow that horse-chesnuts, limes, plane-trees, and aspens would come within that description. Yet surely it would be a perversion of language to call such trees underwood. Generally speaking, that term is applied to a species of wood which grows expeditiously and sends up many shoots from one stool, the root remaining perfect from which the shoots are cut, and producing new shoots, and so yielding a succession of profits. It is probable that this is the description of coppice and underwood to which the statute of Eliz. applies. But it is not necessary to decide that, inasmuch as that statute also requires that it should be saleable underwood, and the word *saleable* in *Rex* v. *Mirfield* (*a*) has been held to denote such as is intended or destined for sale, in contradistinction to such as is to supply the land with estovers for fuel and other purposes of the estate. It does not therefore come within the description of saleable underwood, unless the prospect of deriving a profit by sale was the main object of the proprietor when the plantation was made. There are some species of wood, such as hazel, which are valuable only as underwood, and which must have been planted originally for the purpose of acquiring profit by sale. But of all plantations, fir is perhaps the least valuable, being chiefly, I believe, intended for protection rather than profit. It is found as a fact in this case, that these firs and larches were planted principally for the purpose of affording protection to the oak and ash. The latter were the most valuable. The first two were cut only

(*a*) P. 247.

(*a*) See a learned argument on the legal acceptation of underwood, in a note to this case, 1 *B. & C.* 379; and of the meaning of Gros Bois, *Loxon* v. *Pryse*, 5 *Jurist*, 310.

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for the purpose of thinning the plantation. Some indeed were sold, but the greater part were used in the erection of buildings on the estate. Here the trees when cut were thirty feet high, which to be sure does not accord with one's notions of underwood. Nor could they have been planted with a view to a profit by sale, for if so the cuttings would have taken place with reference to their size; but here, the cuttings were made in fact merely for the purpose of thinning the plantations, and with reference to the main object, the encouragement of the growth of the more valuable trees. It is quite clear, therefore, that profit was not the sole or even principal object for which the firs and larches were originally planted; and if so, they are not saleable underwoods within the meaning of the 43 Eliz. It seems to me, that it would be most mischievous if property of this description was liable to be rated. It is an object of national policy to encourage the growth of timber. The grower of timber gives up a present profit with a view to future advantage, and it is fit that he should be encouraged to do so. If this be rateable property, then, according to *Rex* v. *Mirfield*, it must be rateable annually to the relief of the poor, though it should not happen to be cut more than once in twenty years. The grower, therefore, will be subject to an annual charge long before he can derive any profit. That would operate as a great discouragement to the growth of timber: and I cannot therefore think that the legislature meant to subject property of this description to such an annual charge. *The object of the statute was to subject to the rate all such property only as yielded a succession of profits.* I am therefore of opinion that whether this be underwood or not, at all events it is not saleable underwood, and therefore not rateable to the relief of the poor." *Holroyd*, J. "I am also of opinion that the firs and larches mentioned in this case are not saleable underwoods within the meaning of those words, as used in the 43 Eliz. The word 'underwood' must be there taken to be used in its popular sense, unless it be shown to have been used differently by the legislature in that or other statutes. According to its popular meaning it signifies coppice, as distinguished from *haut bois*. Admitting, however, that these firs and larches were underwood, I am clearly of opinion that they are not *saleable* underwoods within the meaning of the statute of Eliz. The general subject of rate in that statute is property yielding renewable profits; for even coal-mines when worked may be said in some sense to yield a succession of profits. Underwoods cut at stated periods do yield a succession of profits from time to time, though not annually. This is clearly not wood of that description, for when it is once cut, the root is destroyed, and there is no succession of profit. In order to ascertain whether these be saleable underwoods, the object for which they were planted, and the mode of management, ought to be taken into consideration. It appears that, upon one occasion, even though eighteen acres were cut, no profit whatever was thereby produced; and that is a strong circumstance to show that the cuttings were not made with a view to sale, but to encourage and preserve the oaks and ashes. I am therefore clearly of opinion that these firs and larches are not saleable underwoods within the meaning of the statute of Eliz." *Best*, J. "In the reign of Eliz., underwood was probably more generally used for fuel than at present; it yielded also a profit at certain intervals, though not annually. The legislature, too, have not merely used the term underwood, but have qualified it by the term *saleable*, thereby meaning that species of underwood which is generally produced for the purposes of sale, which is cut down at stated periods, produces new shoots, and thereby yields, at certain intervals, profits coming as nearly as possible to annual profits. It appears that the cuttings did actually yield some profit, but they are not necessarily rateable on that account. The property ought to be of that description for which the owner is likely to derive a profit. It has been argued, that as these firs would be titheable, they are therefore subject to be rated to the poor; but that by no means follows; for by the 45 Edw. III. c. 3, *gros bois* of the age of twenty years, in respect of which the clergy had claimed tithe under the name of *sylva cædua*, is

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expressly exempted from tithe. Now, *gros bois* means timber; and by the common law includes oak, ash, and elm; and by the custom of the country, in particular places, many other species of trees. Every species of wood which is not timber by the common law or by custom, is titheable. By the statute of Eliz., no species of wood but saleable underwood is liable to be rated to the relief of the poor. It has been said that *sylva cædua* and underwood are synonymous. In *Ford* v. *Rackster* (4 *M. & S.* 137), however, Lord *Ellenborough*, delivering the judgment of the court, says '*Sylva cædua* and *subbois*, or underwood, are not, it should seem from 45 Edw. III. synonymous; for *subbois* is stated to be comprehended in it, not to be it itself, or to be the same thing with it. *Sylva cædua* seems to comprehend, *vi termini*, besides underwood, all such wood as is occasionally cut, either in body, branch or root, with the statutable exception only of *gros bois*, properly so called, when it is of that age at which it is by the 45 Edw. III. exempt from being tithed, *i. e.* of twenty years or upwards.' Underwood, therefore, is one species of *sylva cædua*, and possibly the firs and larches may be *sylva cædua*, though not underwood. It is, however, unnecessary to decide in this case whether these firs be underwood or not. It is sufficient to say that they are not saleable underwoods, and therefore that they are not rateable to the relief of the poor." Order of sessions confirmed.

Whether the woods are saleable underwoods or not is a question of fact for the sessions.

Reg. v. *Narberth North*, 1 *P. & D.* 590; 9 *A. & E.* 815. This was an appeal against a poor-rate, whereby the appellant was rated for "Cannaster Wood." Rate quashed. Case:—The appellant is the owner and occupier of Cannaster Wood, in the parish of Narberth North, of the extent of 350 acres, or thereabouts. The wood consists chiefly of oak, but a few ash, alder, and beech trees, grow therein. The oaks do not grow from acorns, or original or maiden trees, but from old oak stools belonging to trees that were last felled about 1786. About that year the wood was cut down by the then proprietor, and at that time they were cut from old stools. Since that period they have again sprung up from the old stools, but no regular cutting has taken place until within the last four years. Several of the trees grow from the same stool. They are called poles, and are used for colliery purposes, and for fire-wood. The appellant, during each of the last three years, has cut down portions of these poles and sold them. The mode of treating them while felling, is to cut off at the stump the worse shoots, and leave the best and most promising shoot to stand for further growth. These poles are sold by the dozen, and not by admeasurement, as large timber is sold. They have been occasionally waste-weeded by cutting down the crooked shoots to improve the trees that remained; waste-weedings are permitted to lie on the ground to rot. The trees or poles cut down by the appellant had been growing for fifty years. The bark is stripped from the poles and sold by the ton, and the poles thus stripped are sold for the use of collieries by the dozen. The sessions considered that these trees were not "saleable underwood." *Littledale*, J. "No case has been decided exactly like the present. The first question is, whether this is underwood at all; and I should consider all such small growths as were never likely to grow into timber to be underwood. If, for instance, ash or oak are treated in such a manner as shows that they were not planted with a view to become timber, but were cut down at stated periods for hop-poles and other purposes, I should consider them to be underwood. The trees in the present instance, I should suppose, were never intended to grow up to timber; and, from the facts stated in the case, I should say they were underwood. The next question is, are they saleable underwood? All wood that is or may be sold, is in one sense saleable; but I apprehend the meaning of the expression in the statute applies to that description of underwood only which yields a succession of profits; and that must depend on the mode in which a plantation is managed. All the particulars which determine whether the underwood is saleable or not, ought in fact to be determined by the sessions. In *Aubrey* v. *Fisher*, 10 *East*, 446, the question was left to the jury. So in this case, the question turned on peculiar cir-

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cumstances, and was left to the decision of the sessions, and I cannot say they have decided wrong." *Williams*, J. "The sessions intended, no doubt, to leave a question for our decision; and if they came to a wrong conclusion, we are at liberty to reverse it. It has been contended that these plantations yield a profit, and are therefore rateable; but that is not sufficient, for timber does so likewise, which is confessedly excluded. I agree, however, that the nature of the tree does not determine the question; for if oaks were cut down every twenty-five years, they would no doubt be rateable. The treatment of the plantation, therefore, by the owner, must be the point looked at. If so, the question may be asked, where the limits are to be placed as to the periodical cuttings, which distinguish underwood from timber? If ash may be cut down every fifteen years, and the slower-growing oak every thirty or forty, and both be applied to the same purposes, can one be said to be underwood and not the other? No case draws any such distinction. If, then, there is no rule of law to determine what shall be underwood or what not, there is nothing to prevent the sessions from determining the question of fact according to the treatment of the wood by the owner. They have done so in this case, as the jury did in *Aubrey* v *Fisher*, and I concur in thinking their decision ought not to be disturbed." *Coleridge*, J. "I am of the same opinion, although I have come to it with some difficulty, owing to the previous decisions. On inquiring into what is saleable underwood, we have to determine whether it is underwood, and whether it is saleable. Without pretending to be a naturalist, I should say that any shoots growing from old stools, in plantations, among other trees, constitute underwood, and therefore I do not quarrel with the decision in *Rex* v. *Ferrybridge*, (*a*) which determined that firs and larches are not underwood, because they do not grow from stools, but when cut down their boles rot in the ground. The court, however, went out of their way in that case, to lay down definitions of underwood, which I think are not applicable. I think that these poles were underwood. Then are they saleable underwood? No doubt they are, for they are actually sold; but, according to *Rex* v. *Ferrybridge*, we are told to look at the purpose for which they are planted and cut down, and that, if profit is not the principal object of the cutting, they are not rateable. But look at the different copses throughout the country, which are growing from old stools, or as firs and larches in plantations, which every one knows are ordinarily planted as nurses for other trees. In the lapse of a few years they are capable of yielding great profit; on principle, therefore, one would conceive that such growths should be rateable. But the original purpose of planting in either of these cases does not include the profits actually received. Mr. Williams (in support of the rate) went near to give the proper definition of saleable underwood, in stating it to include all such growths as are capable of reproduction, and of being treated by their owner so as to yield a succession of profits. And I agree that with such plantations the owner shall not be allowed to avoid the rate, by any irregular mode of directing the cuttings. But let us look at the facts of the case. The wood, it appears, was cut down fifty years ago, and lately there have been regular cuttings for the last three or four years; but these cuttings do not appear to have been for the mere purpose of getting a profit, but from the additional motive of improving the plantation. These are the facts, and upon these the sessions do not find that anything has been done out of the ordinary course adopted in that county by woodcutters, to avoid the poor's-rate, which they ought to have done in order to bring the case within the argument of Mr. Williams. They have therefore concluded that this is not a case in which there is such a calculable succession of profits as to justify a rate. Now I do not say the sessions have come to a right conclusion, and if I had had to decide, I might probably have adopted a different view; but as it is a pure question of fact, unless we can see that the sessions were wrong in point of law, we ought not to disturb their decision. To that extent only my judgment goes." Order of sessions confirmed.

(a) P. 248.

7. *Exemption from Rates.*

7. Exemption from Rates.

Property, which may be the usual subject-matter of a rate, is often exempted by express provision; and when tolls are so exempted, the land is so also; and when the value of land, &c. which had previously been rated, is enhanced in value by improvements carried on under acts of parliament, it is frequently provided that the rates shall be imposed according to its former and not according to its improved value. The following cases are examples of each of these classes.

Churches and chapels are exempted from poor-rates.

By 3 & 4 Will. 4, c. 30, it is enacted, that from and after the first day of October, 1833, no person or persons shall be rated or liable to be rated, or to pay to any church, or *poor-rates*, or cesses, for or in respect of any churches, district churches, chapels, meeting-houses, or premises, or such part thereof as shall be exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship, according to the provisions of any act now in force: Provided always, that no person or persons shall be hereby exempted from any such rates or cesses for or in respect of any parts of such churches, district churches, chapels, meeting-houses, or other premises which are not so exclusively appropriated, and from which parts not so exclusively appropriated, such person or persons shall receive any rent or rents, or shall derive profit or advantage. Sect. 2 further provides, that no person shall be liable to any such rates or cesses, because the said churches, district churches, chapels, meeting-houses or other premises, or any vestry-room belonging thereto, or any part thereof, may be used for Sunday or Infant Schools, or for the charitable education of the poor.

If exclusively appropriated.

May be used for Sunday schools

Land and buildings occupied by scientific and literary societies are also exempt.

By 6 & 7 Vic. c. 36, it is enacted, that after the 1st Oct. 1843, no person shall be assessed or rated, or liable to be assessed or rated, or liable to pay to any county, borough, parochial or other local rates or cesses, in respect of any land, houses or buildings, or parts of houses or buildings belonging to any society instituted for purposes of science, literature, or the fine arts exclusively, either as tenant or as owner, and occupied by it for the transaction of its business, and for carrying into effect its purposes; provided that such society shall be supported wholly or in part by voluntary contributions, and shall not, and by its laws may not make any dividend, gift, division or *bonus* in money unto or between any of its members; and provided also that such society shall obtain the certificate of the barrister or lord advocate, as therein mentioned.

If supported by voluntary contributions.

And duly certified.

Mode of obtaining the certificate.

Sect. 2 enacts, that before any society shall have the benefit of this act, such society shall cause three copies of their rules, signed by the chief officer, and three members of the committee, and the clerk, to be submitted, in England and Ireland, to the barrister appointed to certify the rules of the friendly societies, and in Scotland to the lord advocate, to ascertain if the society is entitled to the benefit of the act; and the barrister shall give a certificate on each of the copies that the society is entitled to the benefit of the act, or shall state in writing the grounds on which the certificate is withheld, one copy to be returned to the society, one to be retained by the barrister, and one to be transmitted by the barrister to the clerk of the peace for the borough or county where the land, &c. is situated, and shall be by him laid before the recorder or justices at the quarter sessions, or adjourned, next after fresh copy shall have been so certified and transmitted; and the recorder and justices shall confirm the same without motion, and it shall be filed without fee.

Alterations of rules to be certified.

Sect. 3. If the rules shall be altered, as to the property or constitution of the society, the alterations, within a month, must be submitted to the barrister and filed as before; in the mean time, the society to have the benefit of the act as if no alterations had been made. If the barrister refuses to

certify, then, subject to the appeal, the society shall not have the benefit of the act from the time of alteration.

Sect. 4. Fee to barrister not to exceed one guinea.

Fee.

Sect. 5. If the barrister shall refuse to certify, the society may submit the rules to the quarter sessions, together with the reasons assigned, and the justices or recorder may order the same to be filed; and such filing shall have the same effect as if the barrister had certified.

Appeal against refusal.

Sect. 6. Any person assessed to the rate from which the society shall be exempted, may appeal against the certificate of the barrister to the quarter sessions, within four months after the first rate made after the filing of the certificate, or within four months after the first rate made, or after the exemption has been claimed; the appellant to give to the clerk of the society, twenty-one days previously to the sitting of the court, notice in writing of the intention to, and the grounds of appeal, and within four days after, notice to enter into a recognizance before one justice, with two sureties, to try the appeal and abide the order of the court, and pay such costs as may be awarded; and at such sessions, after proof that the notice and statement have been given, the appeal shall be heard, according to the grounds of appeal, and not otherwise; and if the certificate shall appear to be granted contrary to the act, the sessions may annul it and award costs to the party appealing or appealed against, and the determination of the sessions shall be conclusive.

Appeal against certificate.

By 3 Geo. IV. c. 126, s. 57, it is enacted, that "No tolls to be taken at any gate erected or to be erected by the trustees or commissioners of any turnpike road, nor toll-house erected or to be erected for the purpose of collecting the same, nor any person in respect of such tolls or toll-house, shall be rated or assessed towards the payment of any poor's-rate, or any other public or parochial levy whatsoever."

Tolls and toll-houses of turnpikes are exempted from poor-rate.

Rex v. *The Trustees of the Dover Road*, 1 *N. & P.* 157; 5 *A. & E.* 693. Trustees were appointed under a local act for making a road, and they were empowered to purchase lands, which should vest in them, and to take tolls thereon, and apply the receipts to the payment of the interest of the shareholders, &c. Lord *Denman*, C. J. "I do not apprehend there can be a turnpike-road in the kingdom, if this is not one, both in the popular and legal sense of the term. If that be so, the tolls taken on this road fall expressly within that clause of the General Turnpike Act, which exempts such tolls from poor's-rate. If any difficulty had been pointed out in carrying that clause into effect, by showing that its provisions are inconsistent with the provisions of the local act, we might have been compelled to look more closely into the two statutes; but to speculate now on supposed inconsistencies which may exist between other provisions of the two acts, would be to enter upon the province of legislation, with which we have nothing to do." *Patteson*, J. "It seems to me the only question is, whether Dover Street is a turnpike-road or not; if it be a turnpike-road (of which there can be no doubt), then the provisions of the General Turnpike Act are applicable to it as far as they can be applied. Whether all the provisions are applicable or not is immaterial to the present question." *Williams*, J. concurred. *Coleridge*, J. "I am quite of the same opinion. The basis of the argument to-day has been founded on a supposed difference between the situation of these trustees and the ordinary trustees of turnpike-roads, in order to show that the latter are not rateable, because they are mere trustees for the public. But how would that argument apply to a case which must constantly arise, when a mortgagee of tolls brings ejectment, and obtains possession of the toll-houses and tolls. It cannot be said that he is not a beneficial occupier; but could it be contended that he is not expressly within both the words and the provisions of the 51st section of the General Act?" Order of sessions quashed.

Trustees of a local act for making a road, who are also enabled to take tolls, are not rateable.

Nor a mortgagee of tolls, &c., in possession.

Rex v. *Calder and Hebble Navigation*, 1 *B. & Ald.* 263. By 9 Geo. III. the proprietors were empowered to take certain duties "which should at

Where the tolls of a canal are ex-

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all times thereafter be exempted from the payment of any *taxes, rates,* assessments, or impositions whatsoever." There was no express exemption of the land taken for the navigation, as *land.* The proprietors had built a house, which was occupied by their servant, and for which they agreed to pay a proportion of the rate, resisting only the rate upon the land covered with water and the towing-path, from which the proprietors derived no emolument, but the rates, &c. It was held that the company were not rateable for the land; some doubt was entertained whether as tolls were at that time held to be rateable *eo nomine,* it was not the intention to exempt them only; but, as *Abbott,* J., observed, "It appears that the rates and duties form the only profit arising out of the land. These the legislature has expressly exempted from the payment of the poor-rate, and the only profit of the land being exempted, it would be a strong thing to say that the land itself should still continue subject to the rate. At the time of passing this act, tolls *eo nomine* were considered rateable, but I can find no instance in which the tolls having been rated, the land has also been rated in respect of any other profit;" and after alluding to the oldest case on tolls, *Rex* v. *Wickham Market,* 3 *Keble,* 540, and *Rex* v. *Cardington, Cowp.* 581, he added, "if, as it appears from these cases, by the word 'tolls' may be meant the thing in respect of which the tolls are received, the exemption of tolls by the legislature is an exemption of that in respect of which they are receivable."

empted, the canal itself is exempted.

Lands embanked from the river Thames are exempt from poor-rates by the 7 Geo. III. c. 37.

Rex v. *London Gas Company,* 8 *B. & C.* 54. In a rate made within the parish of St. Bride, the London Gas Light Company was rated by the 7 Geo. III. c. 37, for houses, sheds, and premises. The premises consist of a wharf, buildings and premises abutting on the river Thames, near Blackfriars Bridge, held by the company under a lease granted by the New River company, a part of which premises is in St. Bride, and liable to be rated thereto, and the remaining parts of such buildings, with the wharf and premises, covering and comprising a space of 22,642 feet, superficial measure, and which the company claim to be exempted from the rate, are built upon ground and soil which were formerly part of the ground and soil of the river Thames, and were inclosed and embanked by the New River Company, and became vested in the Gas Company as lessees for a term yet unexpired, of the adjoining wharf and ground in front of which the said ground and soil of the said river were so inclosed and embanked. The inclosure and embankment were made by the New River Company under the act 7 Geo. III. c. 37, by which, (after reciting that it would tend to remove many inconveniences if the ground and soil of the river Thames between certain limits, including the land in question, was inclosed and embanked,) it was enacted that it should be lawful for the mayor and council to inclose and embank the said ground. The owners of wharfs abutting on this ground were authorised to inclose that part of it opposite their premises at their own expense, giving certain notices to the town-clerk; and by the 51st section it was enacted, that the ground and soil of the said river so to be inclosed and embanked in the front of every such wharf, should vest in the owner of such adjoining wharf, *free from all taxes and assessments whatsoever.* By the 52nd section certain quit-rents were imposed upon the land so to be inclosed; and a quit-rent, amounting to 23*l.* 11*s.* 8½*d.* per annum, payable by virtue of the act for the land in question, was redeemed by the New River Company, in 1769, for 471*l.* 14*s.* 2*d.* An act was passed in the 39 Geo. III. "for the better Relief and Employment of the Poor of the Parish of St. Bride," by which the overseers were required "to make one general equal pound-rate or assessment for and towards the relief of the poor, and other the ends and purposes of the act, upon all and every person and persons who did or should inhabit, hold, occupy, possess, or enjoy, any land, house, shop, warehouse, coach-house, stable, cellar, vault, or any other building, tenement, or hereditament within the said parish, and on every other person and persons who by law was, were, or should be chargeable or liable to be

assessed for or towards the relief of the poor." In the 7 Geo. IV. an act to amend this act was passed, but the 35th section, relating to the poor-rates, was the same as in the former statute. The New River Company, whilst in possession of the ground and soil for which the exemption is now claimed by the Gas Company, were several years regularly rated in respect of the same, and of the buildings erected thereon, and paid their rates until 1825, when a new and higher assessment having been made, they objected to the rate, and claimed a total exemption. The question was, whether the land, comprising the space of 22,642 superficial feet, the wharf and premises, and the said buildings erected thereon, and which are assessed in the said rate upon the annual rental of 400*l.*, are liable to be rated? Lord *Tenterden*, C. J. "The question in this case is, whether certain property built on land embanked in pursuance of the 7 Geo. III. c. 37, is to be exempt from poor-rates? That act contemplated an undertaking likely to be productive of public benefit, and certain inducements were held forth to the city to carry it into execution; and it provided that the land so embanked should vest in certain persons, 'free from all taxes and assessments whatsoever; and the question is, whether by those words the land is exempt from poor-rates? It has already been decided (*a*) that it is exempt from the land-tax, and I know not upon what principle that decision could proceed, if it be not exempt from poor-rates also. It is said that an aggregate sum was imposed upon the district for land-tax, which was afterwards subdivided amongst the individuals having property there; and that it was immaterial to government how the division was made, provided the whole sum was raised. It was also said that the act of parliament, being in its nature private, must be considered as a bargain between those who were parties to it, and that the city at large might in expectation of benefit from the embankment have consented that the land should not bear any part of the land-tax. But that argument is equally applicable to the present case. The poor may be substituted for the government; the whole sum to be raised for them is first calculated; and the amount to be raised remains the same, whatever be the property in the district liable to contribute. Again, the embankment might be beneficial in a peculiar manner to the parish as well as to the city at large, and the inhabitants of the parish might, on that account, agree that it should be exempt from poor-rates. If the premises in question were exempt from this burden by the 7 Geo. III. c. 37, I think that no alteration has been made by the 39 Geo. III. and 7 Geo. IV.; for the object of those statutes was only to provide a new mode of making and raising assessments for the relief of the poor, and not to bring in any new matter as the subject of assessment which was not so before they passed. They merely enumerate more specially the same descriptions of property that were mentioned more generally in the stat. 43 Eliz. The recent acts were passed *alio intuitu*, and we ought not in justice, as we are not bound by any rule of law, to make them applicable to any new thing. We were then pressed with the case of *Perchard* v. *Heywood* (8 *T. R.* 486), where it was held that houses built on this land were liable to house and window-tax. But that was a very different case. The object of the tax was to raise as large a sum as possible for the use of the public, and the amount raised would have been lessened had any houses been exempted, whereas the amount raised for land-tax or poor-rate would not; and I think that the decision as to the land-tax ought to guide our judgment on this occasion. One or two very recent cases are analogous to this. In *Chatfield* v. *Ruston*, (3 *B. & C.* 863,) where a private inclosure act secured to the vicar of a parish a certain yearly sum of money, 'free and clear of all rates, taxes, and deductions whatsoever,' it was held that he was not rateable in respect of that sum to the relief of the poor; and in *Mitchell* v. *Fordham* (6 *B. & C.* 274), it was held that the words 'free from all taxes and deductions whatsoever except land-tax,' gave the like exemption from poor-rates. For these reasons I think that the premises in question are exempt from poor-rate,

(*a*) *Williams* v. *Pritchard*, 4 T. R. 2.

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and that the rate must be amended." *Bayley*, J. "I am of the same opinion. The cases cited by my Lord *Tenterden* are in point. Besides, the house and window-tax was a new one imposed after the exemption was given; and the exemption may be considered analogous to a covenant to pay taxes which applies to old taxes or others substituted for them, but not to taxes entirely new, unless there are express words to give it such extensive operation." *Holroyd*, J., concurred. Rate to be amended.

Where a statute directs that the canal shall be rated as the adjoining land, the value arising from tolls must be excluded.

Rex v. *St. Mary's, Leicester*, 6 *M. & S.* 400. The Leicestershire and Northamptonshire Union Canal Company were empowered by statute to make a canal, to purchase land, and erect buildings; and it was enacted, that such lands and buildings should be rated "in the same proportion as other lands and buildings adjoining to or lying near the same are or shall be rated." The company have a toll-house in St. Mary's, at which a considerable part of the tolls are collected, and they were rated for them, the same becoming due and payable in the parish. The court were of opinion that tolls, *per se*, were not rateable but only in connection with some local real property, and that there was no doubt upon the construction of the statute; that it had prescribed a special and definite mode of ascertaining the value of these lands, which excluded the consideration of the tolls. Order confirmed for reducing the rate to the value of adjoining lands, exclusive of tolls.

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In several local acts it is enacted that the land used for canals, &c. shall not be rated according to its improved value, but upon a rate fixed by the particular statute.

The Worcester and Birmingham Canal to be rated only as the adjoining land.

Rex v. *St. Peter, Worcester*, 5 *B. & C.* 473; 8 *D. & R.* 331. By 31 Geo. III. c. 31, s. 77, it was enacted, that the company should be rated to all parochial taxes in respect of their lands, &c., in the same proportion as other lands lying near the same should be rated, and as the same lands would be rateable in case the same were the property of individuals in their natural capacity. By 38 Geo. III. c. 31, s. 20, it was enacted, that the company should be rated to all parochial taxes in respect of the lands used by them for the purpose of the said navigation, in the same proportion as other lands and buildings adjoining or lying near the canal should be rated; but it was further enacted, that it should be lawful for the company to agree with any owner of lands adjoining their lands, taken for the purpose of the said navigation, for an exemption from all rates and taxes in respect of such lands, and for charging the same upon the adjoining lands of such persons; and in all such cases the parochial taxes, rates, &c. which might be thereafter charged upon or payable in respect of the lands so taken for the purposes of the said navigation, should be rated and charged upon such adjoining lands, and upon the owners and occupiers thereof, and the lands of the company should be exempted and discharged therefrom. *Bayley*, J. "This case is perfectly clear. It is in effect decided by the *Grand Junction Canal Company's case*, and *Rex* v. *St. Mary's, Leicester*. These cases establish this principle, that, unless there is some clause of exemption in the act of parliament, land taken for the purpose of a canal will be rateable, not according to the value of the land when it was taken for a canal, but according to the value which it has acquired from being used for a canal. But canals are supposed to be of public benefit, and therefore some canal acts have clauses of exemption, so as to leave land upon the same footing in this respect, as it was when taken for a canal. It has been argued, that the true construction of the clause of exemption is that the rates are to be equally laid upon all the property assessed, and that it is only confirmatory of the common law in that respect; but in construing statutes, we are bound to give statutable effect to the words used, and so construing them, I think that the effect of the clause is to exempt the company from being rated for the increased value of the land by the canal."

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So also the Grand Junction Canal Company.

Rex v. *Grand Junction Canal Company*, 1 *B. & A.* 289. A canal act directed that the company should be rated for all lands and buildings in the same proportion as other lands and buildings lying near the same, and as the same would be rateable if they were the property of individuals in their natural capacity; and a subsequent act directed that all rates and assessments upon the personal estate of the company should be assessed in every parish in proportion to the length of the canal in such parish. The Court of K. B. held that the company were liable to be rated for their lands, &c. only at the same value as other adjacent lands, and not according to the improved value derived from the land being used for the purposes of the canal. *Bayley*, J. "It has been urged, that the legislature only meant to regulate the proportion in which the canal was to be rated to the other lands adjacent, as, for instance, if those lands were charged with three-fourths of the rack-rent, then the canal also was to be three-fourths of the value, and so on in any other case. Now it would have been quite useless to introduce any provision to that effect, for in all cases that mode must be adopted." *Abbott*, J. observed, "that the rate was bad in point of form, as the statute directs it to be made on the rates and personal estate of the company, and the present rate was on the canal."

So also the Chelmer and Blackwater Navigation.

Rex v. *Chelmer and Blackwater Navigation*, 2 *B. & Ad.* 14. Case:— By the 33 Geo. III. c. 93, power was given to make and maintain a navigable communication between Chelmsford and Collier's Reach, in or near the river Blackwater, and the company were authorised to purchase lands for the purposes of the act; and the navigation and works were not to be subject to the control of any commissioners of sewers, or to any law relating to sewers. And it was enacted that the company "shall and may from time to time hereafter be rated and charged to all parliamentary and parochial taxes, rates, and assessments, for or on account of any lands or grounds to be purchased or taken, or of any warehouses or other buildings to be erected by them in pursuance of this act, *in the same proportions as other lands, grounds, and buildings adjoining to or lying near the same are or shall be rated and charged.*" In pursuance of this act, the company completed the navigation by deepening and cleansing, and in some places widening the channel of the river Blackwater, and by occasionally making cuts or deviations from the line of the river. These additional cuts, and the towing-paths along the whole line of navigation, were made upon lands purchased and held by the company under the act. It was admitted that for these new cuts and the towing-paths, or the profits arising from them exclusively, and not for any profits arising from the old bed of the river, the appellants were rateable. In the parish of Heybridge the new cut leading to what is termed the sea-basin is something more than a mile and a half in length. In the other parishes through which the navigation passes the new cuts are of much less magnitude than in Heybridge, having been taken for the purpose of making locks and wears, the expenses of keeping up which are much greater than the profits accruing to the company in those respective parishes, from the land so taken, exclusive of the old bed of the river. If the company were to be rated for the new cuts, and for the wharfs and buildings occupied by them in the parish of Heybridge, according to the profits arising to them therefrom within the parish, the court found the sum of 187*l.* 3*s.* ought to be the sum inserted in the rate instead of 800*l.* But if the company were to be rated for their new cuts, wharfs, and buildings in the parish, without reference to navigation profits, in the same proportions as other lands, grounds, and buildings adjoining thereto in the parish of Heybridge, then the court found that the sum of 35*l.* ought to be inserted in the rate instead of 800*l.* The question for the opinion of the court was, whether the appellants were exempt from any rateability in respect of the land taken and used by them for the purposes of the navigation as aforesaid, beyond the value of the adjoining land? If so, then the sum to be inserted in the rate was to be reduced to 35*l.*; otherwise to stand at 187*l.* 3*s.* Lord *Tenterden*, C. J., delivered the judgment. "The question in this case

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is upon the meaning of the words, 'in the same proportion as other lands, grounds, and buildings adjoining to, or being near the same, are or shall be rated or charged;' whether, in assessing the lands and buildings of the company, their value is to be estimated according to the value of other adjoining lands and buildings, or the assessment is to be made upon that proportion of the actual value (say three-fourths or four-fifths) upon which the other lands and buildings are assessed. I propose to consider the matter, first, without reference to any of the cases that bear upon the question; and secondly, with reference to those cases. The first thing that strikes the mind upon the latter construction of the act is, that it supposes the legislature to have contemplated, that property is not rated according to its actual value, but according to some part only of that value. In fact, this mode of rating is sometimes adopted; but I conceive the law generally assumes that all rateable property is to be rated according to its actual value. The statute of Elizabeth does not point to any other estimate. If all the property of the same kind in a parish is rated only upon some definite part of its actual value, the effect is the same as if the rate were upon the entire actual value, and no occupier of such property has any ground of complaint. If, in making the assessment, the rent is first considered, and then the rate upon land is made on a certain part of the rent, and the rate upon houses on some greater part of, or the whole rent, which is sometimes done, this is not properly a rating upon a part only of the value, but upon all the supposed real value; because, in estimating the value of land, it may be reasonable to make a greater deduction from the rent than is made from the rent of houses, on account of the greater expense (of cultivation and repairs) in the case of lands than in the case of houses. The act of parliament upon which the question arises, was passed for the purpose of making a river navigable. It was foreseen that this object could not be effectually accomplished without making, in some places, new cuts and channels deviating from the ancient course of the river, erecting locks or wears in some places to overcome the inconvenience of natural falls and changes of level, and erecting buildings for the residence of lock-keepers or collectors of tolls, or for warehousing merchandize, and power is therefore given to the company to purchase land for these purposes. It was well observed in the argument at the bar, that the ground taken for locks or wears would be productive of no value in the hands of the company, there being no lockage dues, but only a mileage toll. The company are not rateable in respect of the ancient course of the river, for the soil thereof is not vested in them, nor are they properly the occupiers thereof, but entitled only to the privilege of using it in the nature of an easement. No rate can be imposed upon tolls *eo nomine*, so that if there should happen to be in any parish no new cut or channel made, nor any profitable building erected, but land should be bought for locks and wears which are in themselves unprofitable, it might be contended that the company would not be rateable at all for the land so taken, and the rateable property in the parish would be *pro tanto* diminished, and the parish therefore would lose by the project authorised by the statute; while in another parish where land should be taken for a new cut or channel, or the erection of a profitable building, the amount of the mileage toll for passing along such new cut or channel, or the profit of the building, might be greater than the value of the neighbouring land, or the profit of similar buildings, and in this instance the parish would gain by the project. Whereas, if the land taken and buildings erected throughout the whole line are estimated and rated according to the value of the adjoining land and similar buildings, no parish will either lose or gain by the project, but every parish will be in the same situation as if the act had not passed, or nothing had been done under it. So, also, if the whole undertaking should prove unprofitable, as some projects of this kind have done, and the amount of the mileage toll, or receipts of the buildings erected, should be less than the value of the neighbouring land or of similar buildings, no parish would become a loser by the diminution of the value

All property ought to be rated according to its actual value.

The company have an easement only in the ancient river.

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of rateable property within it, at whatever period of time such diminution might happen to take place. And if we suppose the legislature to have intended to prevent loss or gain to the parishes, and to leave all in the same state and condition as if no land were taken or building erected by virtue of the act, we must construe the words in question to mean, that the land and buildings of the company shall be estimated for the purpose of rates according to the value of other land and buildings adjoining or near: that the value shall be taken according to that rule, without regard to any increase or diminution of actual value. And the words used may certainly very well admit of this sense and construction. It may be observed, also, that this is an affirmative clause of the act, intended to designate the rating; and if it mean only that the company shall be rated on the same part of the value of their property as the adjoining lands and buildings, it will be quite useless and ineffectual, because a rate on a different part, whether greater or less, would be bad, being manifestly unequal and unjust." After some remarks on the cases of the Leeds and Liverpool Canal Company, St. Mary Leicester, the Grand Junction Canal Company, St. Peter the Great, and King's Swinford, the learned Judge observed—" The two cases of the Grand Junction Canal and St. Peter the Great are plain authorities in favour of it, there being no substantial difference in the language of the statutes. In this case, therefore, the rate must be reduced to 35*l.*, that is, to the value of the land and buildings of the company, estimated according to the value of the adjoining lands and buildings, and not according to their actual productive value to the company." Rate reduced accordingly.

Proprietors of the river Dun navigation are not rateable.

Rex v. *Barnby Dun*, 2 *A. & E.* 551, *N. & M.* 436. Case:—The river Dun navigation commences in Tinsley, two miles east of Sheffield, and proceeds in an easterly direction down the course of the river Dun to Holmstile in Doncaster, and thence, in an easterly direction, through the township of Barnby Dun, to Fishlock Ferry, whence it communicates with the river Ouse. By 12 Geo. I. c. 38, "for making the river Dun navigable from Holmstile in Doncaster, to Tinsley, a township near Sheffield," certain persons were appointed undertakers of the navigation, and empowered to make the river navigable from Holmstile to Tinsley, to make new cuts through the adjoining lands, and to receive certain rates and duties of tonnage. By 13 Geo. I. c. 20, "for improving the navigation of the river Dun from Holmstile to Wilsick House, in the parish of Barnby Dun," similar powers are given to certain other persons as to this part of the river. By 6 Geo. II. c. 9, the two navigation companies are united into one, by the name of "The Company of Proprietors of the Navigation of the River Dun," and all powers given to the separate navigation companies are vested in the united company. In this act is a clause "that the company *shall not be taxed or assessed for the same, or the profits thereof, at any place or places except Sheffield or Doncaster aforesaid;*"—at which places it was provided that books of accounts should be kept. Under 13 Geo. II. c. 11, "for improving the navigation of the River Dun from Wilsick House, in Barnby Dun, to Fishlock Ferry," the navigation was continued to its present eastern extremity, and the Stainforth Cut (176 yards of which are in Barnby Dun) was made. By 2 Geo. IV. c. xlvi., reciting that it would be advantageous to abandon the existing navigation in certain parts, and to make and maintain other cuts or canals in lieu thereof, the company are empowered to make certain cuts or canals, with proper towing-paths, and, among others, a cut or canal from the lower end of an existing cut at Barnby Dun, to the upper end of Stainforth Cut: And in consideration of the expenses of making such cuts, &c., the company were authorised to receive rates and duties over and above all other rates and duties allowed to be taken by the former acts: And it was enacted, "that the intended cuts should be considered and taken as part of the navigation of the river Dun, and that all and every the provisoes, directions, restrictions, penalties, and forfeitures, by the acts above-mentioned, respecting the boatmen employed on the said river, the owners, comman-

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ders, masters, or rulers of boats, keels, or vessels, or other persons employed thereon, or passing the locks of the said river, or making obstructions thereon, or in any other respect relating thereto, or for the benefit or protection of the said navigation, and all other *powers and authorities* therein contained, should extend and be applicable to the said cuts, &c., as fully in every respect as if the said cuts, &c., had originally been part of the river Dun navigation, and had been inserted in the several acts." Under this act, the new cut in Barnby Dun was completed in 1830. The navigation company was rated for the new cut or canal, land covered with water, basins, towing-paths, locks and tools, and other works." The rate is fair, supposing that the company are liable to be rated at all. The township of Barnby Dun is co-extensive with the parish. The navigation through the township consists entirely of land, the length being: The old cut 308 yards, the new cut 3498 yards, part of Stainforth cut 176 yards; total in Barnby Dun 3982 yards. The bed of the river is not used as a navigation. Previous to the completion of the new cut the company had been rated, and had paid rates in Barnby Dun upon a sum of 66*l.* 5*s.* Upon the completion of the new cut, the company were rated upon 173*l.* 5*s.*, upon which assessment they have paid one rate. The company also, in December, 1831, paid a highway composition in Barnby Dun upon the same assessment. Land was purchased by the company for making the new canal in Barnby Dun. The company is rated, by mutual agreement, in the adjoining township of Kirk Sandell upon 90*l.* It is also rated in the adjoining township of Stainforth and in other townships. It is not rated in Sheffield;—indeed no part of this navigation is in the township of Sheffield, neither is it rated in the township of Tinsley, where it terminates. It is rated in the township of Doncaster upon 247*l.* 10*s.* The entire length of the navigation of the river is thirty miles, of which length at least twelve miles are canals or cuts. The questions for the consideration of the court are, first whether the company is liable to be rated in the township of Barnby Dun at all; and, secondly, if so liable, upon what sum or in what manner, ought it to be rated in that township?—Lord *Denman*, C. J. "I confess that a good deal of doubt has existed in my mind in the course of this argument. I am so very unwilling that any of these cases should be decided on general views of utility, which may vary in every court before which cases happen to come, that I am extremely anxious to see how the *words* of the statute will decide the case; and I think that the words of this statute are sufficient to decide that this company is exempt from the payment of rates in respect of the land in question, which land was taken under the powers of the act of 2 Geo. IV. It is true that words could hardly be less pertinent for the purposes which they really meant to carry into effect, than those employed in the first section of 6 Geo. II. giving the exemption itself. They say, 'That the company of proprietors, their successors or assigns, or any of them, shall not be taxed or assessed for the same, or the profits thereof, at any place or places, except Sheffield or Doncaster aforesaid,' (those places at which the accounts were to be made up; but I think I cannot in any way connect the rateability with the mere making up of the accounts). It seems to me, that though there are no words immediately preceding that clause, which can be properly referred to by the words 'same or the profits thereof,' yet we are bound to suppose that the legislature must have meant by the words 'same' such of the before-mentioned articles as were capable of producing profits that might be rated. In that sense we must hold that the words 'taxed or assessed for the same' refer to the *navigation* which was regulated by this act of parliament. Then the question is, whether the exemption so given is extended by 2 Geo. IV. to those lands which the company is enabled to take for the purposes of that act? The object of that act is to enable the company to 'abandon the existing navigation in certain parts, and to make other cuts in lieu thereof;' and the company are empowered to make such cuts, with proper towing-paths and so forth,

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and among others the cut in question. Then, in consideration of the expense the company shall be at in making the new cuts, &c., they are allowed to take certain additional rates and duties; and then it is further enacted, that the intended cuts and canals, alterations and works, shall be considered and taken *as part of the navigation of the river Dun.* Then there are other words, as to the effect of which I think very considerable doubt may be entertained. These first words, however, appear to me to be sufficient to establish the right of the company to exemption in respect of their newly-acquired lands, just in the same way as if they had possessed them under the act containing the original exemption clause. For, when it is said 'that the said intended cuts, &c., shall be considered and taken as part of the navigation of the river Dun,' we are then bound to say, that these cuts, being a part of the navigation of the river, the privileges of exemption, which the company possessed in respect of the original works, are conferred upon them in respect of those which are substituted. [The Solicitor-General suggested that there were parts of the navigation made between 6 Geo. and 2 Geo. IV. which were admitted not to be exempt, and which had always been rated.] At present the question is confined to the lands that were taken under 2 Geo. IV. and I am proceeding on the principle that those lands are distinctly substituted for, and put in the same situation as the lands that were exempted under the original statute. It seems to me, therefore, that the sessions have done right in quashing the rate, and that we must confirm their order."—*Littledale*, J. "I am of the same opinion. It seems to me that the original exemption in 6 Geo. II. is sufficiently extensive to exempt this land from poor-rates, except so far as they are to be taken in Sheffield and Doncaster. It seems to be admitted that the words, 'taxed, or assessed' are sufficient to exempt from poor-rates, as was decided in *Rex* v. *London Gas Light Company.* If that be so, the question is as to the construction of 2 Geo. Geo. IV. which authorises the company to abandon certain parts of the existing navigation, and to make new cuts, &c., in lieu thereof. It appears to me, that as this cut was merely a substitution for what was before exempted, it ought to be governed by the same rules, and subject to the same exemptions. I do not mean to say that this would be so, if there were no clause in 2 Geo. IV. enacting that the intended cuts, &c., should be considered and taken as part of the navigation of the river Dun, &c. It is admitted that this clause does not in express words confer any exemption, but the question is, whether the effect of the whole of those words taken together, though the particular word is not used, does not give an exemption? It seems to me, that it gives exactly the same exemption as the previous statute gave as to the original works. Though, generally speaking, where the parish are entitled to rate any portion of land, that right is not taken away, unless there be some express reason for it, I do not apprehend that it is necessary to use in distinct terms the word 'exemption.' If, upon a fair construction of the act, the exemption appears, the right of the parish to rate the particular land is effectually taken away, though the word 'exemption' be not used. It seems to me, therefore, that as this cut is a substitution for the bed of the river, it is governed by the same rules as the original navigation, and that the company are exempt." *Williams*, J. "I am entirely of the same opinion. I agree that it is not desirable in these cases to attempt to lay down any general rules, because the question must depend upon the language of the acts of parliament in each case. It is undoubtedly true, that it is incumbent on the appellants to show that by some express clause they are protected from rateability; otherwise it would follow as a matter of course that the statutory liability would be imposed upon them, and they would be subject to be rated for this cut. Therefore, the matter comes to this single question, whether the two acts of parliament taken together do constitute that exemption? The words, 'the same, and the profits thereof,' which are found in the clause of 6 Geo. II. can with no propriety be referred to any thing but the navi-

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gation. This clause must, in my opinion, be understood as constituting an exemption from being assessed to the poor-rates in the township of Barnby Dun. Then comes the second question, namely, Whether the new works, made under 2 Geo. IV. are in like manner exempt? and I own, if the question had stood upon those general words, 'provisoes, directions, instructions, penalties, forfeitures,' &c., there not being introduced into the clause the word 'exemption,' I should have had great difficulty in saying that these words touched the question of exemption from taxes or assessments. But it seems to me to be quite clear, from the other words which have been referred to, that the intended cuts, &c., did, when they were made, become identical with the original navigation of the river Dun. This consideration disposes of the question; and I am of opinion, that as the original navigation was exempt, so also are the substituted cuts and canals."

The Leeds and Liverpool Canal Company are rateable for their canal as *land*, so also as to the branches.

Reg. v. *Leeds and Liverpool Navigation Company*, 2 *N. & P.* 540; 7 *A. & E.* 671. By the 10 Geo. III. c. cxiv., a company was empowered to make a canal and take tolls, and by s. 49, it was enacted, "that the said tolls shall at all times hereafter be *exempted* from the payment of any taxes, rates, assessments, or impositions whatsoever, any law to the contrary notwithstanding, other than such taxes, rates, &c. as the land which shall be used for the purposes of the said navigation would have been subject to, if this act had not been made." The 23 Geo. III. c. xlvii., repealed this act, and incorporated another navigation with the above, and contained a similar exempting clause as to the tolls to be taken. By the 59 Geo. III. c. cv., the company were empowered to make a cut, and all the *exemptions* in the former act were extended to the purposes of that act; and by s. 17, the lands, houses, wharfs, warehouses, and other houses of the company were to be rateable to the poor, as lands, &c. of a like quality, where the same shall be situate. Held, that the land occupied by the original line of the canal was to be rated as land, without reference to its use as a canal, according to the annual value of the adjoining land at the time of the making the rate: and that the *lands* mentioned in s. 17, meant the land of the canal covered with water; and that the branches of the canal must be considered as part of the whole navigation, and were rateable on the same principle. The 23 Geo. III. c. xlvii., s. 31, which contained the exempting clause from rates and taxes of the tolls of the canal, excepted therefrom quays, wharfs, warehouses, or other houses. Held, that wharfs erected by the company on their branches, were to be rated according to their annual value to let.

The wharfs are exempt.

Lands are not exempt, although they were devised to the parish, subject to that condition, and although they had not been rated for many years.

Reg. v. *Ellis*, 7 *Jurist*, 107, 11 *L. J.* 20, *M. C.* J. Drake, who died in 1713, by his will gave to the township of Keighley certain messuages and land in Keighley, for the maintenance of a sufficient and unmarried qualified schoolmaster for teaching of children residing and dwelling within the town and parish of Keighley, in the English, Latin, and Greek tongues; the schoolmaster to teach children within the town of Keighley, free and without any other reward or stipend, and have the rent and profits of the messuages, land, and closes, yearly paid to him by the feoffees. *And*, he added, "*it is further my desire that the town and parish of Keighley aforesaid will exempt, free, and discharge my said messuages, barns, and buildings, lands and tenements in Keighley aforesaid, of and from the payment of all lays, taxes, impositions, and assessments whatsoever.*" And he gave the residue to be laid out in lands for the use of the schoolmaster. The township of Keighley has been hitherto in the enjoyment of the property so devised by J. Drake for these benevolent and charitable purposes; and during all the time, the property has been exempted from parochial assessments; and there was a contract with the tenants, on the supposition of the exemption. The funds had been applied according to the trusts of the will. It did not appear whether the town and parish of Keighley were co-extensive. *Cur. adv. vult.* *Patteson*, J., after adverting to some formal objections (see *post*), said:—"I come now to the merits of the case, and I cannot see any real doubt upon it. Assuming that the desire expressed in J.

Partial exemption from Rates.

Drake's will of 1713 amounts to a condition, it is one which the law will not allow to be performed; and the present inhabitants of the township of Keighley are in no way bound by the acts of their predecessors in this respect. Even if the rents were appropriated to the aid of the poor, I should think the condition void, to the extent of not exempting the land, much more when it is for the maintenance of a schoolmaster, by which the poor and other inhabitants do not necessarily receive any benefit. I do not profess to determine what effect the nonperformance of the condition may have on the rights of the trustees or the parish to the land in question; but I am very clear that the condition cannot legally exempt the beneficial occupier of the lands from being rated to the poor in respect of them. The devise is of certain premises to the *township* of Keighley 'for the maintenance of a sufficient and unmarried and qualified schoolmaster for teaching of children residing and dwelling within the said *town and parish* of Keighley, in the English, Latin, and Greek tongues, which said schoolmaster for the time being shall always teach and instruct children within *the said town of Keighley*, free and without any other reward or stipend whatsoever, and have the rents and profits yearly paid him at Whitsuntide and Martinmas by my executors and feoffees hereinafter named.' The will then names feoffees, and provides for a succession of them, and gives them power to suspend the master for misconduct, and to make leases and other powers. It then goes on: 'And it is further my desire, that the *town and parish* of Keighley aforesaid will exempt, free, and discharge my said messuages, &c., in Keighley aforesaid of and from the payment of all lays, taxes, impositions, and assessments whatsoever.' It then gives the residue of his personalty to his executors, 'to be by them laid out in lands to and for the use, behoof, and maintenance of such a schoolmaster as is aforesaid mentioned, to teach and instruct within the *town* of Keighley aforesaid:' but nothing is said about any exception of such after-purchased lands. The lands in respect of which the rates were made, are not in the occupation of the schoolmaster, but of a tenant. It appears that they have never been rated. It does not very distinctly appear whether they are the lands actually devised by the will, or lands purchased with the residue of the personalty; but I will assume that they are the lands devised by the will. There is some little confusion in the will in using the expressions *town* of Keighley and *parish* of Keighley, the township being a part only of the parish, and maintaining its own poor; but I do not think that material. I decide upon the broad ground, that the assent of the inhabitants of the township immediately after the death of the testator, cannot make a compact binding on their successors: and that the lapse of time during which no rate has been made cannot make that valid which was not so originally. As I entertain no doubt on the subject, I think that the rule for a *mandamus* must be made absolute." *Rule absolute.*

8. Property rateable by Local Acts.

8. Property rateable under local Acts.

Besides the statute of Elizabeth, local statutes are frequently passed, either *enlarging* or *limiting* that statute; and where the local act uses different languages from the 43 of Eliz., the local act is not to be construed as if the language was the same. "The 43 Eliz. uses language applicable generally to the kingdom at large. The 9 & 10 Will. III. (local act) having in its view the town of Hull only, would naturally suit its expressions to the state and circumstances of that place; and where we find a deviation from the language in the stat. of Eliz. the presumption is, that the deviation was intended, and that a different system was thought better for Hull, and that the language therefore proper for such system was used." C. J. *Abbott. Rex* v. *Hull Dock Company*, 3 *B. & C.* 516; 5 *D. & R.* 359.

Property rateable by Local Acts.

Non-resident owners of stock in trade and ships are rateable in Hull.

One ground of appeal in the above case was, that persons non-resident in Hull, but having shops and stock in trade, were not rated. Also, that the overseer had omitted owners and part-owners of ships, which were registered at Hull, and usually traded to and from that port, and were within the port at the time when the rate was made. The 9 & 10 Will. III. (local act) enacted, that the rates should be raised by taxation of every inhabitant, and of all lands, houses, tithes impropriate, appropriation of tithes, and all stocks and estates within the town. Upon this, C. J. *Abbott*, in giving judgment, said, "It was most properly admitted in argument that '*stocks and estates*' must include all stock in trade and personal property. 'Stocks' could have no other meaning, and 'estates,' placed as it is in the clause, must extend to personal estates. This statute, therefore, has these two effective words, which are not to be found in the stat. of Eliz. and these two words remove from this case all distinction between residents and non-residents: under the stat. of Eliz. there is no word applicable to personal property: and it was only on the ground of his being *an inhabitant* that any owner of personal property could be rated for it, because there is no word to include him except the word *inhabitant*. Under that statute, therefore, there was necessarily a distinction between residents and non-residents, because the resident was rateable for his personalty within the place, the non-resident not. The distinction, however, under that statute, applied only to those kinds of property which the statute did not specify: for the occupier of lands, houses, &c., and whatever the statute enumerated, was rateable, whether he were resident or not. In this statute, 9 & 10 Will. III., what was defective in this respect in the stat. of Eliz. is supplied: the rate is to be not only upon every inhabitant, but upon all stocks and estates. Lands, houses, and tithes, are all rateable according to the general principles of rating, whether the occupier be resident or not; and it is impossible upon this act to say that lands within the town shall be rated, but that stocks and personalty shall not. The stocks and personalty are not rateable elsewhere, they have all the benefit of the town, and there can be no reason, therefore, when there are words sufficient to include them, they should not be included. We are therefore of opinion that the stock in trade, and ships yielding profit, are liable to be rated."

Waterworks not a tenement within the meaning of a Manchester act.

Rex v. *Manchester Waterworks*, 3 *D. & R.* 20; 1 *B. & C.* 630. The facts of the case will be found in the judgment of the court delivered by *Bayley*, J. "The question in this case was, whether the company of proprietors of the Manchester and Salford Waterworks, in respect of their trunks, pipes, and other apparatus for supplying the towns of Manchester and Salford with water, were occupiers of what, within the meaning of the statute 32 Geo. III. c. 69, is a tenement. By that act, the commissioners thereby appointed are authorised to ascertain the sum to be raised by rate or assessment on the several inhabitants of the town of Manchester and Salford, and to raise such sums from time to time, by rate or assessment, upon all the tenants and occupiers of all messuages, houses, warehouses, shops, cellars, vaults, stables, coachhouses, brewhouses, and other buildings, *gardens or garden ground*, and other tenements in the towns of Manchester and Salford. The statute does not adopt the language of the 43 Elizabeth, 'lands and houses,' but enumerates the different properties which I have specified. It does not use the word 'land,' which is used in the statute of Elizabeth, but it uses the word 'tenements,' which the statute does not use. The decisions, therefore, upon the statute of Elizabeth will not govern this case, unless the word *tenements* here is used in as comprehensive a sense as the words *lands* there. This is an act for cleansing, lighting, watching, and regulating the streets, lanes, passages, and places within the towns of Manchester and Salford; and a chief object appears by the recital to be, to provide for the peace, security, and accommodation of the inhabitants of the towns and of persons resorting to and passing through them. The occupier of any messuage, dwelling-house, warehouse, or other building, or *of any other tenement* within either of the towns, of

the yearly value of 30*l.* is a commissioner. The word 'tenement' occurs in this part of the act, and is altogether associated with words which denote buildings. Section 39, which gives the power of rating, directs the commissioners to ascertain every year the sums to be raised by rates on the inhabitants of Manchester, and by rates on the inhabitants of Salford, as if *inhabitants* were to be the persons rated; and in addition to such words as denote buildings, and the general word tenements, introduces the words 'gardens and garden grounds, and other tenements.' By section 40 the demand of the rate is to be left at the dwelling-house or *tenement* occupied. And by section 43, it is recited that several messuages or dwelling-houses, warehouses, or other buildings or *tenements* in these towns, are let out in lodgings or *tenements* to divers tenants, and that it would be difficult to rate the occupiers, or recover their rates, and provision is made for rating the landlord of every such messuage, &c., of the yearly value of 4*l.* 10*s.* or upwards, which shall be so let. There are some of the instances in which the word *tenement* is used in this act; and from these instances and the object of the act, it may be collected in what sense it uses that word. The omission to use the obvious and general word 'lands,' and yet introducing 'gardens and garden-grounds,' implies, that 'lands' in general were not intended to be rated. The object of the act was, to give security and accommodation to the residents and to their property. The inhabited houses, therefore, and every thing connected with residence or trade, as they were to have the advantage, were to be liable to the charge. The houses, warehouses, shops, and all other buildings, were to be rated, because they all had protection. But why were gardens and garden grounds to be included, if lands in general were not? Possibly, because the produce thereof was of value, and was a probable object of depredation, and the general lighting and watching of the towns would give so much additional protection to this species of property, as might properly make it the subject of charge. Gardens, therefore, and garden grounds, may, on this account, be distinguished from other descriptions of land, and may be subjected to this charge, whilst land in general is exempt. Pasture ground, for instance, stone quarries, and other kinds of real property, though included in the 43 Elizabeth, as affording income, and supplying, therefore, the means of contribution, are omitted in this act, because such property derives no equivalent or material protection from it. Upon the ground, therefore, that this statute does not use the comprehensive word *land*, and uses the word *tenement* in a very limited sense only, and not in a sense to include the property in question, we are of opinion that this property was not liable to be rated, that it ought to be expunged from the rate." Order of sessions quashed.

Lord of a market in public street not rateable, in Manchester.

Rex v. *Mosley*, 3 *D.* & *R.* 385; 2 *B.* & *C.* 226. The lord of the manor was rated under the same act for market sites and profits. The market was held in the open street, and it was contended that this was a tenement. But the court said, "The meaning of the word *tenement* as used in this act, had been under their consideration on a former occasion; and that they were satisfied that it was intended to be applied to those things only which were *ejusdem generis*, with those particularly enumerated, and was not intended to be used in the larger sense sometimes given to it: that the subject of the present rate, not being of the same nature as any of the descriptions of property specified in the act, was not liable to be rated." Order of sessions quashed.

The lessee of a private box in Drury Lane theatre is rateable for a tenement, in St. Martin's in the Fields.

Reg. v. *St. Martin's in the Fields*, 2 *G.* & *D.* 426. A. B. Coutts was assessed for a private box in Drury Lane Theatre. Rate amended by striking out the assessment. Case:—The box is in the parish, and the rate was made pursuant to a local act of 10 Geo. 3, c. 75, whereby the overseers, &c. are empowered to make rates for the relief of the poor, "upon every person or persons who do or shall inhabit, hold, occupy, possess or enjoy any land, house, shop, wharf, warehouse, or any other building, tenement or hereditament, *or* any other person or persons who by law is or are charge-

8. *Property rateable by Local Acts.*

able and assessable for and towards the relief of the poor, s. 13. By an indenture, in 1795, R. B. Sheridan and T. Linley, proprietors of the Theatre, in consideration of 6000*l.*, paid by Thomas Coutts, did demise, &c. a box to him for 100 years, with the exclusive use of the same. The lease was similar in its terms to the subsequent one. T. Coutts occupied the box pursuant to the lease, until 1812, when the theatre was destroyed by fire. In 1812 a new theatre was erected under the powers of two acts of the 50 and 52 Geo. 3, by which the proprietors of the theatre were incorporated; and in 1812, an indenture was executed between the committee of the theatre and T. Coutts, by which, in consideration of 3000*l.* paid, the committee did lease to T. Coutts an entire box in the theatre, on the ground tier, and also the small room communicating therewith, and the exclusive use thereof, with full liberty of ingress and egress every evening upon which any public entertainment, theatrical or musical, should be exhibited in the theatre, or for any number of persons by his order, not exceeding in any one night the number of eight; reserving to the said company free liberty to paint and make alterations in the front of the box, and subject to such regulations by the committee as should be made by them respecting other private boxes in the theatre; but so as such regulations did not prevent T. Coutts from enjoying the exclusive use of the box and room; to hold the same for eighty-two years, at the yearly rent of one penny. There were covenants for quiet enjoyment, and by the lessors, to preserve the box and room for the sole use of T. Coutts, and to repair the same; and in case of fire, to provide a box in another theatre. T. Coutts took possession of the last-mentioned box, room and premises, and, during his life, had the use and enjoyment thereof, and the appellant, at the time of the making of the rate, had and now has the use and enjoyment thereof, according to the said indenture. The box and room are upon a level with the stage, and form a component part of the theatre, which is in the occupation and under the management of parties to whom it is let by the company of proprietors. The occupiers and managers have access to the box and room from the other parts of the buildings by internal doors, of which they keep the keys. The approach to the box and room from the street is by an outer door, which opens to a staircase, by which staircase persons going to the other private boxes in the theatre, some of which are let nightly by the occupiers and managers of the theatre, ascend to those boxes. The outer door next the street, and also the staircase, are under the controul of the occupiers and managers of the theatre, and the door is closed and fastened by them at all times, excepting during the hours of performances. The performances usually continue from seven o'clock in the evening until twelve at night. The question is, whether the appellant is liable to be assessed in respect of the box.—Lord *Denman* delivered the judgment:—This box was demised to the late Mr. Coutts, under an act for rebuilding the theatre, for a long term of years. The lease grants an exclusive right to occupy the box and a small room adjoining, whenever any performances take place, and a private entrance to the same in common with other private boxes. We are of opinion that the box in question is a tenement within the meaning of the act, and that it is held and occupied by the appellant so as to make her liable to be rated. The words are too large to admit of any other construction, and none of the cases referred to at the bar lead to any different conclusion. It is argued that the proprietors are rated for the whole theatre, and that, if the appellant be also rated, the same premises will in effect be rated twice over. But this consequence by no means follows. The proprietors are rated in respect of their general possession of the theatre, of which the box in question forms a very small part, the rent being only one penny per annum, and may fairly be considered as not taken into account in rating the proprietors; whereas the appellant is rated in respect of this particular box. If, however, the consequence did follow, it would show only that the proprietors were rated too highly, not that the appellant is not liable at all, which is the question submitted to us.

Rex v. *Trustees of Shrewsbury*, 3 *B. & Ad.* 216. This was an appeal against a paving rate, assessed on appellants as occupiers of gas pipes. Case:—The company was established, and empowered to break the soil and lay pipes, &c. by 1 Geo. IV. c. lvi. By the paving act of 1 & 2 Geo. IV. it was enacted, "That the charges and expenses of lighting, paving, cleansing, watering, watching, widening, altering, improving, and regulating the said streets, squares, highways, lanes, and other public passages of the town of Shrewsbury, and otherwise putting this act into execution, shall at all times be borne and defrayed by the tenants or occupiers of all the houses, shops, malt-houses, granaries, warehouses, coach-houses, yards, gardens, garden ground, stables, cellars, vaults, wharfs, and other buildings and hereditaments, not only within the outer gates and walls of the said town of Shrewsbury, but also within any part of the said town which the river Severn encompasses, meadow and pasture ground excepted." And the trustees under the act were empowered to make rates upon the tenants and occupiers of all such messuages, houses, shops, malt-houses, &c. (as before, with the same exception), for the purpose of defraying those expenses. In pursuance of the power so given, the company were rated as above mentioned. They have no property within the outer gates and walls, or within any part of the town encompassed by the Severn, except the pipes and apparatus, specified in the assessment. *Cur. adv. vult.* Lord *Tenterden*, C. J. "It was admitted that if this had been a poor rate under the statute of Elizabeth, there could have been no doubt that the Gas Light Company would be liable; nor can there be any doubt that the word 'hereditament,' in its large and extensive and ordinary sense, will include the ground and soil in the several ways, lanes, and other places in which the pipes and apparatus belonging to this company are fixed. But it was contended, that the term, as here used, was to be construed with reference to the words among which it was found, and must be applied to hereditaments of the same kind as those particularly enumerated, such as coachhouses, gardens, and so on; and reliance was placed on a case decided not long ago, *Rex* v. *Manchester Waterworks* (*ante*, 262), where the word used was 'tenement,' which is also a term of very large import. In that case it was held by the court that the word should be restrained in construction to tenements of the same kind as the particular ones before enumerated; but there is in this act a circumstance which was not found in the other, the exception, namely, that the act shall not extend to meadows and pastures. Now it is certain that meadows and pastures would have fallen within the meaning of the word 'hereditament,' if they had not been excepted; it was argued, therefore, that this special exemption of meadows and pastures showed that the other word had been previously used in its larger sense. On the other hand it was contended, that these words had been introduced merely *ex majori cautelâ*. Upon the best consideration we have been able to give this case, we are of opinion that we ought not to consider the exception of meadow and pasture ground as made only for greater caution, but are bound to look upon it as introduced by way of special exception, and so to construe the clause: and, consequently, everything not so specifically excepted must be understood to fall within the general liability. We therefore think that the court of quarter sessions were wrong in striking out the company's name from the rate, and that the rate on them ought to have been allowed." Order of sessions quashed.

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Gas pipes are "hereditaments" within the Shrewsbury act.

As to the import of the word building in a local act for paving, see *Brown* v. Lord *Granville*, 10 *Bing.* 70.

Colebrook v. *Tickell*, 6 *N. & M.* 483; 4 *A. & E.* 916. By a local act for Whitechapel, the rector, churchwardens, overseers, and vestrymen, are authorised to make three distinct rates upon all persons who shall inhabit, hold, occupy, possess, or *enjoy* any land, house, shop, warehouse, or other building, tenement, or *hereditament*, that is to say, one rate for the relief of the poor, another for the repair of the church, and another for cleansing and lighting the streets, and repairing the highways of the parish,—such

Words in a local act which will not include incorporeal hereditaments.

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last-mentioned rate to be a pound rate upon the annual rent or value of all messuages, lands, tenements, and hereditaments, as should be held or occupied within the parish: it was held, that the word "hereditament," as used in the former as well as the latter part of the enactment, means such hereditaments only as are the subject of actual corporeal *occupation*, and that therefore no incorporeal hereditament is thereby made rateable. To render an incorporeal hereditament rateable, the local act should be clear and express.

Tithes.

Where by a local act all *hereditaments* liable to the poor-rate were made chargeable to the repairs of a new church, tithes are rateable. *Reg.* v. *Jus. of Buckingham*, 6 *A. & E.* 388; 1 *N. P.* 503.

Land adjoining a canal, which has not been converted into a *wharf*, cannot be rated as such, although timber is permitted to be landed there (*a*).

Rex v. *Regent's Canal*, 9 *D. & R.* 760; 6 *B. & C.* 720. By the act under which the company was established, it was provided that lands, whether covered with water or not, and dwellings, *wharfs*, &c. belonging to the company, should be rateable to the poor, the lands according to their quality, and the dwelling-houses, wharfs, &c. according to the nature and respective uses thereof, in like manner as lands, houses, wharfs, &c. of a similar kind in the several parishes where they were respectively situated. The company had, on the margin of a large basin, a piece of land adjoining the private yard of a timber-merchant. This piece of land next the basin consisted of natural ground; it was not faced with brick or timber, and the ground below the water gradually sloped down to the bottom of the basin. The timber-merchant landed his timber upon this piece of land, and it was there marked and measured by the revenue officers. No acknowledgment or rent was paid to the company for this privilege of landing the goods there, but their rates and duties were increased, a greater number of ships entering the basin in consequence of this privilege: held, that this piece of land was not a *wharf* within the meaning of the act of parliament, and was not liable to be rated as such to the relief of the poor.

Stock not money at interest.

Rex v. *Maddermarket* (*ante*, 149). By a local act, inhabitants were rateable for money out at interest: but it was held that money vested in the stocks is not within the statute.

Local act of London Dock Company.

Rex v. *St. George, Middlesex*, 9 *East*, 127. By the construction of the local act, 39 & 40 Geo. III. c. 47, the London Dock Company are liable, even during the first twelve years of their establishment, to be rated for the fair annual value of their warehouses and other works which are finished and productive, though all the works directed by the act be not completed. But such completed works must, under such circumstances, be rated for their value at the rate of 8½*d.* in the pound, and being the rate calculated upon by the legislature to raise 139*l.* 8*s.* 7*d.* per quarter upon 3966*l.*, the average rental for ten years preceding the act of parliament, on the premises destroyed by the company in making their works: and which quarterly sum the company were, at all events, bound to pay to the parish during the twelve years, or until the works were completed, whether those works were productive or not. But when productive beyond that sum, the surplus is to be taken in the first instance by the company, in order to reimburse themselves what they may have advanced to the parish to make good the deficiencies, before any such productive surplus existed, until the company shall be reimbursed; therefore, until these purposes are effected, a rate made on the increased real value of the dock premises at more than 8½*d.* in the pound, or a rate of 8½*d.* in the pound on the old average value of the premises before the erection of the company's works, and below the increased value of the new works, is in either case bad.

The company are not rateable for any portion of the dues payable by ships on enter-

Reg. v. *The Bristol Dock Company*, 1 *G. & D.* 76; 1 *Q. B.* 535. Lord *Denman*. "This case comes before us upon an appeal, by the Bristol Dock Company, against a rate made for the parish of Clifton, wherein the Company was assessed for 'Cumberland bason, entrance to bason, quay-walls,

(*a*) Another question discussed at great length in this case was, whether the land was rateable at its improved value.

wharfs, locks, and dock gates.' It appears from the case that the company was formed under an act of parliament, for the improvement of the port and harbour of Bristol, and invested with various powers for effecting such purposes. The company purchased about eleven acres of land, in the parish of Clifton, and made the works upon which the assessment has been made. It is further stated, that the port of Bristol extends over more than thirty parishes, including Clifton, and that the tolls and dues, in respect of which it is sought to assess the appellants, are imposed upon *every* vessel *entering the port* of Bristol, and are collected in different parts of the port of Bristol, out of the parish of Clifton. It is stated, however, that no part of the tolls or dues, except the sum of 311*l.* (as to which no question arises), is received by the appellants within the parish of Clifton, and further, that in many (if not most) of the parishes, composing the port of Bristol, the company has no property whatever. Upon this state of facts, we have to consider whether the company ought to be rated in respect of the property above described, in the same proportion 'as other land in the immediate vicinity, in its original state as meadow or pasture land,' or with the addition of all or some proportion of the tolls and dues so collected within the port of Bristol. This question divides itself into two parts: first, whether by virtue of the act the company is made rateable in the latter manner; and, if not, whether it be so by virtue of the law generally applicable to the rating of property of this description. The first question turns upon the 64th section of the act, which especially refers to the manner in which the company is to pay land and other taxes; the other sections to which we were referred in the argument, respecting principally, if not entirely, the manner in which the act was to be carried into effect. By sect. 64, after reciting that by the making the bason, new course of the river, and other works, certain *lands in Clifton*, &c., which at that time paid parochial taxes, would, during the intended works, and for many years after, be rendered unproductive and incapable of being rated in aid of the parochial taxes, by which means a greater burthen must be laid on other lands in the same parishes, it was enacted that the appellants should become chargeable *with all such land and parochial taxes as the same lands and premises then were* or might thereafter be subject to, and that the fund of the company should become liable to pay such taxes then charged, or thereafter to be charged. We think that this enactment falls much short of charging the company with liability in respect of the tolls and dues in question. For, first, if it had been meant to charge the company with such additional liability, it is hardly probable that the property would have been described as 'rendered unproductive and incapable of being rated' during the work, and for many years afterwards. Because the nature of the work (as described in the act) being to make a more commodious communication with the port of Bristol, and generally to improve the same, if the tolls and dues therein received had become liable to the rate, some profit at least must have been expected, *immediately* upon the completion of the works and the use of the bason entrance; and indeed the act gives the tolls to commence at the end of twelve months from the commencement of the works. Moreover, the mode of rating upon the then state of the property is expressly declared to be the mode to be adopted 'for ever thereafter.' The question then is, whether this property be liable to be rated at the increased value, independently of the operation of this said act. Upon this point, since the decision of *Rex* v. *Nicholson* and *Williams* v. *Jones*, the principle upon which the rate upon tolls is to be imposed has been fully established, though the application of that admitted principle to each particular case may not always be easy; it is this, that the tolls are rateable as profits of land, occupied within the parish, for which the rate is imposed, and agreeably to it water companies have been rated, (*Rex* v. *Corporation of Bath*). So also gas light companies (*Rex* v. *Birmingham Gas Light Company*), and canal companies (*Rex* v. *Woking*). In all these cases, and in many others, to

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ing the port, but only for the basin as ordinary land.

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which, in a matter not now to be disputed, it is not needful to refer, the rate is imposed in respect of profits *arising within the parish.* Whether this principle, so established in these cases, would, without further authority, necessarily exclude the consideration of profits arising *elsewhere,* it is not necessary to consider. Because we find the principle, so extended, expressly recognised, and the reasons for it most fully given, especially by *Bayley,* J. and *Littledale,* J., in the case of *Rex* v. *Coke,* where the tolls of a light-house were held not rateable, because they accrued out of the parish. It was further added, by both those learned judges, that in the cases to which we have above generally referred, 'the profits have arisen, and the use of the thing out of which they have arisen has been in the place where the rate is made.' This question again came before this court in the case of *Rex* v. *Aire and Calder Navigation,* and the same principle was again recognised by the court, in a short judgment, probably because the subject was considered as exhausted by the reasoning of the two learned judges above referred to, which was expressly brought under notice and relied upon in the course of argument. Upon the whole, we are of opinion that the assessment should be reduced to the sum of 3*l.* 7*s.* 6*d.*, being after the rate of 1*s.* in the pound on 67*l.* 7*s.* 6*d.*, 'the present rateable annual value of the property in question, *as land.*' "

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Rate to be made on the improved value.

Every rate should be equal, and made upon the improved value of the property, unless a local act otherwise directs. The rent is in general the fair criterion of value, but a deduction is generally allowed for the annual expense of repairing houses.

By the parochial assessment act, the rate is made on the net annual value of all hereditaments, subject to deductions specified in the act. See the statute in Appendix.

A rate apparently unequal will be quashed by the Court of Queen's Bench, but inequality will not be presumed.

An unequal rate on lands and houses is not illegal.

Rex v. *Brograve,* 4 *Burr.* 2491. Land was assessed at three-fourths of the yearly value, and houses at a moiety. It was said that this was apparently unequal, as the assessment was on the value and not on the rent. The proportion had been agreed on at a vestry. Lord *Mansfield* said, "he did not see any apparent inequality. He thought it right and proper, that there should be a difference made between lands and houses; for, there are several charges incident to houses (as repairs, window-taxes, and such like deductions and outgoings). The justices have thought it an equal rate: and all the parish were of that opinion in the year 1764." *Yates,* J. "The court cannot enter into the inequality of it, unless it appears to us to be self-evidently, necessarily, and unavoidably unequal."

Nor though they are rated alike.

Rex v. *Butler, Cald.* 93; 1 *Bott,* 127. The case stated that for some years farms, consisting of land and houses, had been assessed at 1*d.* in the pound, and dwelling-houses by themselves at three farthings in the pound. That from 1777 to 1780, both lands and houses were rated at 1*d.* in the pound. Lord *Mansfield,* C. J. "The question before the court is, does the rate upon the face of it appear to be equal or unequal? Unless it is manifestly unequal, the court will presume it equal. Circumstances may vary the value of different estates; and if this plainly appear, then what is said in *Rex* v. *Brograve* (*ante,* 182,) applies: but you take advantage of an *obiter* saying of the court in that case, when the true legal ground of the authority is decisive against you." Rate affirmed.

A rate of two-thirds of the rent of land, and one-half of houses

Rex v. *Tomlinson,* 9 *B. & C.* 163; 4 *M. & R.* 169. A rate was made in Stoke-upon-Trent, on the farms, lands, tithes, and market tolls, at two-thirds of their estimated net yearly rent payable to the landlord, but

houses, potworks, and every other description of building, and collieries and coal mines were assessed upon only one-half of their estimated net yearly rent. The lessees of certain water-works were assessed in respect of their water-works and water-pipes upon only one-half of their estimated yearly rental value: but the rate was amended as to them, by assessing them upon two-thirds of such rental value, being in the same proportion as land. The question for the court was, whether, as the occupiers of farms, &c., are assessed upon two-thirds of the rent, the occupiers of collieries and coal mines ought not to be rated in the like proportion upon two-thirds of their rent. *Bayley*, J. "The question was whether this rate was upon an unequal and consequently an unjust principle. It estimated the value of all property according to the net yearly rent; but it fixed the rate according to two-thirds of the rent in the case of lands, &c., whilst it fixed it according to one-half only in the case of houses and collieries: and whether this made the rate necessarily unequal was the question. It was not disputed but that the sessions were in general the proper judges of value; but it was insisted that if they fixed the proportions by a wrong rule, this court might and ought to interfere. And if the proportions have been fixed by a rule which we can pronounce to be wrong, we are of opinion our interference is requisite. Can we then pronounce the rule acted upon in this case to be wrong? It was almost admitted that there might properly be a distinction in the proportions between houses and land, though it was urged there could not be one between land and collieries; but when the consequences of this admission were seen, the admission was withdrawn. We are however of opinion that there may properly be a difference in the proportion of the annual rent upon which houses and lands are to be rated, it belonging to the sessions to fix the precise proportion. We also think that houses and collieries may be classed together. The rate is to be made on the occupier according to the annual profit or value which the subject of occupation produces; and it makes no difference in the amount of the rate whether the occupier be tenant or owner. In the case of houses, the annual profit or value is always a part only of the annual rent paid to the landlord. Some portion of that rent ought to be set apart to form a fund for repairing or rebuilding, when necessary; in other words, to maintain or reproduce the subject of occupation, a much less part, if any, of the annual rent of land is wanted for either of those purposes, and the whole in some cases, or nearly the whole in others, is annual profit or value. This difference is mentioned by Lord *Mansfield* in *Rex* v. *Brograve*. In the case of collieries also, a part of the annual rent must be appropriated to repair and replace the works and engines, and in that respect they are in the same situation with houses. The sessions were therefore warranted in making a difference in the proportion of rating, with reference to annual rent, between houses and collieries on the one hand, and land on the other; and it is impossible for us to say that the proportion which they have fixed is not the right one. It was urged in the argument that the sessions have fixed the rate according to unequal proportions of the net rent, and it was contended that by the words 'net rent,' was meant the clear annual rent, after every deduction, including therefore the part to be set aside for repairs and reproduction of the subject of the rate, and consequently that the rate was unequal. But we cannot attribute any such meaning to these terms for the purpose of invalidating the rate. We think they mean only *that part of the rent which goes into the pocket of the landlord, and which is the rent paid by the tenant, after deducting taxes and charges of collection;* and this construction will support the rate. If the rate has been according to different proportions of the clear annual profit or value of the subject of occupation, it would have been otherwise; but annual rent is not annual profit or value. We are therefore of opinion that the order of sessions should be confirmed." Order of sessions confirmed.

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and collieries, is not manifestly unequal.

Annual value part only of rent.

Net rent.

Rex v. *Sillis*, *Cald.* 522. If the proportions in which real and personal

When apparently unequal.

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property are assessed be *apparently unequal*, (viz. one-half of the realty and one-fortieth of the interest of the personalty at 4 per cent.) the court will quash such poor rate.

If by a local act, land and stock are to be rated in equal proportions, an unequal rate will be quashed.

Rex v. *Fakenham*, 4 *Dougl.* 261. A local act for Norwich directed the rate to be made on the occupiers of land, &c., and on all persons using and having stocks and personal estates, &c., in equal proportion, according to their several and respective values and estates. A rate therefore on one moiety of the rack-rent, and one-fortieth part of the supposed stock and personal estate, is manifestly bad.

A person must be rated according to the *improved* value of his property.

Rex v. *T. Mast*, 6 *T. R.* 154. T. Mast appealed against a poor rate for the parish of St. Neot's, in which he was rated at the real annual value of his estate; W. Fowler was rated at 29*l.* per annum, but the real annual value, in consequence of improvements made by him, was 175*l.*; he occupied, besides, other lands and property in the parish, for which he was rated after the same manner. Gorham was rated in the same way. Lord *Kenyon*, C. J. "The assessment for the relief of the poor ought to be so contrived that each inhabitant should contribute in proportion to his ability, which is to be ascertained by his possessions in the parish. Every inhabitant ought to be rated according to the *present value* of his estate, whether it continue of the same value as when he purchased it, or whether the estate be rendered more valuable by the improvements which he has made upon it. If a person choose to keep his property in money, and the fact of his possessing it be clearly proved, he is rateable for that: (*a*) but if he prefer using it in the amelioration of an estate or other property, he is rateable for the same in another shape. Suppose a person has a small piece of land in the heart of a town, which is only of small value, and he afterwards build on it, he must be rated according to its improved value, with the building on it. In short, in whatever way the owner makes his estate more valuable, he is liable to contribute to the relief of the poor in proportion to that improved estate; and whatever be the proportion of rating in a parish, whether to the full value or otherwise, the rate must be equally made on all persons; there cannot be one medium of rating for one class of persons, and another for another class. Now here it appears that the appellant was rated at the full annual value of every thing that he possessed, while other inhabitants were not rated at a third of their estates. With regard to the discretion of the justices, if indeed they had confirmed this rate generally, without disclosing to us the grounds on which they proceeded, we could not have quashed the rate, because the inequality does not appear upon the face of it; but they have disclosed those grounds; and, on the case as stated, it is impossible not to say that they have made a mistake. This rate appears so defective throughout, that it cannot be amended." *Ashhurst* and *Grose*, Js., of the same opinion.

(*a*) Quære. See *ante*, 117.

Though the rent may be less.

Rex v. *Skingle*, 7 *T. R.* 549. William Hill and John Bull occupied lands of a greater annual value than the rent reserved by the lease, but the rate was made according to the rent which was the annual value at the commencement of the lease. The court were of opinion that the case was too clear for argument, and that the rate ought to be regulated according to the *improved value.*

The profits of a mineral spring are part of the produce of the land, and the occupier is rateable upon the value of the whole.

Rex v. *Miller*, *Cowp.* 619. Lands with buildings thereon, and a well of mineral water thereout arising, called the Cheltenham Spa, were demised to W. M. at a yearly rent of 100*l.* The lands and buildings, independent of the well, were of the annual value of 20*l.* Rent paid for the mineral water, 80*l.* The profits of the mineral water arise from the sale thereof, and the company resorting thereto, which is very various and uncertain. W. M. was rated to the poor at 100*l.* a year. Lord *Mansfield*, C. J. "Nothing can be plainer than the present case. This is not a rate upon the profits of the well, but upon four acres of land, let to the defendant at 100*l.* a year; and the value arises partly from the buildings, and partly from the spring that produces the mineral water. Therefore,

the profits of the spring are part of the produce of the land. In Worcestershire and Cheshire, where there are salt springs, the rent of the land is increased considerably on that account. So here, the consideration of the well increases the rent. It is part of the produce of the land, and therefore, as such, ought to be rated."

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Land, the annual value of which is improved by a spring of water, is liable to be rated at the aggregate annual value of the land and spring together.

Rex v. *The New River Company*, 1 *M. & Sel.* 503. In a rate for Little Amwell, the New River Company were rated for land in Chadwell Mead. They were incorporated June 21, 1619, for conveying water from a spring in Chadwell Mead, in Little Amwell, to London and Westminster; and they supply a great part of the same with water, by a cut called the New River, leading from the spring to a reservoir at Islington, whence it is distributed by pipes over the metropolis, and from which the company receive considerable profit beyond the sum at which it is rated. The water of the New River is derived part from the river Lea, and part from a spring rising in and inclosed in a basin in Chadwell Mead, which is the subject of the present rate, and is the freehold of the Company, and in their occupation. The quantity of water derived from each of these sources is nearly equal. That part of Chadwell Mead which is occupied by the company, and is the subject of the rate, contains about two acres: it consists solely of the basin in which the spring rises, and so much of the cut from thence, called the New River, as lies in Little Amwell, where it joins the water taken from the river Lea, and from thence it continues to run with the said water so taken from the river Lea in one joint course to Islington. The land alone, without the spring, and not covered with water, is of the annual value of 5*l.* The whole profits of the company arise from the sale of the water, no part of which is distributed, nor is any money received for it, nor is any due in Little Amwell. If the advantage which the company derive from the use of the spring may by law be included in the rate upon the land, the land and spring of water together are of the annual value at which they are rated. Lord *Ellenborough*, C. J. "This is a rate imposed on land, including a spring of water, as being of the aggregate annual value of 300*l.* The case finds 'that the land alone, without the spring, and if not covered with water, is of the annual value of 5*l.*; but if the advantage which the company derive from the use of the spring may by law be included in the rate upon the land, the land and spring together are of the annual value at which they are rated.' Much of the argument against this rate seems to be built on a perversion of the terms of this finding. I am at a loss to discover between this case and *Rex* v. *Miller*, any other distinction than that which has been alluded to, viz. that the quality of the two waters is different, the one being a mineral, and the other plain water. It has been assumed, indeed, that in that case all the profits were received in the parish where the land lay: but the case does not warrant any such conclusion; and we know perfectly well that the mineral water in question, in that case, is disposed of in great quantities at distant places. It may be said also, that in this case the owners of the property are also the occupiers, but there the property was in the occupation of a tenant; to which the answer has already been given, viz. that the circumstance is no otherwise material than as it affords a more easy criterion for ascertaining the annual value. Here, then, is land and water inclosed in a basin upon the land, which falls within the legal description of land; and although a considerable portion of the profits of such water is derived from pipes, through which it is distributed to other places, yet it is found that the water has a certain ascertained value at the fountain head: and in cases of this kind it is enough to ascertain the local value of the property, without inquiring whether it yields a return on the spot. A degree of confusion has arisen from comparing this to the case of tolls upon canals, whereas they are essentially different; for tolls are an incorporeal hereditament, and have no local corporeal existence, so as to be the subject of rate until they become due. Then we have been pressed with the case of *Rex* v. *Sculcoates*, where it was holden that the commis-

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sioners in whom a drainage was vested were not rateable, but that was so holden upon the principle that where there is not a scintilla of benefit derived from the occupation, the property is not rateable there the commissioners were merely servants of the public, having no divisible fund in their hands either as trustees or to their own benefit, and deriving no advantage from the drainage, and the only persons benefited by it were the owners of lands in other parishes In *Rex* v *Bath* it was assumed in the decision that the water was the subject of rate in the parish where it was impounded in the reservoirs, the only question there being, whether the corporation were rateable in that parish to the extent of all the profits received by them, or whether the rate ought not to have been framed with reference to the contributory profits derived to the company in other parishes Without going farther into the several cases upon this subject, and feeling no disposition to overrule the case of *Rex* v *Miller*, I think there is no doubt that the sessions have come to a right decision The property is locally valuable in the parish where it is rated, although that value is derived from extrinsic circumstances, and although the profits are actually received elsewhere" *Grose*, J "I cannot distinguish this case from the common case of land on which corn grows In such case the land is assessed according to its value, and that value is estimated according to that which it produces so here the land produces a spring, and the value of it is to be computed according to the benefit which the spring produces to the company" *Le Blanc*, J "The question is, whether in estimating the value of land, something which is peculiar to the land, and makes it more profitable to the occupier than if it were away, can be taken into consideration and that question has already been determined in *Rex* v *Miller*, which as it seems to me, cannot be distinguished from the present case. Does it make any difference to the occupier whether he takes the profits of his land by selling the produce on the land itself, or by disposing of it elsewhere? Suppose a man occupying land out of which he digs brick-earth, and converts it into bricks in an adjacent parish, would he not be liable to be rated as for brick land, in the parish where the land lies, in the same manner as if he had sold the bricks in that parish?" *Bayley*, J "I think it is clear that the company are liable to be rated for the spring, which is part of the produce of the land The company have the means of carrying this produce to market, where it affords a beneficial return, and it can make no difference whether they convey it along a canal, or in carts and waggons, or by any other mode. Perhaps it may be fair that in fixing the quantum of rate on this property, respect should be had to the benefit which results to the company in the different parishes through which the water is conveyed But this observation applies only to the quantum, with which we have nothing to do" Order of sessions confirmed

The profits of the steelyard of a weighing machine are rateable as arising from the house itself the machine being annexed to the freehold

Rex v *St Nicholas, Gloucester, Cald* 262, 1 *T R* 723, *n* The mayor and burgesses were possessed of a house in St Nicholas, in Gloucester, and erected a machine in a street by the said house for weighing waggons, carts, &c, for which they received 2*d* per ton for what was weighed there, but persons were not compellable to weigh their carriages, &c The steelyard, part of the said machine, *was in the said house*, which was called the engine house the house, exclusive of the profits of the machine, was worth 5*l*, and the profits worth about 40*l* a year the mayor and burgesses were rated "*for the machine-house*, 24*l* 1*l* 16*s*" Per Lord *Mansfield*, C J. "The nature of the thing shows that the *machine* is annexed to the freehold, they are one entire thing, and are together rated by the common known name (the machine-house), which comprehends both The steelyard is the most valuable part of the house the house therefore applied to this use may be said to be built for the steelyard, and not the steelyard for the house the clear profits are undoubtedly rateable but a liberal allowance ought to be made for wear and tear, labour and attendance" *Willes*, J said, "If the machine be appurtenant to the building, its clear profits are undoubtedly rateable. If a billiard-table stand in a house, and the house

Billiard table

should, in respect of such table, let at a higher sum, it would be rateable, while the table continued there and was so let at the advanced rate." Rate affirmed.

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The profits of a house having a carding-machine are rateable.

In *Rex* v. *Hogg*, *Cald.* 266; 1 *T. R.* 721. A house wherein there was a carding-machine for manufacturing cotton, being *let together with the machine as one entire subject*, (the building being worth only two guineas a year by itself, but together with the machine rated at 36*l.*,) was properly rated as one subject. The engine was not fixed to the premises, but capable of being removed at pleasure. *Ashhurst*, J., considered the house and engine as one entire subject, and therefore rateable as such. *Buller*, J., considered them rateable both on that ground, and also because the engine was permanent property, visible, and yielding profit. *Grose*, J., agreed upon the same grounds.

But if the principal is exempt so also is the machinery attached to it. *Rex* v. *Bilstin*, (*ante*, 233.)

The Hull Dock Company are rateable, although the expenditure in repairs "during the period for which the rate was made," exceeded the amount of the duties received.

Rex v. *The Hull Dock Company*, 5 *M. & Sel.* 394. This company was rated for dock and wharf at 2,240*l.* in the parish of Sculcoates. By 14 Geo. III. c. 56, for making public quays or wharfs at Kingston-upon-Hull, for the better securing his Majesty's revenues of customs, and for the benefit of commerce in the port, for making a dock with works, for the accommodation of vessels using the said port, the dock company were required to make a dock, and also a quay or wharf, and other works, and to repair and cleanse them. Duties on ships lading or unlading in the port, and wharfage rates on goods landed on the quay, were granted to the company. Besides the emoluments arising from the dock dues, the company derive considerable emoluments from the rent of warehouses which they have erected, agreeably to the directions of the act. The warehouses are in the town of Hull, and not in the parish of Sculcoates. Two-third parts of the dock are situate within the parishes of the Holy Trinity and St. Mary, in Hull, and the remaining third is in the parish of Sculcoates. In 1814, the dock company rebuilt the lock and entrance basin, under the advice of their engineer. On the 2nd of May, 1814, the ships were removed out of the dock, and the execution of the works commenced, and continued until the 31st December last. The expenditure of the company in respect of these works, from the 20th of September, (being the day when the rate was made to commence,) to the 31st of December following, amounted to 5,483*l.* 15*s.* 2*d.*, and the receipts of the company, in respect of the duties and wharfage rates during the same period, amounted only to 2963*l.* 18*s.* 7*d.* The further estimated expenditure of the company in respect of the works, from the 31st of December to the 20th of March, (when the six months for which the rate was made would expire,) would be 1193*l.* 7*s.* 4*d.*, and the receipts of the company, in respect of the duties and wharfage-rates, would be 97*l.* only. The chief part of the expense was incurred in respect of the lock and entrance basin, which are situate in the town of Hull, but are essentially necessary to that part of the dock which is situate in Sculcoates. The parishioners of Sculcoates have, in assessing the dock company to previous poor-rates, annually made a deduction of the company's expenditure in respect of the ordinary repairs of the dock, from the gross annual amount of the company's duties and wharfage rates. The sums stated in the account of expenses were all necessarily expended in making the repairs in question, and provided the dock company is entitled to deduct the same from their gross receipts, there are not any net proceeds whatever for the use of the company. The company did not, in consequence of the rebuilding of the lock and entrance basin, become entitled to any greater or other duties or wharfage rates than they were before entitled to. The question was, whether the company were liable to be rated for the six months for which the rate was made. Lord *Ellenborough*: "The act of parliament does not require the company to make a dividend at all events, nor does it say that they shall divide to the extreme limit of the moneys received. Suppose an application to be made to this

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court for a *mandamus*, to compel the company to make a dividend of the whole balance in their hands, if the company were able to show that the expense of the necessary repairs of the basin for the ensuing year would be likely to absorb the whole or the greater part of this balance, would the court grant such a *mandamus*? And if the company were in any one year to do so improvident an act, as to make a dividend to the uttermost penny, not reserving anything for prospective demands; as there is a provision in the act, (s. 37,) enabling them to make calls from the proprietors for the necessary purposes of the act, the consequence would be, that instead of reserving out of the funds in hand, sufficient means to cover these expenses, they must call upon the proprietors to refund what they had improvidently distributed among them. The language of the act is, 'that the company shall have power to make such calls of money from the proprietors of shares, to defray the expenses of, or carry on the works authorised by the act, as they from time to time shall find wanting and necessary for those purposes.' So that the company may call upon the proprietors of shares to refund what they have received. There is no question as to the rateability of this property; it has very properly been admitted that it is rateable. The question therefore is, whether a rate can be imposed in respect of property which is generally rateable, but the profits of which, owing to certain incidental and necessary expenses, have been for a time exhausted. As to which it is to be observed, that a rate is not always imposed on property in the particular year in which it makes a productive return, for if that were so, there could be no rate in respect of saleable underwoods and the like property, which are productive only after a series of years, except in those years in which the profits arose. But in *Rex* v. *Mirfield*, (*a*) (*ante*,) it was decided, after much consideration, that saleable underwoods were rateable annually, in proportion to their value, though they should happen not to be cut down more than once in twenty-one years. In the present case, the company have no money in hand, but they have a property which upon an average is productive. To hold that in every case where property is rateable, an account is to be taken for the particular period for which the rate is imposed, of the precise amount of its productiveness, and that if there is the smallest decrease, the rate is to be reduced *pro tanto*, would, in my judgment, be infinitely inconvenient. Every house must then have its separate assessment, in order to let in the particular deductions belonging to each; and this mode of assessment would be open to every species of fraud, because the largest deductions would be attempted to be thrown on periods of the greatest pressure. It appears to me that this rate is well imposed, and that the average profits of the company are not liable to be merged in the partial expenditure of any particular period." *Bayley*, J. "The case does not state that this property, *communibus annis*, is not productive of profit, but only that during this particular period it was not profitable. It appears that the company are in possession of property which is *primâ facie* rateable: the rate therefore is well imposed, unless the property is to be exempted on the ground of its not being profitable at the particular period for which the assessment is made. As to which *Rex* v. *Mirfield* is a clear authority, that the principle which is to govern is, whether it be profitable *communibus annis*." *Abbott*, J. "I think the company cannot relieve themselves from this rate, by showing that on occasion of some extraordinary expenditure during the particular period for which the rate is made, that which would have gone to the account of profits has been otherwise consumed. To hold any such rule would, in my opinion, be productive of great inconvenience; for by the same rule I know not what answer could be given to the farmholder or householder, if they were to claim a similar exemption, because of the extraordinary expense which they had incurred in the maintenance or improvement of their house or land." *Holroyd*, J. "I am of the same opinion. The only doubt which I have entertained has been on s. 22, which obliges the company to repair

Property is rateable if a profit is made *communibus annis*.

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the dock and other works, and if under that section the specific rates had been, so far as they were required, appropriated to that purpose only, I should have entertained considerable doubt whether any property vested in the trustees could properly be made the subject of rate, beyond the surplus which might happen to remain in their hands, after satisfying the expenses attending the maintenance and repair of the works, but the case is not so, for I find by s 42, the duties payable by virtue of the act are vested in the company, as their own proper moneys, and for their use, in consideration of the expenses incurred by them in making and maintaining the works, and by s 53 they are to take an account annually, and declare what dividend shall be made, so that they stand in the same situation with any other canal company"

Rent the criterion, without reference to the sum expended in rendering it so profitable

Rex v *Attwood*, 9 *D & R* 328, 6 *B & C* 277 The appellant, Attwood, was proprietor and occupier of a coal mine, upon which he had expended 10,000*l* in planting the mine and setting it to work It had been at work one year and a quarter, and the value of the whole coals raised did not exceed 5000*l*. The full value of the annual produce, after deducting expenses of working, amounted to 428*l* 9*s*, at which sum it was rated Other appellants were rated for other mines upon the annual sums paid by them for royalties or rent, the produce of the mine, being less respectively than the sums expended in setting the mines to work *Abbott*, C J "We are all of opinion that the owner and occupier of a coal mine should be rated at such sum as it would let for, and no more As to the other points, the first was, that the rate should not be imposed upon the coal produced, because that was part of the realty It is the first time that such a proposition has ever been submitted, although many coal mines in various parts of the country have constantly been rated, and the argument in support of it is wholly untenable The legislature has expressly made coal mines rateable, and they must be rated for what they produce, viz the coals Slate quarries and brick earth are also exhausted in a few years, but nevertheless the rate is always imposed upon that which is produced The other argument was, that the rate could not be imposed until the expenses of planting the mine had been recouped But I cannot discover any distinction between expenses incurred in bringing a mine to a productive state, and in building a house. The attempt to distinguish them is perfectly novel, and if a house is to be rated as soon as built and occupied, it must follow that a coal mine is rateable as soon as it is set at work and produces coals, although it may happen that the expense of sinking it may never be recovered If the tenant of a mine expends money in making it more productive, that is the same as expending money in improving a farm or a house, in which cases the tenant is rateable for the improved value" Rate upon Attwood ordered, and the residue confirmed (*a*)

Under an act of parliament the Birmingham Gas light Company purchased lands and buildings, and there placed retorts &c, necessary for the manufacture of gas and coke, and fixed in the streets trunks, pipes &c for the conveyance of gas The company derived a considerable profit from the manufacture and sale of coke and gas The

Rex v *The Birmingham Gas-light Company*, 1 *B & C* 506, 2 *D & R* 735 The Birmingham Gas-light Company were assessed in respect of dwelling-houses, shops, buildings, land, and premises, and the trunks, pipes, and other apparatus for the conveyance of gas belonging to the company, being fixed in the ground, in the parish, and the profits therefrom within the parish, the annual value being stated at 800*l* and the assessment 20*l* Case —By the 59 Geo III the company were incorporated to supply the town with gas, and, with the consent of the commissioners for lighting and paving, to break up the soil of the streets, &c, for laying down pipes and other apparatus for the conveyance of gas from the manufactory to the houses, &c, of the consumers. The company purchased the premises mentioned in the assessment, and placed therein gasometers and other apparatus necessary for the manufacture of gas and coke (part of which apparatus is affixed to the freehold, and part is not), and also, by the con-

(*a*) Attwood was rated at the full annual value, which would include both the landlord's and tenant's profit The other appellants were rated only according to the rent, and therefore the rate on Attwood was reduced to the sum it would let for

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stock in trade, and the profits of other manufactories in the parish of B. were not rated to the poor: Held, that the company were not rateable to the amount of the profits of their trade, but for a sum equal in amount to that for which the premises would let to other persons willing to carry on the same business.

sent of the commissioners, broke up the soil in the streets, and fixed therein the apparatus for the conveyance of gas. The company carry on a considerable manufacture of coke and gas upon these premises, and derive a profit from the sale of each of these articles. The coke is conveyed from the premises of the company to the purchasers by carts, and the gas by trunks and pipes. Gas and coke are both manufactured from coal at a great expense of fuel, and the machinery and apparatus necessary for the manufacture of these articles are also very expensive, and require frequent renewal. *Stock in trade, and the profits of the manufactories in the parish of Birmingham, are not rated to the poor in this rate.* The premises, pipes, &c., mentioned in the assessment, if rated to the poor as other land within the parish, *i. e.* if the profits from the sale of gas are not included, are worth 200*l.* per annum, but are worth 800*l.* if the profits from the sale of gas are included. If the court should be of opinion that the profits accruing to the company from the sale of gas are not rateable, or that they can only be rated as the profits of a manufactory, the rate ought to be amended by inserting 200*l.* in lieu of 800*l.*, and 5*l.* in lieu of 20*l.* *Abbott*, C. J. "The question proposed to us is not, whether the company be rateable for their buildings above ground, or their pipes under ground, but to what amount they are rateable. I am of opinion that the amount in respect of which they are rateable is the sum for which the buildings, trunks, and pipes would let to a person who is willing to carry on the business there. It appears from the statement in the case, 'that the premises, trunks, and pipes, if rated to the poor as other lands in the parish, that is, if the profits arising from the sale of gas are not included, are worth 200*l.* per annum, but if the profits are included, then they are worth 800*l.* per annum.' I am of opinion that the profits are not in this case rateable. If they were, a blacksmith's forge might be rated, not at what it would be let for, but at the sum which the blacksmith acquires by it. The distinction between the cases cited and the present is, that here the profits rated are those of a manufactory, which are obtained by applying the skill and industry of men to capital brought from a distance for that purpose. They are very different from the profits of canals or of mineral waters, which are natural products arising within the parish, and rendering the land in which they are situate the more valuable. For these reasons I am of opinion that the rate must be amended by inserting 200*l.* as the value of the buildings and pipes, and 5*l.* as the sum to be paid." *Bayley*, J. "I am of opinion that the company ought to be assessed, not at a sum equal to the annual profits of their trade, but at that sum which the buildings, trunks, and pipes would produce to them if let at an annual rent to persons willing to carry on the trade, or that rent which the company would be forced to pay if the premises were not their own property." *Holroyd*, J. "I am of opinion that the rate ought to be amended, as it is stated that in this parish the profits of other manufactories are not rated. In the case of a canal, the land and the water are rated; and here an attempt is made to rate the pipes and the gas; but that cannot be done. The proper criterion for the rate to be imposed upon these lands and buildings is the rent at which they could be let to a person willing to carry on the business." *Best*, J. "I think that such a construction ought to be put upon the statute of Eliz. as to include the largest portion of productive property, because I feel that the poor-rate, and various other burdens, press heavily upon the landed interest. This rate, however, cannot be supported; it is an assessment upon the profits of trade. Now that is not a correct mode of assessment. Besides, a rate even upon the net profits of any undertaking must be unjust and unequal in a place where similar profits and stock in trade of others are not generally rated. The profits of this company are very different from the tolls of a canal. When a canal is once formed and filled with water, it produces to the proprietor, without anything further being done, a permanent profit in the shape of tolls; but the gas company could obtain no profit by merely laying down these pipes for the conveyance of gas through the streets. The gas must afterwards be manufactured by the company at a

great expense, and sent through those pipes before they will be entitled to any recompense. The gas company stand, therefore, in the same situation as any other manufacturer who produces by artificial means a saleable commodity. Now the profits of such a manufacturer could not, with justice, be rated to the relief of the poor in a parish where other profits and other stock in trade are not rated. I think, therefore, that the company ought to be assessed at that annual sum for which the premises and pipes would let to a person willing to carry on the trade." Rate amended.

Where some lands are rated according to the rent, in rating other lands according to their value, the poor rate must be deducted.

Rex v. *Hull Dock Company*, 5 *D. & R.* 359 ; 3 *B. & C.* 516. The appellants were assessed in respect of profits arising from dock dues and wharfage rates received by them. Their net profits for the year amounted to 8900*l.*, after making a fair allowance in respect of repairs and all other expenses incidental to and necessary for making the property profitable, but without making any deduction for poor-rate, which, according to their assessment, amounted to 2225*l.* In giving the judgment, *Abbott*, C. J., said, "As to the question, whether the rate upon the company should be according to the full amount of their profits, without making any deduction for the sum they are liable to pay for poor-rate, we think that the rate ought not to be so made. This property is to be charged according to its worth and value, in like manner and in the same proportion as other real property is charged in the same rate. If other real property is charged only at three-fourths, or any other part of its value, after making deductions of the same nature as those which have been made in the case of the company, (*a*) the company ought to be charged in the same proportion. If other real property is charged according to the rack-rent actually paid by the occupier, and according to a rent so estimated, where the occupier is not a tenant at such rent, there will even be in those cases a virtual allowance in respect of the poor-rate, such rent being in reality only part of the worth or value of the land. The whole worth or value is made up of what is paid in rent and what in rates, and other outgoings. Land intrinsically worth 40*l.* can only pay a rent of 30*l.*, if it is to pay 10*l.* per annum in other ways ; and in estimating a rent to the landlord and tenant, look to the value of the thing on the one hand, and the outgoings on the other ; and the outgoings must be deducted from the value before the rent can be fairly fixed. Wherever, therefore, the rate is according to the rent, which is generally the case, an allowance is virtually made for the poor-rate ; and if this rate is made according to the rent, the company should have the allowance. The mode of estimating the allowance is a different thing ; that suggested in the case is clearly wrong, for if 2225*l.*, the present rate, is deducted from the 8900*l.*, the rate upon 6675*l.* only, will leave part of the rateable proportion of 8900*l.* (*b*) free from rate. The allowance must be so made that the sum upon which the annual rates are made may, with the amount of the rates, make up the 8900*l.* The sum, according to the present rate, will be 7120*l.*, and the sum to be paid by the company will be 1780*l.* The process of calculation must be adapted to the amount of rate. It is sufficient for us to propound the rules, leaving the process of calculation to others."

The occupiers of a canal, who are also carriers, are rateable only according to the tonnage.

Rex v. *The Trustees of the Duke of Bridgwater*, 4 *Man. & R.* 143 ; 9 *B. & C.* 68. In this case the defendants were rated in proportion to the full amount of the gross receipts as owners as well as occupiers of land taken for the canal, towing-paths, warehouses, wharfs, &c. ; whereas the occupiers of farms and premises in the same parish were rated only in proportion to the rent paid by them respectively. *Bayley*, J., in delivering the judgment of the court, said, "The same principle of rating must be

(*a*) The proportion here would not be necessarily correct. If the landlord keep the premises in repair, the rateable value would be less than the rent, for an allowance was made to the company in this case for repairs.

(*b*) It will be observed that the court were of opinion that the assessment of 2225*l.* on the company was too large, and ought to be reduced to 1780*l.* This latter sum only thus became payable out of their profits, and ought to be deducted.

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adopted whether the party be owner and occupier, or occupier only. I lay out of consideration the fact of the trustees being carriers, because their occupation only is to be considered. The profits of carrying goods are the profits of their *trade*. The tonnage is the profit of the land occupied by them. The principle of our decision in this case is, that the same rule is to be applied to all occupiers, and *that the rent or sum at which the land will let, is the criterion of the value of the occupation.*"

The annual value, *communibus annis*, and not in a particular year, is the criterion of value.

Rex v. *Chaplin* 1 *Bar. & Adol.* 926. The appellants were rated upon the annual rental of 299*l.* 17*s.* 6*d.* as occupiers of lands taken for the Louth canal towing-paths, &c. with the profits arising therefrom. Rate confirmed. Case:—By 3 Geo. III. c. 39, commissioners were empowered to make a navigable canal from the Humber to the Ludd, and to continue it to Louth, and for that purpose to borrow money upon the security of the tolls. The commissioners borrowed 28,000*l.* at 5*l.* per cent., and expended the same in making the canal. This act was repealed by 9 Geo. IV. c. 30, and the canal, with the soil thereof, and the towing-paths, locks, and appurtenances, were by the last act invested in commissioners, who demised the canal and soil thereof, together with the tolls, dues, proceeds, and forfeitures imposed and authorised by that act, to the appellants for forty-eight years from the 24th of June, 1828, subject to the payment thereout of the interest on 28,000*l.*; in default of which payment the commissioners might require the collectors to pay such interest out of the money that might then be in or might thereafter come to their hands; and the collectors were to be allowed such payment in account with the lessees, the tolls being appropriated in the first instance to the satisfaction of this charge. The canal passes through twelve parishes, and one-fifth of the whole extent lies in the respondent parish of Tetney. The lessees are further liable to all the expenses of maintaining and repairing the canal and its works, collectors' salaries, &c. (The case then went into details as to the expense of the canal, the receipts, and the mode of collection.) The annual earnings of the whole canal are 3418*l.* 8*s.* of which the proportion corresponding to the length of the canal in Tetney, namely one-fifth, would be 683*l.* 13*s.* 7*d.* The annual earnings of the canal in Tetney are 788*l.* 17*s.* 3*d.* or three-thirteenths of the earnings of the whole canal, upon which three-thirteenths the present rate was imposed. If the court should be of opinion that the rate ought to be imposed on one-fifth instead of three-thirteenths, the rate was to be reduced accordingly. The appellants claimed the following deductions; 1400*l.* being the interest on the mortgage debt of 28,000*l*; 341*l.* 16*s.* 9½*d.* as the reasonable profit to a tenant to occupy, at ten per cent. on 3418*l.* 8*s.*; a further deduction on account of average annual expenses for repairs, &c. which on the whole canal amounted to 881*l.* and of which 163*l.* were incurred in the respondent parish; and a further sum on account of poor's-rates and other parochial taxes, which on the whole extent of the canal amounted to about 100*l.* The preamble of the 9 Geo. IV. recited that the commissioners under the former act having borrowed the sum of 28,000*l.* and having incurred considerable expense, and being in want of funds, entered into an agreement with C. Chaplin, (for the good of the navigation, and as the only means of raising the necessary funds,) that the canal and navigation, subject to the orders of the commissioners, with all the tolls and all the estate and interest of the commissioners, should be vested in Mr. Chaplin, his executors, &c. for ninety-nine years; and he agreed to accept the trust, do the works to be ordered by the commissioners, pay all the interest of the money borrowed, at five per cent., by half-yearly payments, and make some other advances. The statute then recited, that doubts had been entertained as to the authority of the commissioners to make such agreement; that C. C., and those claiming under him, had, after the said agreement, and on the faith of it, expended considerable sums (in particular, two sums of 7000*l.* and 4000*l.*) on the navigation; that the agreement was entered into by the commissioners *bonâ fide* for the benefit of the public, and was in fact beneficial to the public at the time it was made; and the benefit accruing

therefrom to the C. C. and those claiming under him had not been disproportioned to the risk run by the C. C.; that the agreement had been acquiesced in by all parties for nearly fifty-one years, and it would be for the benefit of the public that the same should be sanctioned for the remainder of the said term of ninety-nine years, but subject to a reduction of the tolls of the navigation by one half, as to some articles, and one-third as to others. The commissioners under the new act were therefore empowered to grant to the persons entitled to the beneficial interest under the above agreement, and their executors, &c. a lease of the navigation and tolls for forty-eight years, being the residue of the term of ninety-nine years in the agreement mentioned; provided that the lessees for the time being should be subject to all the payments, rules, regulations, &c. mentioned in the former act. Under this enactment the demise stated in the case was made. Lord *Tenterden*, C. J. "The rate must go back to be amended. In cases of this kind, which have hitherto occurred, the canal has been in the hands of the original proprietors, and the object has been to ascertain what it would be worth to let, which has sometimes been difficult. But here the canal is actually let, and therefore there is no occasion to speculate on that point. The 1400*l.* interest is in effect a rent, though there is no actual payment to the lessors. The tolls are appropriated to the purpose stipulated by them, and in case of default they may call upon the collectors to make good the payments out of the moneys in their hands. It was contended that this was a beneficial lease; but taking the several recitals of the act 9 Geo. IV. c. 30, together, I think that does not appear. The commissioners in the first instance assigned the canal to Mr. Chaplin, for the good of the navigation, and as the only method for raising the money necessary for putting it into repair; and the act recites that he and those claiming under him did in fact lay out considerable sums of money upon it, that the bargain was beneficial to the public, and is likely to be so if continued; and it states that the benefit as yet derived from it by the lessees has not been disproportioned to the risk originally run; but lest the lease should become too beneficial during the remainder of the term, the tolls are reduced. I think then there is no ground for saying that the 1400*l.* is not such a sum as may be properly considered the value of the navigation, and as three-thirteenths of the profits arise in the parish of Tetney the rate must be laid on three-thirteenths of 1400*l.*" *Littledale*, J. "I am of the same opinion as to the argument which is drawn from the amount of present earnings. It might as well be said that where a farm is let, the year's profit on each particular crop is to be taken into consideration in fixing the rate. In the case of a property so lately let, the actual rent is the best criterion of value; perhaps it might be otherwise, if the letting had been ten or twenty years ago, and it appeared that the profits had very materially increased or diminished since." *Taunton*, J. "The tolls of a canal, like the profits of land, are to be valued at what they would let for *communibus annis*, and it has I believe been held (*a*) that no difference is to be made, because in one particular year there was a loss. In ascertaining what a property is worth to let, the best criterion in general is what it actually does let for. When, therefore, in this case, the value was estimated from the earnings of a single year, a wrong basis of calculation was taken. Here is a rent spreading itself over a period of forty-eight years, and the produce in one is no proof what the average will be. Here in point of form there is no rent, but a payment of interest; it is however in the nature of rent. Instead of the lessee's paying 1400*l.* a-year to the proprietors, and their handing it over to the mortgagee, the lessee pays it to the mortgagee at once." *Patteson*, J. "Where the land is not actually let, it becomes necessary to calculate what a tenant would pay for it where it is let. The actual rent is the criterion, unless it can be clearly shown that that is too small; but that is not ascertained by inquiring whether the property was more or less beneficial in a particular year." Rate to be amended.

Interest on a mortgage is rent.

(a) *Ante*, 247.

Rex v. *Lord Granville*, 4 *Man. & R.* 171; 9 *B. & C.* 188. The defend-

The rate must be

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on the improved annual value, though the improvements are made by the tenant.

ant was lessee and occupier of a coal mine or colliery. In this year he paid royalty to his landlord for a mine rent upon the coals raised the sum of 802*l.* 8*s.*, which sum was a *fair mine rent* for a tenant to pay upon the quantity of coals raised in that year. The defendant some time since erected several steam and other engines in the colliery, which are used solely in draining the mines and raising the coals to the surface; he also laid down a railway, which is solely employed in facilitating the carriage of the coals. This forms the machinery with which the mines were worked, and without which there could be no coal raised *and no mine rent*, and it was assessed at 187*l.* 10*s.*, in addition to the above sum, making together 989*l.* 18*s.* It was calculated that this latter sum would be a fair rent for the whole colliery and machinery, if now let to a sub-tenant. *Bayley*, J. "I have no doubt that the defendant ought to be rated for his engines and railway. Whether the sessions have made proper deductions we are not to decide. The only point for our consideration is, whether the defendant ought to be rated for the engines and railway. If the owner had occupied the mine, he would have been liable to be rated according to the improved value of the property; and where the owner of a mine fixes an engine, or otherwise by expenditure of his capital raises the value of his property, he will be rateable for the value of the property so improved by his expenditure. If it be leased to a tenant who is to incur the same expenditure of erecting an engine, the owner will receive a less royalty; but as a greater quantity of coal will be raised, the tenant will be thereby remunerated for his expenditure, and I think the tenant being the occupier, is liable to be rated for such improved value." *Littledale*, J. "It is immaterial, with reference to rateability, whether the landlord or tenant erect an engine or lay down a railway. The bargain between the landlord and tenant may be varied on that account, but the occupier of the property is rateable in respect of its improved annual value." *Parke*, J. "The question left to us is, whether the defendant be liable to be rated for improvements? I think he clearly is. It is found by the sessions that the value of the property is raised by the improvements from 802*l.* 8*s.* to 989*l.* 18*s.* Whether the amount of the rate is precisely what it ought to be, it is not for us to determine. The sessions seem to have estimated the value according to the sum at which it would let to an undertenant. That perhaps may not be the correct principle on which such property ought to be rated. The annual value is part only of the annual rent: some portion of that rent should be considered applicable to repairing and replacing the engines. In *Rex* v. *Tomlinson* this distinction was taken. The only question for us however is, whether it be right in principle to rate the lessee in respect of an annual value increased by reason of improvements made by himself? I think he was properly rated for the improved value." Order of sessions confirmed.

Annual *value* part only of annual rent.

Houses to which machinery is attached, and which increase their value, must be rated according to such increase.

Rex v. *Birmingham and Staffordshire Gas Company*, 6 *A. & E.* 634; 1 *N. & P.* 691. The company were rated for their premises in Oxford-street, and their mains and pipes within the parish. Rate confirmed. Case:—A local act of 1 & 2 W. 4, c. 67, for regulating the poor, directed a valuation to be made, which was so made in December 1833. Many persons named in the notice of appeal occupied houses, &c., to which pipes, steam engines, and other machinery for carrying on trade were affixed to the freehold. If such pipes, &c. ought to be estimated as forming part of the annual value of the house, then the value would be increased beyond what they are rated for. The pipes, &c. were omitted in the valuation. The gas of the appellants was not manufactured in Birmingham, but conveyed there by pipes. They have no property in the land in the streets where the pipes are laid, only a licence from commissioners in whom the soil is vested. The shares of the company were declared to be personal estate (*a*). The premises of the company in Oxford-street in the parish were valued as other land and buildings in the parish. The gas-holder, formed of brick and iron, sunk into the ground, was valued as a warehouse. The

(*a*) This is no criterion of rateability, *Rex* v. *Hull Dock Company*, 1 *T. R.* 219.

mains and pipes and land occupied by them were valued at the annual value at which they would let for the purpose of a pipe-way, 20*l.* per cent. being deducted for the wear and tear, as was allowed for repairs of houses. The mains were considered as depositories. Lord *Denman*, C. J. "This rate is bad, on a ground which makes it unnecessary for us to discuss any other. It is expressly found that houses, to which machinery is attached, are not rated according to the increased value arising from the machinery. Such machinery constitutes a mode of occupying: that really is clear from the beginning to the end of all the cases on the subject. This principle has never been called in question; and, even where the machine has not been attached, a house has been held rateable in respect of it, if the value of the house was increased by the machine. In a case argued in last Hilary Term (*a*) the principle was never doubted; but it was only attempted to show that it did not apply to the particular case." The other Judges concurred.

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(*a*) The next case.

The value of the machinery attached for manufacturing purposes must be valued without considering whether that machinery be real or personal property.

Reg. v. *Guest*, 2 *N.* & *P.* 663; 7 *A.* & *E.* 951. This was a rate for Merthyr Tydvil. The appellants are the lessees and occupiers of the Dowlais Iron Works in Merthyr Tydvil, and, as connected with the iron works, they are also lessees and occupiers of certain mines and coal mines. One portion of the coal mines, in the occupation of the appellants, is situated in Merthyr Tydvil, and the other in Gellygare, the adjoining parish, and the latter portion is brought from Gellygare by an underground adit, the mouth of which is in Merthyr Tydvil. It was objected that the coal brought from the mines in Gellygare was not chargeable in Merthyr Tydvil. The sessions allowed the objection, and amended the rate. The appellants furthor objected to the amount of the rate upon their iron works, because several engines and other machinery, used for working the iron mines, mentioned in the said rate, and also the several engines and other machinery used in manufacturing iron from the iron-stone, were not fixed to the freehold, so as to be regarded as real property, and personal property was not charged to the poor-rate. The mode of erecting such engines and machinery was: The soil is first excavated for laying down foundation walls of strong masonry; into these walls, when built, are introduced balk and other strong timber, which are covered and secured by bolts and other contrivances to and by an iron platform; upon this platform are placed frames of wood and iron, which are inserted into the walls of the buildings in which the engine and machinery are inclosed; these frames then serve as the foundation of the engines and machinery, which are attached to the frames by cotterells or keys and jibs, in such a manner as to be tightened or slackened, or altogether removed at pleasure; such removal may be effected from and out of the buildings which inclose them, without injury either to the engines or machinery, or to the buildings or the soil, and without displacing any part thereof. The machinery thus described is referred to in schedule No. 2 of the annexed rate. The iron mines occupied by the appellants are situate in Merthyr Tydvil, and within a short distance from the works, engines, and machinery comprised in the rate. As to such of the engines as are applicable to the working of the iron mines, whether such engines are fixed to the freehold or not, the sessions allowed the objection and amended the rate accordingly, and no question is raised as to such amendment. The sessions, with the amendments before mentioned, confirmed the rate, subject to the opinion of this court. The schedule was set out, and the following is a specimen of the items:—

Landlord.	Person Rated.	Property Assessed.	Schedule No. 1, Fixed Building.	Schedule No. 2, Machinery and Engines alleged to be Chattels.
			£	£
Marquis of Bute	Messrs. Guest, Lewis & Co.	11 Blast Furnaces 5 Blast Engines	10,500 4,500	17,000

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The question was, whether the appellants were liable to be rated for the various properties referred to in the schedule No. 2. *Cur. adv. vult.* Lord *Denman*, C. J. "This was an appeal against a rate, on the ground that many articles of machinery, employed by the appellants in their manufactory, were personal property, and not subject to be rated. The sessions proposed numerous questions to us, but we did not think their statement so full as it might have been, and we desired to see a copy of the rate, in the hope that we might be enabled, from the description there given, to specify the articles that ought to be included. In this we are disappointed, and can only direct that the rate should finally stand on the general principle which we have lately had occasion to lay down (*a*), that real property ought to be rated according to its actual value, as combined with the machinery attached to it, without considering whether that machinery be real or personal property, so as to be liable to distress or seizure under a *fieri facias;* or whether it would descend to the heir or executor, or belong, at the expiration of a lease, to landlord or tenant. The rate must therefore be sent back to the sessions to apply this principle."

(*a*) Preceding case.

Canal tolls must be rated on the same principle as the land.

Rex v. *The Oxford Canal Company*, 4 *B. & C.* 74; 6 *D. & R.* 86. The principle of rating laid down in *Rex* v. *Chaplin* must be applied to canal tolls, *Abbott*, C. J. saying, "As to the amount, it appears that other lands are rated according to the amount which would be obtained by letting them at a rent: this company therefore must be rated according to the same rule."

In estimating the value of the tolls upon which the rate is to be made, deductions for repairs, expenses of collections, and other charges must be made from the gross amount of tolls received.

Reason for not rating all profits.

The expenses of the canal in each parish to be deducted.

Also of supplying water. (See *Rex* v. *River Weaver*, 182.)

Rex v. *Oxford Canal Company*, 5 *Man. & R.* 100; 10 *B. & C.* 163. In fixing the amount of the rate for which the company was liable, the sum paid by the proprietors for the poor-rate, the expense of collecting the tolls, of repairing the banks of the canal, and of supplying it with water, ought to be deducted from the gross profit. Upon this point, during the argument, *Bayley*, J. observed, "There can be no doubt the poor-rate, the annual repairs, and the expenses of collecting the toll must be allowed. The sum which remains after making such deductions constitutes the net profit." *Parke*, J. "In strictness, all the profits ought to be rated, but inasmuch as tenants' profits in respect of other lands in the parish are not rated, the tenants' profit in respect of land occupied by the canal company ought not to be rated." It appeared that the annual repairs of that part of the canal situate in the parish amount to 20*l.*, the annual repairs of the whole line of the canal amount to 4,000*l.*; and in reference to the question whether in fixing the rate there should be deducted that proportion of the whole sum expended in repairs, which the length of the canal in the parish of Foleshill bears to the whole line of the canal, or whether only the expense of repairs incurred in that part of the canal situate in Foleshill, *Bayley*, J. said, "The rate is to be in proportion to the value of the land in the parish where the rate is made: therefore all expenses incurred in repairing that part of the canal in that parish must be allowed." *Littledale*, J. "The banks in one parish may require more repair than in another, or there may be locks which require frequent repair; so that it may happen that a given part of a canal may yield no profit whatever." Counsel further urged that a deduction must also be made for the expense of supplying water for the canal. It is analogous to the expense of manure used in the cultivation of land. Without the supply of water, the canal can produce no profit whatever. The fair rent of land, is the value of the land after deducting the expenses of cultivation. *Bayley*, J. "There must undoubtedly be an allowance made upon that account; the quantum will be the question for the sessions. We can only lay down the principle. We never fix the quantum, unless the sessions tell us the principle upon which they have fixed the quantum, and their calculation appears to be erroneous."

Rex v. *Adames*, 1 *Nev. & M.* 162; 4 *B. & Adol.* 61. By a rate for the parish of Pagham the appellant, who was the owner and occupier of lands lying within a district of the parish called Pagham Level, was assessed at 312*l.* 14*s.* which was the amount at which the land would let for, making no allowance for the sewers' rate, which is a landlord's tax. *Cur. adv. vult.*

—*Parke*, J. " The question for the opinion of the court in this case, is in effect whether an occupier of lands in a district of the parish of Pagham which is liable to be flooded, and is protected from floods at a certain occasional expense (for that is the nature of the sewers' rate), ought to be rated at the same sum as the occupier of lands of similar quality and of equal annual produce, lying in the same parish, but not liable to the same expense. We are of opinion that he ought not. It is obvious that the average annual net profit of one description of land is not the same as that of the other; and both upon principle and authority we think the rate ought to be made in proportion to that profit. The statute 43 Eliz. c. 2, requires the churchwardens and overseers to raise competent sums, by the taxation of every occupier of lands, according to the ability of the parish: nothing is expressly said as to the principle upon which the rate should be made, but it is implied that it must be made with equality, and with some reference to the subject of occupation. Now it is quite clear it ought not to be made according to the profit derived by the occupier himself; for if that were so, the rate must vary according to the nature of the occupier's interest. An occupier who is tenant at will at rack-rent, and therefore receives a less share of the annual profit of the land than one who is tenant for years at a small rent, and still less than one who is a tenant in fee-simple, and pays none at all, would be rateable at a less sum, a proposition which was never yet contended for. Again, it is quite clear that though the occupier is the person who nominally pays the tax, it is in reality paid by the beneficial owner, and is a charge upon the land. In proportion as the average tax which the tenant has to pay is greater, in the same proportion will he give less rent to the owner. Ultimately in the long run, this will always be the case; though when the tenancy is for a term more or less long, the burthen upon the landlord is postponed for a greater or less period. This being so, it follows that in order to make an equal rate, the nature of the occupier's interest must be disregarded, and the rate imposed according to some value of the subject of occupation. Usage and convenience have established this value to be not that of the estate or property itself, but that of the profit which is or might be made from the estate or property; and as it would be very difficult and extremely troublesome to ascertain the precise value of that profit during the time for which each rate is made, and in case of occasional profit both troublesome and unjust, (*Rex* v. *Mirfield*, *ante*, 247 ; *Rex* v. *Hull Dock Company*, *ante*,) to make a rate for a large sum at one time and a small one or none at another upon the same land, the rule has been to assess according to the annual profit of the land; or, where the produce is not matured in one year, then upon an average of years, from which profit deductions are allowed for all the expenses necessary to its production. It is not material whether the whole or a certain aliquot part of that net profit be rated, provided all lands of the same description are rated equally upon that aliquot proportion of the profit; and in practice it is usual, and it is most convenient, to rate lands at the rack-rent which they would pay to a landlord, or some certain portion of it, the tenant paying all rates, charges, and outgoings; which is in effect rating according to a part of the net profit only; but provided it be the same aliquot part in all cases, it makes no difference. Further, if the subject of occupation be of a perishable nature or require an annual expense to secure its existence, an allowance ought to be made on this account, for the total annual profit is not the net annual profit; a part must be set aside for the restoration and maintenance of the subject of occupation. It is on this principle that buildings have been permitted to be rated at less in proportion than arable and other land. The cases, especially those of a more recent date, in which the principle of rating has been more fully discussed and considered, will be found to have established this rule of rating, which is, in other words, that all lands are to be assessed in proportion to the net rent which a tenant at rack-rent would pay, he discharging all rates, charges, and outgoings. It may be sufficient to refer to the following authorities in support

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of this position:—(*Rex* v. *The Birmingham Gas Light Company; Rex* v. *Hull Dock Company; Rex* v. *Attwood; Rex* v. *Trustees of the Duke of Bridgewater; Rex* v. *Tomlinson; Rex* v. *Lower Mitton; Rex* v. *The Oxford Canal Company; Rex* v. *Joddrell.*) It remains only to apply the principle to the present case, and there can be no difficulty in saying, that land which requires some occasional expenditure to preserve it from being damaged by water, and to make it as productive as it is, would let for less rent than similar land which requires none, the tenant defraying amongst others that occasional expenditure. In other words, the net average annual profit of both is not the same, and consequently the rate ought not to be the same. In the course of the argument a question was asked, whether land of which the land-tax was redeemed ought to be rated higher than land of the same quality, which is still chargeable with the tax. The answer is, that it ought not: the annual net profit of both is the same, though such annual profit in the latter case is liable to a tax from which it is by law exempted in the former. The rate in the present case must therefore be amended. I must add that this is the judgment of myself and my brothers *Littledale* and *Patteson*, who heard the argument." Lord *Tenterden* was of a different opinion. *Taunton*, J. then said that he concurred in the judgment delivered.

An embankment tax raised from particular lands, equal to the rack-rent of the lands, ought not to be deducted.

Reg. v. *Vange*, 2 *G. & D.* 474. The facts of this case appear in the judgment. Lord *Denman*. "This was an appeal against a poor-rate for the parish of Vange, in the island of Canvey, wherein the appellant was assessed as the owner and occupier of 'a house, premises, and land,' in the sum of 128*l.* The sessions relieved the appellant by striking out the whole amount from the assessment, subject to an opinion. In 1621, Sir H. Appleton and others, conveyed to J. Cropenbergh one-third of their lands, situate in the island, in fee, in consideration of his defending the same against the waters of the Thames. The lands then so vested in J. Cropenbergh are called 'the third acre lands,' and the premises for which the appellant is assessed form a portion of those lands. By the 32 Geo. III., c. 31, for more effectually embanking, &c. the island of Canvey, commissioners were empowered to do such acts as to them might seem right and necessary to protect the island. They were empowered to tax the owners and occupiers of the 'third acre lands,' to *the full amount* of the annual rent or value of the same; and also, if the moneys raised therefrom should be insufficient, to tax other lands. The appellant paid nothing for the purchase of the premises, but holds them as owner, subject to the liabilities aforesaid. The case then states that for several years the sums raised on the 'third acre lands' for the purposes of the act, have been equal to the rack-rent or full annual value of those lands, and the sum assessed upon and paid by the appellant, in respect of the said premises, has been, for the current and preceding years, 123*l.* per annum. The question thus presented for our consideration is, whether the occupation of the premises by the appellant be such as to make him liable to the rate? A question of some difficulty undoubtedly, and which is usually expressed to be, whether the occupation be *beneficial*. The distinctions in many of the cases upon this subject are certainly very fine, and, except the subject immediately under consideration requires it, we do not know that it is useful to enter into a minute examination of them. This question of *beneficial occupation*, moreover, has been frequently before the court; and at no distant time we had occasion to comment upon the import and meaning of the expression: (*The Governors of Bristol Poor* v. *Waite*). (*a*) We will only here again observe, that 'beneficial' and 'profitable,' in the ordinary sense of the words, are not convertible terms; that a party holding property, in its nature rateable, is not discharged from his legal liability because he does it a loss. Suppose a farmer to be able to prove that he was holding his farm at any assignable amount of loss, would that constitute an exemption from the poor-rate? It is unnecessary, however, to put hypothetical cases: *Rex* v. *Parrot* (*b*) is the case. The unprofitable and losing occupation (expressly so found) of a coal mine, was held to create no exemption, because a coal mine is, by the statute of Eliz., *eo nomine*,

(*a*) 5 A. & E. 1.

(*b*) 5 T. R. 593.

made rateable. In the present instance the subject of the rate is of the same description, 'house and lands,' and therefore directly within the statute. What then is to exempt this property from rateability? The answer is, because it yields no profit to the owner, the appellant. Suppose, however, the premises to be let to a tenant at the rent of 123*l.* per annum, the sum at which the sessions seemed to think, if rateable at all, that they ought to be assessed; it seems to be clear that in such case the tenant would be rateable for such occupation. Again, suppose that instead of having paid nothing for it, and taking it as he has with the incumbrance, he had purchased it, and left the whole purchase-money unpaid, but secured by mortgage upon the property, in what respect would that charge have differed from the present? Yet in the case lastly supposed, he surely would have been rateable. *Rex* v. *Adames*, (*a*) which was quoted in argument in support of the rate, was one of comparative amount of assessment, whether property A. was fairly rated in respect of property B.; but there was no question, as here, of abstract rateability. Upon the whole, we are of opinion that the said sum of 123*l.* ought not to be deducted from the assumed gross rental in assessing this appellant."

(*a*) 4 B. & Ad. 61.

Rex v. *Joddrell*, 1 *Bar. & Adol.* 403. This was a rate for the parish of Yelling, which had been inclosed under the 59th of Geo. III., by which the tithes were extinguished and a compensation made in lieu thereof. This rate was made on the amount of the rack-rent which the farms were letting at, and were worth to let at the time. E. Bull, the occupier of one farm, was assessed at 226*l.*, which was the rent paid by her without any deduction. E. B. was not assessed in respect of the corn-rent or compensation for tithe paid to the rector for the same, amounting to 93*l.* 6*s.* 6*d.* The appellant, the rector, is assessed in 368*l.* in respect of the gross payments for compensation for tithes, amounting to 452*l.* 2*s.* 0½*d.*, and that the deduction in the assessment allowed the rector (to wit) 83*l.* 2*s.* 0½*d.*, which is the amount of parochial dues levied on 451*l.* 2*s.* 0½*d.*; it was objected that the farms should have been assessed in the amount of the rent paid to the landlord, added to the amount of the compensation paid to the rector, such being the actual value of the land to let at rack-rent; and also that the appellant was assessed at such a sum as with his poor-rate made up the full gross amount of the corn-rent, the profit accruing to the occupiers beyond the amount of the rate, and beyond the amount of the interest of capital employed, and of expense of cultivating lands, including compensation for the farmer's trouble and labour and superintendence, ought to have been included in these assessments: and also the corn-rent was not worth 368*l.*, the appellant being liable in respect of such sum to the payment of land-tax and ecclesiastical dues beyond the parochial rates, and having further to do or provide for the duties of the incumbency. *Cur. adv. vult.*—*Parke*, J. "This was a question between the rector of a parish and the farmers in it, as to the extent to which he on the one hand and they on the other ought to be rated. The tithes in the parish were extinguished, and the rector had a corn-rent or compensation in their stead. He was rated to the full extent of all he received, with the deduction only of what he paid for parochial dues. He claimed as additional deductions the amount of his land-tax, the amount for what he paid for ecclesiastical dues (which would include tenths, synodals, &c.), and a compensation for performing or providing for the duties of his incumbency. The farmers were rated at the *bonâ fide* amount of the rack-rent at which the farms were letting, or which they were worth to let, the tenants paying the corn-rent or compensation for tithe; and the rector contended that they ought to be rated in addition upon that corn-rent or compensation they paid him, and upon their share of profit beyond the rent. The great point to be aimed at in every rate is equality, and whatever is the proportion at which, according to its true rateable value, any property is rated is the proportion in which every other property ought to be rated. The first thing upon every rate, therefore, is to ascertain the true rateable value of every property upon which the rate is to be imposed, and the next to see upon what pro-

By act of parliament the tithes in a parish were extinguished and the rector entitled to a corn-rent, for which he was assessed to the full amount less the parochial rates. The farmers who paid the corn-rent were rated upon the amount of their rack-rent. Held, that the tenants ought not to be rated for a sum made up of the rack-rent paid to their landlords, and the corn-rent paid to the rector; but that they were properly rated on the amount of the rack-rent only. And also, that the rate was unequal, as the farmer was rated not for the full value of the land which comprised the landlord's and tenant's profit, while the rector was rated for the full value of his corn-rent. And, that in estimating the amount at which the rector ought to be rated, the land-tax ought to be deducted from his corn rent, provided the tenants of the other lands in the manor paid the land-tax without being allowed for it by the landlord, but not if such allowance was made. Held also, that allowance ought to be

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made to the rector for ecclesiastical dues, which were a charge upon the rectory, but not for the exp viding duties of incumbency.

portion of that value a rate is in fact imposed. In the case of land, the rateable value is the amount of the annual average profit or value of the land after every outgoing is paid, and every proper allowance made, not however including the interest of capital, as the sessions have done, for that is a part of the profit. Tithe is an outgoing, and therefore the corn-rent or compensation for tithe in this case, is not to be added to the amount upon which the farmer is rateable; and in respect of that proportion of the annual profit or value, which consists of tithe or corn-rent, the rector is himself to be assessed. We think, therefore, that the sessions were right in overruling the first objection. The second objection was, that the farmer's share of profit ought to have been rated, or, which is the same thing, that the appellant should have been rated proportionably less; and that objection should in our opinion have prevailed. Of the whole of the annual profits or value of land, a part belongs to the landlord in the shape of rent, and part to the tenant; and whenever a rate is according to the rack-rent (the usual and most convenient mode), it is in effect a rate on a part of the profit only. It must, therefore, in the next place be ascertained what proportion the rent bears to the total annual profit or value, and that will show in what proportion all other property ought to be rated. If, for instance, the rent is one-half or two-thirds of the total annual profit or value of land, the rate on all other property should be on a half or two-thirds of its annual value. In this case it is clear that there was a share of profit received by the tenant upon which there has been no rate, and in that respect the farmers were assessed in a less proportion of the true annual profit or value than the appellant. The sessions were therefore wrong in disallowing this objection, and they ought to ascertain the ratio which the rent of land bears to its average annual profit or value, and assess the appellant for his tithe-rent in the same ratio. The last objection was, that the appellant ought to have had the land-tax, ecclesiastical dues, and expenses of providing for the duties of incumbency deducted. As to the land-tax, that is always in practice paid in the first instance by tenants, and whether it is to be deducted or not in this case must depend upon the answer to a previous question, whether the tenants in the parish deduct it from the rent specified or not. If they do, the landlord pays it in effect out of the rent he receives, and the appellant, to be on the same footing, must do the same; in that case it must not be deducted in making the rate on him. But if the tenants pay the specified rents and the land-tax besides, then they have in effect not been rated upon that proportion of the annual profit or value with which the land-tax is paid, but upon a part of the residue only, after deducting the land-tax. Upon this supposition, the appellant must also be rated in a proportionate part of his profit after deducting the land-tax. The ecclesiastical dues ought to be allowed, because they are payable by the appellant in respect of his rectory, and the profits of the rectory constitute the only fund out of which they can be paid; but the expenses of providing for the duties of incumbency ought not to be deducted, because those duties are personal, and ought to be performed personally by the incumbent. The last objection therefore ought to prevail in part. The case must, for these reasons, be sent back to the sessions, who must amend the rate, acting as nearly in conformity to the principle here laid down, as their means of investigation will admit: a precise and accurate application of it is, we are well aware, impracticable."

The principles of 6 & 7 Will. 4, c. 96, applies to tithes as well as land. Ecclesiastical dues may be deducted. The profits of the farmer are not to be included.

Reg. v. *Capel*, 12 *A. & E.* 382, 4 *P. & D.* 87. The facts of this case are fully stated in the judgment. *Cur. adv. vult.*—Lord *Denman.* "This was an appeal against a rate made for the relief of the poor of Watford. The sessions confirmed the rate, subject to the opinion of this court upon a case stating the assessment to have been made on all the lands, houses, shops, warehouses, wharfs, factories, and other buildings, on an estimate of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and deducting from such rent the probable annual cost of the repairs, of insurance, and other expenses, necessary to maintain them in a state to command such rent. The vicar-

age or dwelling-house of the appellant is stated to have been rated thus. It further appears that the appellant, as vicar of the parish, receives compositions for small tithes from the occupiers of land, the gross annual amount of which was 660*l.*; but the assessment upon the appellant was for 540*l.*, after deducting 82*l.* 15*s.* for tenant's rates and ecclesiastical dues; the said sum of 540*l.* being such as the small tithes might be reasonably expected to let for from year to year, free of all tenant's rates and taxes, and deducting from such rent the amount of the ecclesiastical dues. Upon this state of facts the argument before us extended over a very wide range, comprehending an examination of almost all the cases ancient and modern touching the rateability of property. In our view, however, it is neither necessary nor useful to pursue the same course, because this rate strictly complies with the enacting part of 6 & 7 Will. IV. c. 96, s. 1; and if that embraces tithes as well as land, and if the proviso at the end does not interfere, that rate will be good, even though it could not be sustained on the principles laid down in former decisions. Now it cannot be questioned that the words used in the enacting part are large enough to embrace tithes; 'hereditaments' is the division under which a lawyer would class tithes: the expressed object of the statute is to break down distinctions and establish uniformity of rating; and the rule which it propounds is thus far applicable to tithes—that they are demisable at a yearly rent. It is indeed true that many of the deductions required to be allowed from the rateable value are not commonly, and others perhaps cannot be, incident to tithes. But, as they are incident to other hereditaments, the expression of all such deductions was necessary, and indicates no intention to exclude any species of hereditaments. The form of rate given in the schedule was also relied on, which certainly cannot be strictly followed with regard to tithes; but, besides that the second section, which prescribes it, by no means requires that this shall be the only form of rate, the argument would prove too much, for it would exclude tithes from the rate altogether, as it was unsuccessfully argued that it excluded personal property in the late case of *Reg.* v. *Lumsdaine.* (*a*) But, supposing tithes to be within the enacting part, it was strongly contended that they must also be within the proviso—'that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities, if any, according to which different kinds of hereditaments are now by law rateable.' We were pressed with a history of the introduction of this proviso into the bill in its passage through parliament; of such facts, if capable of being ascertained, we are not permitted judicially to take notice. The law must ever be interpreted by the general rules of construction, and we cannot travel out of its language in search of any supposed intention. This language, it must be owned, is very inartificial and loose to a degree, which renders the discovery of a definite meaning to all its parts extremely difficult. To speak of the principles on which rating has proceeded is intelligible; but we also have to deal with 'the different relative liabilities to which different kinds of hereditaments are liable.' If 'principles' and 'liabilities' are intended to express the same thing, tithes are not within the proviso, for the titheholder was never rateable on any principle different from the landholder. If there be one point as to which the spirit of all the decisions is uniform, it is that the rate must be adjusted on the principle of equality. The court possibly has not in every instance worked out its purpose successfully, but the object has never been lost sight of; and the court has constantly laboured to find out the net annual produce, after making proportionally equal deductions. In the instances where the court may have failed to do this, the failure has been principally caused by the general practice (prohibited by the late statute), of rating on aliquot parts of the value, instead of the whole, and the consequent difficulty of dividing the burden between various kinds of property, and in a great degree by the ambiguous and fluctuating sense of many terms necessarily employed in speaking of the subject-matters of the rate. Viewing, then, the decisions according to their avowed intention,

(*a*) P. 141.

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and not with a minute reference to particular expressions, we find no variety in the principles of rating But the word 'liabilities' is supposed to go much further, and to set up the doctrine of *Rex* v *Joddrell*, (*a*) to the extent of showing that land and tithes are under 'different relative liabilities,' which difference the proviso meant to leave untouched On this much canvassed decision we cannot refrain from making some few remarks 1 It neither introduced nor affected to introduce any new law, on the contrary, the court cited it in the later case, *Rex* v *Adames*, (*b*) as a recognition of the old principle to which we have alluded. 2 The tithe owner had not been allowed any deduction beyond the parochial rates, which he paid on the gross amount of the corn-rent substituted for his tithes, either, therefore, he was not rated on the principle of what his own corn-rent was worth to let, after the usual tenant's deductions, or it was assumed, contrary to the fact, that the corn-rent would let for exactly its gross amount, deducting only the parochial rates On the other hand, the respondents, the land occupiers, were rated on their actual rents, although it was admitted that a profit accrued to them, from the occupation, beyond the rent, the interest of capital employed, expenses of cultivation, and compensation for trouble, labour and superintendence They, therefore, were rated on their rack rent, but it was a rent manifestly below that which the land was annually worth The sessions, therefore, in effect found that the tithe composition was rated at its yearly value, and the land below its yearly value, and *Rex* v *Skingle* (*c*) would be an authority to show that the appeal was properly sustained The language of the court in that case must be admitted to go further It appears to lay down a rule of general application, and of great importance This sentence occurs at p 408 'Of the whole of the annual profits or value of the land a part belongs to the landlord in the shape of rent, and part to the tenant, and whenever a rate is according to the rack rent (the usual and most convenient mode) it is, in effect, a rate on part of the profit only' Now this important sentence expresses no general proposition of law, nor any conclusion of fact from any premises stated in the case, it is an assumption in the most general terms upon a point much questioned by those who have made such matters their peculiar study It is certainly inconvenient to make such an assumption, the very terms 'profit' and 'value,' used as synonymous, raise arguments as to their meaning, and the whole proposition is controverted It might be urged, with as much show of reason, that the rack-rent is the consideration which it is worth while to give beyond the rates, charges and outgoings, for the right to occupy and take the actual produce, and must always represent the net annual value beyond those outgoings, and beyond a fit compensation to the tenant for his risk, labour, and superintendence According as land may be made productive at more or less charge, the rent which may be commanded for the occupation, in other words, the net annual value, will be more or less near to the gross, still this will not show that a rate made on the rack rent in all cases will be unequal, because whatever is beyond the net annual value is not properly the subject of the rate In this part of the argument one consideration is supposed to be of the utmost weight If the landlord held the farm in his own hands, the annual value would consist of the amount of rent for which it might be let, with the addition of the tenant's profit He would, in that case, have nothing to deduct but the ordinary outgoings and his bailiff's wages, but who shall say that these wages might not be equal to the estimated profits of the tenant, or, in the simpler case of the owner being entirely his own manager, that his personal labour, withdrawn from other profitable occupation, was not of equal value? As a proposition of law we cannot assert this, nor as a fact deducible from scientific axioms too clear for controversy That discussion we purposely decline, preferring to say merely that *Rex* v *Joddrell* does not convince us that there was any difference in the legal liabilities of the tithe owner and the occupier of land If any case shall arise in which the facts show that the rule, though formally applied according to the statute, will work injustice to

(*a*) 1 B & Ad. 403

(*b*) 4 B & Ad 61

(*c*) 7 T R 549

the tithe owner, there will be no more difficulty in relieving him, than in relieving one landowner as against another; but the facts of this case call for no such interposition. It was suggested that in this view of the case the proviso will have no operation. We are not quite sure that it will, as the attempt to apply it to special modes of rating prescribed by some local statutes did not appear very successful; but this doubt grows out of the language of the proviso itself, which expressly avoids to state affirmatively that there are any cases to which the proviso can apply. Certainly something much more decisive was requisite to defeat an enactment so simple, practical, and useful." Order of sessions confirmed.

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Reg. v. *The London and South-western Railway Company.* (*a*) By a rate for the parish of Mitcheldever, the Railway Company was rated for four-and-a-half miles of railway, 4320*l.* Rate confirmed. Under the powers contained in several acts of parliament, the company have formed and completed a line of railway from Vauxhall to Southampton, being a length of seventy-seven miles; and this railway, for four miles and a-half thereof, passes through the parish of Mitcheldever; and in pursuance of the acts, the company have caused lists to be made of the rates, tolls and sums which they have appointed to be taken, and have kept a separate account, showing the amount of rates or tolls which would have been received by them for the use of the railway, in respect of passengers, cattle, or other animals, goods, wares, &c., if carried by any other party, which said account the overseers of the parishes through which the railway passes, have free access and liberty to inspect. The sum which would have been received by the company for the use of the railway, by such other parties, in the year next immediately before and up to the time of the making of the rate, in respect of so much of the railway as lies in the said parish, amounts to 3470*l.* 13*s.* 9*d.*, being such portion of the tolls as is earned by the railway company in Mitcheldever. The whole sum, however, received by the company for the conveyance of passengers, &c. by the company, in carriages provided, manned and worked by the company, at their own sole expense, including the said sum of 3470*l.* 13*s.* 9*d.*, amounts to 13,880*l.* per annum, in respect of so much of the railway as lies in the said parish. The former sum of 3470*l.* 13*s.* 9*d.* constitutes the proportionate sum for the said parish, which any individual who contracted with the company for the exclusive right to take tolls for the use of the railway by persons using the same, under the powers and subject to the regulations of the statutes, for the transmission of goods, cattle and passengers along the line, in carriages provided by such persons, would receive from such persons; and the sum of 1293*l.* constitutes the rent which a tenant from year to year would give to the company for the exclusive right to receive tolls for the conveyance of goods, cattle and passengers, in the manner mentioned in s. 157 of first 4 & 5 Will. IV., along so much of the railway as lies in the said parish, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, and making allowance and deductions for the average annual cost of repairs, insurance, and other expenses necessary to maintain the way, its fixtures and appurtenances, in a state to command such rent. The respondents contend, that the annual value is not to be estimated on the basis of the tolls alone, nor to be limited to such tolls or their value; but that the advantage which a lessee of the railway may be expected to derive from his lease, by supplying power, and by carrying upon it, may be taken into account. That if a lessee is to be supposed capable of deriving from the use of the railway all the profits which now accrue to the company from the conveyance of passengers, cattle, and goods, under the powers of their acts, such lessee finding locomotive power, carriages, &c., and paying all expenses incidental to working the railway, then the whole railway, with its fixtures and appurtenances, might be

The principle of rating a railway is to calculate the value of the land, as increased by the line of railway and buildings.

The company must be assessed upon the annual rent which a lessee, capable of deriving all the profits which now accrue to the company, would give for the railway, with its fixtures and appurtenances, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, and deducting for repairs, insurance, and other expenses necessary to maintain the railway, its fixtures, and appurtenances, in a state to command such rent, and not merely for the tolls which the company would receive for the use of the railway by others.

Such amount was to be distributed amongst the assessments of the several parishes, in proportion, not to the length of railway, but the actual earnings in each parish.

(*a*) This case and judgment are taken from the able report of the case by Mr. Carrow. See also 2 *G. & D.* 49.

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reasonably expected to let from year to year at a rent which, for the purposes of this rate, may be assumed at 70,000*l.* per annum, at the least, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, and making allowance and deductions for the average annual cost of repairs, insurance, and other expenses necessary to maintain the way, its fixtures and appurtenances, in a state to command such rent. That supposing such rent to be given for the whole line, the proportion thereof in respect of so much of the railway as lies in the respondent parish is to be assumed to be the net sum of 4320*l.* per annum, being the amount at which the appellants were rated in the above rate. The questions are: Whether the company are rateable upon the principle contended for by them, that is to say, upon an estimate of the net annual value, obtained from the statement of the tolls which would be received by the company, forming the basis of the rent which a tenant would give as before mentioned, subject to proper deductions; or upon an estimate of the net annual value, as ascertained by a rent given by a tenant under the circumstances, and for the purposes above stated, as contended for by the parish? Lastly, whether the annual value upon which the parish rate is to be made, should be such proportion of the estimated rateable value of the whole line (whichever basis is adopted by the court), as the length of the part situate in the parish bears to the whole line; or such proportion thereof as the receipts actually derived from or in respect of the carriage of passengers, cattle, and goods, or from tolls upon so much as lies in the parish, bear to the same receipts throughout the whole line? If the rateable value is to be proportioned to the length of the railway in the parish, and not to the receipts, then the estimate as contended for by the company should be the sum of 1400*l.* (*a*) If it is to be proportioned to the receipts as above, and not to the length of the railway in the parish, then the estimate, as contended for by the parish, should be 3800*l.*

STATEMENT showing the different Amounts at which the Company would be rateable, under the different Principles and Data set forth in the Case.

	On the footing of the Company being rateable in respect of the parish of Mitcheldever, in the proportion which the length of line in that parish bears to the length of the whole line, without allowing any other consideration than the proportionate length to affect the question.	On the footing of the actual earnings, in the parish of Mitcheldever, being the criterion of rate.
1. On the footing of the company being rateable in respect of tolls only.	. . . £1400 . . .	. . £1293
2. On the footing of the company being rateable in respect of the tolls and *other matters* mentioned in the case.	. . . £4320 . . .	. . £3800

The Judgment.

Lord *Denman.* "This case has stood over for consideration for some time, on account of its novelty, and its supposed application to the rating of railway companies in general for the relief of the poor. It must, however, be determined on its own state of facts. The question raised is, Whether this company, being in occupation of its own railway, and at

(*a*) This point was abandoned on the argument, upon the authority of *Rex* v. *Woking*, 4 *A. & E.* 40.

present, in fact, in the exclusive use of it, for the purpose of a large carrying trade, the rateable value of such occupation is to be taken only on the amount of certain tolls which have been fixed, under the statutes hereinafter mentioned, as payable generally by all carriers for the use of the railway, but which are in fact never paid; or on the general amount of the profits which the company in fact receive from the occupation so devoted to such carrying trade? Another question was indeed raised as to the mode of measuring the rate, upon whichever of the two principles it was to be calculated; namely, Whether it was to be measured according to the proportion which the mileage of the railway in the respondent parish bears to the whole length of the way, assuming the profits to arise equally through the whole; or according to the actual earnings in the parish? This question, however, was not much argued, it being conceded ultimately that the latter was the proper mode; and the result was agreed to be that the rate ought to be for 3800*l.* if the parish were right, and 1293*l.* if the company's act limited their responsibility to a rate in fact on the tolls only. The railway has been formed and is regulated under the authority of several statutes. By the first, the 4 & 5 Will. IV., the proprietors were incorporated and authorised to purchase lands in fee-simple, subject to certain qualifications not material to be noticed. Upon the lands so purchased, they are to make and maintain a railway, with warehouses, stations, landing-places for the purpose of locomotive engines, carriages, and waggons, &c., and for loading, unloading, landing, &c., of goods, and the approach and departure of passengers for conveyance. For the tonnage of goods, and in respect of passengers, beasts, cattle, and animals conveyed in carriages on the railway, and also for carriages conveyed on it, they may demand certain tolls, of which the maximum is fixed and not the minimum; and further, they may themselves provide power for the propelling of persons and things, or they may themselves convey such persons and things on their railway, for which, in addition to the before-mentioned tolls, they may charge such sums as they may from time to time fix. The company may, therefore, be simply the owners of the way, on which others may place steam-power and carriages, and convey persons and goods; and these two parties would then stand much in the same relation to each other as the trustees of a turnpike road, and the coach and post masters conveying passengers upon it. In this case they would receive the tolls only—the owners of the steam-power and carriages, the fares or remuneration for the conveyance; and it would be of course the interest of the company to raise the tolls to the maximum, or as near to it as the competition of the ordinary modes of travelling would allow. On the other hand, the company may avail themselves of the latter clause, and unite both characters, of owners of the way and carriers upon it; they would then receive both the tolls and the fares. In both cases the persons or owners of goods conveyed must pay both the tolls and the fares; but in the latter, as the company would be the first and last receivers of the fares and tolls, they might be charged as well as paid in one undistinguished sum; there could be no division: and supposing the company to be the only carriers, there could be no necessity for fixing any rate of toll at all; the whole payment might just as well be considered as a fare. This appears in fact to be the existing state of things; but the statute, section 157, has provided that where the proprietors shall carry for their own profit, a separate account shall still be kept, showing the amount of toll which would have been received by them merely for the use of the railway, if such conveyance had been by other parties, to which account the overseers of the parish shall have access during the first fourteen days in July and January in every year. But this act makes no provision for such an account being kept and open to the same inspection, where other parties do in fact convey on the railway, when it would be equally necessary;—an indication, it may be thought, that the framers of the act did not seriously contemplate, what in truth has not happened, and probably never will

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(a) 1 Vic. c. 71, s. 82.

happen, that any parties but the company would ever become carriers on the railway. By the second act, however, which passed in 1837, (a) this 157th section is referred to, as if it directed that a separate account should be kept in both cases and be open to inspection, and the neglect to keep it, or refusal to permit its inspection, is subject to the very heavy penalty of 300*l.*, and 50*l.* per diem for its continuance. The effect of these clauses on the argument we must consider in the sequel. By the 172nd section of the first act, all persons have free liberty to use the railway with carriages properly constructed, on payment only of the rates, tolls, and sums demanded by the company, and subject to the rules and regulations which they shall from time to time make. The construction of such carriages must also be agreeable to the orders of the company, and approved by their engineer or agent. But although the railway itself is thus, under certain qualifications, thrown open to the public as a highway, no corresponding provision appears to have been made with regard to the warehouses, wharfs, stations, or landing-places. Both of the statutes before mentioned contain powers for the purchase of forty additional acres, eighty in the whole, for the erection of stations, yards, wharfs, and warehouses, and other similar erections and conveniences for receiving, depositing, loading, and unloading goods, and other purposes connected with the undertaking; but as to these lands, neither statute gives the public any right of access or user adverse to the company; and the use, for anything that appears, might be denied to any individual desiring to become a carrier on the railway. These are the material facts and provisions which the case states, and the statutes supply; and to these we are now to apply the rule of rating prescribed by the 6 & 7 Will. IV. c. 96, s. 1. The 3 & 4 Vic. c. 89, was referred to in the argument, but it has, in truth, little or no bearing on this question. It prohibits a rating of any inhabitant, as such inhabitant, in respect of his ability derived from the profits of stock in trade, or any other property, to the relief of the poor; but it expressly leaves unaffected the liability of any occupier of lands or houses to be taxed under the provisions of the 43 Eliz. and the 13 & 14 Car. II. Under the 6 & 7 Will. IV. c. 96, the rate must be made on an estimate of the 'net annual value,' and that value is declared to be 'the rent at which the hereditaments might reasonably be expected to be let from year to year, free of all usual tenant's rates, and taxes, and tithe commutation rent-charge, if any, necessary to maintain them in a state to command such rent.' To this enactment is added the proviso 'that nothing in it shall be construed to alter or affect the principles according to which different kinds of hereditaments were, at the time of its passing, by law rateable.' The argument for the company may be stated shortly: it is clear, and, if it be applicable to the circumstances, convincing. It is, that in order to apply the statute, it is always necessary to suppose the property, in respect of which the rate is imposed, let from year to year. The portion of the railway in the respondent parish must therefore be supposed to be so let; and in order to estimate the rent, it must be asked what the tenant would take by the demise: the answer to which would be, a portion of the railway itself, and the perception of the tolls as before fixed by the company. He would have the right to place his own carriages on the railway, not in virtue of the demise, but in common with all the world. The gross rent, therefore, would be something less than the amount of the tolls, by the allowance for tenant's profits; and after making therefrom the statutable deductions, the residue will be the net annual value on which the rate is to be imposed. If, because the lessee in occupation should place carriages on the railway, and derive therefrom a profit, you were to rate him in respect of that profit, you might equally rate any other carrier using the railway, but having no interest in it; for the user in the case of a lessee is not referable to his occupation under his demise. This, therefore, would be in violation of the statute. We forbear to notice at present the subsidiary parts of the argument. It is obvious that the case here supposed, which is that of a lessee in exclu-

Effect of 3 & 4 Vic. c. 89, on the question.

Of the parochial assessment act.

See the words of the stat.

sive perception of the tolls on a railway practically open to rival carriers, is one very different in fact from the case before us—one, moreover, which not only has not occurred, but from the nature of things, it may be safely said, never can occur. (*a*) The supposition of a lease of a portion of the railway, with no demise of the stations, warehouses, and approaches to it, or at all events some provision for the use of them, is merely absurd. Such a lessee would be a mere toll-collector for the company, without even, as it should seem, any convenient mode of collecting the toll. The supposition, again, of a free competition of carriers on the same railway is practically little else than absurd. If all difficulties were removed as to the stations, warehouses, landing-places, and approaches, and all these were supposed as much laid open to the public as the railway itself, the very nature of the mode of conveyance forbids the free competition of rival carriers. But how can we suppose any competition possible with the company now the carriers, or indeed any free use of the railway, even by a private carriage, the company retaining the independent occupation and control over all the existing approaches? Nay, a lease which should include the stations and warehouses, and approaches, and place the lessee, as to extent of occupation, in the same position exactly in which the company now are, would not be without its difficulties; for the company's act is framed, whether effectually or not, with some regard to the interest of the public as well as the company. The travelling and conveyance, by carriages drawn or propelled by locomotive engines, are attended with peculiar and very alarming risks. Many regulations of police, therefore, are enacted, which the company are charged to enforce; and it is very questionable whether their lessee could be their delegate as to this trust, while it is certain that the company out of possession could not discharge the duty so conveniently or perfectly as they now can. These are considerations which make us pause in giving our assent to the arguments which suggest themselves. The proviso in the 6 & 7 Will. IV. declares, that the principles of rating are not to be altered or affected by it. It is, therefore, important to consider how, under the circumstances stated in the case, the company would have been rated if that act had not passed. They would then have been found occupying buildings and lands on an entire line of railway, and carrying on a trade not merely therein and thereon, but thereby—a trade inseparably connected with such buildings and such lands—a trade that could have no existence without the buildings and lands, and but for which the buildings would not have been erected or occupied, and for the sake of which, in great measure, the lands themselves are occupied in a particular manner. The profits of this trade would be included in the fares received for the conveyance of goods and passengers; and the question would be, whether those profits ought in any and what degree to affect the rateable value of the lands and buildings. There is a class of cases often cited, which has established the principles on which this question is to be answered. We allude among others to *Rex* v. *St. Nicholas, Gloucester*, (*a*) and *Rex* v. *Bradford*. (*b*) In the first, a steelyard, part of a machine in a street leading by a house, was in the house; sums were paid by persons for weighing their waggons and carts, but those persons were not compellable to weigh them. Without these profits the house was worth 5*l.* a-year; these profits were worth about 40*l.*; and these, after due deductions, were included in the rate, as enhancing the rateable value of the house. The court thought rightly so. Lord *Mansfield*, C. J., considered the house and machinery as one entire thing. 'The principal purpose of the house,' said he, 'is for weighing. The steelyard is the most valuable part of the house.' 'If,' said *Willes*, J., 'a billiard-table stands in a house, and the house should in respect of such table be let at a higher sum, it is rateable while the table continues there, and it is so let at the advanced rent.' *Buller*, J., said, 'There is an extraordinary profit arising from the modification of the enjoyment. The only question, therefore, is—whether a man shall be rated for the property he has? If a house to-day is let for 30*l.* a-year, and

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(*a*) It has actually occurred. The Great Western Railway Company has the exclusive perception of the tolls, and use of the Bristol and Exeter Railway.

(*a*) Cald. 262.
(*b*) 4 M. & S. 317

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to-morrow, if turned into a shop, would let for 50*l.*, when it is turned into a shop it shall be rated at 50*l.*' The court clearly regarded neither the nature of the source of profit, nor its purpose. They looked only to the existing value of the subject-matter of the rate—the house—and rated it according to that value. This principle had become so well established by the time when *Rex* v. *Bradford* came before the court, that it was then sought not to deny, but to evade it by demising the canteen, and the privilege of using it as such, and selling liquors therein, at two distinct rents, in the hope of successfully contending, that the rate should be on the rent of the house only. The court, however, looked to the substance, not the form, and held both sums to be parts of one entire rent, paid for the occupation of the house and the enjoyment of the advantages which for the time belonged to it, and for the time enhanced its value. As in the former case, people might cease to weigh at the engine, or the engine might be removed; so in this, the barrack might cease to be occupied; the customers being all removed, the licence to sell liquors might be withheld or forfeited: still, while these remained, and so the additional value was sustained, that value, it was held, must come into the rate. And, as *Le Blanc*, J., expressly said, this was not rating the canteen man 'in respect of the profits of his trade, but only in respect of the rent which he paid.' The occupation of the house was indeed necessary for earning the profits of the trade, but the house became more valuable because it enabled the profit to be earned. How it became valuable the overseers were not to inquire. Finding it so, they were to rate the occupier according to that value. We are now to consider a case on which much reliance was placed by the appellants: it has been always considered a leading one, and we think will not, upon examination, be found to conflict with the preceding; we mean *Rex* v. *The Trustees of the Duke of Bridgwater*. The question there was simply this—Whether, when the other occupiers of lands in the parish were rated on four-fifths, not of the actual value, but of their rents taken as the value, the appellants ought—being the owners as well as the occupiers of land covered by water and used as a canal, and from which the case found they derived no profit, except from the tonnage of goods carried on it—to be rated at four-fifths of the gross receipts of such tonnage? The court determined, as might have been expected, that equal allowances must be made in both cases. The rent, or the sum at which the land will let, is the proper criterion; but the rent, they said, is not supposed here to be the value of the land or of its produce, *minus* the expense of producing, but the value after deducting the expenses of cultivation and the farmer's subsistence, and on this supposition it is clear the rate was unequal. This was all that was decided. The trustees were also rated as the occupiers of warehouses &c. adjacent to the canal; but as to these, by arrangement, no question was to come before the court; and they were also carriers on their own canal, and received freight as such for goods carried, in which the tonnage was included in the rate on the canal. The question being thus confined to the canal, and the trustees, as carriers, merely using it as any other person might and did, their characters of occupiers of the land and of carriers were quite distinct. The tonnage strictly respected their profits in the one, the freight their profits in the other. These last were unconnected with the land, did not add to its value, and therefore were properly excluded from the rate. Let now the principle which these cases establish be applied to the facts before us, if we wish to know whether the fares would have been properly included in the rate before the assessment act passed. We apprehend that, according to that principle, the only question to be asked would be, Do they increase actually the value of the buildings and lands on which the rate is to be made? If they do, and to whatever extent they do, to that extent, due allowances always being supposed, they must directly or indirectly be included. It would be no answer to say that by law the railway is a highway, that all the world may carry goods and passengers on it, that it is an accident that the company alone monopolises all the trade, and that their

monopoly may cease to-morrow. These, so far as they lessened the value of the buildings and lands, would be proper to be taken into account as to the quantum of the rate, but that would not affect the principle. Then, do the fares increase the value of the buildings and lands? No one can doubt it; indeed, the case has answered that they do—that a higher rent for the buildings and lands might be obtained, in consequence of the facility afforded by the occupation of them to the carrying on a lucrative trade, and earning the profits on those fares. The case thus supposed would be exactly the same in principle as that of the house and engine, the house and billiard-table, the house converted into a shop, the canteen. It would be distinguishable from the canal case, because there, by agreement, the warehouses, &c., were laid out of consideration. The trustees were, in fact, only carriers in common with all the world; and, to the extent in which their trade on the canal did augment the value of the canal, it was brought into account. But it will be observed, that so far we have supposed lands and buildings, the railway, and the stations, &c., all in one parish and included in one rate. Will it make any difference in the principle, that the railway is in more parishes than one, and that we are now dealing with a parish in which, so far as appears, there is no station-house or other appendage to the railway? We think not. The subject-matter of the rate in any particular parish is, no doubt, the beneficial occupation of the land there, and you cannot draw into the rate the value of the occupation of buildings elsewhere; yet as you are to rate on the value in the parish, however occasioned, you cannot strike off any portion, because it would not have existed but for the occupation of buildings in another parish; still it exists, and in the parish, and therefore cannot escape the rate there. Suppose A. B. occupying an entire tenement, as an inn, in two parishes C. and D., the lodging part of the buildings in C. and the tap and stables in D., there would be two rates; but could the owner say in C., 'True it is, that which I occupy here is *de facto* more valuable than a mere dwelling or boarding house; but that is in a great measure because it is connected with the tap and stables in D.; you must reject whatever is valuable to that connection, and rate me here as if I occupied the inn without the tap or stables; you must suppose a demise only of the part in C., and rate on a rent to be given only for what that demise would pass to me?' The answer would be, 'If the occupation of this part is, in fact, of a certain increased value, whether that increase be derived in part or in the whole from the other is immaterial.' Wherever the valuable occupation is, there the occupier must be rated in respect of it. Then, in the present case, it would become a question of fact—Is the land occupied in the respondent parish by the railway more valuable in fact to the occupier by reason of his occupation, together with the stations, &c., elsewhere, and the general purposes to which all together are applied? We suppose that without doubt this would be answered in the affirmative. Sever it from them, and three or four miles of railway, unapproachable, from and to no place, having no connection with any termini, would be absolutely useless and unproductive. Give them the connection, which in fact exists, you give them a value increased indirectly from the stations, warehouses, and portions of the entire line in other parishes, and directly from a general traffic, to the profits derived from which everywhere they are indispensable contributors, and through one part of which they directly come. We are thus led to the conclusion, that if this case had been to be considered before the passing of the Parochial Assessment Act, the principle of rating on which the respondents have proceeded would have been found the true one. Has then the statute made any difference in this respect? Now, without having recourse to the express language of the proviso, it is clear that the enacting part introduced no new principle of rating. From the time of the decision in the case of *Rex* v. *The Trustees of the Duke of Bridgwater* before referred to, it had been understood generally that, fraud apart, the rent, whether the occupier was the owner or only the tenant—in the former case a supposed, in the latter a real rent—was to be the

Buildings in another parish may enhance the value of a railway in the parish rating.

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criterion of rateable value. Both parties in the present case appeal equally to this criterion. The difference between them is, there being no real demise, what is to be brought into the supposed demise? And as to this it is obvious the statute can make no difference, the only question between the parties being as to the proper mode of applying the admitted principle. In cases on rating, in which the great objects are to procure equality, and to bring everything into contribution which ought to share the public burthen, it is essential (as Lord *Ellenborough*, C. J., said, in *Rex* v. *Bradford*,) to regard the substance and not the form. 'We must,' said he, 'judge of things as they really are, and not as they appear to be; and therefore, we are to consider here, whether this be not substantially one entire rent in respect of one entire subject, though artificially divided into several payments.' If we deal with this case in the same sensible and just way, we shall be at no loss to see, that to break up this entire line into parochial portions, and then in imagination to sever all and each from the buildings which the occupiers occupy together with it *de facto*, exclusively and under the authority of the same statutes passed in furtherance of one great scheme, and then again in imagination to sever both from the traffic which the occupiers carry on in, by, and throughout the whole, *de facto*, exclusively and for the sake of which they have made, built, and occupy the whole, is to apply the principle of the statute in form and not in substance, and so as to lead to a mere evasion of its object. If it be said that, by not only law, but in fact, the company may lease their line and become mere carriers on it; or that they may demise their buildings and carriages, cease to be traders, and become mere occupiers of the railway; the answer is, that the present rate, with which alone we have to deal, is not made on either of those states of facts; that whenever either shall arise, the rate must be altered to meet it; but that even then, in all probability, the result to the parish would be much the same; the rate only would become apportionable between two classes of occupiers, instead of being chargeable on one. But it is said that the private statutes conclude this question by the clauses referred to in the earlier part of this judgment, directing, under a severe penalty, a certain account of tolls to be kept for the benefit of the overseers of the poor. It is asked, What object can be conceived for that provision as to the tolls alone, unless the tolls alone be the fund with which the overseers have to do? Some answer was attempted to be given to this question in the argument, but not, we think, very successfully. The truth is, that the counsel for the appellants very much overrated its importance in the argument. The framers of this statute—which must not be dealt with, when we are talking of intention, exactly as if it were a public general act, but rather as a mode of carrying into effect a bargain between certain individuals and the public—no doubt intended to limit the rate (if by law they could) to the tolls alone, and these clauses were inserted to effectuate the working of that mode of calculating the assessment, if it should prevail. We have already noticed the omission, remarkable enough, in the first act, and the awkward mode in which it is attempted to be supplied in the second; but we are not now construing these clauses; we are only considering the collateral bearing on the argument which their insertion in the act has. All that need be said therefore is, that that bearing is not strong enough to prevent the application of the general principles of law to the rating of the company's property in their occupation. We conclude, therefore, in favour of the respondents' principle. The sums are agreed between the parties; and we decide in favour of the larger, by the application of admitted principles to the facts, thinking that that represents truly the actual rateable value of the land occupied by the company in the respondent parish." Rate amended by inserting the sum of 3800*l*.

Land used for a navigation, rateable under a local act as the adjacent land in its improved state.

Rex v. *Monmouthshire Canal Navigation Company*, 5 *N.* & *M.* 68; 3 *A.* & *E.* 619. By a local act for making a canal, it is, by sect. 101 of 32 G. III. *c.* 102, enacted that the tolls taken by the company shall not be liable to the payment of any parochial rates, and that the company "shall *from time to*

time be rated to all parochial rates, for and in respect of the *lands and grounds* to be purchased or taken, and the warehouses and other buildings to be erected or set up by the said company or their successors, in pursuance of this act, in such and the same proportion as, but not at any higher value or improved rent than *other* lands, grounds, and buildings, lying near or adjacent thereto, *are or shall for the time being be rated*, and as the lands, grounds, warehouses, and other hereditaments so to be purchased, and taken and erected, would have been rateable in case the same had *continued in their former state*, and not been used for the purpose of the said navigation or undertaking." The case stated that the present annual value of the adjacent land was very much greater in consequence of the formation of the canal, and their value had been increased by other local causes; that places had been left by the company for wharfs adjoining the canal, and that houses, yards, and docks had been built and formed in consequence of the canal, none of which belonged to the company. Three points were raised: 1. whether the 101st section was incorporated in subsequent acts; 2. whether the company were rateable in proportion to the actual value of the adjacent land at the time when the lands were originally taken for the canal; 3. that the company was rateable only in proportion to such value as the adjacent lands would now possess if the canal had not been made, and that their increased value, arising from the canal, ought not to be considered. The sessions confirmed the rate, which was made upon the present improved actual value of the lands adjacent to the canal. Lord *Denman*, C. J. "I think that there can be no substantial doubt as to any of the questions. The exemption is incorporated in the subsequent acts. This is manifestly distinguishable from the case cited. (*a*) The next question is as to the construction of the 101st clause, upon which appellants argue that they are only liable to be rated according to the value of the lands when taken; that is, that, for all time, the company are only to be rated according to the actual amount, and in proportion to the value of the lands at the time when they were taken. If that had been the intention of the legislature, it would have been better to have put a certain estimate on the lands. It would have been easy to have said that the land shall hereafter be rated at so much per acre. It would be exceedingly difficult at the present time to determine what was the value of the neighbouring lands at the period when the canal was formed. But it is said that the words are clear and explicit on this subject. If they are so, they are, in my opinion, clear and explicit the other way, because the clause provides that the lands to be taken shall be rated 'in such and the same proportion as (but not at any higher value or improved rent than) other lands, grounds, and buildings, lying near or adjacent thereto, *are or shall for the time being* be rated.' Two periods are here contemplated during which the lands and buildings shall be rated; not only the time of the passing of the act, but also all future time. The standard of rating being the *fluctuating* value with reference to the adjacent lands, how can it be contended that *these* lands are to be rated according to the value when they were taken? The clause proceeds,—'and as the lands, buildings, &c. so to be purchased and taken and erected, would have been rateable in case the same had continued in their former state, and not been used for the purposes of the said navigation or undertaking.' It does not say that they shall only be so rated as if the undertaking had never been carried into effect. It is impossible to give effect to the whole of the words, but it is extremely easy to see what the legislature intended, namely, that the company should pay the same rates as a similar description of lands would have paid if those lands had never been taken for the canal. As to the cases cited, they have been very industriously collected, and very ingeniously commented on, but the judges who decided those cases were deciding on a different question. The court were not considering the question which we are now considering, but only the question of *rateability;* and though they say that the lands should be liable to be rated only according to their value when taken, that language is to be applied to the liability and not to the rating. The rate is to be

(*a*) Sirhowey Tramroad *v.* Jones, 3 A. & E. 640, n.

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according to the value from time to time. The language of the judges is, however, certainly open to the construction contended for. The third point is, that at all events the canal company were only liable to be rated in proportion to such value as the adjacent lands would now possess, supposing the canal and railways had not been made, but the adjacent lands had continued in their former state, and were now used for the same purposes as they were at the time when the lands were taken by the company; and that any increase of value, arising from or depending upon the existence of the canal or railways, ought not to be taken into consideration in ascertaining the value of the adjacent lands for the purpose of fixing the sum at which the canal company ought to be rated. The words of the clause are not such as these, and do not carry that import with them. The term used in the clause is not 'rated,' but 'rateable,' that is, *liable* to be rated. The company are liable to be rated according to the increase or diminution of value of the adjacent lands. That being so, the question is, whether we are authorised to introduce this condition, that they are only to be rated according to the value of the adjacent lands, such value not arising from the canal. Those are not the words in the act, and there is no reason why they should be inserted. If they were so inserted, the parish and the owners of neighbouring lands would be losers. On the first point the appellants are right: on the two latter the sessions have decided quite correctly." *Littledale*, J. "With regard to the first point I have no doubt whatever. I do not think it necessary to point out what the effective words of the incorporating clauses are; they seem to me complete to all possible purposes to incorporate the clause. Allusion has been made to a case. That was a very difficult case:—A power was given to make cuts communicating with the canal under particular circumstances; the line of the canal was to be extended, and the question was, whether those powers were to be extended to the new canal. The second point is, that the company were only liable to be rated in proportion to the actual value of the adjacent lands at the time when the lands which they now occupy were originally taken by them; I have not the slightest doubt as to this. The 101st section says, first, that the tolls are to be free from rates; then that the company shall be rated to all parochial rates in respect of the lands to be taken and the buildings to be erected, in such and the same proportion as (but not at any higher value than) lands and buildings adjacent thereto are rated. If this clause had stopped at these words 'are rated,' some doubt might have been raised, whether they were not to be rated according to the value when the lands were taken. But I do not think that even in such a case it is clear that would be so. The words 'are rated' are however followed by the words 'or shall for the time being be rated.' That refers not only to present but future time. The rate must go on from time to time. It is now upwards of forty years since the act passed. I do not see how it is possible to ascertain what the value of the land was when the act passed. I am very clearly of opinion that the true construction is, that you are to take the fluctuating value. With regard to the third question, there is more difficulty. The case states that the value of the property has increased by a variety of means and circumstances. It is contended by the appellants, that the increased value of the adjacent lands is only to be taken *from other circumstances*, and that the increase of value *from the canal* ought not to be taken into account. There is some doubt from the words, 'and as the lands so to be taken and purchased would have been rateable in case the same had continued in their former state.' It is said that the meaning of these words is, that the improved value of the lands, supposing that the canal had not been made, is to be taken. That appears to me not to be their meaning. The increased value of the lands is, in my opinion, to be taken—from whatever cause it arises. At the time of passing this act some doubt existed as to whether tolls were rateable *per se*. The act clearly intended to exempt tolls at all events, and the framers of the act may have thought that though they had exempted the tolls, yet if they had said nothing as

to the lands, a doubt might have arisen as to whether those lands, as increased by the value of the tolls, might not be rateable; or whether, if a toll-house were erected on the land, the rate might not be increased on account of the value of the tolls received. The meaning of the latter part of the act is, that the land shall be rateable *as mere land.* The company have taken so many acres of land, and are to be exempt altogether from the payment of rates on the tolls; but the lands they possess are to be rated at the value of the adjacent lands. There is, however, great doubt (arising from the inaccurate wording of the clause), as to how the value of the adjacent land is to be estimated. Is the value of the adjacent lands to be taken *without* the addition made by means of the canal, or *with* the addition? How are the adjacent lands now increased in value? From two causes; by means of the canal, and by means of other circumstances. The meaning of the clause, I think, is, that the value, as it is *altogether*, is to be taken. I do not see how it is possible to ascertain how much the value has increased from one, and how much from the other cause. The proper mode of rating the canal is upon the supposition, that instead of the canal being made where it is, it was 100 yards off, and the present value of the land 100 yards off is to be taken as the value of the land upon which the canal is situated." *Patteson*, J. "On the first point I am with the appellants. The precise ground on which the case cited was decided is not known. There is this distinction between that and the present case, that there the question arose on the 128th section, and the court thought that the incorporating clause in the act of 42 Geo. III. did not extend to *that* clause. I do not see exactly the reason for the decision, but it is enough to say that the two cases are not alike. With regard to the other points, I cannot make sense altogether of the clause, though, upon the whole, it is more nearly intelligible than those clauses generally are. The intention and object of the act was, that the company should not be rated in respect of the tolls. The discussion in all the cases cited was, whether the premises were to be rated, taking into consideration the value of the tolls. It is argued upon the difference in the forms of expression used in different parts of this clause; first, there is 'at any time or times hereafter,' then 'from time to time,' and presently for the 'time being.' But what can this last expression by possibility mean, as it is here used, but the same as 'from time to time?' The enactment is, that the lands, warehouses, and other buildings *to be* erected (not *now* erected), are to be rated as other lands, grounds, warehouses, and buildings, *are or shall for the time being* be rated. If the clause had stopped there, no doubt could have existed but that the company were to be rated in the same way as if the lands and warehouses were in the hands of any private person; but it goes on to say, 'and as the lands and grounds, warehouses and buildings, would have been rateable if they had continued in their former state.' That is impossible, because the *warehouses* to be erected cannot be rated in the same way as if they had continued in their former state, for they had no former state, and had not been used before. They are rateable in the same manner as other land, that is to say, as if they were not in the hands of the company. That is the real meaning of the act. To the third question the answer has been given—that the thing is impossible. No person can possibly tell what is the value of the lands without including the value arising from the canal. The legislature cannot have intended what was impossible." *Williams*, J. "Upon the question of incorporation I am entirely of the same opinion. No doubt whatever can be entertained. All the words that can be introduced are to be found in the clause in question. Nor is there more doubt on the second point. Several cases have been very properly brought under the consideration of the court, for the purpose of inducing us to suppose that the period to be looked at, is the period of the formation of the canal or of the taking of the lands. Those cases depended upon the language of each act. This particular one must depend on, and be regulated by, the language in the particular statute itself. Upon that, it is impossible to suppose that the time of

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making the canal is the point of time to which we are to look to ascertain the amount of assessment. The property is to be rated from time to time according to the fluctuating value of the adjacent lands. With regard to the third point, almost all the observations as to the second apply, with this, that it introduces another subject more intractable and more impossible, namely, the extinction of the canal by supposition—a state of things I do not know how we are to deal with. The result is, that as to the second and third points we are against the appellants, and therefore the rate is to remain confirmed." Rate confirmed.

1. Where the mains and pipes of a gas company are distributed through several parishes, the proper criterion for the assessment of the company to each parish is not the amount of receipts for gas supplied therein, but a proportional part of the rent at which, after deductions for the wear and tear of machinery, the works of the company would let, calculated according to the improved value of the land, from the apparatus and works of the company laid down therein.

2 The proper deduction to be made from the rent of a company's works, to form the basis of a poor-rate assessment, is such an annual sum as will be sufficient to replace the works when worn out.

3. An assessment upon the above principles is not levied in any degree on the profits of the company.

4. A gascompany in the town of Cambridge, which consists of several parishes, in which are situated numerous colleges which are extra-parochial, supplied gas in mains and pipes to these colleges, and was rated therefore to the parishes in which the colleges are locally situated:—Held, that the rate was bad, the company being rateable in respect, not of its receipts, but the land occupied.

Reg. v. *The Cambridge Gas Company*, 3 *N. & P.* 262; 8 *A. & E.* 7. In St. Mary, Cambridge, the Gas Company was rated in 70*l.* for the mains, pipes, &c., fixed in the ground in the parish. Rate confirmed. Case:—The company was incorporated by statute, for lighting the various parishes in Cambridge. The company purchased premises in the parish of St. Andrew, within the town of Cambridge, and erected thereon a gasometer and works necessary for making gas and coke, and broke up the soil and pavement in the public streets, and fixed mains and pipes along the streets, and into the colleges, halls, shops, &c. of the University and town. They manufactured for sale a quantity of coke and tar, at their works in St. Andrew. The colleges and halls in the University were all founded prior to the 43 Eliz.(1601), excepting Downing College, which was founded in 1800; and (with the exoeption of Downing College and of some modern additions to others) no college or hall in the University ever has been rated to the poor. The parishes in which the colleges and halls are locally situate, in perambulating their boundaries, go into and pass through the colleges and halls, and affix their boundary marks therein. Several of the colleges and halls are lighted by the company with gas, which is supplied from their works by the mains and pipes fixed in the ground, and which pass into and through various parishes, and amongst others into and through St. Mary. The works and apparatus for making gas, coke and tar, with the mains and pipes, would let to a responsible tenant for 2400*l.* a year, the tenant paying all rents and outgoings for making the subject of occupation productive, and doing all the ordinary repairs required, but not providing for the renewal of the works when necessary, which renovation would cost upon an average 500*l.* a year; viz.—for the buildings and main pipes, 300*l.*; for the gasometers and other more perishable articles, 200*l.* The rent of 2400*l.* also includes the mains, pipes and apparatus in those colleges and halls which are not assessed to the relief of the poor, the value of which mains, pipes and apparatus, so included, is 350*l.* a year. The gas consumed in St. Mary is conveyed into and through it by mains and service pipes sunk and affixed in the soil. The sum received by the company for gas thus conveyed and consumed by the parish is 763*l.* 18*s.* 8*d.* per annum. The assessment in St. Mary the Great has been confirmed, upon the assumption that 2400*l.* is the sum at which the works, &c. of the company is liable to be rated, and that this sum, after deducting 150*l.* for the value of the buildings and works at the manufactory, ought to be distributed amongst the different parishes through which the mains and pipes are laid, with reference to the annual receipts by the company for gas supplied in each parish respectively. If this be correct, 70*l.* is a proper assessment to be made by St. Mary. The company contend for the following deductions: For the cost of renovation of the various works 500*l.*; for the annual value of the mains, &c. within the colleges not rated to the poor, 350*l.*; for the profits in trade of the company, 600*l.* The company also contend that the rent at which the works would let is not the proper criterion of value, but that they should be rated at the actual productive value, to be calculated on the balance of their total receipts and expenditure, viz. on 2370*l.* 2*s.*, deducting therefrom—for renovation of works, &c. 500*l.*; bad debts, 50*l.*; law expenses, 25*l*; for interest at 5 per cent. on a capital of 3000*l.*, necessarily employed in the company's manufacture or works, 150*l.*; allowance of 20 per cent. for profits in trade, 600*l.*; gross receipt for gas supplied to the colleges and halls, 814*l.* 17*s.* 4*d.*—making a total of

2139*l.* 17*s.* 4*d.* Personal estate or the profits of trade are not rated in any parish in Cambridge. The questions were, which of the two principles of assessment was the correct one, and what deductions ought to be made? Secondly, the total rateable value being ascertained, upon what principle it ought to be distributed amongst the several parishes through which the mains and pipes were laid, after deducting 150*l.* for the value of the buildings and works in St. Andrew? Lord *Denman* delivered the judgment:—"The company has been assessed in 70*l.* upon the amount of 2400*l.*, which is what a responsible tenant would give for the whole apparatus for a year, after making some deductions, and disallowing others, hereafter to be noticed. Upon hearing of the appeal two questions mainly arose:—1st. Whether the above principle of ascertaining the sums to be assessed be correct, or whether it ought to have been made upon the total receipts of the company, deducting their expenditure? and 2nd. Whether due allowance has been made of all proper deductions, supposing the first principle to be correct? That the general principle adopted by the parish officers, and confirmed by the sessions, as contrasted with that contended for by the appellants, is correct, we consider it to be now too late to doubt. The decisions of *Rex* v. *Trustees of the Duke of Bridgwater*, of *Rex* v. *Tomlinson*, and of *Rex* v. *Lower Mitton*, have, we think, settled the question. The former case is an express authority against the appellants, and the latter in favour of the decision of the sessions upon this point. We are of opinion, therefore, that the sessions were quite right in the adoption of the general principle, but not equally so in *allowing* the deductions which ought to be made. These were claimed by the company, first, for the renewal of the works, 500*l.*; secondly, for the value of the mains and pipes within the colleges and halls, 350*l.*; and thirdly, for the profits and trade of the company, 600*l.* As to the first, the rule laid down in *Rex* v. *Lower Mitton* is, we think, in point. Amongst other deductions there mentioned which ought to be made from that rent, which is to be the criterion for ascertaining the proper amount of the rate, there is specified, 'a further deduction which ought to be allowed when the subject is of a perishable nature, towards the expense of renewing or re-producing it.' It was observed at the bar, that, until *Rex* v. *Lower Mitton*, this doctrine is not to be found. The court, however, in their judgment, for which time was taken, referred to other cases as the foundation of it; and the reasonableness of allowing such a deduction is, we think, obvious, because the estimated rent at the supposed time of letting, manifestly could not be continued at the same amount unless the apparatus be maintained in as good a state and condition. And this view of the subject receives confirmation, if it had been requisite, from the recent statute 6 & 7 Will. IV. c. 96, s. 1, which prescribes the manner in which property shall thereafter be assessed. The language there used in describing one of the deductions to be allowed, is almost in terms the same as that employed by the court in the last-mentioned case. The second ground of deduction may be more conveniently considered hereafter. The third claim of deduction is 'for the profits in trade of the company, 600*l.*' This claim, it is presumed, has arisen from the fact stated, that profits in trade are not assessed in any parish in the town of Cambridge, nor are they in this instance. The rent which it is found a tenant would give by the year, after certain deductions, (viz. 2400*l.*) is not the amount of *profits*. Those necessarily are something independent of and beyond the rent, upon which the person taking the apparatus must calculate, or nobody would become tenant at all; they are, therefore, perfectly distinct. The rent which a tenant would give for land after certain deductions, which is the criterion for the due assessment of it, is one outgoing, the expense of cultivation another; and all beyond, whatever that may be, obviously comes under the denomination of profits. Since, therefore, the profits are in their nature wholly distinct from the rent, and are not only not a deduction from it, but the reverse—something beyond and in addition to it—we cannot perceive that this claim rests upon any just principle, and are of opinion that it has

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been properly disallowed. We come now to the fourth question—Upon what principle the total rateable value, being ascertained, ought to be distributed amongst the parishes in and through which the mains and pipes are laid, after deducting 150*l.* for the value of the buildings and works in the parish of St. Andrew the Less? and it is one of considerable general importance. The sessions have adopted as their criterion the amount of the receipts for gas supplied in each parish, and have assigned to the respondent parish the sum of 753*l.* 18*s.* 8*d.*, being such amount within it; and, if the principle be correct, it is admitted that 70*l.* is the proper assessment upon the company in that parish. In determining this point it is necessary to consider *in respect of what* the company is rateable according to the decisions. And from *Rex* v. *Corporation of Bath,* and various other authorities in conformity thereto, including *Rex* v. *Brighton Gas Company,* and the still later case of *Rex* v. *Trustees of Duke of Bridgwater,* and many others which might be cited, it appears that they are rateable as occupiers of lands, 'for the improved value of the land from the gas pipes being laid in it.' This therefore being, as we think it is, the acknowledged principle, it seems to follow that the criterion before mentioned, which has been adopted by the sessions, cannot be the true one. Suppose (adopting their own rule) the value of the whole works to be 2400*l.* per annum, *minus* certain deductions, and the quantity of apparatus in the soil of each of the several parishes to be equal, but the sale of gas and the receipts for it to be confined to one, the *Rex* v. *Corporation of Bath, Rex* v. *New River Company,* and *Rex* v. *Foleshill.* are express authorities to show that a rate upon the company in that particular parish, where all the profits are received, could not be sustained. The New River Company was rated in the parish of Little Amwell at the sum of 300*l.*, the value of the land, independent of the water, being 5*l.* only; and this court held the rate to be proper, though it was expressly stated that *no part of the profits accrued in the parish of Little Amwell,* nor, indeed, until the distribution of the water in London. Since, therefore, in the present case the land occupied by the apparatus in each parish through which it passes contributes to the whole value to let, it follows that the company must be rated in respect of its occupation in each parish; and if so, we are aware of no rule which can be laid down as to the amount, except that it must be in proportion to the quantity of apparatus situate in each parish. It is true that in the case of a canal, where the tolls varied in different parts of the line, it was decided that a rate could not be made upon the company in each parish according to the length of the canal in it, and *for that reason* (*Rex* v. *Kingswinford*). But in a case very recently before this court, where the tolls were the same throughout the whole line, it was held that the proportion to be paid by the company in any given parish along the line must be ascertained by a mileage calculation (*Rex* v. *Woking*). And as it is impossible to suppose any superiority in one part of the apparatus over another, the same principle, we think, should be applied in the present instance, and that the assessment upon the amount of profits received in the respondent parish was wrong. It remains only to consider whether the deduction of 350*l.*, being the annual value of that part of the apparatus which lies within the colleges and halls, ought to be made. And we purposely reserved the consideration of this point to the last, because it is connected with the principle which regulated our answer to the last question. For, in as much as the rate is imposed upon the land used for the apparatus, and as none can be imposed upon that part which lies in those extra-parochial places, the amount which would otherwise have arisen therefrom (the aforesaid sum of 350*l.*) must, we think, be deducted. Upon the whole, therefore, in those particulars as to which the sums are agreed upon, the amendment of the rate will be of course; but as we have no materials for ascertaining the proportion between the parishes, it must (as according to the statement was intended) in that respect be 'adjusted.'" Rate sent to sessions to be adjusted.

10. Where Property to be rated.

10. *Where Property to be rated.*

Property must be rated in the parish in which it lies.

Real property, whatever may be its kind, if it is rateable, must be rated *in the parish wherein it is situated;* all, therefore, who occupy *real* property, must be rated in the district, though they dwell elsewhere. So that if a man *occupy lands* in the several parishes of A. B. and C., and reside in the parish of D., he is liable to be rated in all the *four* parishes; in A. B. and C. for the land he occupies in each respectively, and in D. as an inhabitant; *Jeffrey's case*, 5 *Co.* 66; 1 *Bott*, 122; but he cannot be rated for *personal* property which is not within the parish where he is an inhabitant. *Rex* v. *North, Curry*, 4 *B. & C.* 953; 6 *D. & R.* 424.

Coal mine extending into several parishes must be rated in each, although the shaft or entrance be only in one parish.

Rex v. *Foleshill*, 2 *A. & E.* 593. G. Whielden was assessed in 525*l.* for coal-mine and engines in Foleshill. Rate reduced to 320*l.* Case: Mr. Whielden is the owner and occupier of a coal-mine, situate partly in the parish of Foleshill, and partly in the adjoining parish of Exhall. At the time when the rate was made, he was getting coal partly from that part of the mine the surface of which is in Foleshill, and partly from that the surface of which is in Exhall. The pits, engines, and all the fixed machinery for working the whole of the mine, and by which the same is made available, are in Foleshill alone, in which parish all the coal taken from the whole mine is brought to the surface of the earth. Whielden is assessed in Exhall at 210*l.* for that part of the mine of which the surface is in Exhall. The sessions found that, if the overseers of Foleshill were entitled to rate Whielden in that parish for the whole profits of the mine, 525*l* was a proper sum; but that if they were entitled to rate him for the profit derived from the steam-engines and other machinery for the coal gotten from that part of the mine the surface of which is in Foleshill, the assessment ought to be reduced to 320*l.* Lord *Denman*. "I am clearly of opinion that this was a coal-mine in Exhall, where a part of the coal lay. It is too great a refinement to say that there was no mine there, because all the works for raising the coal were not within that parish. According to that argument, if a coal-mine extended into twenty parishes, and all the coal was brought to the surface in one, the proprietor must be rated in that only. The difficulty of ascertaining what is raised in each parish may be great; but here the sessions have ascertained it." *Littledale*, J. "It is contended that there can be no coal-mine in a parish, unless the apparatus for raising the coal be there. But that the law doth not consider this necessary to constitute a mine is clear from the language of Lord *Coke*: 'If a man hath mines hid within his land, and leases his land, and all mines therein, there the lessee may dig for them.' (5 *Rep.* 12 *a.*) So that in legal understanding there is a coal-mine where there are coals capable of being gotten. There may be no machinery at the place where it is severed; but if men are sent in for the purpose, it is the same thing. The case of a spring is very different; it cannot be ascertained where that originates, or through what parishes it may pass; but a vein of coal, when particular circumstances are known respecting it, may now be traced without difficulty, though this may not have been so in the reign of Elizabeth. The *Rex* v. *Mayor of Bath*, p. 312, was very much like this; but the present case is stronger than those in which companies have been held rateable for pipes laid in the ground to convey an artificial rill of water; here the subject of the rate is coal naturally existing at the place where the rate is imposed. As to the pit and shafts, they are rated in the one parish in which they are available for raising coal; if another shaft became necessary for raising the coal in the other parish, it would be the subject of a rate there." *Williams*, J. "Without violating the ordinary sense of words, the appellant may be considered as occupier of a coal-mine in both the parishes. It has been said that no value has been ascribed to the shaft and machinery in respect of the benefit derived through them from the coal situate in Exhall; but they are rated, and if the principle of the rate be not wrong, I do not see how we can say that they are rated erroneously. Order of sessions confirmed.

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If part of a farm is situated in one parish and part in another, the occupier must be rated in each parish. *Rex* v. *Etwall*, 2 *Smith*, 15.

Or a farm.

In ordinary cases, therefore, no difficulty can arise upon this subject; but where there is an unbroken occupation extending through several parishes, and the profits arising from such occupancy are received in one or more of the several parishes, and not in due proportions in all, the respective claims of the several parishes for poor-rates do not appear so susceptible of a satisfactory adjustment. Accordingly, the reports present many cases in which this question has arisen, upon the rating of canals, gas-works, &c. It was formerly holden that navigations and canals were rateable in those parishes only in which the *tolls were payable;* but it is now settled that these companies *are rateable to the poor in every parish through which their canals or works pass in proportion to the profits which the land occupied by them in such parish yields.* Thus where a canal passed through several parishes, in which the tonnage dues varied, it was held that the company were rateable to the relief of the poor of each parish for the amount of tonnage dues actually earned *there*, and not for part of the *whole* amount earned along the whole line of the canal, in proportion to the length of the canal in that parish. *Rex* v. *Kingswinford*, p. 310. In like manner, the main pipes of water-works are rateable in the several parishes in which they are laid. *Rex* v. *Mayor of Bath*, p. 312; *Rex* v. *Rochdale W. W. Co.*, p. 195.

Principle on which canals are rateable.

It will be perceived that in some of the following cases the question whether tolls are rateable is also discussed.

The proprietors of a navigation are rateable *in every parish through* which the navigation passes, as occupiers of the land used in each parish, for the navigation; and not in *one* parish on the *entire* amount of their tolls.

Rex v. *Palmer*, 1 *B. & C.* 546; 2 *D. & R.* 793. S. Palmer was rated for a wharf and buildings situate in Fornham All Saints, adjoining the river Lark, and occupied for the purposes of navigation of the said river, *and the towing paths, sluices, &c.* within Fornham All Saints, and the tolls arising therefrom due at Fornham All Saints. By 11 & 12 Will. III. s. 1, H. Ashley was empowered to make navigable the river Lark, and after making satisfaction to the land-owner to have the cuts, towing-paths, &c., in as ample and beneficial a manner as if he had bought them, and to receive for the freight of goods, at such place adjoining the river as he should think fit, certain tolls, and a proportionate toll according to distance. Mr. Ashley made the river navigable from Mildenhall to Fornham All Saints, a distance of twelve miles and a half. Half the channel, the towing-path and the half of one sluice, and two locks, are in *Fornham All Saints.* The towing-path is separated from the adjoining lands by a ditch. The appellant is not an inhabitant of Fornham All Saints. She is the owner under a distinct title of a wharf or coal-yard, of about four acres, lying in that parish, and adjoining the extremity of the navigation, in which wharf are several warehouses; different portions of this yard are allotted to the coal merchants who use this navigation, to the number of fourteen or fifteen. They pay no rent, but keep division fences. Large quantities of coals are carted at once from the boats, and not deposited in the coal-yard; but it is necessary for the accommodation of the wholesale dealers using the navigation, that they should have a place to deposit their goods, but the appellant is not bound to provide such place. The buildings and the outer fences and walls inclosing the wharf and the towing-paths, locks, and sluices, are repaired by the appellant, and were erected by her or her ancestors. Up to 1816, the appellant was rated on a rental of 17*l.* for the coal-yard, and no rate was imposed upon the profits of the navigation. The annual value of the coal-yard, as mere land, is not above 3*l.* Since 1816, she has been rated in Fornham, "for tolls arising from the navigation and warehouses," at 250*l.* per annum. The tolls becoming due, and received by the appellant for goods landed in the parish of Fornham All Saints, equal the amount of the assessment. *Abbott*, C. J. "I entertain the greatest reverence for the opinion of the learned judges who decided those cases. (*a*) It must be recollected, however, that when those cases

(*a*) The cases referred to were *R.* v. *Aire and Calder Navigation*, 2 *T. R.* 660, *R.* v. *Page*, *T. R.* 543, *R* v. *Staffordshire Canal*, 8 *T. R.* 340. These cases decided that a party was rateable in respect of the tolls of a navigation

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came before the court, it had not been decided that tolls *per se* were not rateable. This is now fully established by *Rex* v. *Nicholson* (*b*). The proprietors of a navigation are, therefore, rateable only as the occupiers of the canal, or land covered with water, for their tolls, as profits arising out of that land so used. They are rateable, therefore, in every parish through which the canal passes, in respect of the land there situate, and so used for the canal. The true principle of rateability is this: the land is to be rated to the relief of the poor in the parish where it is productive of profit to the proprietor, and in proportion to that profit, which may be considered as in the nature of a rent received by the proprietor for the use of his land within the parish. This is very different from the case of a sluice. In that case, the tolls become due for the use of a sluice itself, and the proprietor must contribute to the relief of the poor in that parish where the sluice is situate. The proprietor of a navigation is to contribute in respect of the profits of land, extending probably through many parishes; and he is to pay to each of those parishes in respect of his land locally situate within it. Here, the whole land occupied by the canal contributes to produce the entire amount of the tolls, and the proprietor of the navigation ought not to have been assessed at that amount in any one of the parishes through which the canal passes. The rate, therefore, cannot be supported.

(b) P. 220.

True principle of rateability;

of a sluice.

Rex v. *Woking*, 4 *A. & E.* 40. Earl of Portmore and another were rated in Woking as proprietors of the Wey navigation. The sessions allowed the appeal. Case:—By 22 Car. II. c. 26, the river Wey was declared to be navigable; and the soil of the river, and so much of the banks as extended on any side of the cut made since 1650, and the locks, sluices, towing-paths, &c., were vested in trustees to receive the profits of the navigation, and apply them to repairs, and for continuing the river navigable, and to dispose of the residue as the act directs; and they were authorised to remove all impediments. It provided that Lord Montagu, his heirs and executors should receive out of the profits 2½*d.* for every ton, chaldron, or load, navigated on the river; that F. Dalmahoy should receive 4*d.* for every ton, &c., navigated on the river in his own land in Depdeene in Stoke, besides 20*l.* for a wharf in that parish; and that the corporation of Guildford should receive 1*d.* for every ton, &c., navigated on the river; and the trustees were to pay to the person, to whom any share of profits should be allotted, such shares of the clear and neat profits of the navigation yearly, for ever, after deducting the expenses of repairing and of executing the trust. Recompense was to be paid out of the profits to any person receiving damage to his lands by the cutting of the passages or heightening of waters; and such recompense was to be paid before the persons received their shares. The river was not to be navigated without leave of the trustees, and they were empowered to take from the owners of vessels "passing upon any part of the river, 4*s.* for every chaldron of coals, and 4*d.* for every load or ton of corn," and so upon that rate for a greater or less quantity. The present fixed tolls:—Between Guildford and the Thames, 4*s.*; between Depdeene Wharf and the Thames, 4*s.*; between Stoke and the Thames, 3*s.* 6*d.*; between Bowers and the Thames, 3*s.*; between Triggs or Send Heath and the Thames, 2*s.* 6*d.*; between Newark and the Thames, 2*s.*; and so on, according to the distances, with similar rates, decreasing in the same proportion from the Thames to Guildford. Triggs is in the parish of Woking, and Send Heath in Repley, (on the side of the river opposite to Woking); and that part of the navigation which is in Woking extends from a spot between Bowers and Triggs and a spot between Triggs and Newark. If the increased toll is considered to be earned for the use of the navigation between the points above named, then 3*d.* per ton is payable in respect of that part of the navigation situate in Woking. There are no toll-houses on the river, but the entire tolls for

Proprietors of the navigation of the Wey are rateable upon a mileage calculation.

as tolls, and for the entire amount at the place where they became due, "that is, where the respective voyages finished." This doctrine is now overruled, and the judgments are therefore omitted.

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the whole navigation are paid at once. The length of the navigation is 27,600 yards; the length in Woking is 4049 yards. Upon an average of the last three years, the gross receipts for the tonnage on the navigation are 5923*l.* 16*s.* 10*d.* Gross receipts, deducting for tonnage not passing through Woking, 4705*l.* 12*s.* 6*d.* The latter sum is made of 4311*l.* 13*s.* 1*d.* receipts of the *thorough trade*, (going the whole line of navigation), and 393*l.* 19*s.* 5*d.* *the short trade*, passing through Woking. The share of Woking, in the gross receipts for the whole tonnage of the navigation, is, upon a mileage calculation, 886*l.* 9*s.* 11*d.* Share in such gross receipts, deducting for tonnage, not passing through Woking, upon a mileage calcution, is 688*l.* 14*s.* 2¼*d.*; that is, Woking's share of the thorough trade, 630*l.* 5*s.* 4½*d.*; of the short trade, 58*l.* 9*s.* 9¾*d.* The share of Woking in the tolls, upon a calculation of 3*d.* per ton, being half the 6*d.* rise for Triggs and Send Heath, according to the scale, for every ton passing Woking, is 309*l.* On an average of three years, the general expense of the navigation, exclusive of compensation, is 2566*l.* 19*s.* 4*d.* The compensation to Mr. Dalmahoy, the Corporation, and Lord Montagu, and for mills (one only in Woking), amounted to 1226*l.* 3*s.* The expenses in Woking were equal to the expenses of the other parts, regard being had to comparative length. The share of Woking on the whole expenses, exclusive of compensation, on a mileage calculation, was 384*l.* 2*s.* 10*d.* Share in the compensations, on the like calculation, 183*l.* 9*s.* 10*d.* The net income of the navigation, on an average of three years, is 2230*l.* 14*s.* 6*d.* The share of Woking on the net profits, upon a mileage calculation, without deduction, is 337*l.* 16*s.* 10*d.* Ten per cent. would be a reasonable deduction from the net income for tenant's profits, leaving 2007*l.* 13*s.* 1*d.* Share of Woking, after such deduction, 300*l.* 8*s.* 10*d.* The question was, whether the sum, on which the rate was to be made, was to be ascertained by the proportion which the length of the navigation in Woking bears to the whole length, and, if so, what deductions ought to be made; or whether the sum is to be ascertained by the amount of the tonnage on all goods carried through Woking at the rate of 3*d.* per ton; and, if so, what deductions are to be made. On the first mode, the appellant claimed deductions to the amount of 886*l.* 9*s.* 11*d.* as the share of Woking in the gross receipts for the whole tonnage on a mileage calculation: *i.e.* 1. 197*l.* 15*s.* 8¾*d.* for tonnage not passing through Woking, thereby reducing the share, as before stated, to 688*l.* 15*s.* 8¾*d.* 2. Share in the general expenses, on a mileage calculation, excluding compensation, 384*l.* 2*s.* 10*d.* 3. Share in compensation, on the same calculation, 183*l.* 9*s.* 10*d.* The last two sums were to be deducted from 688*l.* 14*s.* 2¼*d.* And from the residue, after such deductions, (121*l.* 1*s.* 6¼d) the appellants claimed further to deduct, 4. tenant's profit, 10*l.* per cent., 12*l.* 2*s.*, leaving the sum on which the appellants were to be rated, 108*l.* 19*s.* 6¼*d.* If the court should adopt the second mode of rating, and hold that the gross receipts applicable to Woking were to be calculated at 3*d.* per ton on all goods carried through Woking, the appellants claimed to take as deduction the 2, 3, 4, above deductions, in which case the deductions would exceed the receipts. The respondents denied that any of the deductions ought to be made. *Cur. adv. vult.*—Lord *Denman*. "The rule by which Canal Companies are to be rated is laid down in *Rex* v. *Kingswinford*, in these words: 'The true principle is, a Canal Company is to contribute to the relief of the poor in each parish through which the canal passes, in proportion to the profits which they derive from the use of their land in the parish.' It is also truly observed, in the same judgment, 'that if the traffic be the same through the whole line of the canal, every part of the canal will earn an equal proportion of the tolls; on the other hand, if the profit vary in different parishes, the rate also must vary.' Apply that principle to the present case. The thorough trade pays one gross sum for the whole line; and all parts of the line are equally profitable: the proportion of Woking, therefore, must be ascertained by a mileage calculation, with reference to the whole line. Again, the short trade pays one gross sum for the whole distance gone over; and all parts of that distance are equally profitable: the proportion of Woking, therefore, must be

ascertained by a mileage calculation, with reference to the whole distance gone over. The tolls earned by passing over parts of the canal which do not include Woking will be wholly excluded. By the case, the true proportion of Woking in the gross receipts, according to the calculation, is 688*l.* 14*s.* 2¼*d.* The next question is, what deductions, if any, ought to be made from this sum. The necessary repairs and expenses must, of course, be deducted; and, as they are found to be equal throughout the line, the proportion of Woking is to be ascertained by a mileage calculation, and is found by the case to be 384*l.* 2*s.* 10*d.* Mr. Dalmahoy's groats are payable in respect of the use of the canal within his land, in Stoke; and, therefore, if this could be deducted at all, they must be deducted from the profits in that parish, and not from the profits in Woking. But these groats, as well as the per centages paid to Lord Montagu, and to the Corporation, are payable out of the *profits* of the canal, and are in truth nothing more than rent-charges; and they do not affect the value of the occupation, or the rent which a tenant would give, but only show amongst whom, and in what proportion, the rent or profits are to be divided. The poor-rate must be paid on the whole profits by those who receive them, viz., the proprietors; and they must settle the matter as they can with those who are entitled to share the profit with them. The same reasoning applies to the compensation to the mills, for they also are payable out of the profits. One mill only is situate in Woking, the compensation paid to which is 65*l.* 6*s.*; but we think, for the reasons before stated, even this sum ought not to be deducted. Upon the whole, the gross receipts earned at Woking are found, according to the principles here laid down, to be 688*l.* 14*s.* 2¼*d.* From that sum must be deducted 384*l.* 2*s.* 10*d.* for repairs and expenses, leaving a balance of 304*l.* 11*s.* 4¼*d.*, from which 10*l.* per cent. for tenant's profits, amounting to 30*l.* 9*s.* 1½*d.*, must be deducted, according to the rule laid down in *Rex* v. *Duke of Bridgwater*, (*ante*, p. 279.) The case indeed does not state distinctly that lands are rated at rack-rent and no more in Woking; but, as it finds that 10*l.* per cent. is a reasonable deduction for tenant's profits, we must presume that the fact is so: and this deduction must be made in order to equalise the rate, and the sum at which the proprietors of the navigation ought to be rated will then stand 274*l.* 2*s.* 2¾*d.*"

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Rent-charges are not to be deducted.

Rex v. *The Earl of Portmore*, 1 *B.* & *C.* 551; 2 *D.* & *R.* 798. Defendants were rated, as proprietors of the same river mentioned in *Rex* v. *Woking*. The question raised, was whether the proprietors were rateable, except upon the amount of the riverage arising from the goods landed in the parish. The case was not argued; as it was admitted that, according to the principle laid down in *Rex* v. *Palmer*, the proprietors were liable to be rated in Woking in respect of the profits of their land, situate within that parish; and that the riverage payable on goods landed there would not be the correct measure of those profits.

The rate must be made not in respect of the riverage becoming due in the parish for goods landed there, but in respect of the profits of the land used for the navigation within the parish.

Rex v. *the Trent and Mersey Navigation*, 2 *D.* & *R.* 752; 1 *B.* & *C.* 545. The appellants were, by an act of 6 Geo. III. empowered to purchase lands to them and their successors, for making a navigable canal from the Trent to the Mersey; and to take, for their own use, for tonnage and wharfage, for all goods conveyed upon the canal, rates not exceeding one penny halfpenny per mile for every ton, to be paid at such places near the canal as the company should appoint. All persons had liberty to navigate with boats upon the canal, upon payment of such rates. A part of the canal, in length about one mile and fifty-two yards, comprising the land for which the defendants were rated, passes through Findern. The company have no other property in the township, except the canal and towing-path. No tolls are received in Findern, nor do any tolls become payable there, the company not having so appointed; the company receive annually a much larger sum than that in respect of which they are assessed, for tolls for the passage of goods over that part of their canal which lies in Findern. The Canal Company derive very considerable annual profits from the canal. The counsel being asked whether they could distinguish this case from those which had decided the principle, that a canal is rateable in every parish through which it passes, according to the value of the land covered with

A canal company are rateable as occupiers of land covered with water.

10. *Where Property to be rated.*

water, they confessed their inability to distinguish it from *Rex* v. *Milton*. It was observed, that this was the first time that canals had been rated as land covered with water. *Per Curiam.* Is not that the only correct mode of rating them, according to the statute which imposes the rate upon "every occupier of lands." Unless they are rated in this form, they cannot be rated at all. The cases which have been decided establish this principle, namely, that the occupier of lands in every parish is liable to be rated in respect of the land which he occupies in each; and if a canal passes through several parishes, the undertakers are rateable in each and every parish through which the canal passes, according to the quantity of land occupied. The Trent and Mersey Canal Company occupy the land which the water covers in the township of Findern, and are rateable in respect of such occupation.

A canal company is rateable in each parish for the profits earned in each, and not upon the entire profits divided by the length of the canal in each parish.

Rex v. *Kingswinford*, 7 *B. & C.* 237. The proprietors of the Dudley Canal Navigation appealed against a rate made in the parish of Kingswinford, whereby the company were rated at 25*l.* 3*s.* 4*d.* The land occupied by the canal in this parish was twelve acres, two roods, thirty-six perches, and is one-twelfth part of the land occupied by the company for the whole canal, which extends through seven parishes. The total amount of tonnage received by the company for the last year on the whole canal, after deducting expenses, is 5670*l.* 13*s.* 1*d.*, one-twelfth part of which is 472*l.* 11*s.* 1*d.* and the rate thereon 9*l.* 16*s.* 11*d.*, to which amount the sessions reduced the rate. The tonnage received during the same period for goods carried on that part of the canal which is situate in Kingswinford, after deducting expenses, is 1208*l.* 4*s.* 4*d.*, and the rate on that sum was 25*l.* 3*s.* 4*d.* *Bailey*, J. "It seems to me that in amending this rate the sessions have not adopted the correct rule. The Canal Company are to be rated under the 43 Eliz., as occupiers of land in Kingswinford. Tolls *eo nomine* are not rateable, but if the subject-matter out of which the toll arises be one mentioned in the statute, as the object of a rate, then that may be rated by name, and the tolls which constitute its profit may be thus made to contribute to the relief of the poor. A Canal Company, therefore, is rateable in respect of the land which they occupy in every parish through which the canal passes, and for that value which the land there produces. When there is a long line of canal extending through different parishes, although the money collected for tonnage in all the parishes constitute one common fund, out of which all the expenses are to be borne, still the proportion which those expenses may bear to the tolls collected, even in cases where the rates are the same along the whole line, may vary in different parishes. The traffic on the canal may be greater in some parishes than others, or the rates may be unequal, and thus the net profits, which constitute the value of the land used for the canal, may vary in different parishes. There are twelve miles in length of the canal in this parish. Assuming that the different branches of the canal had been made under (*a*) one act of parliament, I am of opinion that the company ought to be rated in each particular parish in proportion to the profit which they derive from the land there used by them for the purposes of the canal. If a canal run through six different parishes, and there is the same traffic through the whole line of the canal, every part of the canal will earn an equal proportion of the tolls. But it may happen that in that part of the canal situate in one parish, there may be double or treble the traffic which there is in any other of the six. Why are the other parishes to have any part of the tolls earned in that parish? The land in those parishes contributes nothing towards earning the sum derived in that other parish from the use of the land there. The true principle is this: a Canal Company is to contribute to the relief of the poor in each parish through which the canal passes, in proportion to the profit which they derive from the use of their land in that parish. If the profit arising from a given quantity of land vary in different

(*a*) The question raised for the opinion of the court in this case was, whether those parts of the canal which were formed under several statutes were to be considered as a joint concern with another part constructed under 16 Geo. III.

parishes, the rate must vary in the same proportion. The whole rate will be payable out of the common fund. But then each parish will receive from the company a sum in proportion to what the land in that parish produces. If in this instance this rule has the effect of making the rate in Kingswinford higher, it will also make the rate in other parishes lower. For these reasons, it appears to me that the sessions have not proceeded on the correct principle, but that they ought to have rated the company for the tonnage received on that part of the canal which is in Kingswinford, and the rate ought therefore to be amended by making it 25*l.* 3*s.* 4*d.*" *Holroyd*, J., and *Littledale*, J., concurred.

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For what the Oxford Canal Company rateable.

Rex v. *Oxford Canal Company*, 10 *B. & C.* 163. The proprietors of the Oxford canal were empowered to take a mileage tonnage for coals and other merchandises, excepting that they were not to take a tonnage upon coals for two miles measured from L. to B. As to those two miles, the proprietors of the Coventry canal should take all the rates and duties payable by virtue of that act for all coals carried from any part of the Oxford canal within those two miles; and the proprietors of the Oxford canal were to take all the rates payable by an act for making the Coventry canal, for all goods, except coals, conveyed upon any part of the Oxford canal, and afterwards upon the Coventry canal, within three miles and a half of the junction of the two canals. The point of junction of the Oxford and Coventry canals was in the parish of Foleshill. That parish contains one mile and nine hundred and sixty-three yards of the Oxford canal, being part of the two miles above-mentioned, and also two miles and a quarter of the Coventry canal, being part of the three miles and a half above-mentioned. By the 33 Geo. III. c. 80, for making the Grand Junction Canal (which it was apprehended would be injurious to the Oxford canal), it was agreed that compensation should be made to them. It then authorised the proprietors of the Oxford canal to take, for all coals that should pass from the Oxford canal into and upon the Grand Junction canal, 2*s.* 9*d.* per ton, without regard to the distance the same should pass on the Oxford canal; and for all other goods which should pass from any navigable canal into or upon the Oxford canal, and from thence into or upon the Grand Junction canal, or from the Grand Junction canal into or upon the Oxford canal, and from thence into or upon any other canal, 4*s.* 4*d.* per ton, without any regard to the distance the same should pass on the Oxford canal. *Cur. adv. vult.*—*Bayley*, J., after observing on the 33 Geo. III. c. 80, added, "The question is not for what injury the right to receive the new tonnage dues is given as a compensation, or, in other words, for what reason the legislature have given that right to the Oxford Canal Company; but what is the legal liability of the company in respect of these dues, when received by them, to contribute to the poor-rates. The company are rateable in each parish for the net annual profit of the portion of the canal lying in that parish; in other words, for what the canal in each parish earns, and the tonnage dues are paid by the owners of goods *for passing along the canal*, and are received by the company *for the use of it*, though the reason of being enabled to receive them by the legislature was, that their canal was likely to be injured by the new navigation. It is on the ground that these dues are received *for the use of the canal*, and are earned by the canal, that the company were held rateable for them in *Rex* v. *Oxford Canal Company* (p. 284.) For the passage of coals, therefore, along the part of the canal lying in Foleshill, some part of the new dues is received by the company, and in respect of that part the rate is proper. It is true that the consequence is, that for coals passing along that part of the canal, being within two miles from the junction with the Coventry canal, the company would receive more dues, and therefore be rateable for more than those which pass along other parts; for they would receive for such coals the proportion of compensation dues above mentioned *directly*, and indirectly a part of the tonnage duties on other goods on the first three miles and a quarter of the Coventry canal, for which it is admitted by their counsel that they were properly rated in the rate in question. This consequence, however, can make no difference in the construction of the

True principle of rating canals.

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act of parliament, which makes the dues payable by the public to the company *for passing along their canal*, and which therefore constitute a part of the profits of the portion of the canal through which they pass. The canal earns no part of the *original* tonnage upon coals carried through the two miles of Foleshill into the Coventry canal, because it receives its *equivalent* by the tonnage upon other goods for the first three miles and a half upon the Coventry canal; but those two miles contribute to earn the *compensation* tonnage, and for that there is no equivalent. The rate is therefore to be confirmed in this respect; but the case must be remitted to the sessions to make the several deductions (*a*) to which the company were held in the argument to be entitled."

Corporation of Bath erected reservoirs of water in the parish of A., from which, by pipes, they supplied with water the inhabitants of the parishes of A. and B.: Held rateable in A. for so much of the profit from these reservoirs as they made in A., but not for the entire profits made in A. and B.

Rex v. *The Mayor of Bath*, 14 *East*, 609. By a rate for the parish of Lyncomb and Widcomb, the corporation of Bath were rated as occupiers of certain springs and reservoirs, at 22*l.* 10*s.* An act, 6 Geo. III. c. 70, for supplying the inhabitants of the city with water, gave the corporation full power to cause water to be conveyed to the city from springs belonging to the corporation; and to break up any public way, and any street, to drain and collect the water of the springs, and to make reservoirs and engines necessary for distributing such water, &c., and to lay under ground pipes for the same purpose. The act vests the property of all watercourses leading from the springs to the city, and of all reservoirs, pipes, &c., used for the purpose aforesaid, in the mayor, &c. The corporation made several reservoirs in Lyncomb and Widcomb, where the springs are situated, no part of the city, &c., lying in the said parish The reservoirs are walled in and roofed; pipes were also laid under ground for conveying the water, which first pass through a part of Lyncomb and Widcomb called Holloway, and from thence along the Old Bridge, over the river Avon, through the parishes of St. James and of St. Peter and St. Paul, which two parishes are within the city. All the water flowing from the springs is collected into the reservoirs, from each of which it is distributed by a main pipe and cock, under the charge of an officer of the corporation, who has no residence upon the spot, but goes there to turn the cocks and distribute the water; and from the main pipes it is distributed by smaller pipes to the houses of the inhabitants, both in Holloway and in St. James and St. Peter and St. Paul. The occupiers of the several houses pay a rate to the corporation for the water with which they are respectively supplied, and the amount of this rate is in the discretion of the corporation. The corporation has been in the occupation of the springs and reservoirs, and of the land included within the walls thereof. The annual profits arising to the corporation from the water thus distributed from these springs and reservoirs, amount to 600*l.* in the whole, of which 50*l.* are collected from the occupiers of houses in Holloway, and 550*l.* from the occupiers of houses in St. James and St. Peter and St. Paul; the 600*l.* is paid at the office of the chamberlain of the corporation. The 22*l.* 10*s.* for which the springs and reservoirs are rated, is *upon the whole sum of* 600*l.* The lands in which the springs and reservoirs are situated are rated separately in the names of the respective occupiers, exclusive of the springs and reservoirs, and the land thereof. The questions were, 1st, whether the corporation are liable to be rated at all in respect of the said springs and reservoirs in Lyncomb and Widcomb: and 2dly, whether they were to be rated to Lyncomb and Widcomb upon the whole of the profits of the water which flows from the springs and reservoirs, or only upon so much of those profits as are collected from the occupiers of houses within the said parish. Lord *Ellenborough*, C. J. "The mayor, &c., of Bath must be rated under the 43 Eliz. if at all, for the description of property within mentioned, either in the character of *inhabitants* of the parish of Lyncomb and Widcomb, or as the *occupiers* of some of the different kinds of property particularly specified in the act as the subjects of the rate. Under various and late decisions, and particularly that of *The King* v. *Nicholson*, it has been established as the

Inhabitants mean residents.

(*a*) The sum paid for the poor-rate, the expense of collecting the tolls, of repairing the banks of the canal, and of supplying it with water.

sound construction of the 43 Eliz., that the word *inhabitants* in *that act* is only satisfied by a residence within the parish. And as there is no doubt that the corporation of Bath are not residents, they cannot be charged *eo nomine* as *inhabitants* in this case; and, therefore, if rateable at all, must be rated as the *occupiers* of some of the several descriptions of property enumerated in the act. That they are *occupiers* of the *reservoirs* which they are empowered to make, and in which the water which they are also authorised to collect is kept, and that such *reservoirs* and *water kept therein* are comprehended within the legal description of *land* (one of the descriptions of rateable property mentioned in the stat. 43 Eliz.), will not admit of a doubt. This disposes of the first question submitted to our opinion. As to the second question, whether the corporation is liable to be rated in this parish for the *whole* of the profits of the water which flows from the springs and reservoirs, or only for the profits collected in this particular parish; it should seem to follow as a consequence from what has been said already, that if the corporation of Bath be occupiers of any local visible property producing profit in any other parish, and falling by reasonable construction within the same description of property as the reservoirs already mentioned, they should be liable in like manner to be rated for it *pro tanto* in such other parish. As so large a portion of the apparatus, by the aid of which the water is conveyed along the two several parishes in Bath, and the soil itself within these parishes on which these pipes rest, and on which soil the corporation are certainly, under the powers of this special act, authorised to lay them, must be considered as mainly conducive to the acquiring the water-rent which in so large a proportion (namely, eleven to one, or 550*l.* out of 600*l.*) is received for the use of it in the two Bath parishes, it is impossible to say that the corporation ought to be rated as they are, that is, for the whole of such profits in the parish of Lyncomb and Widcomb alone. A great deal of stress has been laid on the supposed authority of *Atkins* v. *Davis*, *Cald.* 313; but as the judges of K. B. were equally divided, no decision which can be relied on as authority was come to in this court. And although it may be collected from Lord *Loughborough*'s judgment in the Exchequer Chamber, that he thought that 'the *proper place* where the value of the whole is to be taken is the *fountain head* from which the whole is to be distributed,' thereby intimating two things; 1st, that the whole profit should be assessed at *one* place; and 2dly, that such one place should be the *fountain head;* yet he adds, 'however, it is not very material to consider that, for upon the present action it is certainly sufficient to warrant the levying the distress that here was a foundation to make a rate and *some property* rateable.' And indeed upon that ground, viz., of the form of the action which assumed the distress to be illegal *in toto*, and upon the difference which is to be found in the language of the statutes 27 & 43 Eliz., did the united judgment of the Court of Exchequer Chamber proceed, and not upon the supposed rateability of the whole profits at the fountain head. In order to decide the questions reserved for our determination upon this case, it is by no means necessary or proper for us to pronounce in what parishes besides that of Lyncomb and Widcomb, and in what proportions the corporation shall be in future charged. Indeed, we have no adequate materials before us for such a decision. It is enough, upon the present occasion, to state that the rate in question by which the corporation has been charged for the *whole* of their profits in that *one* parish, is on that account bad, and must be quashed."

A company's bridge standing in two parishes is rateable in both, although the tolls are received in one only.

Rex v. *Barnes*, 1 *B. & Adol.* 113. The Hammersmith suspension bridge is at one end in the county of Middlesex, and the other in the county of Surrey. It was erected by a company, and the surplus receipts are divided among the shareholders. The gate at which the tolls are received is on the Middlesex side, and the company paid to the poor-rates on that side; but upon being assessed on the other side, where no tolls were taken, they appealed, and the sessions confirmed the rate and granted a case. *Bayley*, J. "This is a very clear case. The proprietor of land is liable to be rated to the relief of the poor in the parish where the land lies. The Hammersmith Bridge Company have, in the parish of Barnes, land used by them for the

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purpose of facilitating the passage over the Thames, and they are entitled to receive from all persons passing their bridge certain tolls. Then what is the character of their occupation of that land? It is a valuable occupation in respect of the money which the land produces to the company, by being appropriated to the purpose of facilitating the passage over the Thames, for which passage they receive tolls. The quantum is a question for the sessions. All that we decide is, that the land is rateable property in the place where it is situate. There the profit is earned, though the money may be actually received elsewhere." *Littledale*, J. "The tolls are payable for passing over the bridge, not for passing through the toll-gates. The gates are put up merely to prevent persons passing over the bridge without paying the toll." *Parke*, J., concurred. Order of sessions quashed.

Lighthouses.

The tolls of a lighthouse, where rateable.

Rex v. *Rebowe*, 1 *Bott*, 166. Two light-houses were erected at Harwich, by Sir I. R. by virtue of a patent; for the maintenance thereof certain tolls were payable by all ships coming into or passing by the harbour. Part of these tolls were collected by the defendant at Harwich, and the remainder on other parts of the kingdom. He did not reside in the parish, and was no occupier there, excepting by having two persons who lodged in one of the lighthouses to take care of them. He was rated to the lighthouses. The court decided that the tolls were not rateable there, not being locally situated in the parish. According to what was stated in argument in *Rex* v. *Cardington*, the ground of decision was, that the vessels did *not* come within the parish, and therefore the tolls were *not due there*. Note. In a MS. note of this case, in the possession of Mr. Douglas, it is expressly stated that the court observed that it was not set forth in the case that Rebowe was rated *for the house*, but only for the *tolls*. *Dougl.* 118, *n.*

The owner of a lighthouse is not rateable for tolls not received in nor taken for vessels passing through the respondent parish.

Rex v. *Tynemouth*, 12 *East*, 46. There were two points in this case; 1st, whether R. W. be rateable for two rooms in Tynemouth lighthouse: 2nd, whether Mr. Fowke be rateable for the tolls in respect of the lighthouse. By letters patent of the 17 Car. II., and by the statute 42 Geo. III. Mr. F. is entitled to Tynemouth lighthouse, and certain tolls payable in respect of the same, for every ship passing by the lighthouse, and belonging or trading to the ports of Newcastle or Sunderland; and for certain tolls from every ship belonging to any foreigner passing by the lighthouse. The lighthouse is in the parish of Tynemouth, the tolls are payable upon ships sailing on the German ocean, and benefited by it. They never come within the township of Tynemouth, and neither Mr. F. nor any of the receivers of the tolls reside in Tynemouth, and the tolls are collected out of it. R. W. is a servant of Mr. F. at an annual salary, and resides within the walls of the lighthouse, to take care of the lighthouse; and is rated for these two rooms, as occupier, at 6*l.*; and Mr. F. is rated for the tolls in respect of the lighthouse. Lord *Ellenborough*, C. J. "It is no question now whether this property could be rated in some other way; as if the lighthouse, whose light is the meritorious cause of earning the tolls, were in consequence let at a larger rent; but this is a rate specially upon the tolls, and therefore the case is not distinguishable from *Rex* v. *Rebowe* (*supra*), which is so immediately *in specie*, and in all its circumstances the same, and has been so long considered and acted upon as law, that it concludes the question. What local property is there within the township on which this rate or the tolls can be levied? The tolls are not received there; nor do the ships from which they are collected come within the township; the subject-matter of the rate has no locality within this township. As to the other point, it is equally clear that it is the occupation of the master by his servant, and not the occupation of the servant himself, and therefore the rate on the servant is bad on that ground."

Where a person resides as a servant, he is not rateable.

Owner of the lighthouse is not rateable though some of the vessels come within the parish.

Mr. Fowke was subsequently rated, as the *occupier* of the lighthouse, at 500*l.* The case stated that if the lighthouse should be *let, together with the tolls*, it would be worth 500*l.* a year to be rented by a third person; but if let without the tolls, it would be worth 6*l.* a year only. There were also these facts added, that about a thirty-eighth part of the entire number of vessels paying tolls *come within the township of Tynemouth*, and receive

their loading there. The tolls received in respect of such last-mentioned vessels do not equal in amount the expense of maintaining the light and managing the lighthouse; the whole of which expenses are incurred within the township of Tynemouth. No tolls from any ships whatever are *received* in the township of Tynemouth, nor do any of the collectors thereof, or Mr. Fowke, reside in that township. It was contended, that by the letters patent and the act of parliament, the privilege of having the light was connected with the lighthouse itself, and that therefore the whole was rateable. *Bayley*, J. "The tolls do not arise from the building, nor from anything of *necessity* connected with it, and this case therefore is not distinguishable from that of *Rex* v. *Coke* (*infra*). Here the act of parliament declares the lighthouse to be a public benefit, and it ought not to be burthened with an additional charge." The order of sessions was quashed, and the sessions were directed to amend the rate by reducing it to 6*l*. *Rex* v. *W. Fowke*, 5 *B. & C.* 814.

The proprietor of a lighthouse is not rateable in respect of duties collected out of the parish.

Rex v. *Coke*, 5 *B. & C.* 797; *D. & R.* 666. Mr. Coke was rated as the occupier of a "lighthouse, together with the duties and contribution money payable in respect of ships passing by the same, the annual value of the same being stated to be 2250*l*. over and above the expense of keeping up the lighthouse and lights. The lighthouse was situated in the parish, and occupied by a servant of the owner, but the duties were collected out of the parish. *Bayley*, J. "It seems to me that this house is rateable, but that the rate, to the extent to which the parties are desirous of carrying it, cannot be supported. The rate is upon the lighthouse, with the duties or contribution money, in respect of ships, hoys, and barks passing by the same. To make the defendant rateable to the full extent of 2,000*l*. a year, it must be shown that he comes within the words of the stat. 43 Eliz, and is the occupier of a house or land of that annual value. The authorities cited in the course of the argument are distinguishable from the present case, except the two cases, *Rex* v. *Rebowe*, (*ante*, 314), and *Rex* v. *Tynemouth*, (*ante*, 314), where it was expressly decided that the tolls of a lighthouse were not rateable. A considerable interval of time elapsed between the decisions in those cases. And where there has been one uniform course of proceeding as to property of this description for a very considerable period of time, we ought not to introduce any alteration, unless it be founded upon sound legal principles. The privilege of erecting lighthouses was, I apprehend, originally in the Crown. I believe it was afterwards vested in the Trinity House. The tolls are contributed by the proprietors of ships; and if the sums of money which they from time to time pay be properly apportioned, they will contribute a sum sufficient to remunerate the proprietor for the expense of keeping up the light-house, and to leave a moderate and reasonable profit for the trouble of renewing the light. If the proprietor of the lighthouse be rateable to the poor, the contribution which he will expect from the proprietors of ships must be proportionally larger, and they, in reality, will pay the rate, which will therefore, become a burthen upon commerce." The learned judge, after commenting on several cases, added: "*Rex* v. *The New River Company* does not bear upon the present case, because the proprietor of the lighthouse in this case is at liberty either in that house or in any other which he may think fit, to erect or to rent, to burn lamps, and to produce a stream of light which shall be visible at a considerable distance at sea. But even if, by the terms of the letters patent, it were imperative on the grantee to burn his lights within this particular lighthouse, still, if the privilege is not given to him by reason of his being the occupier of that house, it would not be appurtenant to, but distinct from, the house where it was to be exercised; and the duties payable to him in respect of the light, would be profits arising from the exercise of that privilege, and not from the house or land where it happens to be exercised. The grantee would in that case have an exclusive privilege of carrying on in that particular house (if I may so express myself) a particular description of trade. But there would be no necessary connection between the freehold interest in that house and the light which is to be kept up in it. The apparatus which is

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to contain or produce the light may or may not be attached to the freehold, and if it were wholly unconnected with the freehold, it might produce all the effect which is produced in a lighthouse. Suppose that effect were produced by hanging up a quantity of lighted coals with a reflector behind them, any sums payable by the owners of ships for the benefit which they might by possibility derive from that fire, would not constitute any part of the profit of the house or land where the lighted coals or reflector happened to be placed, but would be profits arising from the privilege. Then, as all the purposes contemplated by the grant may be attained by forming the apparatus to produce the light in such a way as not to be connected with the building, and in that case the tolls payable by the ships would not constitute any part of the profits of the land, and would not therefore be rateable; it seems to follow, that the exclusive privilege of having the lights, even if the grant required them to be placed in a particular house, is distinct from that house or building, and the duties and contributions are profits arising from the exercise of the privilege, and not from the house or land where it is exercised, and those profits are not rateable as constituting part of the value of that house or land. And if it be once ascertained that the tolls and duties, *quâ* tolls and duties, are not rateable, then, although the business must be carried on in a house, or even in this specific house, a distinction must be taken between the value of the house in which that particular trade (for I consider it a species of trade) is carried on, and the profit arising from the trade itself. Now here the nature of the trade is that the proprietor of the lighthouse is to keep certain lights burning. Those lights are not of necessity attached to the freehold, and if they are not attached to the freehold, they would be personal property. The proprietor of the lighthouse does no more than keep a candle or a fire lighted, and for keeping his lights; whether produced by candle, or by burning coals, or by oil, and for keeping mirrors behind those lights, the tolls and duties which are the subject of the rate are imposed. Such tolls, down to the present time, never have been rated, and, in my opinion, they are not rateable." Per *Holroyd*, J. "In this case the profits of the lighthouse arise from the tolls, and I think, according to the two cases (*Rex* v. *Rebowe* and *Rex* v. *Tynemouth*), we must decide that the tolls, not being received and having no locality in the parish of Lydd, are not rateable. Here the benefit for which the tolls are paid (which is an incorporeal hereditament) is not one of the things mentioned in the 43 Eliz., for it constitutes a benefit not received within the parish, but received by ships elsewhere, or not received at all if they pass in the daytime when no light is burning." Per *Littledale*, J. "To make tolls rateable, there must not only be a profit produced within the parish, but it must also arise from the use of the thing, and in respect of it. Here the ships have not that sort of use; they have merely a transient view of the light as they pass. They do not come within the lighthouse as they do within a dock; in that case they have the actual use and occupation of the dock. They not only do not come near the thing itself, which is the subject of profit, but they do not come within the parish. This is distinguishable from all the other cases where the tolls themselves have arisen in respect not only of what was produced in the parish, but from the actual use of the thing which was the subject of the rate." It was ordered that the rate be amended by striking out 2250*l.*, and inserting 4*l.*, the annual value of the house.

The owner of a *Ship or a Vessel* (*a*) must be rated in the parish to which the ship belongs.

Rex v. *Shepherd*, 1 *B. & Ald.* 109. This was an appeal against a rate for the parish of St. Peter, Wisbech, whereby the defendant was rated for the profits of the sloop John, and one Patrick for the sloop Nene. The harbour of Wisbech is several miles up the river, but the water is so shallow that small vessels only can get up into the parish of St. Peter's. Part of the port is not in any parish. The John, being too large to get up to the parish, was never within any part of it. Her usual berth was in the port, but not in the parish. "John of Wisbech" was painted on her stern. The

(*a*) This is stock in trade, and the owner is at present not rateable for it.

cargoes were usually unshipped into smaller vessels, which had their home in St. Peter's, and were included in the rate. The owners and master resided in St. Peter's, and carried on their business there. The sloop is registered there, and has her entries and clearances made there. The freight is generally paid, and the contracts made at the place of business. The sloop Nene usually receives and delivers her cargo in the parish, where her voyage terminates, but occasionally delivers them out of the parish. When unemployed, her home is in the parish, where her owner and master resides and carries on his business. She is registered there, and her name on the stern is "The Nene of Wisbech." At the time of the rate she was not in the parish. Lord *Ellenborough*, C. J. "As the ship John was never within the parish, I cannot consider the rule by which the court has abided in all cases, viz., that the property should be locally within the parish, as attaching upon her. That vessel has never been locally or visibly within the parish, and therefore I do not consider her as rateable. As to the Nene, she is said to have been out of the parish at the time when the rate was made; but I cannot say that we are to measure by a stop-watch the precise position of a ship (which is in its nature a machine of passage) at the time when the rate was made. If such strictness were required, it would be almost impossible to make a ship the subject of a rate. It appears to me to be sufficient, to answer the purpose of the poor-laws, that the parish in which the ship is rated is the domicile of the vessel, and that the profits derived from it contribute to the ability of the occupier within the parish. In all cases the profit is earned, as to the bulk, out of the place. This vessel, as far as can be predicated of such a thing, yields a profit so as to answer the description of local and visible property within the parish. It need not be ascertained with precise exactness where the ship was at the time of the rate, in order to give validity to the rate; this parish was generally her home, and the vessel so far resided there that it could not be predicated of it, that it resided elsewhere; therefore, it must be rated within that parish; it can be rated nowhere else. It seems to me, therefore, that the Nene was well rated in the parish of St. Peter's." *Bayley*, J. "I think that the Nene was well rated in the parish of St. Peter's; it has been decided over and over again, and too often for us to disturb it now, that if property can be shown to be available property in the parish where the owner resides, he must be rated there in respect of such property. It is found in this case that the owner of this vessel was an inhabitant of the parish, and also that the ship's port was within this parish: she usually received and delivered her cargo there: then, if I may use the expression, where was the property domiciled? Locally within the parish of St. Peter's. It has been said that the ship might be lost at the time when the rate was imposed; but it must be recollected that the rate is made in respect of by-gone profits, already earned at that time; and, therefore, the loss of the ship could not interfere with the right of the parish to receive this rate in respect of profits antecedently received." *Abbott*, J. "I think the owner of the ship John was not rateable in respect of that vessel, inasmuch as she was never within the limits of the parish; the rule being, that the property rated must be visible property within the parish. If the court were to depart from this rule, I think it would create great uncertainty and confusion in this branch of the law. As to the Nene, I think the owner was rateable in respect of that vessel, as St. Peter's was the parish where her cargo was usually received and delivered, and which, when unemployed, was her home. Being a coasting vessel, she would necessarily be often absent, but in the course of that employment, she would often return to the parish; it may therefore fairly be said that this parish was her home, just as the dwelling-house of a person travelling on his necessary business may be said to be his home. Looking, then, at the general state and condition of this vessel, I think she must be considered as property locally visible within the parish, and that her occasional absence is quite immaterial." *Holroyd*, J. "I am of the same opinion as to both points: as to the Nene, the owner is rated in respect of profits,

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which had been earned by him, from a vessel, which, under the circumstances, must be considered as visible property within the parish. In the case of *The King* v. *Jones*, there was no statement that the ship was in the parish at the time of the rate being imposed; but that circumstance does not, I think, make any difference in this case, inasmuch as St. Peter's was the home of the vessel, and she must be considered as belonging to this parish for the purpose of being rated."

Land converted into drainage.

Rex v. *Sculcoates*, 12 *East*, 40. The commissioners of the Beverley drainage were rated for lands and buildings in Sculcoates, purchased by them and converted into a drain. By the 38 Geo. III., c. 63, commissioners were appointed for draining low grounds in certain parishes. For this purpose they purchased the lands and buildings now rated, which were converted into a drain extending from Beverley to Sculcoates, ten miles; *but no part of the lands thereto adjoining are benefited thereby:* previous to the purchase, these lands and buildings had been rated; but, since the making of the drain, they had not. The proprietors of the low grounds had been benefited by this drainage. Lord *Ellenborough* said, "he could not find by the act that the commissioners were in the receipt of any fund for their own benefit, or were trustees of any divisible fund in their hands in this parish, for the benefit of others; and certainly not for their own benefit. That the only persons benefited were the owners of lands benefited by the drainage in other parishes, and in those liable to be rated for the improved value of their premises." *Bayley*, J., asked if "there was any beneficial interest derived in this parish from these works." Lord *Ellenborough*. "In all the cases cited, the property rated yielded pecuniary benefit, or that which was capable of being estimated and converted into pecuniary benefit, within the parish, to the parties interested; but here the benefit results to the lands drained, which lie in other parishes, and the property would be liable to a double rate if it were also rateable in the hands of the commissioners. Here is no benefit received by these commissioners for themselves or others within this parish, which is capable of being rated. The benefit is all divided in other parishes. The Dock Company of Hull were in the receipt of tolls for the benefit of the shareholders in respect of the use of the docks within the parish in which they were rated; but the commissioners are the mere instruments of benefit to landowners elsewhere. I know of no instance where a Canal Company has been held rateable for the mere space occupied by the canal in a particular parish, if no tolls were received or become due there; and I cannot distinguish between land converted into a drainage and a canal." And finally he delivered the opinion of the court, that the commissioners having no beneficial occupation of the property in this parish, either for themselves or others, were not liable to be rated.

On waste lands, formerly fens and marsh, drained, &c.

By 17 Geo. II. c. 37, when waste lands, which were formerly fens and marsh, are drained and improved, and the parish to which they belong cannot be ascertained, the occupier thereof, or of houses built thereon, tenements, tithes arising therefrom, mines therein, and saleable underwoods thereon growing, or hereafter to grow, are to be rated to the parish that lies nearest to such lands; and if any dispute shall arise as to what parish or place they ought to be rated to, the justices in quarter sessions shall, after due notice given to the persons interested, and to the parishes and places abutting and adjoining the said lands, cause them to be assessed as they shall think meet, and their determination and allotment is to be final and conclusive.

11. *Form of Rate, Allowance thereof, and Publication of same.*

11. Form of Rate, Allowance thereof, and Publication of same.

It was observed by *Willes*, in *Rex.* v. *Wavell*, *Dougl.* 116, that the *title* of a poor-rate is in general material, and cannot be rejected as surplusage; as if by its title a rate purport to have been made to raise money *to reimburse money borrowed*, that defect in the object of the rate will be fatal to its validity. See the usual form of *title* of rate, *post*, *Appendix*.

By a general order of the 22d April, 1842, overseers are required to produce a rate-book in this form :— 11. *Form of Rate, Allowance, &c.*

Form of rate by the Commissioners.

RATE-BOOK.

No.	Name of Occupier.	No. of Votes.	Name of Owner.	No. of Votes.	Description of Property rated.	Name or situation of Property.	Estimated extent.	Gross estimated Rental	Rateable value.	Rate at —— in the Pound.	Arrears Due, or if Excused.	Total Amount to be Collected.	Amount actually Collected.	Present Arrear.	Amount not Recoverable, or Legally Excused.

and the allowance of it must be recorded in the rate-book.

By 6 & 7 Will. IV., c. 96, s. 2, every rate must, in addition to any other particular which the form of making such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the form given in the schedule of the act. This form is in substance the same as that prescribed by the commissioners, except that they have added the column "No. of Votes," and the four last columns. See Statute, Appendix. Form by statute.

The commissioners, by the above order, require the overseer to enter in a book the names and addresses of the owners and proxies, who shall send their claims to vote, and the assessment, in respect whereof they so claim, in the following form :—

No.	Name of Owner.	Address.	Property in respect whereof right to Vote is claimed.	No. of reference to Rate-book.	Aggregate amount of Assessment.	Name of Proxy.	Address of Proxy.	No.	Date on which claim received.

We do certify that the above is a full and correct register and entry of the claims to vote of owners of property and proxies in the said parish.

(Signed)

Overseers.

It was urged in *Rex* v. *Lumsdaine*, that a rate in the prescribed form was necessarily good, but Lord *Denman* observed, "The rate in another form may be bad, but it does not follow that every rate in that form is good." 10 A. & E. 159.

The Parochial Assessment Act further requires that the churchwardens and overseers, or other officers whose duty it may be to make and levy the said rate, or such a number of the said churchwardens and overseers or other officers as are competent to the making and levying of the same, shall, before the rate is allowed by the justices, sign the following declaration given at the foot of the form ; and otherwise the said rate shall be of no force or validity :— The overseers must sign a declaration, otherwise the rate is of no force.

11. *Form of Rate, Allowance, &c.*

DECLARATION OF OVERSEERS AND CHURCHWARDENS.

We, do declare the several particulars specified in the respective columns of the above rate to be true and correct, so far as we have been able to ascertain them, to which end we have used our best endeavours.

Thomas Jones, Overseer,
John Thomas, [Churchwarden, &c. &c.]

The words "otherwise the rate shall be of no force or validity," apply solely to default in signing the declaration, and not to omission of any form given in the columns.

Reg. v. *Fordham*, 11 A. & E. 73. On appeal against a rate, the sessions quashed it. The property rated was not numbered according to the schedule of 6 & 7 Will. IV. c. 96, but the *numbers*, for the most part, were wholly omitted, or else attached to the names of the occupiers, instead of the properties. The columns intended for the number of voters were left entirely in blank. The names of many persons were inserted without any sums being carried out against them in the assessment. In many places the column, which should contain the name of the occupier, was left entirely in blank, without even the word "ditto" under the name immediately preceding the blank; and the column which should contain the "arrears due or if excused," was improperly left in blank. It was contended that these omissions rendered the rate altogether void, and upon this ground the sessions quashed it. Lord *Denman* said, "The present and other discussions may, perhaps, induce the legislature to endeavour to give to the word 'void' and other similar words a more fixed signification, and to point out the consequences that are practically to follow from that signification. At present the courts have often great difficulty in construing the word. It is contended that this rate was void, because it did not follow the forms in the schedule of the Parochial Assessment Act. I am of opinion that the words 'of no force or validity,' apply only to a non-compliance with the last requirement, viz., that the declaration at the foot of the form shall be signed by the churchwardens and overseers. I am, in some degree, led to this conclusion by a consideration of the serious consequences that would follow from another construction; for, if a rate which does not exactly correspond to the various forms detailed in the schedule is to be absolutely void, all parties concerned in levying it would be exposed to actions of trespass; or the same consequence, perhaps, might follow, if some jury hereafter should think that the rate had not been made on the net annual value of the hereditaments. But by confining the words, which make a rate 'of no force or validity,' to a rate wanting the declaration required by the words immediately preceding, no violence is done to the language of the act, nor is any inconvenient consequence introduced. I think that the sessions were wrong in quashing this rate on the ground that it did not contain the particulars directed by the act; the act gave them no power to quash it on that ground." *Patteson*, J. "I am of the same opinion. The 6 & 7 Will. IV. c. 96, requires that a rate shall contain certain particulars, but, if they are omitted, does not say what is to be the consequence; for the words which are relied upon as invalidating this rate, apply, in my judgment, to the want of the declaration only, and not to the want of the other particulars in the schedule. As the act gives no appeal against a rate because it is not made out according to the forms of the act, it follows that the sessions could not quash this rate on that account. What other consequences may ensue from an omission to make the rate according to form—whether the parish officers may be indicted—it is unnecessary to say. *Williams*, J. "I am of the same opinion, and will add one word, as the question arises for the first time. The non-observance of all the forms in the schedule of the act is, in my opinion, no ground for considering a rate as a nullity; the only ground, according to the second section, is the want of the declaration at the foot of the rate. Suppose ten thousand persons to be rated; if any one particular in the schedule is omitted in the rate, is the person levying to be made a trespasser, and exposed to suits without number? I think the sessions were wrong in quashing this rate for the want of form, and that they should have proceeded to try the appeal upon the merits." *Coleridge*, J. "I am of the same opinion. There are, no doubt, many cases in which the word 'void' and other similar words have been modified by the construction of courts of justice. In construing any

11. *Form of Rate, Allowance, &c.*

new act, I should be unwilling to extend this practice. But, in construing the act now before us, I think, in point of literal rendering and without looking to the consequences, that one rendering is as probable as the other. The words 'that otherwise the said rate shall be of no force or validity,' occur at the end of a long period, and may be applied either exclusively to the want of the declaration, or generally to the want of that or of any other of the requisites in the section. I may then look at the consequences incident to either rendering. Can it be said that a rate, made in a large parish, is to be void, if any one of the multiplied requirements of the statute or of the commissioners, as to matters of form, is neglected? On the other hand, if it is only the neglect to sign the declaration which is to invalidate the rate, no perplexity ensues; what is required in that respect is a plain, practical proceeding, and any one can see whether what is required has been done or not. Forms, indeed, for rating are given by the act, and ought to be followed, but what is to be the consequence of not following them is not stated. There may of course be an appeal under 17 Geo. II. if a party can bring himself within that act by showing that he is aggrieved; but, as the act gives no power to quash for want of form, the sessions were wrong in quashing the first rate." Lord *Denman*, C. J. "*Rex* v. *Newcombe* (4 *T. R.* 368) was a very distinguishable case. The statute expressly made any rate invalid, of which due notice had not been given; and, though due notice had not been given of the rate, it was contended that a mandamus should go to the defendants, who were justices, commanding them to issue distress warrants for levying."

The rate must show upon the face of it in respect of what property the assessment is made upon each individual.

Rex. v. *Aire & Calder Navigation*, 2 *B. & C.* 713. The property in respect of which the appellants were rated, was specified, but as to all other persons it was not particularised or specified. *Abbott*, C. J. "The objection to the form of the rate is decisive. If any person wished to appeal, on the ground that another was underrated, how could he tell in respect of what property the rate was imposed?" See *Rex* v. *Bromyard*.

A rate in one gross sum for rent of mines, and also for moors and wastes, is bad.

Rex v. *Welbank*, 4 *M. & Sel.* 222. The defendants were rated thus: The trustees under the will of G. Browne, for 2000*l.* *annual rent* paid by the Arkengathdale and Derwent Mine Company, for the Arkengathdale lead mines and other minerals and fossils (except coal), within the parish of Arkengathdale, and also in respect of their being owners and occupiers of the moors and wastes within the parish of Arkengathdale. Amount, 2000*l.*; assessment, 150*l.* (being 1*s.* 6*d.* in the pound). Lord *Ellenborough*, C. J. "This rate appears to be ill on this single ground, that it is a conjoint rate in respect of two things, one of which is not rateable. The rent is clearly not the subject of rate, the other may or may not be. But it cannot be good as a conjoint rate." *Le Blanc*, J. "If these trustees had been rated in a large sum in respect of their being the owners and occupiers of the moors, commons and wastes, equal to the profits they derive from the mines, perhaps the court might have said, we will not enter into the question of proportion; but here the rate is imposed in respect of two distinct properties, namely, the rent and the surface of the land."

The description of the property assessed must also be in such terms as to show it was in point of law *primâ facie* rateable; and therefore it must not be described as merely *a way* or *an entrance*, &c.

A preceding or even ancient rate may be a good rule for future assessments, but it cannot be confirmed as a standing rate; but to be equal it should be altered as circumstances have altered. *Rex* v. *Wrexham Regis*, 1 *Bott*, 123.

Rate by a limited authority.

A rate made under a limited authority ought to disclose, on the face of it, the power under which it is made. *Reg. v. Ipswich*, 8 *Dowl.* 103.

Allowance of the rate by the justices.

By 43 Eliz. c. 2, s. 1, they (the overseers), or the greater part of them, shall take order from time to time *by and with the consent of two or more such justices of the peace as is aforesaid, &c.* (See that stat. *ante*, 11.)

And this *consent* is usually given by the justice signing the rate, with their allowance thereupon, thus:—

Form of allowance.

We, two of her majesty's justices of the peace in and for the said county, one whereof is of the quorum, *do consent unto and allow of this assessment: witness our hands the day of* 18 *J. P.*
K. P.

11. *Form of Rate, Allowance, &c.*

The sessions have no original power to order an assessment.

But this consent is to be understood of two justices out of sessions; for the sessions have no original power to order an assessment to be made, but only if it come before them by way of appeal; for in such case the party would be deprived of the benefit of appealing. (2 *Lord Raym*, 798.)

And if the justices refuse to sign and allow the rate, the court of King's Bench will grant a mandamus to compel them; and an attachment if they keep out of the way to avoid the mandamus. (*Rex* v. *Edwards*, 1 *Bla.* 637.)

The justices cannot refuse signing a poor rate.

Rex v. *Justices of Dorchester*, 1 *Stra.* 393. A mandamus issued to the justices to sign a poor-rate. Before the return, a motion was made to supersede it for several objections to the fairness of the rate. But by the court: "The two justices are necessary to sign the rate only by way of form; for it is the churchwardens and overseers that have the power of making it; and whether it be a fair rate or not, is proper for the jurisdiction of the sessions, and was never intended for examination." The justices returned that they could not allow the rate, it not being a just and proper rate; and the court quashed the return, and ordered an attachment.

Semble. The allowance of a poor-rate by justices is still a mere ministerial act, notwithstanding 6 & 7 Will. 4, c. 96, s. 1, which says that no rate shall be allowed which is not made upon the net annual value of the property rated.

Held, that at all events, they cannot refuse to allow a rate on the sole ground that it is not in conformity with the valuation made by order of the poor law commissioners, under sect. 3.

Reg. v. *The Earl of Yarborough*, 12 *A. & E.* 416; 3 *P. & D.* 491. On an application for a mandamus to compel the defendants to sign and allow a rate made for the relief of the poor of Brading, it appeared that, by an order of the poor-law commissioners, a new survey and valuation had been taken of the lands &c. in the parish, and that the overseers had made a rate upon the alleged net annual value of the rateable property, but the rate was not in all respects in conformity with the survey and valuation, certain alterations having been made by them, which, in their judgment, rendered the same more equal. The defendants had refused to allow the rate, which was in the form and contained the declarations required by 6 & 7 Will. IV. c. 96, on the ground that it varied from such survey and valuation. Lord *Denman*. "Every reader of law, probably, has been surprised at finding that the allowance of a poor-rate by justices is a mere ministerial act. It seems very extraordinary that they should be called in, and yet not permitted to exercise any judgment in the matter. But this rule has been settled and acquiesced in for a long course of years. The parochial assessment act does not, in terms, get rid of the old law, but certainly uses language somewhat inconsistent with it, in enacting that no rate shall be allowed which is not made upon an estimate of the net value. The justices in this case would certainly have brought themselves within the very terms of the first section, if they showed that the rate was not made upon such an estimate; but, even then, I cannot believe that the legislature intended to make the allowance of poor-rates other than ministerial, and I think it would be highly inconvenient so to alter the law. In Queen Elizabeth's time, the justices were almost the only persons who could read and write, and there might then have been good reason for appealing to their judgment in such a matter; but now, overseers are, generally speaking, persons of respectable attainments, and may, more safely than in former times, exercise their own judgment in assessing the parish; and the parochial assessment act itself requires them to state by the declaration, which is a necessary part of the rate, that they have virtually exercised their judgment. There seems, therefore, to be no reason, from the necessity of the case, why the allowance by the justices should not be a ministerial act now, as well as formerly. The justices in this case have not attempted to bring themselves within the terms of the act, by showing that the rate was not made upon an estimate of net annual value, but they rely specifically upon this—that the rate did not follow the valuation made under the authority of the poor-law commissioners. I will not flinch from saying that I think the justices cannot refuse to allow a rate even where they are of opinion that the rate is not made upon a proper estimate of annual value, as required by the act; for I think it was simply intended to lay down a rule which the parish officers were to take as their guide, and themselves carry into operation. And with regard to the valuation, for non-conformity to which the justices rejected this rate, though undoubtedly the opinion of scientific men may be most useful, and should have all respect paid to it by the overseers, yet they must exercise their own judg-

ment in the last resort, and assess property accordingly. It is to be observed that, if the justices will not allow a rate, no provision is made by the act as to what is then to be done: no appeal is given in such an event; and the parish might be left without any fund for supporting its poor. The view which the magistrates have taken of this case is certainly very natural with reference to the words of the act; but I think that they were in error, and that this mandamus must go." *Littledale*, J. "I am of the same opinion. I think that the magistrates should have acted as they would have done before the late statute. The overseers may frequently think it prudent to adopt the valuation made under the authority of the poor-law commissioners, but are not bound to do so. They may discover errors in the valuation, and therefore pass it by altogether. The magistrates, I think, ought not to have refused to allow this rate, on the ground that it was not made according to the valuation. They have no power to amend the rate, and there is no appeal from their decision; so that, if they will not allow the rate, there can be no rate at all; and an application must be made for a mandamus to make a rate. The act has provided two stages of appeal in the case of incorrect valuation, and has made special provision as to the notices, &c. A third stage of appeal to the justices could not have been intended, for there is no provision as to notice or any other matter connected with it. The two stages of appeal that are allowed are against the rate, not against the valuation." *Patteson*, J. "I do not wonder that the justices, looking at the terms of the parochial assessment act, should think they had the power of withholding their allowance of this rate. At the same time it appears to me that they were mistaken in their construction: the act does not require the rate to be made upon such an estimate as shall satisfy them of its correctness. If the rate is in the form prescribed, and the overseers make the prescribed declaration that the rate has been made, to the best of their belief, according to the provisions of the act, that satisfies the requisition of the first section, (unless there is good reason for supposing that their declaration is false and collusive,) whether they turn out to be right or wrong. It is no part of the magistrates' discretion to go into particulars; they are merely to see that the rate bears the general character required. With respect to the valuation under the third section, I cannot think that it was intended to be binding, even where there has been no subsequent alteration in the value of property. There are no words in the act to signify that, after such a valuation has been made, the rate shall be in conformity with it. So the section of the poor-law amendment act that has been referred to, does not say no rate shall be allowed which is not according to such valuation; it avoids this, and merely says that all rates grounded on the valuation shall be allowed, without even requiring them to be grounded on it." *Williams*, J. "I agree in thinking that the act furnished the magistrates with good reason for conceiving that they had the power which they have exercised. I do not know whether the question might not have been doubtful to my mind, if I did not see that there is a provision made by the 6th section for the exercise, on appeal, of that very power over the valuation which they have assumed in the first instance. If the form of rate, as prescribed by the act, is observed, I do not see that the justices have any other discretion than they had formerly." Rule absolute.

11. *Form of Rate, Allowance, &c.*

Rex v. *Uttoxeter*, 1 *Bott*, 83. The allowance of the poor-rate by two justices is merely a ministerial act. (See also *Rex* v. *Kynaston*, 1 *East*, 117.)

The allowance of a rate is a ministerial act.

After a rate has been allowed, it should not be altered by inserting additional names, although with the magistrate's approbation. (*Rex* v. *Barrett*, *Doug.* 465.)

Rate not to be altered after allowance.

43 Eliz. c. 2, s. 8, enacts, "That the mayors, bailiffs, or other head officers of every town and place corporate and city within this realm, being justice or justices of peace, shall have the same authority by virtue of this act within the limits of their jurisdictions, as well out of sessions as at their sessions, if they hold any, as is herein limited, prescribed and appointed to justices of the peace of the county, or any two or more of them, or to the justices of peace in their quarter sessions to do and execute for all the

Officers of corporate towns have the authority of justices of peace.

11. *Form of Rate, Allowance, &c.*

uses and purposes in this act prescribed, and no other justice or justices of peace to enter or meddle there; and that every alderman of the city of London within his ward shall and may do and execute in every respect so much as is appointed and allowed by this act to be done and executed by one or two justices of peace of any county within this realm."

Aldermen of London.

A parish extending into two counties or into two liberties.

Sect. 9 enacts, "That if it shall happen any parish to extend itself into more counties than one, or part to lie within the liberties of any city, town, or place corporate, and part without, that then the justices of every county, as also the head officers of such city, town, or place corporate, shall deal and intermeddle only in so much of the said parish as lieth within their liberties, and not any farther, and every of them respectively, within their several jurisdictions, to execute the ordinances before mentioned concerning the nomination of overseers, the consent to binding apprentices, the giving warrant to levy taxation unpaid, the taking account of churchwardens and overseers, and the committing to prison such as refuse to account or deny to pay the arrearages due upon their accounts; and yet, nevertheless, the said churchwardens and overseers, or the most part of them, of the said parishes that do extend into such several limits and jurisdictions, shall, without dividing themselves, duly execute their office in all places within the said parish, in all things to them belonging, and duly exhibit and make one account before the said head officer of the town or place corporate, and one other before the said justices of peace."

Rate for a parish comprehending a borough ought to be confirmed by a justice of a county and of the borough.

Rex v. *Gordon*, 1 *B. & Ald.* 524. Where a parish contained within itself a borough not co-extensive with it, and the mayor of the borough, on a return to a mandamus for allowing a poor-rate made by the churchwardens and overseers of the whole parish, stated a custom which had existed since stat. 43 Eliz. c. 2, of appointing separate churchwardens and overseers, and of making separate rates for the borough and for those parts of the parish which lay without the borough; it was holden that such custom was invalid, and the return was quashed. Lord *Ellenborough*, C. J. "The 9th section of the 43d of Eliz. specifies and enumerates many acts that may be done separately, where a parish is partly within a town corporate, and partly without; but it does not mention the act of making rates. Now this of itself affords a very strong presumption that the legislature contemplated the making of one entire rate for the parish; and, besides, that section, after directing in what way the churchwardens and overseers are to be appointed, enacts expressly that they shall, without dividing themselves, execute their offices in all places within the said parish. That shows distinctly that one rate only for the whole parish must be made, and prohibits the making of separate rates by the separate bodies of churchwardens and overseers, as has been, according to the custom stated in this return, done within this borough. I think this return to the mandamus bad."

Only *one* rate for the whole, though a custom for two.

Distinct rates may *now* be made where borough and parish have had separate assessments for sixty years.

But by 59 Geo. III. c. 95, separation of towns corporate or franchises from the parish in which they are situate shall be deemed lawful in case it shall appear that such separation has not commenced within sixty years before the passing of that act.

Publication.

Notice to be given on the Sunday next after allowance.

By 17 Geo. II. c. 3, s. 1, the churchwardens and overseers or other persons authorised to take care of the poor, shall give or cause to be given public notice *in the church* of every rate for the relief of the poor allowed by the justices, the next Sunday after such allowance; and no rate shall be esteemed or reputed valid and sufficient so as to collect or raise the same, unless such notice shall have been given.

Notice not to be read in the church, &c., but affixed at the doors.

The mode of giving this notice was altered by the 7 Will. IV. & 1 Vic. c. 45, which recited that by divers acts, relating (*inter alia*) to poor-rates, public notice was required in the church, and enacted, that from the 1st of January, 1838, all notices which by any law, statute, or custom, or otherwise, have been given in churches, or chapels, during or after divine service, shall be reduced into writing, and copies thereof, printed or written, shall previously to commencement of the divine service on the several days on which such notices have been heretofore given in the church or chapel, or at the door, be affixed on or near the doors of all the churches and chapels within such parish; and such notices when affixed shall be in

lieu of the several notices heretofore given, and shall be valid to all purposes.

11. *Form of Rate, Allowance, &c.*

Reg. v. *Marriot*, 4 *P. & D.* 440; 12 *A. & E.* 779. On a rule for a mandamus to grant a warrant of distress for the amount of a poor-rate, it appeared that notice of the rate had been affixed on the door of the church of St. Andrew, Pershore, only, whereas the parish also contained five chapelries, each having a chapel of its own. The five chapelries had existed as far back as could be traced, and had been treated and reputed as distinct parishes, each making its own rates and maintaining its own poor separately, and they were altogether unconnected for parish purposes either with each other or the rest of the parish of St. Andrew. The rate in question was made at a vestry meeting for the residue of the parish, which residue also maintained its own poor separately from the five chapelries, and was itself a reputed parish, and the rate did not extend to any of the chapelries. Lord *Denman*. "The recent statute merely substitutes a written notice for the oral notice formerly required by 17 Geo. II. c. 3, s. 1, to be given 'in the church.' The notice is now to be affixed to the doors of all the churches or chapels within 'such *parish* or *place*.' In the *place* in question there is one church only, and notice has been given there." Rule absolute.

Where a parish has several districts, each having its own chapel, and separately maintaining its own poor, notice on the chapel door of that district alone for which the poor-rate is made is sufficient.

Reg. v. *Whipp*, 7 *Jur.* 193; 11 *L. J.* 64, *M. C.* By a lighting and watching act for Clitheroe, the overseers for the purpose of collecting, raising, and levying the rate for lighting and watching, are to proceed in the same manner as for levying money for the relief of the poor. In Clitheroe rates for the relief of the poor had been published, by affixing them to the door of the church of St. M. only, there being two other churches in the township:—Held, that since the passing of 7 Will. IV. & 1 Vic. cap. 45, notices with reference to the poor-rates ought to be affixed to the doors of all the churches in the place; and that this rate, having been published by affixing it to the door of the church of St. M. only, was bad.

The publication must be on all the churches in the township.

Rex v. *Newcombe*, 4 *T. R.* 368. On a mandamus to compel two justices to grant a warrant of distress to levy a poor-rate, it appeared that the rate was not published till the *third* Sunday after it was allowed. The rate had been confirmed on appeal. Lord *Kenyon*. "This application is answered by the act of parliament, which requires a particular step to be taken before the rate can be 'valid;' namely, that public notice shall be given of the rate in the church on the next Sunday after it is allowed: that direction was not pursued in this case, and consequently the rate itself is invalid. Suppose the parish officers were to give notice of the rate at some other public place in the parish, it would not be sufficient, though it might be equally notorious. What is said in *Hutchin* v. *Chambers* (1 *Burr.* 579; 2 *Ld. Keny.* 204), is perfectly right, as applied to the inequality of the rate. But this is a radical defect in the rate itself, which nothing can cure." *Buller* and *Grose*, Js. concurred.

Want of publication renders the rate invalid.

Sibbald v. *Roderick*, 3 *P. & D.* 106; 11 *A. & E.* 38. In *replevin*, the defendants avowed for a distress as overseers for a poor-rate. The plaintiff was rated for tithes in several rates, but it appeared on the face of the rates that they had been published on Sundays, which were not the Sundays following after they had been respectively allowed; and *Gurney*, B., held the rate was invalid, and that as the distress and demand had been for one gross sum, the distress was illegal; and a verdict was entered for the plaintiff, and a motion was made to enter a verdict for defendant. *Cur. adv. vult.*—Lord *Denman* stated that the court was of opinion that the ruling of the learned baron was correct, and that, as any rate of which notice had not been duly given was invalid, the objection taken at the trial must prevail. Rule refused.

Same point.

In *Bennett* v. *Edwards* (see *post*, 328), in giving judgment, *Bayley*, J. observed, "It is said that there was no proper publication in church, because the notice did not state that the rate had been allowed, but merely that it would be collected forthwith. Now the act requires no such publication in words. All that it requires is, 'that the churchwardens and

Notice that a rate will be *collected* is sufficient.

12. *Inspection of the Rate.*

overseers, or other persons authorised to take care of the poor in every parish, township, &c., shall give or cause to be given public notice in church of every rate for the relief of the poor allowed by the justices of the peace the next Sunday after the same shall have been so allowed; and that no rate shall be reputed valid and sufficient, so as to collect and raise the same, unless such notice shall have been given.' It does not say that notice shall be given 'that the rate has been allowed,' but 'of every rate allowed.' This has been done here. It must have been in fact allowed, or the publication would be useless. A notice that a rate is about to be collected *ex necessitate* implies that it has been allowed."

Rate, when *made*.

For certain purposes a rate is *made* when allowed, and not when it is published. *Reg.* v. *St. Mary Kalendar*, *post*.

12. Of Inspection of the Rate, &c.

12. *Of Inspection of the rate.*

Inhabitants may inspect the rate and have copies.

By 17 Geo. II. c. 3, s. 2, it is enacted, "That the churchwardens and overseers of the poor, or other persons authorised as aforesaid (*i. e.* to take care of the poor) in every parish, township, or place, shall permit all and every the inhabitants of the said parish, township, or place, to inspect every such rate at all seasonable times, paying one shilling for the same, and shall upon demand forthwith give copies of the same or any part thereof to any inhabitant of the said parish, township, or place, paying at the rate of 6*d.* for every twenty-four names."

Penalty for refusal

By s. 3 it is enacted, "That if any churchwarden or overseer of the poor, or other person authorised as aforesaid, shall not permit any inhabitant or parishioner to inspect the said rates, or shall refuse or neglect to give copies thereof as aforesaid, such churchwarden or overseer, or other person authorised as aforesaid, for every such offence shall forfeit and pay to the party aggrieved the sum of 20*l.* to be sued for and recovered by action of debt, bill, plaint, or information, in any of his Majesty's courts of record, wherein no essoin, protection, or wager of law, or more than one imparlance, shall be allowed. See also, 17 Geo. II. c. 38, s. 13, 14, 15, *post*.

Rules of commissioners may be inspected, and copies taken.

Every owner of property, his agent, or any rate-payer within any union, may inspect every rule or order issued for the union by the commissioners. The inspection is to be free of any charge. Copies are to be furnished at the rate of 3*d.* for every folio, and copies may be taken by paying 1½*d.* for each folio. 5 & 6 Will. IV. c. 78, s. 18.

The *demand* to inspect the rate must be made at a reasonable time and place by an inhabitant *who is aggrieved*.

Spencely v. *Robinson*, 3 *B. & C.* 658; 5 *D. & Ryl.* 572; 2 *D. & Ryl. Mag. Ca.* 551. In an action on the statute it appeared that the plaintiff was an inhabitant of Coxwould, and the defendant overseer. The rate in question was published on the 28th of March. About eight o'clock of the 19th of April, the plaintiff sent his son to the defendant, to request that he would come to him at his (plaintiff's) house. The defendant went and saw the plaintiff and his attorney; the plaintiff asked the defendant to allow him to inspect the rate, and tendered him one shilling. The defendant said that he durst not allow it; he was ordered not to do it. The plaintiff's attorney then asked him for a copy of the rate. The defendant then went away and related what had taken place to Mr. Newton, a magistrate, and stated that he had not shown the rate, because he was informed that he was not obliged to show it. Mr. Newton told him that he was, and pointed out the clause, and advised him to go back immediately and show the plaintiff the rate, and take a copy of it next morning as early as possible to the attorney. The defendant did return to the plaintiff's house, in about two hours after the inspection of the rate had been demanded, and offered to show him the rate, and the defendant made out a copy that night and delivered it to the plaintiff's attorney early the following morning. The latter said that it was too late, for the plaintiff could not appeal to the next sessions. The defendant said that he would waive all objection to the notice. The defendant, on the 17th of April, had met the plaintiff's attorney in Helmsley market, which is about eight miles from Coxwould, and he then asked him if he had a copy of the rate, for he was employed by the plaintiff, and wished to see one. The defendant said

As to this see p. 330-1.

that he should have one if he was entitled to it, and the attorney replied that he should be at Coxwould on Monday the 19th, and should expect to have one. *Bayley*, J., told the jury, that although there was a refusal at one time to permit an inspection of the rate, the question was, whether that refusal was not done away with by what subsequently took place, the defendant, within two hours after the refusal, having offered to allow the plaintiff to inspect the rate, and having delivered a copy to the plaintiff's attorney early next morning; a party was bound to give an overseer a reasonable time to do what the law required; and that, if the jury thought that the defendant had complied with the demand in a reasonable time, the defendant was entitled to a verdict. The jury found a verdict for the defendant. On a motion for a new trial it was urged, that as permission to inspect the rate had been once refused, a right of action vested in the plaintiff. *Abbott*, C. J. "My doubt in this case has been, not whether the learned judge left the proper question to the jury, but whether he ought to have left any question at all to the jury. I think that the plaintiff ought to have been non-suited." After reciting sect. 2, he added, "The person, therefore, to whom an inspection is to be allowed, or a copy to be given, must be an inhabitant. The defendant, therefore, was not bound to attend to the request made by the attorney of the plaintiff on the 17th." His lordship here read the next clause, sect. 3, and said, "The latter words plainly import that the penalty is to be given to the person who has sustained an injury by the act of the overseer. Now here the plaintiff sustained no injury, for he was not deprived of his appeal by what took place, as it might have been entered at the next sessions, and the justices had power to adjourn it to a subsequent sessions. The question left to the jury was, whether the defendant had, within a reasonable time, complied with the request of the plaintiff to be permitted to inspect the rate, or to have a copy? Before any right of action could vest in the plaintiff, by reason of the defendant's not permitting him to inspect the rate, a request must have been made for such permission at a reasonable time and place. The house of the overseer, where he may be fairly supposed to keep the rate-book, must be the reasonable place for making such a request or demand. Now, in this case, the overseer, without having any notice that the rate-book is required, is desired to come to the plaintiff's house, and the demand to inspect the rate-book is made at a place where it was known he could not have the book with him. That was an unreasonable place for making the request. I think, therefore, that there was, in this case, no legal request or demand to inspect the rate-book. Then, as to the copy of the rate, assuming that the *demand of a copy, made by the solicitor* in the presence of the plaintiff, was a demand by the latter, the defendant was entitled to a reasonable time to comply with that demand. For although the statute requires the overseer to furnish the copy *forthwith*, that word must receive a reasonable construction, so as to give the overseer an opportunity of making the copy required. Here the copy was made during the night, and delivered the following morning. That demand was complied with in a reasonable time, and therefore the plaintiff ought to have been nonsuited." *Holroyd*, J. "I think that the demand to inspect the rate was not sufficient, because it was not made at a reasonable time and place. I think, also, that the plaintiff was not a party grieved, because he did not sustain any injury by the refusal to allow him to inspect the rate. The being an inhabitant does not make him a party grieved. It has been held, under the Bankrupt Laws, that unless the party be a creditor, he is not a party grieved, within the meaning of those statutes."

12. *Inspection of the Rate.*

What is not a *refusal.*

House of overseer the reasonable place.

"Forthwith" means a reasonable time.

Who is a party grieved.

Bennett v. *Edwards*, 7 *B. & C.* 586; 1 *M. & R.* 482. In a similar action against an assistant-overseer, it appeared that the plaintiff and his attorney, Steele, required of the defendant to see the rates, but tendered no fee to the defendant for showing them. On a subsequent day they went together to the defendant's house; the defendant met them in the yard, close to the door. Steele said, "It is intimated to Mr. Bennett (the plaintiff), that the reason you refused to show the accounts was because the proper fees were not tendered. I hope you will take the money and

An *assistant overseer* is not liable to the penalty for not producing the rate, unless by the terms of his appointment it was part of his duty to produce the same.

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let *us* see the rate." The defendant then said, "I cannot; I have the books, but I have orders not to show them;" and a moment afterwards added, "Bennett may see them by going to the vestry," (explaining, upon inquiry, that he meant the select vestry, who had consented to meet at short notice, should the plaintiff apply for inspection of the rate and accounts). The plaintiff then tendered 1*s.* 6*d.* and said he demanded inspection of the poor-rate; and the defendant said he had orders not to show them. A rate was allowed on the 17th May, 1827, and published in church on the 20th, in the form following: "This is to give notice, that a rate or assessment of one shilling in the pound will be collected forthwith." The next preceding rate had been made the 8th December, 1826, and published on the 24th. The action was brought before June 15th, so that no sessions intervened between the time of the refusal and the commencement of the suit. The plaintiff was nonsuited; and on a motion for a new trial, *Bayley*, J. said, "In the course of the argument six questions have been presented, on one only of which we have felt any doubt. First, the presence of the attorney has been made an objection to the mode of making the demand; and it is said, that, not being a parishioner, he and the plaintiff improperly required the defendant to give them inspection. But it appeared that the attorney had explained to the defendant that he asked for inspection on behalf of Mr. Bennett, his client; and although by the 17 Geo. II. c. 3, s. 2 and 3, an inhabitant alone is entitled to inspect the rate, yet his attorney, or any other person, may go with him to make the demand; or in case of an improper refusal, how can the demand be proved? Secondly, I think the plaintiff was a party aggrieved. Here the plaintiff had a right to see the rate, in order to satisfy himself whether he was fairly dealt with, and whether other parties were assessed at all, or to the full value, or whether he was overrated; and this inspection was wrongfully denied him. Fourthly, the objection that there was not a sufficient demand, is answered by the fact that the plaintiff asked for the rate. There was no rate *in esse* at the time of such demand except this, which was published in church on the 20th of May, and demand was made on the 23rd. Fifthly, it is said that the refusal was not absolute, because the books were offered to be produced at the vestry. But if a party entrusted with the rate has no right to insist on terms, then a refusal qualified by such terms as he has no right to insist on, is an unlawful refusal; and he thereby commits the offence of not permitting the parishioners to inspect the rate, within the words of this act of parliament. The remaining question on which we doubt is, whether the defendant, as assistant-overseer, be liable within the act of parliament. We all think that this rule ought not to be made absolute for entering a verdict for the plaintiff. For if we decide that an assistant-overseer may be liable to the penalty imposed by the 17 Geo. II. c. 3, s. 3, it will still be a question of fact whether the defendant was such an assistant-overseer. If it was part of his duty to produce the rate, the plaintiff will be entitled to a verdict. But if that was no part of his duty, there ought to be a nonsuit. Assuming, therefore, that we should be of opinion that an assistant-overseer (whose duty it is to produce the rate) is an overseer within the meaning of the 17 Geo. II. c. 3, s. 3, it will still be a question for the jury, whether the defendant was such an overseer." *Holroyd*, J. "The law knows what an overseer is, but it does not know what is an assistant-overseer. He may be appointed generally to do all the business of an overseer, as a deputy, or only to keep the accounts, or perform other particular business. If it were his duty to do all the acts which an overseer is bound to do, then he ought to have produced the rate. A jury must decide this by ascertaining the nature of his duty." *Cur. adv. vult.*—*Bayley*, J. "The question reserved for our consideration was, whether this action was maintainable against an assistant-overseer. The select vestry are to determine and specify the duties to be performed by the assistant-overseer. It did not

Demand by an attorney in the name and presence of the inhabitant is sufficient.

Who is a party aggrieved.

The rate *in esse* is the last published rate. (*a*)

A qualified refusal sufficient.

(*a*) The right of inspection is not limited to the existing rate. *Batchelor* v. *Hodges*, p. 330.

appear upon the trial what duties the defendant was liable to perform. He may be liable to perform all or only some of the duties of overseer. It must depend on the nature of his appointment, therefore, whether it was part of his duty to exhibit the rate to the plaintiff in this case. There having been no evidence to show that it was his duty, as assistant-overseer, to produce the rate, the case must go down to another jury, in order that the nature of his duties may be ascertained." At the second trial, in addition to the former evidence, it appeared that the plaintiff had given the defendant notice to produce his appointment to the office of assistant-overseer; but he refused to produce it. *Parke*, J. left it to the jury to infer, from the conduct of the defendant when the rate was demanded of him, and from the fact of the non-production of his appointment, that it was part of his duty, as assistant-overseer, to produce the rate. The jury found a verdict for the plaintiff on those counts which charged the defendant as assistant-overseer. Upon a motion in arrest of judgment (8 *B. & C.* 702; 2 *M. & R.* 482), *Bayley*, J. said, "I agree that he is not a person authorised to take care of the poor within the meaning of the statute. Neither is he a churchwarden. Is he then an overseer? Certainly not for all purposes, but for this I think he is. The 59 Geo. III. authorises the appointment of assistant-overseers, and every person so appointed is authorised to execute all such of the duties of overseer as shall in the warrant of his appointment be expressed. And therefore it is not sufficient to aver that the defendant was assistant-overseer; but that must be stated which expressly, or by necessary implication, shows that he was an assistant-overseer with the duty in question cast upon him. If the duty of keeping the parish books and rates is imposed, I think the consequence follows that he must allow the inspection of them. If this were otherwise, the original overseer, when applied to for permission to inspect, might answer that he had them not: the assistant-overseer might say, that it was no part of his duty to exhibit them; and thus the 17 Geo. II. would be inoperative. I am, therefore, of opinion that when the duty of keeping the rate is imposed, the duty of allowing an inspection of it is imposed also." *Littledale*, J. "The duties of an assistant-overseer are certainly undefined, nor can we tell correctly what they are without seeing the warrant by which he is appointed. The rate-book might be delivered to him for the purpose of collecting the rate only; but then the plaintiff must have been nonsuited. We are, therefore, bound to presume after verdict that the defendant was proved to be such an assistant-overseer as made it his duty to produce the rate to the plaintiff, and in general we may presume that when a person has the custody of the parish books, he has them for lawful purposes for which they may be wanted." *Parke*, J. was of opinion that the declaration was sufficient to warrant a judgment for the plaintiff. "It is alleged that he, as such assistant-overseer, had the rate in his possession at the time it was demanded. According to *Shreves* v. *Parker* (1 *T. R.* 141), we must assume that it was delivered to him for some purpose connected with the duties of his office; and as those duties can only be some of the duties of the principal overseer, he would have the rate in the same way as the overseer himself. If so, it follows that he was bound to produce it when lawfully demanded, and is liable to a penalty for refusing to do so. If this were otherwise, the parishioners might be altogether deprived of the means of obtaining an inspection of the rate."

If defendant neglect, after notice, to produce his appointment on the trial, his duty may be inferred from his conduct.

The duty to allow inspection will be implied from the custody of the books.

On a writ of error the judgment was given by *Tindal*, C. J. "In the argument of this case two objections have been taken: first, that an assistant-overseer is not within the 17 Geo. II., which imposes the penalty; and secondly, assuming that he is within the statute, that he is not liable upon this record. We think neither of these objections can prevail. With respect to the first, the words of the 17 Geo. II. c. 3, s. 3, are (his lordship read the clause). It is said, that an assistant-overseer does not come within either of these descriptions. It may be admitted that he is not a churchwarden or overseer, but whether he be or not a person authorised to take care of the poor will depend upon the nature of his appointment." The learned judge then read the 59 Geo. III. c. 12, s. 7 (*ante*, 36), under

Same case in error.

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which he was appointed, and added, "It must, therefore, depend upon the words of his appointment whether an assistant-overseer be or be not a person authorised to take care of the poor; and if they are large enough to embrace all the authority of the superior officer, then undoubtedly he would be, within the meaning of the statute, 'a person authorised to take care of the poor,' and liable to the penalty. It would, indeed, be a narrow construction of this statute to confine its operation to such officers only as were then in existence. It is true that it could not at the time be intended to apply to assistant-overseers, because such officers were not then known; but the legislature having created an officer, who does come within the description of the statute, it would be a narrow construction of an act, which is not merely penal, but remedial, to say that such an officer was not within its operation. Still it is said, that upon this record the defendant is not brought within its operation. Now the declaration contains an allegation that the defendant is an assistant-overseer, which allegation could not be proved, except by the production of the appointment, or by giving secondary evidence of its contents. Without adverting to any other allegation, the judge who had the warrant of appointment before him, would direct the jury that the case was not within the statute, unless by the appointment the defendant had authority to take care of the poor. After verdict we must therefore assume that the authority of the defendant was such as would satisfy the description in the act. But the declaration further alleges, that the defendant was requested to produce the rate, and had it in his possession as such assistant-overseer. At all events, therefore, if by his appointment he had no general authority to take care of the poor, he had a limited authority, part of which was to have the custody of the books; because we cannot after verdict intend that he had the book in his possession, otherwise than in the execution of his duty. The question therefore is, whether, after verdict, it must not be intended that he was authorised to have the care of the poor, or that it was his duty to have the custody and possession of these books? and in either view of this case the declaration would be sufficient. If this declaration had contained an allegation that defendant had authority to take care of the poor, no doubt could exist; but as it is doubtful whether he had that, or a mere limited power, and as the judge must have directed the jury to find for the defendant, unless by his appointment he came within the description of the statute, we must after verdict intend that he had either a general authority to take care of the poor, or a limited authority to have the rightful custody of the books." The learned judge then distinguished the case from *Rex* v. *Everett* (8 *B. & C.* 114; 2 *M. & R.* 35), and affirmed the judgment. (3 *Y. & J.* 458; 6 *Bing.* 230; 3 *M. & P.* 749.)

50 G. 3, c. 12, s 7, not confined to officers *then* existing.

The statute is remedial as well as penal.

Declaration sufficient on general demurrer. next case.

Batchelor v. *Hodges*, 5 *N. & M.* 75; 4 *A. & E.* 592. The plaintiff was an inhabitant of Windsor, and the defendant the assistant-overseer. The declaration alleged that on 10th July, 1834, a rate was made for the relief of the poor, allowed and published, and that the plaintiff requested the defendant, as such assistant-overseer, to permit him to inspect the rate, and tendered the defendant 1*s.* for the same; and although the defendant, as such assistant-overseer, had the rate in his possession, yet he would not permit the plaintiff to inspect it. Whereby, &c. The second plea was, that at the time when the plaintiff requested, &c. he had no right to inspect the rate, the same not being a *subsisting* rate for the relief of the poor of the said parish; and also that the rate was an old rate, and that the time for appealing against such rate had expired. Lord *Denman*, C. J. "It appears to me that this declaration is perfectly good. The decision of the court in *Spenceley* v. *Robinson* introduced, in effect, a new term into the act of parliament. The ruling in that case as to the present point (viz. that he must be rated and actually aggrieved), was abandoned by general consent in the late case, in which the declaration was held good, although, as in *Spenceley* v. *Robinson*, it did not state that the plaintiff was a *rated* inhabitant, nor that he was aggrieved by the refusal of inspection. An inhabitant may be grieved by the very fact of not being upon the rate. Then upon the second point we have been referred to *Bennett* v. *Edwards*,

An inhabitant of the parish, being rated, is entitled to inspection.

It is sufficient to charge that the defendant had the rate in his possession as assistant-overseer.

The right of inspection is not limited to a *subsisting* rate.

But see *Rex* v. *George*, p. 334.

in which it was said that an assistant-overseer was not a person who, as a matter of course, was authorised to take care of the rates; and to *Edwards* v. *Bennett* (in error), in which the Lord Chief Justice of the Common Pleas said, that the objection to the declaration on that ground must have prevailed on demurrer. He may possibly have meant *on special demurrer.* I cannot think that, at all events, it is *more* than that. It seems to me to be impossible to bring any person more distinctly within the purview of the act of parliament than this defendant, who, it appears, was assistant-overseer, and as such had custody of the rates. A refusal to produce the rate by the party thus possessing the means of withholding it, is the very mischief which the statute was intended to remedy." *Littledale*, J. "The second point appears to me to be decided by *Bennett* v. *Edwards.* With respect to the other point:—The plaintiff is within the *words* of the act of parliament, inasmuch as he is 'an inhabitant.' He may have an interest in seeing the rate, although not himself rated. He may desire to see whether he is rated or not, as there are some privileges connected with the being rated. The act of parliament says nothing about '*rated* inhabitants:'—we have no right, therefore, to say that it is necessary that he should appear to be such." *Williams*, J. "I am of the same opinion. We have no right to import a term into the act of parliament. If the legislature had intended that none but rated inhabitants should have the right of inspection, the enactment should have been so expressed. If the plaintiff, as an inhabitant, had a right to inspect, and inspection was refused, he was a party aggrieved within the meaning of the act. With respect to the other point:—Here it appears, on the face of the declaration, that the defendant was assistant-overseer, and as such had the possession of the rate; and this, I think, brings him within the language of the act, which is very general." *Coleridge*, J. "I think that the defendant is quite right in giving up the second plea, as well as the others. There can be no doubt that, under this act of 17 Geo. II. c. 3, and 17 Geo. II. c. 38, the rule applies equally as well to old rates as to modern rates. The overseers are bound by the 13th section of the latter act to keep a book, wherein to enter attested copies of all rates and assessments; which book is to be carefully preserved in some public place, whereto all persons assessed or liable to be assessed may freely resort. There are two objections to the declaration. With respect to the first, we must look at the words of the statute. It would be extraordinary if a declaration in the words of the statute were held not to be good upon the face of it. Here it is in the words of the statute. As to the second objection:—We must look at the sections which give the right of inspection and impose the penalty. There are three sets of persons liable—churchwardens, overseers, or other persons authorised as aforesaid,—*i. e.* (by reference to the 1st section,) 'authorised to take care of the poor.' The very term 'assistant-overseer' of itself imports that he is a person 'authorised to take care of the poor.'" Judgment for the plaintiff.

To subject a person to this penalty he must not only have the custody of the rate, but have the care of the poor.

Whitchurch v. *Chapman*, 3 *B. & Adol.* 691. By a local act for certain incorporated parishes, guardians of the poor were appointed, and were authorised to appoint a clerk, and to make rates; and all poor-rates and books purporting to be rates made for the said parishes, and all papers relating to the settlement of the poor, were to be delivered by the churchwardens and overseers to the clerk of the guardians for the time being, who was to cause the same to be preserved and filed. The clerk to the guardians paid the casual and out-poor weekly, and transacted some other matters relating to the poor, and had the custody of the books. Lord *Tenterden.* "No persons are subject to the penalty imposed by 17 Geo. II. c. 3, s. 3, but churchwardens, overseers, or persons authorised to take care of the poor. The defendant was neither. The guardians were the persons so authorised. In *Bennett* v. *Edwards* (*ante*, 328), the defendant was assistant-overseer; the case therefore fell within the words of the act, and he appeared to be the only person who had possession of the rate." *Littledale*, J. "In *Bennett* v. *Edwards*, the defendant, who had the custody of the rate, was a person authorised to take care of the poor. Here, by the

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local act, the clerk of the guardians is to have the custody of the poor-rate, but the guardians are the persons who are authorised to take care of the poor, and the demand of inspection ought to have been made to them." *Parke* and *Taunton*, Js. concurred.

Mandamus may be issued to compel allowance of inspection of books, &c. although the time for appealing has elapsed; but the party applying should state some grounds.

Rex v. *Clear*, 4 *B. & C.* 899; 7 *D. & R.* 393. A rule was obtained for a mandamus to churchwardens, commanding them to permit J. P., a rated inhabitant of the parish, to inspect the accounts relating to the poor, for the years 1821, 1822, 1823, and 1824, at all reasonable times, paying, &c. as required by the act. *Bayley*, J. "The right of inspection given by the 17 Geo. II. c. 38, is not general, but for the remedy of the evils contemplated by the statute. The applicant should, therefore, have shown some ground for desiring to inspect the books; and for want of such statement I think that this rule must be discharged. It is no answer to the application, that in a subsequent clause a penalty is imposed; that is not given by way of compensation to the party grieved, but it is imposed for the relief of the poor, and to punish the offender." *Holroyd*, J. "In *Com. Dig. Mandamus* (A), it is stated that the writ of mandamus is granted to prevent failure of justice, and for the execution of the common law, or of a statute, or of the king's charter, but not as a private remedy to the party. The applicant not having stated the grounds upon which he desires to inspect the books, has not brought himself within that rule for granting a mandamus. His right as a parishioner is a mere private right, for which the court will not grant it. The penalty, indeed, is not such a specific legal remedy as would prevent our interference, but inasmuch as I think the party should have pointed out some public ground for the court to proceed upon, and has not done so, this rule must be discharged." *Littledale*, J. concurred.

There may be other reasons besides the right of appeal.

On an application for a mandamus in behalf of a rated parishioner, to allow him an inspection of the accounts of the expenditure of the parish moneys kept by guardians of the poor, appointed under 22 Geo. III. c. 83, Lord *Tenterden*, C. J. "We have no doubt that the party is entitled to inspect the books at a reasonable time. *Assuming that he has no right to appeal, or that the time for appeal is gone by, he may have other good reasons for inspecting the books.* He has a right to see what has been done." Rule absolute. (*Rex* v. *Great Farringdon*, 9 *B. & C.* 541.)

A *churchwarden* cannot sue the *overseer* for the penalties under this stat.

Wethered v. *Calcutt*, 10 *L. J.* 123; 6 *Jurist*, 487. In an action for penalties under 17 Geo. II. c. 3, it appeared that the *plaintiff* was *churchwarden* of Marlow, of which the defendant was *overseer*. The plaintiff applied to the defendant and offered him the requisite sum for a copy of the rate, and the defendant promised to let him have a copy, but did not do so; the defendant, however, had directed his attorney to make a copy for the plaintiff, but the plaintiff could not get it without the payment of 1*l.*, (the attorney said the defendant had so ordered him), and 5*s.* for the attorney's letter informing the plaintiff that the copy was ready for delivery on such payment. The plaintiff had paid his assessment. On rule for a nonsuit, *Tindal*, C. J. said, "The only question is, whether, upon the facts proved, the case is within the statute. I think the act uses the word 'inhabitant' in contradistinction to 'overseer' or 'churchwarden,' for if the rate were properly made, the churchwardens and overseers would have been present at the time of the making, and the legislature could not suppose that they would want to inspect the rate again. The object of the legislature was the protection of the inhabitants generally as against the makers of the rate. Has this plaintiff brought himself within that object and intent? I think not. It has been argued that the defendant virtually admits his liability; but it cannot be that if a man make a voluntary promise to perform an act which the law will not compel him to perform, he shall thereby render himself liable to a penalty. The action is wrongly conceived." *Cresswell*, J. "I am of the same opinion. The three sections of this act intend to provide a sufficient remedy, as set out in the preamble, and for the same persons. The first is a remedy, that churchwardens and overseers shall give public notice of every rate; the second, that they shall permit all the inhabitants of the parish to inspect the rate, and give copies of it if demanded; the third, that if they shall refuse or neglect to do either,

they shall underlie the penalty. And the same class of persons is evidently intended in each section. Again, the churchwardens and overseers are supposed to be parties to the making of the rate. They have a much higher right, as far as the books are concerned, than the right of inspection: they have a right to the custody of the books. The statute could not, therefore, have contemplated them in these sections." Rule absolute for a nonsuit.

13. Relief from Rate in Cases of Poverty.

13. Relief from Rate by Justices, with Consent of Overseers, in Cases of Poverty.

13. Relief from Rate by Justices, with consent of Overseers, in case of Poverty.

By 54 Geo. III. c. 170, s. 11, it is enacted, "That it shall and may be lawful for any two or more of his Majesty's justices of the peace acting for the county, riding, division, or jurisdiction, in which any district, parish, township, or hamlet shall be situated, in petty sessions assembled, on application made to them by any person rated to any rates or cesses within any such district, township, parish, or hamlet, to be discharged therefrom, and proof of his or her *inability, through poverty, to pay such rate* or cess, with the consent of the churchwardens and overseers of such district, parish, township, or hamlet, or of such other person or persons as is or are competent to act, under the authority of any act or acts of parliament, for the ordering, management, control, or direction of the poor of any such district, parish, township, or hamlet, to order and direct that such person shall be excused from the payment of such rate or cess, and to strike out his or her name therefrom: and the sum at which such person was so rated in such rate or cess shall not hereafter be collected, or any person or persons charged therewith, or in any manner called or liable to account for the same, or for omitting to collect or receive the same."

Justices in petty sessions, with consent of parish officers, may discharge paupers from the payment of parish rates.

If the occupier is excused on account of poverty, the owner cannot be rated. (*Rex* v. *Hull Dock Company*, 5 *D. & R.* 359; 2 *B. & C.* 516.)

They cannot assess the owner.

14. Of Appeals to the Petty and General Sessions, and Remedies under Local Acts.

14. Of Appeals and Remedies under Local Acts.

A person aggrieved by a poor-rate may be relieved by *appeal* either to the petty or quarter sessions, and sometimes by application to *local authorities*, under particular statutes.

No appeal will lie unless it is given by statute. A party, therefore, cannot appeal for the purpose of trying if the rate was *bonâ fide* made for the purposes for which it professed to be made. (*Reg.* v. *J. Middlesex*, 8 *Dowl.* 103.

Appeal must be given by statute.

If the rate be a *nullity*, or the person charged be *not rateable at all*, he may then not only appeal, but also dispute his liability, when his goods have been distrained, in an action of trespass or replevin. (*Milward* v. *Caffin*, 2 *Bla. Rep.* 1336; *Durant* v. *Boys*, 6 *T. R.* 580.) But if there be anything legally due for poor-rate, or there has been a distress under several warrants, and one of them was valid, then neither trespass nor replevin lies, but only a special action on the case for an *excessive levy*. (1 *Adol. & Ell.* 264.) It is always *safest to appeal*.

When the rate is a *nullity*.

The rate is made under the authority of the 43 Eliz c. 2, and by s. 6 of that act it is provided, "That if any person or persons shall find themselves grieved with any cess, or tax, or other act done by the said churchwardens and other persons, or by the said justices of peace, that then it shall be lawful for the justices of the peace at their general quarter sessions, or the greater number of them, to take such order therein as to them shall be thought convenient, and the same to conclude and bind all the said parties."

The appeal clause in 43 Eliz.

17 Geo. II. c. 38, s. 4, enacts, "That in case any person or persons shall find him, her, or themselves aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put on or left out of such rate or assessment, or to the sum charged on any person or persons therein, or shall have any material objection to such account as aforesaid, or any part thereof, or shall find him, her,

The regulations of 17 Geo. 2, c. 38, as to appeals against rates.

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Notice of appeal.

Adjournment.

or themselves aggrieved by any neglect, act, or thing done or omitted by the churchwardens and overseers of the poor, or by any of his majesty's justices of the peace; it shall and may be lawful for such person or persons, in any of the cases aforesaid, giving reasonable *notice* to the churchwardens or overseers of the poor of the parish, township, or place, to appeal to the next general or quarter sessions of the peace for the county, riding, division, corporation, or franchise where such parish, township or place lies; and the justices of the peace there assembled are hereby authorised and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said justices that reasonable notice was not given, then they shall *adjourn* the said appeal to the next quarter sessions, and then and there finally hear and determine the

The right of appeal is given to persons who are aggrieved by the rate. A person omitted from a rate is not necessarily a person "aggrieved."

The simple fact of being left out of a poor-rate, where no improper motives are shown for making the omission, is no ground for an appeal.

Rex v. *George*, 6 *A. & E.* 305; 1 *N. & P.* 451. J. George appealed against a poor-rate for St. Giles, in the isle of Ely, on the ground that he was not rated for the house he occupied. The sessions confirmed the rate. Case:—The house of the appellant had been rated during the occupancy of a former tenant, and up to the time when it ceased to be occupied, at 6*l.* per annum, but the last rate was not paid. It had been unoccupied for a short time. On account of the difficulty of obtaining payment of the rates, it was not afterwards rated. The appellant had then become the occupier, and expressed his willingness to be rated, and had requested the parish officers to rate him, but they had not done so. The parish officers have not of late rated similar houses, on account of the difficulty of obtaining the rates. The defendant cited in his favour the observation of Lord *Mansfield* in *Rex* v. *Uffculine*, 2 *Const.* 235, who said, "The 17 Geo. II. says, 'that where there is a franchise to be enjoyed, a man shall not be deprived of his franchise;" and he further argued that a party omitted might lose his right to vote under the Vestry Act, 1 & 2 Will. IV. c. 60. Lord *Denman*. "Must a rate of 6*d.* per annum be collected from a parishioner, if the parish can levy enough without descending so low? The question cannot be affected by a privilege being incident to the being rated. Lord Mansfield seems to speak merely of the object of the act, not of its effect. And there is no personal injury." The defendant urged that the statute did not limit his right to a pecuniary injury. Lord *Denman*. "The power to rate an occupier does not impose a duty towards the occupier, though certain rights may result to him from the power being exercised. A rate might be sufficient which could not reach the party. If every one is to be rated, however small the rate to be imposed on him, the expense of collecting might be greater than the profit." *Williams*, J. concurred. *Coleridge*, J. "I cannot say that the simple omission is a grievance, or that any particular grievance is shown here; therefore the right of appeal does not arise." Order confirmed. See *Batchelor* v. *Hodges*, p. 330-1.

Appeal against a rate on a rent charge.

The same privilege of appeal against a rate made on a rent-charge is given to the owner as to the occupier. Sect. 70 of 6 & 7 Will. IV. c. 71.

Several having a joint grievance may join in a notice of appeal.

In *Rex* v. *Sussex*, 15 *East*, 206, it was objected that the appellants should have given separate notices. But on *Rex* v. *White* being quoted, Lord *Ellenborough* said, "he thought that that case, which had been much considered, was authority sufficient to support the present appeal."

There may be one appeal against several rates.

Rex v. *Justices of Suffolk*, 1 *B. & Ald.* 640. This was an appeal against four distinct rates, and it was urged that it was not competent for the appellant to do this. *Bayley*, J. "The act which gives the appeal states that a party who may find himself unequally taxed or assessed may appeal against any *such* rate. It does not say that he must appeal against that rate *per se* without joining it with the others, which, being monthly, may have been made in the interval between one sessions and the next. The joint appeal may be then considered as a separate appeal against each rate, and if the sessions should be of opinion that injustice would be done by hearing the appeal against the four rates jointly, they might determine upon them separately; but they are not bound to do so. The party

therefore, may legally appeal against the poor-rates in the manner adopted by him in the present case. (*a*)

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Rex v. *The Justices of London*, 15 *East*, 632. An appeal against a poor's-rate in London or Middlesex must be made, as in all other counties, to the next practicable general *quarter* sessions; though the 17 Geo. II. c. 38, s. 4, in its terms gives the appeal to the next *general* or *quarter* sessions; it appearing from other parts of the act as well as from other acts *in pari materiâ*, that those terms are used synonymously, and though in the two counties named there are four *general* as well as four *general quarter* sessions.

Meaning of "general" or "quarter" sessions.

The following are some of the remedies provided by local acts:—

Under local acts.

Rex v. *Justices of Kent*, 9 *B. & C.* 283. By a local act, the management of the poor of Greenwich was vested in the churchwardens, overseers, governors and directors of the poor, and an appeal to them was given to any person thinking himself aggrieved by any thing to be done by virtue of the act, and if the appellant should be dissatisfied with their determination, then an appeal was given unto the quarter sessions. A parishioner applied for relief against a rate to the churchwardens, overseers, governors, and directors, upon which, at a meeting regularly held, a resolution was moved, seconded, and carried, that *no further* notice of this application should be taken; against which resolution he appealed to the sessions. Lord *Tenterden*, "In this case a rate was made for a sum of money ordered to be paid out of that rate to S. (the vestry clerk). The appellant objected to that payment, and applied for relief under the local act to the churchwardens, overseers, governors, and directors assembled at a meeting on the 16th of July. They resolved that they would take no notice of his application for relief: they refused, in fact, to hear the appeal at all. The proper course under those circumstances would have been to have applied to this court for a mandamus to compel them to hear his appeal. If they had heard it, and come to a determination upon it, and he had been dissatisfied with that determination, he might then have appealed to the quarter sessions. In *Rex* v. *Tucker* (3 *B. & C.* 544; 5 *D. & R.* 434), the justices at petty sessions heard the evidence and dismissed the appeal."

If the act directs the appeal to commissioners in first instance, that course must be pursued.

Rex v. *St. James, Westminster*, 1 *Ad. & El.* 241; 4 *N. & M.* 252. By a local act for the relief of the poor in St. James, Westminster, it was provided that if any person should find himself aggrieved by any rate, he shall first apply to two justices, and *if not relieved*, shall be obliged to pay such rate, and then upon an appeal to the quarter sessions next after payment of such rate, the sessions may cause so much money to be returned as shall appear to the justices to have been overpaid, and to make such order as they think fit, which order was to be conclusive. The Earl of Burlington under this provision applied to two justices, who examined witnesses as to the value of the premises, and made an order (*b*) for the reduction of the rate. A rule was obtained to quash this order for insufficiency, and after argument, Lord *Denman* said, "The clause in question is an extraordinary one, and I should recommend the parish to have it made clear as soon as possible. I have a difficulty in inferring any authority in the justices to act upon an occasion of this kind from the words, 'if not relieved.' Still it must have been intended to give some power; and if so, what is that power? It can only be to relieve the individual, and that is by amending the rate as far as it applies to him; and such amendment can be grounded only on an opinion formed by them that the party had been incorrectly rated. The objection here taken is not to what they have done, but to the reason they have given. They have said that they thought the principle of the rate erroneous, but that is immaterial. They had no authority to quash the rate; their power was only to amend it so far as it affected the individual; and I cannot say that they should not

By the local act of St. James, Westminster, two justices have the power to relieve.

(*a*) Three defendants, convicted of unlawful fishing, on a joint hearing may join in a notice of appeal, although three separate convictions were returned to the sessions. *Reg.* v. *J. Oxfordshire*, 12 *L. J.* 40, M. C.

(*b*) The form of the order is given in the Report.

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have acted to that extent, because they have at the same time declared that they thought the rate erroneous in principle. (*a*) It may be so, and yet the error in principle may not affect any other person in the parish. If others were prejudiced by the amendment, the same remedy was open to them as to Lord Burlington. The justices have relieved a party whom they thought to be overrated; whether they thought so for good reasons or bad, or more or less extensive in effect, is, in my opinion, immaterial." *Taunton*, J. "In my own opinion it follows by necessary implication from the words used, that the justices have authority to relieve, and consequently to form their conclusion as to granting relief in the way that appears to them most effectual." *Patteson*, J. "I certainly feel myself hampered by the words of this act: if, however, it is at variance with the general law of appeals, we cannot help that." The learned judge then quoted the clause as above, and added, "I cannot understand that the legislature should do so absurd a thing as to direct an application to justices, and then oblige the justices to say to the persons applying, 'We have no power to relieve you, therefore you must go to the sessions.' As the party aggrieved cannot by this clause go to the sessions till after he has applied to the justices, it must have been meant that they should have power to hear the complaint and to relieve upon it. It is extraordinary that no power is given to administer an oath; and the justices have acted wisely and properly in not administering one. I think, however, we must take it by implication that the justices have power to deal with the complaint made by any person under it to any extent that may be necessary." The same judge observed during the argument, "It appears strange that this act gives the parish no appeal where the justices decide unfavourably to them." *Williams*, J. concurred.

Sudbury act gives an appeal, first to the borough sessions, and then to the county.

Rex v. *Justices of Suffolk*, 1 *B. & Ald.* 640. By a local act relating to the poor of Sudbury, power was given to make a rate; and an appeal might be made against it, "first, to the justices of the peace of the town of Sudbury at their general quarter sessions next after the making and demanding the same, or at any other sessions to be held for the said town." A further appeal was given against the order of the justices of the town at their sessions, to the justices of the county at the general quarter sessions. At the January sessions for the town, the appellant instituted his appeal against four rates, made respectively on 17th September, 19th October, 16th November, and 14th December preceding. The borough sessions determined against him, and he appealed to the county sessions. *Bayley*, J. "The true construction of the clause is this: the legislature alluded to the general sessions which might be holden within the borough, and which might happen before the quarter sessions, not depending on that act of parliament by which the latter are regulated: the clause means that the party may appeal either to the quarter sessions or to the general sessions next after the rate, as the case may be. I think the appeal as to *the first rate* was clearly out of time."

Parochial assessment act.

Justices acting in petty sessions to hold four special sessions in the year to hear appeals against poor-rates, for inequality, or unfairness.

A more speedy remedy against a rate has been provided by the 6 & 7 Will. IV. c. 96, which enacts, by s. 6, that the justices acting in and for every petty sessions division shall four times at least in every year hold a special sessions for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church of the said parishes, twenty-eight days at the least before the holding of the same; and such special sessions shall and may be adjourned from time to time by the justices there present as they may think fit; and at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein, which decision shall be binding and conclusive on the parties, unless the person or persons impugning such decision shall within fourteen days after the same shall have been made,

(*a*) This did not appear on the face of the order, but upon the affidavit.

cause notice to be given in writing of his, her, or their intention of appealing against such decision, *and of the matter or cause of such appeal*, to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice shall enter into a recognisance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party or parties appealing or appealed against as they shall think proper, and their determination in or concerning the premises shall be conclusive and binding on all parties, to all intents and purposes whatsoever: provided always, that no such objection shall be inquired into by the said justices in special session unless notice of such objection in writing under the hand of the complainant shall have been given, seven days at least before the day appointed for such special session, to the collector, overseers, or other persons by whom such rate was made; provided also, that the said justices in special sessions shall not be authorised to inquire into the liability of any hereditaments to be rated, but only into the true value thereof and into the fairness of the amount at which the same shall have been rated. And by s. 7, that the justices present at any such special or adjourned session shall, for the aforesaid purpose, have all the powers of amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs, which any court of quarter sessions of the peace has upon appeals from any such rate, except as herein excepted: provided always, that no order of the said justices shall be removed by *certiorari* or otherwise into any of his Majesty's courts of record at Westminster: provided also, that nothing in this act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any court of general or quarter sessions: provided also, that no order of the said justices in special session shall be of any force pending any appeal touching the same subject-matter to the court of general or quarter sessions of the peace having jurisdiction to try such appeal, or in opposition to the order of any such court upon such appeal.

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Their decision may be appealed against.

Seven days' notice to be given of objections.

Proviso.

Justices may act with all the powers of justices in quarter sessions.

It is sufficient if the recognisances required by the sixth section be within the five days verbally acknowledged before a justice, the record of the recognisance may be perfected afterward from the minute then made. (*Reg.* v. *J. St. Albans*, 8 *A. & E.* 932.)

A *verbal* acknowledgment of the recognisance is sufficient.

Where the parish is not within any borough, the appeal must be to the county sessions.

Appeal to county justices.

Where the parish in which the rate is made is situated within a borough, the appeal, under certain circumstances, may be made to the justices of the borough. By 43 Eliz. c. 2, s. 8, the justices and sessions of boroughs have power over appeals against rates, made for places within the borough, exclusive of the county. (*Rex* v. *St. Mary Taunton*, 1 *Bott*, 282.) But their jurisdiction is modified by the 17 Geo. II. c 38, s. 5, which provides in all *corporations* or franchises which have not *four* justices of the peace, it shall and may be lawful for any person or persons in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such corporation or franchise is situate.

To borough justices.

Under 17 Geo. II. c. 38.

And by 1 Geo. IV. c. 36, it is enacted that "in all corporations and franchises not having more than *six* justices of the peace, nor having jurisdiction or authority over two or more whole parishes or wards contained within such corporation or franchise, it shall and may be lawful for any person or persons, in any of the cases mentioned or referred to by the said act or acts, or either of them, where an appeal is given by the said act or acts, or either of them, to appeal, if he, she, or they shall think fit, to the next general or quarter sessions of the peace for the county, riding or

In all corporations and franchises not having more than six justices, nor jurisdiction over two wards or parishes, the appeal may be to the county or borough sessions.

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division wherein such corporation or franchise is situate, in as ample manner as if such corporation or franchise had not four justices of the peace: provided always, that nothing herein contained shall be deemed or taken to extend to any city or town corporate being a county of itself."

Justices of the county have jurisdiction in boroughs to which no grant of quarter sessions made; but the borough, not the county justices, where such sessions are granted.

By s. 111 of the Municipal Corporation Act (5 & 6 Will. IV. c. 76), it is enacted that after May, 1836, the justices of the county in which any borough is situate, to which a grant of quarter sessions shall not have been made, "shall exercise the jurisdiction of justices of the peace in and for such borough, as fully as by law they and each of them can or ought to do in and for the said county; and no part of any borough, in and for which a separate court of quarter sessions of the peace shall be holden, shall be within the jurisdiction of the justices of any county from which such borough was exempt before the passing of that act." (See *Reg.* v. *Bridgwater*, p. 339.)

Where corporation justices consist of a greater number than four an appeal lies to them at sessions against a poor rate, although there be less than four who are not interested in the question.

Rex v. *Justices of Essex*, 5 *M. & Sel.* 513. Upon a rule for a mandamus to receive an appeal against a poor's-rate for the parish of Saffron Walden, the case was, the town and parish of Saffron Walden are co-extensive. The town is a town corporate, and by the charter the mayor during his mayoralty and for one year next ensuing, the recorder and the deputy recorder, and the two senior aldermen (making together six), are constituted justices. The corporation have held a court of quarter sessions from the date of their charter. The mayor is elected from the aldermen, and the aldermen from the inhabitants, and, except the recorder and deputy recorder, the justices composing the court of quarter sessions must be resident in the parish of Saffron Walden. The appellants gave notice, and (among others) to the mayor and recorder, as being two of the persons in respect of whom they were overrated: and the other town justices, except the deputy recorder, were also rated in the said assessment. Lord *Ellenborough*, C. J. "Of the six corporation justices, consisting of the recorder, the deputy-recorder, two senior aldermen, and two other persons, it was contended that the last four were disqualified by law from sitting upon any appeal in any matter respecting the poor-laws, as being in respect of their inhabitancy and liability to be rated within the borough, on that account incompetent, and that these being judicial acts, as persons interested, they were, in the language of one of the cases cited, tacitly excepted. And the case of *Greate Charte* and *Kennington* (2 *Str.* 1173), and of *Foxam Tything*, in *Com. Wilts* (2 *Salk.* 607), were relied on to this effect; but upon looking into the 43 Eliz. c. 1, 16 Geo. II. c. 18, and 17 Geo. II. c. 38, we are of opinion that the justices of the borough of Saffron Walden are not disqualified from sitting as a court of appeal under the poor-laws, on the ground of their being rated or chargeable with the rates of the place within which their jurisdiction is to be exercised. By stat. 43 Eliz. c. 2, s. 8, as head officers of the town corporate, they, being justices of the peace, have the same authority within the limits and precincts of their jurisdiction, as is limited, prescribed, and appointed by that act to justices of the peace of the county, 'and no other justices of the peace are to enter or meddle there.' Being invested with the like jurisdiction, both original and appellate, on the subject of the poor-laws with justices of the county, and with the sort of *ne intromittant* provision in their favour as to its exercise which I have last stated, there occurred in Mich. term, 16 Geo. II., the case in 2 *Str.* 1173, in which it was held that a justice could not join in removing a pauper from his own parish. This decision in its letter, if it should continue to be acted upon as a general rule of law, would have wholly disabled the justices of a great many towns corporate from acting in the execution of the poor-laws, both in an original and in an appellate character, as justices in respect to the same; and it is fair to presume, from the very nearly contemporary date of the stat. 16 Geo. II. c. 18, with this decision, that this act was introduced to obviate this inconvenience; for reciting, 'that doubts had arisen whether, according to the laws and statutes then in force, his Majesty's justices of the peace might lawfully act in any case relating to the parishes and places to the rates and taxes of which such justices respectively are rated or chargeable,' it enacts, 'that it shall and may be lawful to and for all and every justice or justices of the peace for any county, riding, city,

Justices may act, though they are rated.

liberty, franchise, borough, or town corporate, within their respective jurisdictions, to make, do, and execute all and every act or acts, matter or matters, thing or things appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons, or to any other laws concerning parochial taxes, levies, or rates, notwithstanding any such justice or justices of the peace is or are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place, affected by any such act or acts of such justice or justices as aforesaid.' However, inasmuch as from the greatness of the number of justices of the peace for counties, the attendance of any particular justice could be spared upon appeals, it provides 'that that act, or anything therein contained, should not authorise or empower any justice or justices of the peace for any county or riding at large, to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place where such justice or justices of the peace is or are so charged, taxed, or chargeable as aforesaid; anything therein contained to the contrary notwithstanding.' Here it will be observed, that 'justices of the peace for cities, liberties, franchises, boroughs, or towns corporate,' who are all included by name in the enabling clause of this statute, are not included in this prohibitory provision in the case of appeals, which prohibition is confined expressly to justices of the peace for counties and ridings at large only. The stat. 17 Geo. II. c. 38, s. 5, probably adverting to and meaning to obviate the danger of admitting justices, under any bias or interest in the subject-matter of the appeal, to sit upon such appeals, where from the smallness of the number of the attending justices, such bias or interest shall be likely to operate with prejudicial effect upon the administration of justice, provides, 'that in all corporations and franchises, which have not four justices of the peace, it shall and may be lawful for any person or persons, in any of the cases aforesaid, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division, wherein such corporation or franchise is situate;' where the corporation justices consisted of a larger number of persons than four, thinking it probably unnecessary to interfere with the exclusive jurisdiction on this subject, which they derived under stat. 43 Eliz. c. 2, s. 8, which has already been observed upon. We are therefore, upon a view of the provisions of the several statutes referred to on this subject, and adverting to their policy and object, of opinion that the legislature meant, in the case of borough justices (where the whole number of them was four or more), as in the present case, to leave their jurisdiction under 43 Eliz. entire, not curtailed or abridged, from suspicions of possible abuse: a liberal confidence on the part of the legislature, which ought to be repaid by the most perfect impartiality and justice on the part of those to whom such a jurisdiction is under such circumstances entrusted." Rule discharged.

An inhabitant in the outlying parts of the parish of Bridgwater may appeal against a poor's rate to the *county* sessions.

Reg. v. *Bridgwater.* 2 *P.* & *D.* 586, 10 *A.* & *E.* 711. The whole of the borough and parish of Bridgwater is within the county of Somerset. Bridgwater is a borough, having a recorder and court of quarter sessions, under 5 & 6 Will. IV. c. 76. Before the passing of that act the borough of Bridgwater had justices of its own, and a right to hold separate quarter sessions, but their charter had no non-intromittant clause. The ancient borough contained a part only of the parish, but the jurisdiction of the borough justices was co-extensive with the parish. The boundaries of the borough were altered by 5 & 6 Will. IV. c. 76, and the present boundaries exclude some parts of the parish of Bridgwater, and include several small parts of two adjoining parishes, namely, Hembdon and Durnleigh. Since, and under the authority of the municipal reform act, a separate court of quarter sessions has been granted to this borough, but the borough justices and the recorder have no jurisdiction beyond the limits of the borough. Before the municipal corporation act, the borough had only four justices, but at the time of this appeal there were seven justices for the

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borough, and it was then divided into two wards The appellant lives, and the whole of the land for which he is rated is situate in that part of the parish without the limits of the borough All the persons, the omission of whose stock in trade from the rate was objected to by the appellant, are inhabitants of that part of the parish which lies within the limits of the borough, and the whole of their stock in trade is within that part of the parish of Bridgwater which is within the borough The rate was allowed by two justices of the county of Somerset, and by three justices of the borough of Bridgwater The parts of the rate which applied to the inhabitants residing within the borough are distinct and separate from those parts which apply to the inhabitants residing without the borough, but the whole is only one rate The declaration, signed by the churchwardens and overseers, and the allowance by the justices, are at the foot of the whole rate It was objected, that the county quarter sessions had no jurisdiction to hear the appeal Lord *Denman* "Looking at the different acts on this subject, from the 43 Eliz down to the 1 Geo IV c 36, I think, in the case of a parish situate like the present, there was an appeal to the county sessions Then sect 111 of the municipal corporation act enacts, that no part of any borough which has a court of quarter sessions shall be within the jurisdiction of county justices, from which such borough was exempt before the passing of the act. Bridgwater, not being exempt, does not come within this provision, and therefore remains subject to this jurisdiction The boundary act (6 & 7 Will IV c 103) ought to have provided for the case of a parish situated like this, so as to have allowed the appeal for the entire parish to the borough sessions, which would be much more convenient, but, as it has not done so, we cannot supply the defect *Patteson*, J "The question turns entirely on the construction of section 111 The general point is a very curious one, for it may be that, in certain cases, where a parish is situated partly within a borough, and partly within a county, the latter part may have no right of appeal anywhere, and that it is a *casus omissus* under the 43 Eliz c 2 It is not however necessary to go into this point, as it does not arise in the present case, for here the whole parish, before the passing the 5 & 6 Will IV c. 76, was within the jurisdiction of the borough justices Up to the passing the 17 Geo II there can be no doubt on this head Nor did that statute make any difference because Bridgwater always had four justices But then came 1 Geo IV c 36, which gave a concurrent jurisdiction to the county justices, because Bridgwater had not more than six justices It must be conceded, therefore, that after that statute there might have been an appeal to the county as well as to the borough sessions The Municipal Corporation Act then takes away (sect 8) part of the parish from the borough, and gives it to the county, both as to locality and jurisdiction The question, therefore, arises, whether these circumstances bring themselves within the *casus omissus* alleged to exist on the 43 Eliz It is very extraordinary if the court should be obliged so to construe an act as to bring a parish within a *casus omissus* in which it ought never to have been placed, and we should certainly be very unwilling to adopt such a construction But it might be so, though no case has ever been decided upon the point Section 111 enacts, that no part of the borough shall be within the jurisdiction of county justices, if exempt before the passing of the act, and if Bridgwater had had more than six justices before that time, the point certainly would have arisen But here the whole of the parish had the opportunity of appealing to the county at large, and I see nothing in sect 111 to alter that power, but think it was intended to leave matters as to jurisdiction exactly *in statu quo*, and that, as an appeal, before passing the act, would lie from the whole parish to the county, so it will now No argument has been urged as to the existence of more than six justices at present, nor could there well be, because the functions of borough justices, under the existing corporation law, are totally different from what they were before the passing the act *Williams*, J "It is alleged here that the appellant is seeking to make an alteration in the state of things in a borough, with which he is wholly unconnected But at the time of passing the 5 & 6

Will. IV. c. 76, there was an appeal to the county sessions, and that statute has not altered the law in that respect. The appellant, therefore, is only using a power which he enjoyed before."

Amendment of Rate.

Amendment of rate under 41 Geo. III. c. 23.

Upon all appeals from any rate or assessment made for the relief of the poor of any parish, township, vill, or place, the court of general or quarter sessions of the peace shall, and such court is hereby authorised and required (in all cases where they shall see just cause to give relief) to amend such rate or assessment, either by inserting therein or striking out the name or names of any person or persons, or by altering the sum or sums therein charged on any persons, or in any other manner which the said court shall think necessary for giving such relief, and without quashing or wholly setting aside such rate or assessment: provided always, that if the said court shall be of opinion that it is necessary, for the purpose of giving relief to the person or persons appealing, that the rate or assessment should be wholly quashed, then the said court may quash the same, but nevertheless, all and every the sum and sums of money in and by such rate or assessment charged on any person or persons, shall and may be levied and recovered by such ways and means, and in such and the same manner, as if no appeal had been made against such rate or assessment: and all and every the sum and sums of money which any person or persons charged in such rate or assessment shall pay, or which shall be levied upon or recovered from him, her, or them, shall be deemed and taken as payments on account of the next effective rate or rates, assessment or assessments, which shall be made for the relief of the poor of the same parish, township, vill, or place."

On appeal from any poor-rate, the sessions may insert or strike out names, or alter the sums.

Or if necessary for giving relief may quash it, but the sum to be paid and payments to be deemed on account of next rate.

In *Rex* v. *Milton*, (*ante*), an application was made to the Court of Queen's Bench, to amend the rate, but the court thought that the act was confined to the quarter sessions.

Queen's Bench has no such power.

The overseers have no power to refer the validity of a rate to arbitration, but the sessions may, it seems, "arrest the adjudication at sessions until the parties have had an opportunity of making a new valuation. *Thorp* v. *Cole*, 2 *C. M. R.* 367, & 1 *M. & W.* 531.

Rate cannot be referred.

Time of appealing.

Time of appealing.

Before some recent decisions, it had been thought necessary to enter and respite an appeal at the next practicable sessions, even though the order, &c., was served too late to give such notices as the sessions required for trying an appeal. However, a more sensible rule has now been adopted. And in *Rex.* v. *Justices of Southampton; Rex* v. *Justices of Devon;* and *Rex* v. *Justices of Kent*, 8 *B. & C.* 639, and in notes, it was determined that it was not necessary to enter and adjourn an appeal when there was not sufficient time to give the notice of trial required by the sessions. (*a*)

The next sessions means the next sessions at which it is *practicable to try the appeal.*

An appeal against a poor-rate must be made to the *next* sessions after the publication of the assessment, for it is by making the rate that the party is aggrieved. *Rex* v. *Micklefield*, 1 *Bott*, 113; *Cald.* 507.

In *Rex* v. *Atkins*, 4 *T. R.* 12, it appeared that the rate was made in October, 1789, and allowed in the November following, against which the defendant appealed to the next Easter sessions, when the appeal was dismissed with costs, because it was not made to the sessions next after the *allowance.* The court, without hearing any argument, confirmed the order of sessions, on the authority of *Rex* v. *Penryn* and *Rex* v. *Micklefield.*

Appeal must be to the next sessions after the allowance.

Rex v. *The Justices of Sussex*, 15 *East*, 206. On the 5th of October a rate was allowed, and on the following day (Sunday) it was published in the parish church of Horsham. The Michaelmas quarter sessions were holden at Petworth, on the 8th of October, there being only one intervening day between the publication of the rate and the quarter sessions, which was too short a time to inspect the rate, to see if the inequalities in

One intervening day between the publication of a rate, and the next immediate quarter sessions, is not sufficient for an effectual notice of appeal.

(*a*) See Vol. I. title Appeal.

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the former rate had been continued, and whether the property omitted in former assessments had been inserted in the rate, so as to determine the deponent whether or not to appeal against it at the said sessions. The court determined the notice to be bad, and confirmed the rate. Lord *Ellenborough*, C. J., asked, "why the parish officers made their rate so close upon the time of the sessions; it appeared as if they had done it with a view of ousting the parties of their appeal. *The court had decided that morning that the* next *sessions meant the next practicable sessions at which an effectual appeal could be lodged.* If by the late publication of the rate the parties are driven into such a narrow point of time as not to be able to make an effectual appeal at the next sessions, those must be considered the next when such appeal can be made effectually."

Against what an appeal lies.

Rex v. *Justices of Norwich*, 3 *D. & R.* 42. By 10 Anne, the city of Norwich, and hamlets and liberties of the same, were incorporated for the purpose of better employing and maintaining the poor thereof; and the guardians thereby appointed were empowered from time to time to ascertain what aggregate sums would be necessary for that purpose, and to ascertain what proportion each parish, &c., should contribute, and then certify the same to the justices, two of whom were to issue their warrant, requiring the proper officers of each parish, &c., to rate and assess the amount on the respective inhabitants; and if any person, parish, &c., should be unequally assessed, he might appeal at the next sessions held after such assessment made and demanded. Under this act, the governors certified that the hamlet of L. ought to pay a certain proportion of an assessment made upon the whole city, and two justices issued their warrant, requiring the collectors of the hamlet to assess that sum upon the inhabitants; the hamlet being aggrieved by such assessment may appeal against both the certificate and the warrant thereon, as being an assessment made and demanded, within the meaning of the appeal clause in the statute.

Notice of Appeal.

A notice in writing of the grounds of appeal must be given to the overseers and to the parties interested in the event of such appeal.

Notice to be given to the churchwardens and overseers, stating grounds of appeal.

41 Geo. 3, c. 23, s. 4, enacted that "All notices of appeal from or against any rate or assessment made for the relief of the poor, or from or against the account of the churchwardens and overseers of the poor of any parish, township, vill, or place, shall be in writing, and shall be signed by the person or persons giving the same, or his, her, or their attorney on his, her, or their behalf; and such notices of appeal shall be delivered to or left at the places of abode of the churchwardens and overseers of the poor of the parish, township, vill, or place, or any two of them, and the particular causes or grounds of appeal shall be stated and specified in such notice; and upon the hearing of any appeal from or against any such rate or assessment, or account, the court of general or quarter sessions to which such appeal shall be made, shall not examine or inquire into any other cause or ground of appeal than such as are or is stated and specified in the notice of appeal."

Appeals may be decided, if the parties consent, although *notice* be not given.

Sect. 5. "Provided nevertheless, that with the consent of the overseers, signified by them or their attorney in open court, and with the consent of any other person interested therein, the said court of sessions may proceed to hear and decide upon such appeal, although no notice thereof shall have been given in writing: and also that with the like consent such court may hear and decide upon grounds of appeal, not stated or mis-stated in such written notice, where any notice shall have been given in writing."

Persons appealing against any rate shall give *notice*, not only to the churchwardens, &c., but also to the persons *interested*, &c.

Sect. 6. "If any person or persons shall appeal against any rate or assessment made for the relief of the poor, because any other person or persons is or are rated or assessed in such rate or assessment, or is or are omitted to be rated or assessed therein, or because any other person or persons is or are rated or assessed in any such rate or assessment at any greater or less sum or sums of money than the sum or sums at which he, she, or they, ought to be rated or assessed therein, or for any other cause that may require any alteration to be made in such rate or assessment with respect

to any other person or persons, then and in every such case the person or persons so appealing for the causes aforesaid, or any of them, shall give such notice of appeal, in writing, as hereinbefore mentioned, not only to the churchwardens or overseers of the poor, or any two or more of them, but also to the other person or persons so interested or concerned in the event of such appeal as aforesaid; and such other person or persons shall, if he, she, or they shall so desire, be heard upon the said appeal; and it shall be lawful for the court of general or quarter sessions of the peace, on the hearing of such appeal, to order the name or names of such other person or persons to be inserted in such rate or assessment, and him, her, or them to be therein rated and assessed in any sum or sums of money; or to order the name or names of such other person or persons to be struck out of such rate or assessment, or the sum or sums at which he, she, or they is or are rated or assessed therein, to be altered in such manner as the said court shall think right; and the proper officer of the said court shall forthwith add to or alter the rate or assessment accordingly."

Sessions may amend the rate.

Rex v. *Justices of Suffolk*, 1 *B. & Ald.* 640. *Bayley*, J. "The fourth ground of appeal is, that the appellant is rated in a greater and higher proportion than all the other inhabitants and occupiers whose names are mentioned in the said rate. It is contended that this made it necessary to give notice to all those other inhabitants and occupiers, amounting in the whole to 364 persons. But that is not necessary. The 41 Geo. III. c. 23, first gave to the justices the power of amending the rate appealed against, instead of altogether quashing it, but required the grounds of the appeal to be stated, and notice to be given to the parties affected by the appeal. So that where the ground is that A. B. or C. are under-rated, it would be necessary to give notice to those individuals; but where the ground of complaint is, that the party appealing is over-rated in respect of all the rest, then it would be necessary, because the alteration sought is the diminution of his assessment only, and the rest of the rate remains entire." The other judges concurred.

Notice to the individuals unnecessary where the ground of appeal was that the appellant was rated higher than the other persons named in the rate.

Rex v. *Brooke*, 9 *B. & C.* 915; 4 *M. & R.* 719. In an appeal against the rate, the notice stated the grounds to be, that two persons, who were named, had rateable property and were omitted. But no notice of appeal having been given to either of those persons, the sessions confirmed the rate without going into the merits. *Bayley*, J., after quoting *Rex* v. *Aberavon*, 5 *East*, 453, as furnishing an argument in support of the order of sessions, said, "Before the 17 Geo. II. c. 38, whenever a party had been improperly omitted out of a rate, the sessions were bound to quash it. That statute was passed to remedy that inconvenience, but then it was thought unjust that a party should be affected by having his name inserted in a rate without notice, and the 41 Geo. III. c. 23, was passed to remedy this evil. The preamble of that statute recites, that by 17 Geo. II. power was given to the justices upon appeals from rates to give relief without altering the rate in other respects. But if the argument now urged were to prevail, the sessions would no longer have the option of amending the rates: they might in all cases of omission be compelled to quash them, and so appeals would be doubled in number. The 6th section, however, is general, and applies equally to all cases of amending or quashing rates. It provides in plain unequivocal terms, that if there is an appeal against a rate because some person who ought to have been rated has been omitted, notice shall be given to such person; and if it be not given, the appeal shall not be heard. The sessions in this instance have done right, and their order must be confirmed." *Littledale* and *Parke*, J. concurred.

Where the ground of appeal is that a person has been omitted, the sessions have no jurisdiction unless notice has been given to that person.

It is a good ground of appeal that the rate does not show on the face of it in respect of what property the several persons are rated. For "if any person wished to appeal, on the ground that another was under-rated, how could he tell in respect of what property the rate was imposed?" *Abbott*, C. J. *Rex* v. *Aire and Calder Navigation*, (*ante*).

Ground of appeal.

Rex v. *Bromyard*, 8 *B. & C.* 240; 2 *M. & R.* 280. This was an appeal against a poor rate. The rate did not describe the property in respect of which the several persons were rated. But this was not stated in the notice

But the sessions cannot quash the rate on this ground, unless it

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is stated in the notice of appeal.

as a ground of appeal. The sessions, however, quashed the rate upon this objection, subject to the opinion of the court. *Bayley*, J. "There can be no doubt that it ought to appear on the face of the rate in respect of what property the assessment is made upon each individual charged in the rate: and if the omission of that statement had been pointed out by the notice, as one of the grounds of appeal, it would have been a sufficient ground for quashing the rate. In many instances the specification of the property in respect of which the assessment is made, will give no further information to the parties to be affected by the rate, than the fact of their having been rated at a specific sum. But still the party rated has a right to know in respect of what property he is rated, in order that if he is over-rated in respect of that property he may appeal. If however he be satisfied with the amount of the sum for which he is rated, he will not appeal, because it will not be his interest to have the rate corrected. By 41 Geo. III. c. 23, the legislature intended to limit the expense of appeal, and lessen the labours of the justices at sessions. (He then read the 4th section, *ante*, p. 219, and continued.) Now, suppose there were no notice of appeal whatever, could the sessions quash the rate upon the ground that it was bad for a defect apparent on the face of it? clearly not. Or could the sessions quash the rate for such a defect, if a general notice of appeal were given, without specifying any cause? They certainly could not, because the statute prohibits their inquiry into any causes of appeal except those mentioned in the notice. For the same reason they cannot, in a case where certain causes of appeal are specified in the notice, go into others not specified. It is said that the words 'examine and inquire' are applicable to those cases only where extrinsic evidence is required to show the defect of the rate, and not to cases where the defect appears on the face of it. But we should not do justice to the intention of the legislature, if we entered into so very critical an examination of the language of the act. When the language of a deed is made the subject-matter of discussion, in order to ascertain thereby its legal effect, it may be said to be the subject of examination and inquiry. It has been said that this rate is illegal and void on the face of it, because the property in respect of which the assessment is made is not specified. I am of opinion that it is not illegal and void upon that ground, unless that be pointed out as a specific cause of appeal in the notice. That is one ground of objection which will render the rate liable to be quashed. In *Rex.* v. *Aire and Calder Navigation*, (*ante*), the objection was specifically pointed out in the notice of appeal." *Holroyd*, J. "It seems that the sessions had no jurisdiction to consider this objection, unless it was specified in the notice as a ground of appeal. They had no jurisdiction whatever over the rate unless the notice required by the statute was given, except in the case provided by the 5th section (*post*). It has been argued that the words 'examine and inquire' are to be construed more narrowly than their natural import warrants, and the object of the legislature seems to require. The fourth section requires that all notices of appeal shall be given in a particular manner, and that the particular causes or grounds of appeal shall be specified in the notice. So far that section is directory, but in what follows, it is not merely directory, but prohibitory. It goes on, 'and upon the hearing, the sessions shall not examine or inquire into any other grounds of appeal than such as are specified in the notice.' Construing this according to the natural import of the words, I think that it means that the sessions shall not enter into any other causes of appeal than those specified in the notice: but assuming the meaning of those words 'examine and inquire' to be doubtful, I think we ought to put upon the clause that construction, which will have the effect of preventing the 'quashing of rates.' The inconvenience mentioned in the recital, which it was the object of the statute to remedy, and construing the clause with reference to that object, I think that the sessions had no power to enter into any other causes of appeal than those stated in the notice; and that being so, I think we must hold that the sessions had no jurisdiction to quash the rate upon the ground that the property in respect of which the assessment was made was not described, because that was not specified

in the notice as a cause of appeal." *Littledale*, J. "By 43 Eliz. c. 2, the rate was to be made on every inhabitant in respect of certain descriptions of property. The property in respect of which individuals are assessed ought therefore to be specified in the rate for two purposes. First, that the parties rated may see whether they have the property, and that it is the subject of a rate: secondly, that other persons may see whether the rate be equally assessed. If the property is not specified, the rate is defective and informal; and that informality is a ground of appeal, provided it be made the subject of appeal by giving the required notice. The statute says, that the sessions shall not examine or inquire into any other causes of appeal than such as are specified in the notice. It is true that in this case there was a defect on the face of the rate itself, which would therefore appear on inspection. But if neither the person whose property is omitted, nor others who have an interest that the rate should be equal, make the omission of such property a ground of complaint, the justices have no jurisdiction to quash the rate on that account. I think that the words 'examine or inquire' apply to an examination by inspection as well as by extrinsic evidence. The word 'examine' is frequently used in the same sense as the word 'inspect.' Thus the 27 Eliz. c. 5, which gives the writ of error from K. B. to the Exchequer Chamber, enacts, that the record may be removed there to be *examined* by the justices and barons, and they are to have full power to *examine* all such errors as shall be assigned.' Now when error is assigned upon a matter of law, it appears upon the face of the record, and whether there be good cause of error or not is ascertained by inspection of the record, and not by extrinsic evidence. So, in 31 Edw. III. c. 12, which gives the writ of error from the law side of the Exchequer to the Chancellor and Treasurer, the word *examine* is used in the same sense. I therefore think that the sessions could not *take notice of* this objection to the rate."

The sessions have a discretion to hear an appeal against a rate at the sessions next after it is published; but where it is the practice to adjourn the hearing to the next sessions after the appeal is entered, the appellant is entitled to try then, the 17 Geo. II. c. 38, s. 4, not being imperative in this respect.

Rex v. *The Justices of Wilts*, 8 *B. & C.* 380; 2 *M. & R.* 401. A rate for the parish of Laycock was published on the 16th of September, 1827. The quarter sessions were held on the 16th of October at Marlborough, which is 16 miles from Laycock. The appellant gave no notice of appeal before the Michaelmas sessions, but at that sessions the appeal was entered and adjourned as a matter of course. It was the usual practice of the quarter sessions for the county of Wilts to enter the appeal at the sessions next following the publication of the rate, and to adjourn it to the next sessions as a matter of course. At the Epiphany sessions, the justices refused to hear the appeal. Lord *Tenterden*, C. J. "I think that the sound construction of the 17 Geo. II. c. 38, s. 4, is, that the justices are to receive an appeal against a rate at the next sessions after publishing the same, and that they are then to exercise a discretion whether they will hear and determine it at that sessions, or respite it to the next. It is impossible to say that the matter must at all events be determined at the first sessions. The statute expressly mentions one case where the justices are to adjourn the appeal, and that is where it shall appear to them that reasonable notice has not been given, but other cases may occur in which it may be fit to adjourn the appeal, even though reasonable notice has been given, as in the case of the unavoidable absence of a material witness. Here it appears that the practice of the sessions has been to allow appellants to enter their appeals at the sessions next following the publication of the rate, and to adjourn the hearing to the second sessions as a matter of course. That being the general practice, I think that the appellant in this case, who acted on the faith that such practice would be adhered to, ought not to be deprived of his right of appeal, and therefore that the rule for a mandamus ought to be made absolute. At the same time, I think it would be more beneficial to the public, and more consistent with the intention of the legislature, if the justices did not adjourn appeals against rates as a matter of course. I think they should endeavour to induce parties to try their appeal at the next practicable sessions after the publishing of the rate."

But the justices should not adjourn the hearing as a matter of course.

Bayley, J. "I am of the same opinion. It was competent for the justices at the first sessions after the publishing of the rate to refuse to receive the

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appeal unless there was proof that notice of appeal had been given; but they did receive the appeal. Having received it, it was then competent to them in their discretion to adjourn it, and they did adjourn it. I think the appeal ought to have been heard at the next sessions after that adjournment." Rule absolute.

If there is time to give notice.

Rex v. *Justices of Monmouthshire*, 1 *Bar. & Adol.* 895. A rate was published on the 14th October, and the next sessions took place on the 23rd. At the January sessions an appeal was entered and respited. The sessions cannot refuse to hear it at the Easter sessions. *Reg.* v. *Suffolk J.*, 8 *Dowl.* 618.

Appeal may be to an adjourned sessions.

Rex v. *Justices of Sussex*, 7 *T. R.* 107; 2 *Bott*, 965. The appeal may be made to an adjourned sessions. And in this case Lord *Kenyon*, C. J., referred to the case of *Rex* v. *Monks Risborough*, 2 *Bott*, 954, and *Rex* v. *Hinderclave*, 2 *Bott*, 956.

Application to sessions for the repayment of money where too high a rate is levied, under 41 Geo. III. c. 23, must be made either to the sessions at which the appeal was heard, or at which the rates were reduced.

Rex v. *Justices of St. Peter's Liberty, York*, 4 *B. & Ad.* 342. In August, 1828, the undertakers of the Aire and Calder Navigation were rated in Brotherton, in 150*l.* on a total annual value of 2000*l.* as "the owners and occupiers of a cut or canal, and that part of the river Aire lying within the township of Brotherton, the dams, locks, and weirs, tolls, dues, &c." They appealed against the rate at the October sessions, and the appeal was respited until the Christmas sessions, but the overseers of Brotherton had no notice in writing of the entry and respite, and in December they distrained a vessel belonging to the company for the rate. The company, to prevent the vessel being sold, paid the 150*l.* under a protest, and 13*l.* 3*s.* 3½*d.* costs. At the Christmas sessions the appeal was heard, and a case granted, and the Court of King's Bench in Trinity Term, 1829 (9 *B. & C.* 820), decided that the company were not rateable in respect of the river, and sent the rate back to the sessions to be amended by striking out that part. While this appeal was pending, other rates were made on the company for the same amount, and in the same terms, and appealed against; and on an appeal against one rate in January, 1830, the sessions amended the same by striking out the words "and that part of the river Aire," subject to the opinion of the Court of King's Bench on the question whether the company were rateable for dams on the river; and that court on the 21st of January, 1832 (3 *B. & Ad.* 139), made a rule that the rate should be sent back to be amended by reducing it from 150*l.* to 15*l.* 16*s.*, the amount chargeable on the canal and lock. At the April sessions, 1832, the rates were reduced from 150*l.* to 15*l.* 16*s.* pursuant to the rules of court. A demand was afterwards made on the overseers of Brotherton for the difference in amount between the sums due from the company on the rates as ultimately amended, and the sums paid to the overseers of Brotherton, under the distress in December, 1828, and afterwards upon the subsequent rates. At the October sessions, an application was made by the company for an order of sessions on the overseers to refund the sums of money so paid to them, after deducting the amount of the several rates chargeable. That court refused to make any order, on the ground that the application ought to have been made at the April sessions, when the rates were altered. A rule *nisi* had been obtained for a mandamus to the justices to make the order. *Denman*, C. J. "The motion ought to have been made either to the court of quarter sessions which heard the appeal, or to the court which ordered the sums rated on the company to be decreased or lowered. The application here was too late." *Littledale*, J., concurred. *Taunton*, J. "The court of quarter sessions had no power to order money improperly paid to overseers to be refunded until this statute gave it them; and the statute gives the power to the court of sessions which heard the appeal, or at least to the court which orders the sums rated on any person to be lowered. No application was made in this case to either one or the other." *Patteson*, J., concurred. Rule discharged.

Which party shall begin.

Rex v. *Newberry*, 4 *T. R.* 475. Upon an appeal against a poor-rate the question was, which party should begin? The court said, that where the appellant alleges that he has no rateable property within the place, the respondent should first show that he has some property liable to be rated;

for it is impossible for the appellants in the first instance to prove the negative. And *Heywood, amicus curiæ*, said, "that in Yorkshire, where more appeals of this kind were lodged than in any other county, when the appellant objected to his being rated at all, it is the practice for the respondents to begin: but if he object to the *quantum* of the rate, then the *onus* lay on him.

Where the appellant disputes before the sessions the *quantum* of the rate, it is not sufficient for the respondent to show that the appellant is in possession of some rateable property within the parish, they must also show some *probable ground* for the amount at which they have charged the party in the rate.

Rex v. *Topham*, 12 *East*, 546. The defendant appealed against a rate for Driffield, which the sessions confirmed. Case:—The defendant was rated as occupier of property of the annual value of 250*l.*, and the grounds of his appeal were, that he had no rateable property in the parish, and not to the amount at which he was rated. The respondents proved that the appellant was in the annual receipt of certain tithe-rents, originating in the Driffield enclosure act, of the annual value of 6*s.* 8*d.*; and that other sums were received by him for tithe-rents, but there was no proof of their amount. Here the respondents closed their case, insisting that as they had proved the appellant to be in possession of *some* rateable property, it was incumbent on him to prove that in fact he had been over-rated. The appellant insisted that this composition or rent was not rateable at all. The sessions held that it was rateable. The appellant then contended that as there was no proof of any specific sum having been paid beyond the 6*s.* 8*d.*, the rate ought to be amended by inserting that sum instead of the 250*l.* The sessions held that the proof of over-rating lay on the appellant, and confirmed the rate generally. The appellant was lessee of the prebendary of Driffield, who was entitled under the inclosure act, &c., *to a yearly rent or composition in lieu of the tithes of corn, grain, and hay therein*, of 267*l.*, to be paid by the owners and proprietors of certain lands in certain proportions. And by the act, in all future rates and levies in the said townships, the *composition rents* were to be assessed *in the same proportion* as the other landholders. Lord *Ellenborough*, C. J., said, "The question is, whether a person, who I will suppose for the present is liable to be rated for something beyond the 6*s.* 8*d.*, can be rated to the amount of 250*l.*, and then left to pare down that assessment upon an appeal to the amount which it ought to be? He might as well have been charged to the extent of 50,000*l.*" [*Parke* said he could not pretend to argue that that could be done, but here the act of parliament stated the composition to be more than the appellant was rated for.] On which his lordship observed, "It is not stated as a fact in the case that the appellant was in the receipt of the rents and compositions to the amount of 250*l.* If the sessions have proceeded upon what the court has said in some cases, that if the party rated have rateable property in the parish they will not inquire into the *quantum* of the rate, they have egregiously mistaken the court. When the question before the sessions is upon the *quantum* of the rate, the officers making it must show to the justices some probable ground for the amount at which they charge the party in the rate. The mischief of any other rule would be enormous; a small occupier may be rated at once in the round sum of 1000*l.*, and left to struggle his way out of that charge as he can." For the appellant it was observed, that the question made at the sessions was, whether the appellant should begin by proving his case, that he was over-rated; or whether the parish officers should begin by proving a probable case for rating the appellant at so much? On which *Le Blanc*, J., said, "The court will have no difficulty in dealing with that naked proposition whenever it should be brought nakedly before them." The case was sent back to sessions.

The practice of the sessions, that the appellants should begin, is not so inconvenient that K. B. will control it.

Rex v. *Justices of Suffolk*, 6 *M. & Sel.* 57. This was an appeal by a person who was rated as the occupier of tithes and other things in a *gross* sum. According to the practice of the sessions the appellant ought to begin, but he refused to do so, and the appeal was dismissed. Upon a rule for a mandamus, Lord *Ellenborough* said, "As a general rule, I should say that the granting of a writ, which has for its object the reversal of the order of proceeding at quarter sessions, according to the rules of practice which there prevail, is not a jurisdiction, which, if the court possess it, it will be inclined to exercise, unless it be apparent that great injustice will

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follow the refusal of the writ. Now here the appellant did not dispute that he was rateable, but only the amount of the rate; and it is complained that the justices at sessions, according to their practice, called on him to begin and make good his allegation that he was over-rated. The appellant says that this was impossible; but he has not shown why, nor even now ventures to state to us that he was really over-rated; so that he stands merely on the irregularity of the rule of practice, as to which it is urged, that the sessions have not proceeded according to what is thought to be and perhaps may be a more convenient rule. But if under such circumstances the court were to interfere, I am apprehensive that we might be attaching to ourselves a most inconvenient jurisdiction. It would come to this, that wherever the practice at the different sessions should happen to vary, we should be called on to decide between them." *Bayley*, J. "I do not see that the practice complained of is so inconvenient as alleged, and if the court were to interfere in this instance we should have to grant a mandamus in every instance where the sessions proceed according to a rule of practice, which we may not think the most convenient." *Abbott*, J. "It would be a dangerous precedent if we were to grant this writ upon the cause alleged. In general a mandamus to the justices to hear, proceeds upon the statutes. This writ is asked, because of some supposed error in practice." *Holroyd*, J. "The case of *Rex.* v. *Topham* not only differs from this in the points stated for the opinion of the court, but the decision also proceeded upon the special circumstances of that case. At the conclusion it was stated that the question made at the sessions was whether the appellant should begin by proving his case that he was over-rated, or whether the parish officers should begin by proving a probable case for rating the appellant at so much. And the court observed that they would have no difficulty in dealing with that proposition when it should come nakedly before them. So that it clearly appears the court did not consider that they were determining the simple question in that case." Rule refused.

Appellant not to furnish the means to enable sessions to amend the rate.

Rex v. *Hull Dock Company*, 3 *B. & C.* 516; 5 *D. & R.* 359. See this case *ante*, 279. The appellant objected to the rate because certain ship-owners were not rated for their ships, and upon this point *Abbott*, C. J., said, "It was pressed on us in the argument, that as the appellants had not made out what was each ship's profit, they had not given to the sessions the means of amending the rate, but this is founded on a misapprehension of the duties of the parish officers and the appellant. Where property is rateable, it is the duty of the officers to include it in the rate, and to take what means they can to ascertain its value. It is not for them to omit it altogether and to cast upon the appellant—what is properly their duty—the burthen of proving its value. In cases of single omission, the difficulty might not be very great, but if all the property of a given description is omitted, the difficulty might be excessive. Before 41 Geo. III. c. 23, the omission of a single individual, who ought to have been included, compelled the sessions to quash the whole rate, and so as he was rateable at all, the extent to which he was rateable was not in question. The 41 Geo. III. requires the sessions to alter or amend a rate appealed against without quashing it; but with proviso that if the sessions shall think it necessary for the purpose of giving relief to the appellant to quash the rate, they may do so; and when a rate contains so many omissions that it can hardly be expected of an appellant that he should have evidence to show the extent to which each person omitted ought to be rated, and where the investigation before the sessions would be likely to exhaust more time than they could reasonably be required to give up, we think it would not be an improper exercise of their discretion to quash the rate and make the officers do in the end what they ought to have done in the beginning.

Overseers cannot abandon a rate.

The remedy by appeal must be pursued, for the overseers have no power to abandon a rate duly allowed and published. In *Rex* v. *Justices of Cambridge*, 4 *Nev. & Man.* 238; 2 *Ad. & E.* 370, the appellant paid his rate and gave notice of appeal, and then received notice from the overseers that

they abandoned the rate, as it could not be supported, and that he might receive the money back. The money was afterwards tendered, but they refused to pay the costs, and an appeal was entered. The sessions made an order, "that the overseers of the poor did abandon the rate on the 8th day of October, and that the court had no jurisdiction to hear the appeal." On a mandamus to hear the appeal, Lord *Denman* said, "The justices were not right in their judgment, for they certainly had a jurisdiction, and the rate exists at this moment." Rule absolute.

Yet they may so far abandon it as to refuse to incur expense in supporting it on appeal.

Reg. v. *Fouch*, 1 *G. & D.* 585, 2 *Q. B.* 308. Upon an appeal against a disallowance in the accounts of overseers of Warfield, the sessions confirmed the disallowance. Case:—The parish of Warfield, in the East Hampton union, was valued under 6 & 7 Will. IV. c. 96, s. 3, by a surveyor. His valuation, having been objected to, was sent back to him; he made some alterations in it, but it was still disapproved of, and the parish refused to adopt it. After this the defendants and the other parish officers made a new valuation on their own responsibility, and made a poor's-rate on that valuation. Notice was given by the parish officers that this new assessment was made, and several persons inspected it and made no objection to it. The defendants subsequently made a rate upon this assessment. The rate was appealed against at the special sessions, under 6 & 7 Will. IV. c. 96, s. 6, on the grounds of inequality, unfairness, and incorrectness in the valuation. The defendants attended on that appeal, with their solicitor, and supported the rate by evidence, but, after evidence heard on both sides, the justices in special sessions made alterations in the assessment of ten of the persons rated, some of them being raised and others lowered, but in some of the instances to a small amount only; and the justices in special sessions directed that the parties in the appeal should each pay their own expenses, and pay the amount of the fees of the magistrate's clerk in equal moieties. For the expenses incurred on the hearing of this appeal, the overseers inserted the following items in their accounts:—To the land-surveyor, 32*l.* 11*s.* 10*d.*; to ditto, 31*l.*; to the solicitor, 21*l.* 16*s.* 10*d.* These items were allowed by the auditor of the union, and at a vestry meeting held afterwards, the majority of the parishioners then present resolved that these expenses should be allowed. Before the justices in special sessions, these items were objected to, and disallowed. The question was, whether these items ought to have been allowed. Lord *Denman*. "This is a case in which I think the sessions have exercised a sound discretion, the question before them being, whether the costs of these parish affairs were to be visited upon the parish or not. I think that the parish officers were not justified in endeavouring to cast a useless expense upon the parish. Overseers have no right to litigate every case at the expense of their parish, and it ought to be generally known and understood that, if public officers will get into unnecessary litigation, they will not be allowed to charge their expenses to the parish. The meaning of the decision in *Rex* v. *Justices of Cambridge* is, that an abandonment of a rate after allowance will not prevent it from being still an existing rate; but, although, therefore, overseers cannot so far abandon a rate as to make it void, yet they are bound to do so under certain circumstances so far as they can, namely, to the extent of not bringing witnesses, or incurring expenses to support it. The only point of law upon which our opinion can be supposed to be asked in this case is, whether the quarter sessions were *bound* to allow these items in the accounts, which they clearly were not." The other judges concurred.

Expenses not allowed, though sanctioned by the auditor and the majority of the parishioners.

When the rate should not be *quashed*.

Rex v. *Ambleside*, 16 *East*, 380. The question intended to be submitted to the court in this case, was whether stock in trade was rateable? But Lord *Ellenborough* said, "Is there not another question, whether the rate ought not to have been amended instead of being quashed? It is an objection applicable (*a*) to one person, and the justices should have amended

(*a*) The sessions had quashed the rate because W. W. was not rated. This was the form of the case, but the notice of appeal pointed out several others similarly circumstanced.

14. *Of Appeal &c. under Local Acts.*

the rate and not quashed it. The 41 Geo. III., c. 23, was passed for the very purpose of enabling them to do so, in order to prevent the inconvenience of the parish being without funds for the maintenance of its poor in the mean time. We say, therefore, that this rate was not properly quashed, and ought to have been amended." (*b*)

When *it may* be *quashed.*

Rex v. *Aberavon*, 5 *East*, 452. The ground of appeal was that certain lands were omitted, which were in the occupation or possession of the corporation. The sessions quashed the rate, and granted a case, from which the court could not collect whether the burgesses stocked the land in right of their franchise or by permission of the corporate body, and the court were inclined to send the case back; but Lord *Ellenborough* said, "I think we may deal with the case as it is. Here is a large tract of property producing profit, which is liable to be rated, and no person in fact is rated for it. This property is stated to belong to the corporation, and it may be doubtful whether the occupation shown be their occupation or that of individuals. Under these circumstances, I cannot say the sessions have done wrong in quashing the rate. The rate therefore is quashed, because no person has been rated for property which ought to have been rated."

The sessions cannot award costs unless the appeal be entered.

Rex v. *Justices of Essex*, 8 *T. R.* 583. Notice of appeal against a rate was given, and on the day before the sessions countermanded, whereupon the parish officers applied to the quarter sessions for the costs of preparing to resist the appeal. But the court thought they had no authority under the statute to give costs, as no appeal was entered. *Per Curiam:* "The quarter sessions have no authority to award costs under the 17 Geo. II. c. 38, *unless* an *appeal* has been *entered and determined.* The determination of the appeal is a condition precedent to the power to give costs, the words of the act being, 'may award to the party for whom such appeal shall be determined reasonable costs,' &c., and the subsequent words, 'in the same manner that they are empowered to do in case of appeals concerning the settlement of poor persons,' &c., only relate to the mode in which those costs are to be recovered. By referring to the former statute under which costs may be given in two instances, and by mentioning only one of those instances in the latter statute, it is evident that the legislature did not intend by the latter to authorise the sessions to give costs in both cases.'"

But if entered, they may, though the rate is quashed by consent.

Rex v. *Cawston*, 4 *D. & R.* 445. Where an appeal against a poor's-rate was entered at the Midsummer, and respited until the Michaelmas sessions, and then further respited at the instance of the appellant till the Epiphany sessions, four days previous to which the respondents gave notice that they would not oppose the appeal, and it was accordingly allowed without opposition, the rate being quashed on the motion of the appellant's counsel, and costs allowed by the sessions; held that the appellant was entitled to costs as upon an appeal which had been "heard and determined" within the meaning of the stat. 17 Geo. II. c. 38, s. 4. *Bayley*, J., said, "*Rex* v. *Justices of Essex* is perfectly distinguishable from this case; there no *appeal* was entered. This appeal was heard and determined in the fair sense and meaning of these words. In the first place, as to the hearing: the appellant was bound to prove his notice of appeal before he could entitle himself to costs: and having done so, that would be a hearing.

(*b*) The court did not advert to the power given to the sessions to quash the rate, and the sessions might have been of opinion that relief could not be given to the appellant without quashing it. Wherever the amendments to be introduced are such as will essentially alter the character and proportion of the rate, so as to render it a new rather than an amended rate, it should be quashed. Thus if the ground of complaint is that personal property is altogether omitted (*Rex* v. *Dursley*, 6 *T. R.* 53), or that the real estate is taxed ten times more in proportion than the personal (*Ib.*), or that the rate is made upon a principle altogether erroneous (*Rex* v. *Sandwich*, *Doug.* 562), or that a large portion of property is altogether omitted, and it does not clearly appear who ought to be rated for it (*Rex* v. *Aberavon*, *supra*;) these, says Mr. Nolan, seem cases in which the rate ought to be quashed. Because, otherwise, the sessions must examine into the circumstances of every person in the parish, in order to render the rate perfect, and so make one altogether new, which the statute forbids. See another ground for quashing a rate, *Rex* v. *Hull Dock Company*, *ante*, 348.

Then, in the second place, the allowance of an unopposed appeal would be a final determination of it, so as to satisfy the statute. It is said that the appellant need not have gone to the sessions, because notice was given four days before that it was not intended to resist the appeal. If notice had been given by the respondents at the same time, that they meant to pay the costs already incurred, then the appellant need not have gone to the sessions, but he is obliged to go there to get his costs." *Holroyd*, J. "By allowing the appeal the sessions determined it. Suppose the justices, notwithstanding the respondent's notice, entertained a doubt as to the propriety of allowing the appeal, and desired to hear what the appellant could say on the subject, would not that be a hearing? Could it be said that was only a hearing on one side, and that both sides must be heard before the costs ought to be allowed? Surely not. I think the order must be affirmed." *Littledale*, J., concurred.

14. *Of Appeal &c. under Local Acts.*

Reg. v. *The Recorder of Stamford*, 1 *P. & D.* 72. On an appeal against a borough rate, at the Epiphany sessions, the town clerk, who appeared for the respondents (the town council), objected that the appeal ought to have been to an earlier sessions; but the sessions, on inspecting the rate, decided that the appeal was properly lodged. The appeal was then adjourned to the Easter sessions, and from thence, at the request of the respondents, to the Midsummer and Michaelmas sessions successively. Previous to the Michaelmas sessions, the town council abandoned the rate as a nullity. At the Michaelmas sessions the appellants proved their notice of appeal and their notice to produce the rate, but no one appeared for the respondents, although the town clerk was present in court. The appellants then moved for their appeal to be confirmed, with costs. The sessions decided that as there was no proof given of a rate, or, at all events, of a legal rate, it had no jurisdiction. Held, that the rate was sufficiently before the court to give it jurisdiction.

Where a rate had been inspected by the sessions, and the appeal adjourned, the court has jurisdiction over it, though not produced at the subsequent sessions, and see *Reg.* v. *Stampmer*, Q. B. 119.

Rex v. *Prosser*, 4 *T. R.* 17. On an appeal against a poor-rate, because certain persons were omitted to be rated, a parishioner who is *liable* to be rated, but who is *not* in fact rated, is a competent witness to prove the rateability of appellants.

Who may be witnesses.

This was before the 54 Geo. III. c. 170, s. 9, which enacts, that no person rated or liable to be rated, or supported thereby, or holding any office therein, shall be by reason thereof an incompetent witness for or against the parish. See also 3 & 4 Vic. c. 26, and 6 & 7 V. c. 85, *post*, *Evidence*.

Inhabitants not to be incompetent witnesses in certain cases on behalf of or against their parish.

The 17 Geo. II. c. 38, s. 13, enacts, that "Copies of all rates be fairly entered in a book by the overseers within fourteen days after appeals from such rates are determined, and shall attest the same by putting their names thereto; and every such book shall be carefully preserved by the overseers in some public or other place, in every such parish, whereto all persons assessed, or liable to be assessed, may freely resort; and shall be delivered over to the succeeding overseers as soon as they enter into their office, to be preserved, and produced by them at the quarter-sessions, when any appeal is to be heard or determined."

Copies of rates to be entered in a book after appeals determined.

Production of the rate.

Rex v. *Uttoxeter*, 2 *Str.* 932. Upon great debate and search after precedents, it was held that a *certiorari* would not lie to remove the poor-rate itself, the remedy being to appeal, or by action when a distress is taken, which will answer all the ends of justice in coming at an unequal rate; whereas if the rate itself should be required to be sent up, great inconveniences and delays would follow. *Rex* v. *The J. of Salop*, 2 *Str.* 975. But see *Reg.* v. *J. Middlesex*, 9 *A. & E.* 540, and the general principles relating to *certiorari*, under the title "*Certiorari*."

Rate not removable by *certiorari*.

15. Payment of the Rate, and enforcing same by Distress or otherwise.

"The proper mode of enforcing payment of an arrear of poor-rate is by *summons* and distress given by 43 Eliz. c. 2, s. 4, and subsequent statutes; for it is a rule that upon a new statute which prescribes a particular remedy,

The remedies to enforce payment of rate.

15. *Payment of Rate, and enforcing by Distress, &c.*

that is the only one that can be taken. Therefore clearly no action will lie for a poor-rate." *Denison*, J. (*Stevens* v. *Evans*, *post*; *Underhill* v. *Ellicombe*, *M'Cl. & Young*, 456.) In one case, however, where a corporation had been rated, and it was doubtful whether there were any distrainable goods, a mandamus to pay was issued. (*Rex* v. *Margate*, 3 *Bar. & Ald.* 220; 2 *Chitty's Rep.* 356, S. C.) So payment of rates is enforced collaterally by the Reform Act, 2 Will. IV. c. 45, s. 27, and the Municipal Corporation Act, 5 & 6 Will. IV. c. 70, s. 9, and the Vestry Act, 58 Geo. III. c. 69, s. 5, which incapacitate the party rated from voting unless he has paid the rate.

Persons removing out of parishes to pay a proportion of the rate, enforceable by *distress*.

By 17 Geo. II. c. 38, s. 12, after reciting, "that whereas persons frequently remove out of parishes and places without paying the assessed rates on them, and other persons do enter and occupy their houses and tenements part of the year, by reason whereof great sums are annually lost to such parishes and places;" it is enacted, "that where any person or persons shall come into or occupy any house, land, tenement, or hereditament, or other premises, out of or from which any other person assessed shall be removed, or which at the time of making such rate was empty or unoccupied, then every person so removing from, and every person so coming into or occupying the same, shall be liable to pay such rate in proportion to the time that such person occupied the same respectively, in the same manner and *under the like penalty of distress*, as if such person so removing had not removed, or such person so coming in or occupying, had been originally rated and assessed in such rate; which said proportion, in case of dispute, shall be ascertained by any two or more of his Majesty's justices of the peace."

Rate to be levied by distress; and if no goods, then may follow commitment. (*a*)

By 43 Eliz. c. 2, s. 4, "it shall be lawful, as well for the present as subsequent churchwarden and overseers, or any of them, by warrant from any two such justices of peace as is aforesaid, to levy as well the said sums of money and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, *by distress and sale* of the offender's goods, as the sums of money or stock which shall be behind upon any account to be made as aforesaid, rendering to the parties the overplus; and in defect of such distress, it shall be lawful for any two such justices of the peace to commit him or them to the common gaol of the county, there to remain without bail or mainprise until payment of the said sum, arrearages, and stocks."

Goods may be distrained in any part of the county.

17 Geo. II. c. 38, s. 7. "The goods of any person assessed, and refusing to pay, may be levied by *warrant of distress*, not only in the place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found within the said county or precinct, on oath made thereof before some justice of any other county or precinct (which oath shall be certified under the hand of such justice on the said warrant), such goods may be levied in such other county or precinct by virtue of such warrant and certificate; and if any person shall find him or herself aggrieved by such distress as aforesaid, it shall and may be lawful for such person to appeal to the next general or quarter sessions of the peace for the county or precinct where such assessment was made, and the justices there are hereby required to hear and finally determine the same."

If not to be found within the district, &c., may be made out of.

By 54 Geo. III. c. 170, s. 12, it is enacted, "that the goods and chattels of any person or persons neglecting or refusing to pay any sum or sums of money legally assessed on and due from him, her, or them in respect of any rate for the relief of the poor, church cess, or highway cess, of any district, parish, township, or hamlet, for the space of seven days after the same shall have been legally demanded of him, her, or them, shall and may be distrained, not only within such district, parish, township, or hamlet, but

(*a*) By 27 Geo. II. c. 20, a power is given to justices granting a warrant of distress, to order the goods to be sold, unless the money is paid. And c. 2 empowers the officer making the distress, to deduct reasonable charges for taking, keeping, and selling the distress.

also within any other district, parish, township, or hamlet, within the same county, riding, division, or jurisdiction; and if sufficient distress cannot be found within the same county, riding, division, or jurisdiction, then upon oath thereof made before any one or more justice or justices of the peace for any other county, riding, division, or jurisdiction, in which any of the goods or chattels of such persons shall be found, which oath such justice or justices are hereby required to administer and certify, by indorsing in his or their respective handwriting his or their name or names on the warrant granted to make such distress, the goods and chattels of the said person or persons so neglecting or refusing to pay as aforesaid, shall be subject and liable to such distress and sale in such other county, riding, division, or jurisdiction, where the same shall be found; and may by virtue of such warrant and certificate be distrained and sold in the same manner as if the same had been found within the district, parish, township, or hamlet, in or for which such rate or cess had been made or was due."

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We have seen by 41 Geo. III. c. 23, s. 1 (*ante*), that although the rate be quashed, the sums charged are to be levied and taken as payment on account of the next effective rate.

Notice of appeal not to prevent a distress for a sum not greater than that assessed in the last effective rate.

41 Geo. III. c. 23, s. 2. "All and every the sum and sums of money at which any person or persons is or are or shall be rated or assessed, in any rate or assessment made for the relief of the poor of any parish, township, vill, or place, shall and may be levied and recovered by distress, and all other lawful ways and means, notwithstanding the person or persons so rated or assessed, or any other person or persons, shall have given notice of appeal from or against such rate or assessment for any cause whatsoever: provided always, that if any person rated or assessed in any rate or assessment made for the relief of the poor, shall give such notice of appeal as hereinafter mentioned, to the churchwardens and overseers of the poor of any parish, township, vill, or place, or any two of them, then from and after the giving of such notice, and until the appeal shall have been heard and determined, no proceedings shall be commenced or carried on to recover any greater sum or sums of money from such person or persons than the sum or sums at which he, she, or they, or any occupier of the same premises, shall have been rated or assessed in the last effective rate which shall have been collected in such parish, township, vill, or place."

If rate quashed, sum charged is not to be paid, and all proceedings to be stopped.

By s. 3. "If the court of general or quarter sessions of the peace shall, upon appeal, order any rate or assessment for the relief of the poor to be quashed, it shall be lawful for the said court to order any sum or sums of money in and by such rate or assessment charged on any person or persons, or any part of any such sum or sums, not to be paid, and then and in every such case no proceedings shall, after making such order, be commenced: or if any proceedings have been previously commenced, such proceedings shall be no further prosecuted or carried on for the purpose of levying or enforcing the payment of any sum or sums which shall be so ordered by the said court not to be paid."

The rate to be recovered as altered by the sessions.

By s. 7. "If upon the hearing of any appeal from or against any rate or assessment, the said court shall order the name or names of any person or persons to be inserted therein, and him, her, or them to be rated or assessed at any sum or sums of money, or shall order the sum or sums at which any person or persons is or are therein rated or assessed to be raised or increased, then and in such case all and every the sum and sums of money at or to which such person or persons shall be so ordered to be rated or assessed, or to be raised or increased, or so much thereof as shall not have been already paid, shall and may be recovered in such and the same manner, and by such and the same means as if he, she, or they had been originally named in such rate or assessment, and rated or assessed therein at such sum or sums of money."

A warrant may be made to distrain before the time for which the rate is made is expired. *Charlwood* v. *Best*, 1 *Bott*, 261.

An overseer is not liable for the amount of rate

Priestley v. *Watson*, 2 *C. & M.* 691. Where an overseer distrains for a rate, not knowing there is an appeal against it, and immediately pays

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over the money so levied to a guardian under 22 Geo. II. c. 83, and the rate is afterwards lowered on the appeal being heard, the overseer not being a wrong-doer will not be liable in money had and received.

lowered on appeal and paid over to a guardian.

Before any warrant of distress is granted, the person assessed must be summoned, and if the proceedings are under the 54 Geo. III. c. 170, s. 12, the rate must be demanded seven days before the warrant is granted.

A *summons* must precede a warrant of distress for a poor-rate, and without it the Court of K. B. will not issue a mandamus.

Rex v. *Benn*, 6 *T. R.* 198. On a rule for a mandamus to the defendants to grant warrants of distress against persons who had refused to pay a poor's-rate, it appeared that there had been no previous summons to the persons charged. Lord *Kenyon*, C. J. "I confess I cannot subscribe my assent to the decision in *Rex* v. *Middlesex*. (*a*) The payment of a poor-rate, unless it be set aside, must be enforced; and if the magistrates will not issue a summons to the person who refuses to pay the rate, the court will grant a mandamus to compel them to do it: but a summons must precede a warrant of distress, which is in the nature of an execution. On the summons, the party may show a sufficient reason to the magistrates why a warrant of distress should not issue; as, for instance, that he has already paid the assessment to one of the parish officers, who has not accounted for it. But it is an invariable maxim in our law, that no man shall be punished before he has had an opportunity of being heard: whereas if a warrant of distress were to be issued without any previous summons, the party would have no opportunity of showing cause why the execution should not issue against him. (*b*) But the next day the court granted a rule for a mandamus to the magistrates 'to receive such informations and complaints as shall be laid before them against persons refusing to pay the sums assessed upon them for the relief of the poor of the township of Whitehaven, and to proceed thereupon to levy the same.'"

Summons essential.

Rex v. *Stafford*, 5 *Nev. & Man.* 94. Before issuing a warrant it is essential that a summons should have been served on the party, or left at his present residence, calling upon him to show cause why a distress warrant should not issue.

Oath of the refusal to pay the rate must be made before the justices previously to distraining for non-payment.

Tracy v. *Talbot*, 2 *Salk.* 532. *Holt*, C. J. "The rate cannot be distrained for by virtue of a general warrant made before the rate: but there ought to be a special warrant on purpose; that is to say, the nonfeasance of the party shall not be left to the judgment of the officer, who may, out of private resentment, sell his neighbour's goods without sufficient cause; but oath of the refusal must be made before the justices. And it is reasonable that the party should be heard in his defence; for he may show cause variously why a distress should not be granted; as that the rate was not regularly allowed, or was not published in the church, or that he had given notice of appeal, or that no demand or refusal had been made, and the like."

A distress after tender by landlord improper.

Rex v. *Cozens*, *Dougl.* 426. On an application for an information against two justices of Dorchester for granting a warrant of distress corruptly, it

(*a*) *Rex* v. *Justices of Middlesex*, 1 *Bott*, 262. Motion for a mandamus to sign a warrant of distress for levying a poor-rate. It was the custom not to grant warrants without first summoning the party, and the justices refused to grant any warrants of distress, without first summoning the party. *Lee*, C. J. "A writ of mandamus will not give the justices any power they had not before, and therefore it is to be considered what powers stat. 43 Eliz. cap. 2, s. 4, gives them; and in that there is no direction that the party shall be summoned to show cause: nothing appears upon the affidavits that this is such a rate as a distress ought to be granted upon; but the whole is, that persons applying for the warrant did first refuse to take out a summons, which to me does not appear a sufficient cause why the mandamus should not go; if the justices have sufficient reason why they did not grant the warrant, it will appear upon the return of the mandamus." The other judges concurred. Mandamus granted.

(*b*) This case was approved of by *Bayley*, B. in *Capel* v. *Child*, 2 *C. & J.* 579, where that learned judge says, "I know of no case in which you are to have a judicial proceeding, by which a man is to be deprived of any part of his property without his having an opportunity of being heard."

appeared that the grandson of the owner of the house tendered the rate to the overseer for the owner, and not for the occupier, and the overseer refused to receive it, and the justices granted a warrant against the occupier. The right of voting for members in Dorchester depended on the payment of poor-rates. Lord *Mansfield*, C. J. "It is impossible for the defendants to excuse themselves on account of ignorance. In many parts of the kingdom the landlord pays the rates for the tenants." Twenty-eight rates had been paid in the same way; and his lordship strongly condemned the issuing of this warrant. Rule discharged, on payment of all costs by the defendants.

When doubtful whether distress would be lawful, mandamus will be refused.

A warrant should not be issued if the parties think there is reasonable ground to believe that the rate is void as regards the person summoned. In such cases the justices may decline to grant a warrant if the rate is questionable. *The Court of King's Bench will not compel them* (*a*) *to enforce it.* If the objection to the rate, however, is one of which the party can avail himself by appeal only, then the mandamus will be granted.

One writ for two rates.

One writ of mandamus may go, commanding the issue of two warrants of distress for two distinct rates against the same individual. *Reg.* v. *Ellis*, 7 *Jurist*, 107.

Not necessarily against all the justices.

Where there is no reason to presume that an improper selection has been made in moving for the writ, or no inconvenience can arise from such selection, it is not necessary that a mandamus should be directed against all the justices who refuse the warrants. *Ib.*

May be against a justice interested in the land.

A mandamus may be directed against a trustee of the lands rated, if he has acted as a justice in refusing the warrant. *Ib.*

Refusal on 25th Aug., application in Hil. Term sufficient.

A warrant of distress was refused by justices for one rate on the 25th August, and for a different rate on the 29th December. A mandamus applied for in the Hilary Term following, as to both rates, is in time. *Ib.*

If some justices refuse to act, an application may be made to others.

Application had been made on the 16th October to a bench of magistrates at Skipton, who, being equally divided, refused to act; and a second application was made on the 29th December to the justices of Keighley:—Held, that, as the first bench of magistrates were equally divided, and had dismissed the case, their jurisdiction did not attach so as to exclude the Keighley magistrates.

The justices cannot refuse to issue a warrant when the validity of the rate had been decided by the Queen's Bench. *Reg.* v. *J. Middlesex*, 12 *L. J.* 36. *M. C.*

Rate for lands not in the party's occupation is void.

No warrant ought to be granted where a person is assessed for lands which were *not in his occupation*, notwithstanding it had been confirmed on appeal. For the determining that a man may be assessed for what he does not occupy, is an excess of jurisdiction. *Milward* v. *Caffin*, 2 *Bla. Rep.* 1330. And in such a case *trespass* lies for the illegal seizure. *Durant* v. *Boys*, 6 *Term R.* 580.

So also where the party is assessed for some houses which he occupies, and others which he does not, he may dispute the legality of the rate as to the latter in an action. *Governor of Bristol Poor* v. *Waite*, 1 *Ad. & E.* 264.

So also for lands not in the parish.

So also where the assessment is for land in another parish; for that is an illegal tax, which the justices have no power to confirm. *Weaver* v. *Price*, 3 *B. & Adol.* 406. (*b*)

(*a*) It is a general rule that where magistrates have been called on to exercise their judgment upon the propriety of granting a warrant, the Court of King's Bench will not interfere, especially where there is a probability that an action will be brought against them upon such warrant. *Rex* v. *Margate*, 3 *Bar. & Ald.* 220; 2 *Chit. R.* 250, S.C.; *Rex* v. *Dyer*, 2 *Adol. & El.* 613; 4 *Nev. & Man.* 546; *Rex* v. *Somersetshire*, 4 *Nev. & Man.* 394. It was observed, (*Rex* v. *Dyer*), that it was a pity that acts of parliament relating to the poor-rates did not contain a clause indemnifying magistrates for what they did in obedience to the mandate of the court; the court would then take upon itself to see whether the thing required were within the provisions of the act. (See *Rex* v. *Greame*, 2 *A. & E.* 615; *Rex* v. *Morgan*, *ib.* 618.)

(*b*) Trustees were authorised to erect a chapel at Islington, and to borrow

15. *Payment of Rate, and enforcing by Distress, &c.*

But the rate may be enforced by distress, if the rate is not a nullity, and the justices had jurisdiction to allow the assessment. In *Pitman* v. *Marshall*, 9 *Bing.* 595, the plaintiff had been rated for his stock in trade, and the special case stated that the plaintiff had no personal property or stock in trade for which he was liable to be rated, unless his stock of drugs, &c., which he had as an apothecary, rendered him rateable. And it was held that as the plaintiff was an inhabitant of the parish possessing visible personal property, he was within the jurisdiction of the justices, and liable to be rated, although his rateable property might turn out to be worth nothing. See also *Crease* v. *Sawle*, *ante*, p. 239, and 4 *Hag. Rep.* 84.

Rated inhabitant cannot resist the rate in an action, though he had no rateable property.

Insufficient description of property furnishes no answer to a distress.

The want of a sufficient description of the property rated cannot be made the ground of objection to a distress for a rate. It can be made by appeal only. *Curtis* v. *Kent Water Works Company*, 7 *B. & C.* 314; *Hutchins* v. *Chambers*, 1 *Burr.* 580.

If one warrant is granted for several rates, and one of them has been quashed, the warrant is void. (b)

Hurrell v. *Wink*, 2 *B. Moore*, 417; 8 *Taunt.* 369. In replevin the defendant avowed as overseer under a warrant of distress granted against the plaintiff on the 9th of January, 1817, and executed on him on the 13th, for 104*l.* 17*s.* due for seven several poor-rates. The plaintiff appealed, but not in sufficient time as regarded six of the seven rates. The sessions quashed the last rate, on the ground that the plaintiff was not the occupier. *Gibbs*, C. J. "It was necessary that the sum actually due from the plaintiff for poor-rates should be demanded previous to the issuing of the warrant of distress, and that it was distinguishable from a distress for rent; that whatever might be due as the amount of rent might be distrained, and that although a larger sum were distrained for than was actually due, that the lessor might still be supported; as if a distress were made for three years' rent, and two only were due, still the avowant was entitled to recover for the two. So if a person bring an action for goods sold and delivered to the amount of 100*l.*, still he may only be entitled to recover 40*l.* But in neither of these cases is a precise and previous demand necessary as here, where the party distrained on is entitled to know what sum is actually due for poor-rates, previous to the issuing of the warrant under which the levy is made." Verdict entered for the plaintiff.

The precise sum due should be demanded previous to the issuing of the warrant.

Same Point.

So also, where one of the rates had not been published. See *Sibbald* v. *Roderick*, *ante*, and *Price* v. *Quarrel*, *ante*, 20.

A party making a distress for two rates, as to one of which only he is entitled to notice of action, is liable in trespass.

A defendant seized goods under a distress for a highway and poor-rate. No notice of action was given, to which the defendant was entitled under the highway act, and the plaintiffs obtained a verdict for the value of the goods seized for the poor-rate only. On a motion to enter a nonsuit, Lord *Abinger* said, "There is no ground for this application. It is not like the case of a man coming with one good warrant and one bad warrant, for there he could justify under the good one. Suppose the defendant had pleaded specially a justification under warrants both for highway-rate and poor-rate, that issue must have been found against him. He could not justify both the takings. He could not have made a tender of amends under the poor law act; at least he would not be entitled to notice." Rule refused. *Lamont* v. *Southall*, 5 *M. & W.* 416.

Several warrants and one seizure is not void.

When, therefore, there is only one warrant, authorising a distress for a good and bad rate, it is defective; but where *several* warrants were granted against a defendant, who was liable to be rated for some of the premises, but not others, the distress may be excessive, but the seizure is legal. *Governor of Bristol Poor* v. *Wait*, 3 *Nev. & Man.* 359; 1 *Ad & E.* 264.

Skingley v. *Surridge*, 12 *L. J.* 122. *M. C.* B. *Parke* delivered the judgment. "It was an action of replevin with cognizance under 43 Eliz. c. 2, s. 19, and the points reserved for the consideration of the court were

£30,000: they borrowed £32,000, and made a rate to pay the interest of it. This rate is bad *in toto*; and though the defect did not appear on the face of it, replevin will lie for the distress. *Richter* v. *Hughes*, 3 *D. & R.* 788. Similar points under the Land Tax Act. *Charlton* v. *Always*, 11 *A. & E.* 993.

three—1. Whether the goods of one churchwarden were liable to be seized under a distress made by the order of the other churchwarden and overseers for the poor-rate due from him. 2. Whether the demand of the rate by a person who acted as assistant overseer was sufficient to support the warrant of distress; and, if not, whether the warrant of distress was bad on that account. 3. Whether the distress was illegal by reason of the warrant being to levy 11*s.* 6*d.* for costs, as well as a certain sum for the rate. We think none of these objections ought to prevail.—1. The argument is, that one churchwarden or overseer has as much right to receive the poor-rate as another; and that, being also a person to disburse the rate, he may be considered as having already paid his own rate to himself; and that though he would therefore be accountable for it, he could not become liable to pay it to the then overseer: and if this rate could be recovered only by action, or other proceeding, wherein all the churchwardens and overseers were necessary parties, there would be great weight in the objection; the case would then be analogous to that of one of several debtors being made executors. But this is not the situation in which one parish officer stands to the others; all need not join in the application to the justices to enforce the payment by warrant of distress; the complaint of one is sufficient, and, consequently, the simple fact that the churchwarden or overseer who is liable to the rate, does not amount in law to a payment to himself; but if an overseer charges himself with the amount as received, and has applied it to parochial purposes, the justices would have the discretion (as they act judicially in this matter, *Harper's Case*, 7 *T. R.* 271) not to allow the overseers to have the warrant against him, which they otherwise would. Whether one parish officer can distrain on another for the rate will depend on the question, whether that other refused to pay the rate or not. In this case there was, beyond all doubt, a refusal altogether to pay, and the magistrates were justified in granting the warrant of distress. The case of *Wethered* v. *Calcut* (*ante*), is not an authority applicable to this case. The decision of the Common Pleas on the words of 17 Geo. II. c. 3, s. 2, which makes a churchwarden or overseer liable to a penalty for not giving a copy of the rate to every inhabitant or parishioner, was a case where the latter words were used in contradistinction to churchwardens and overseers, and, consequently, no such penalty attached to one churchwarden or overseer by the refusal of a copy to another. 2. The second question is, whether a warrant was valid on the ground of a demand and refusal of the rate by a person who was not an overseer. The objection to Till's appointment was, that although he was elected under the 59 Geo. III. c. 12, and appointed by warrant of two justices assistant-overseer to perform all the duties of overseer, he was not duly appointed, because the vestry did not specify that all those duties were to be performed by him as assistant-overseer; and unless they did, the justices had no power to appoint. The court are of opinion, that the minutes (*a*) were not to be construed as a nullity, which they would be unless the parish meant to appoint him as assistant-overseer. We think it was the necessary implication from that resolution, that the parishioners, in vestry assembled, meant to appoint Till an assistant-overseer, with all the duties attached; and, therefore, that the justices were perfectly right in considering that as evidence of the intention of the parish, that all the duties should be executed by the assistant-overseer, and that appointing him assistant-overseer was an obligation to perform all those duties. 3. The last objection was, that the distress was illegal, the costs of the summons and hearing before the two justices was included, and that the *payment* of these costs was not warranted by law. If this had not been a legal demand, it would not follow that the distress was illegal, because, on the face of the warrant, the sum demanded must be assumed to be a legal demand, as distinguished

The majority of the parish officers may distrain on a churchwarden for his poor-rate.

One overseer may apply for the warrant of distress.

Granting the warrant is a *judicial* act.

An assistant-overseer may demand the rate.

A minute of vestry, that "A. was elected assistant-overseer," justifies the two justices in appointing him to all the duties of an overseer.

Warrant not vitiated by the introduction of the costs.

(*a*) The minutes of the vestry were, "At a meeting held for the appointment of an assistant-overseer, W. Till was duly elected, at a salary of 40*l.* per annum."

15. *Payment of Rate, and enforcing by Distress, &c.*

A warrant for two things is legal, if the legal and illegal can be distinguished.

from the sum which is said to be an illegal demand, viz. the costs. The rate legally due was duly claimed and refused, and the plaintiff had the means of tendering the precise sum. Nothing was done under the distress which the warrant did not justify. The case differs from *Milward* v. *Caffin*, p. 355; *Sibbald* v. *Roderick, ante; Hurrell* v. *Wenk*, p. 356 (*a*); in which cases the legal could not be distinguished from the illegal part, and there was no demand of that sum which was lawfully due. The sum of 11*s*. was, however, due in this case under 18 Geo. III. c. 19. It was said there was no proof that the same had been given by the statute; but this was not made a ground of objection at the trial. It was argued, that the sum could not be recovered by distress under the st. of Eliz., which is true. It was also argued, that the distress for it could not be justified in general terms. But here the defendants did not need to justify the distress for that sum at all. They did nothing but what they were authorised to do, under the warrant of distress for the poor-rate alone, and were therefore justified under the st. of Eliz. If the poor-rate had been paid, and they had then stayed to raise the amount of costs, they must have justified specially. Nothing of that sort was done. The rule for disputing verdict for the defendant must be discharged."

Such costs not recoverable by distress.

Under a warrant of distress, defendants broke and entered the house: Held, that they were not acting in obedience to the warrant, and therefore not entitled to the protection of 24 Geo. II. c. 44, s. 6.

Bell v. *Oakley*, 2 *M. & Sel.* 259. Under a warrant of distress for a poor-rate, the defendant knocked at plaintiff's door, and being informed that the plaintiff was from home, defendant tried to get in at the cellar, but failed; he then removed the fastening of a window, and got into the wash-house. Having found nothing within, the inner door being locked, he returned, and took some planks and other articles which were lying in the garden. It was contended, that there ought to have been a demand of the copy of the warrant, under 24 Geo. II. c. 44, s. 6. Lord *Ellenborough*, C. J. "The case of *Money* v. *Leach* (3 *Burr.* 1742; 1 *Bla.* 555), decides that the defendant, in order to avail himself of the objection upon the statute, must show that he acted in obedience to the warrant; in that case the officers apprehended a different person from that described in the warrant, and therefore not in obedience to the warrant; and Mr. *Yorke*, the then attorney-general, who was to have argued on behalf of the officers, gave up the point upon the second argument, as being too great a difficulty for him to encounter. Here the defendants, so far from showing that they acted in obedience to the warrant, commence by an unauthorised course of proceeding; it was a trespass in them *ab initio;* and I do not see how, after the case of *Money* v. *Leach*, they can stir this objection. That was a case of much public interest, and was decided upon great deliberation, and the matter was upon the record. If this had been a distinct subsequent trespass of the defendants, it might have presented a different question." *Bayley*, J. "In *Price* v. *Messenger* (2 *Bos. & P.* 158), the defendant, so far as he acted in obedience to the warrant, was under the protection of the statute, but he was holden liable for the seizure, which was not made in obedience to the warrant." *Dampier*, J. "The case of *Money* v. *Leach* decided, that where the justice cannot be liable, the officer is not within the protection of the statute. In this case, suppose notice had been delivered to the justice, for what could he have tendered amends? In *Price* v. *Messenger*, the justice might have been proceeded against upon the warrant." Rule discharged. See *Peppercorn* v. *Hoffman*, *post*, 360.

Distress shall not be deemed unlawful for want of form in the proceedings.

And by 17 Geo. II. c. 38, s. 8, 9, 10, "Where any distress shall be made for any sum or sums of money justly due for the relief of the poor, the distress itself shall not be deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers, on account of any defect or want of form in the warrant for the appointment of such overseers, or in the rate or assessment, or in the warrant of distress thereupon; nor shall the party or parties distraining be deemed a trespasser or trespassers *ab initio*, on account of any irregularity which shall be afterwards done by the party or parties distraining, but the party or parties aggrieved by such irregularity shall or may recover full satisfaction for the special damage he,

she, or they shall have sustained thereby, and no more, in an action of trespass or on the case, at the election of the plaintiff or plaintiffs. Provided always, that where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs. Provided nevertheless, that no plaintiff or plaintiffs shall recover in any action for any such irregularity as aforesaid, if tender or amends hath been made by the party or parties distraining before such action brought."

15. *Payment of Rate, and enforcing by Distress, &c.*

Commitment for want of distress.

By 43 Eliz. c. 2, s. 4, "In defect of such distress it shall be lawful for any such two justices of the peace to commit him or them to the common gaol of the county, there to remain without bail or mainprize until payment of the said sum, arrearages, and stock."

What may be taken.

As a distress for a poor-rate is analogous in some respects to an execution, beasts of the plough are distrainable, though there may be sufficient goods without them (*Hutchins* v. *Chambers*, 1 *Burr.* 579); and working tools in a shop. (2 *Show.* 126.) And yet *replevin* lies. (*Sabourin* v. *Marshall*, 3 *Bar. & Adol.* 440.)

So also it seems money. But *quære.* (*East India Company* v. *Skinner*, 1 *Bott*, 257.)

Money.

Only the goods of the party assessed can be taken.

The goods only of the *party assessed* can be taken under the distress. The 43 Eliz. c. 2, s. 4, enacts, &c. "by distress and sale of the *offender's goods.*" The 17 Geo. II. c. 38, s. 7, says, "the goods of any *person assessed.*" It is otherwise as to the assessed taxes, for which any goods on the premises may be distrained. (*Stevens* v. *Evans*, 2 *Burr.* 1152; *Juson* v. *Dixon*, 1 *M. & S.* 601.)

Quære, Whether goods of party assessed in hands of executor can be taken? At all events the executor must be first summoned. See 2 Williams. Executors, 1083.

If the person charged shall die before payment, it has been doubted how far the deceased's goods in the hands of the executor or administrator are liable to answer the same. In *Stevens* v. *Evans* (2 *Burr.* 1152; 1 *Bla. Rep.* 284), W. Vesey was assessed to the poor-rate, and died intestate. Administration was granted to the plaintiff. After which two justices executed a warrant, in which it was recited, that the sum assessed had been demanded of Vesey, and (since his decease) of his widow; and then it required the officer to distrain the goods and chattels of the late William Vesey. An action was brought by the administrator, and a special case was stated, and the question was, whether the distraining the cattle, which were the goods of Vesey, in the hands of his administrator, was lawful or not? Mr. Justice *Denison* said, "The question is stated particularly upon this case, and is confined to the levying the money upon the representative of the person charged. I should think the event must have often happened in fact and experience. The practice is not stated. But, however, the question is, what the law is? and not what the practice is. It is a rule, that upon a new statute which prescribes a particular remedy, no remedy can be taken but the particular remedy prescribed by the statute. Therefore, clearly, no action of debt will lie for a poor-rate. The remedy given by the act of the 43 Eliz. must be considered with analogy to other like cases. This statute considers the person rated and refusing to pay as an offender, and gives no authority but to distrain the goods of the offender. Therefore no goods are liable to be distrained, by the words of this act, but the goods of the offender himself. I never apprehended that the goods of the person assessed to the rate can be charged in the hands of the representative. And therefore (as at present advised) I should think that this action will lie for taking them. I agree that this is in the nature of an execution; but yet it is personal: and I do not know that it is a *lien* upon the assets." Mr. J. *Wilmot* said, he had no doubt about it. "It is not stated in the *case* that a demand was made even upon Vesey (the person assessed), and that he refused payment, though it is so recited in the *warrant;* but that is not material; for I have not the least doubt but that the representative ought to have been convened before the justices,

No action of debt lies for a poor-rate. (*a*)

(*a*) This remedy is sometimes given by a local act. In such case, notice of the rate need not be averred. *Robinson* v. *James*, 20 *L. J.* 236, Q. B.

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and asked what he had to say why he should not pay the rate assessed upon Vesey, his intestate. The case seems to be like a *scire facias* upon a judgment; upon which execution cannot be sued out against the representatives, without asking them what they have to allege why it should not be taken out. At the time of the *teste* of the warrant, they were the goods and chattels of the representative. If the *teste* had been prior to the death, they would have been the goods and chattels of the deceased; but if tested after his death, they are not his goods and chattels, but the goods and chattels of the representative: *therefore, if the money had been demanded of the representative, I should have had great doubt whether this warrant and distress would not have been good;* for I cannot think that by the death of the person charged with this rate, the assessment before made upon him and demanded of him would have been quite gone and lost to the parish, and could not have been any way come at; for though it may be a charge upon the person, yet it is a charge upon him in respect of the thing occupied. And though he be called an offender, if he refuse to pay it, yet he can be no otherwise considered as an offender, than every other debtor who refuses or neglects to pay his debts, and thereby renders his person and goods liable to be taken in execution, is so far treated as an offender, till he shall comply with the judgment awarded. And in experience I know it to be the case, that these payments by executors or administrators are often allowed to go in discharge of the assets of the testator or intestate; though I do not remember that it has been settled in what course of administration. Indeed it might be of too much consequence to put it into the power of justices of the peace to determine upon the administration of assets, as to the course in which they are to be administered. In *Wallis and Hewit*, at the sittings after H. T. 5 Geo. II., before Lord C.J. *Eyre*, in an action of trespass, two aldermen of London had made a warrant to distrain a man for a poor-rate. The man died intestate; but before that, there had been a demand made upon him, and refused by him, and a warrant of distress granted upon his refusal; and then he died. *Eyre*, C. J. held, that a distress could not be made after his death; or, if it could, yet the representative ought to have been summoned; and he held the property to be changed. A case was made, but I could not hear what became of it. Lord C. J. *Eyre* was a great lawyer. It would be strange that a distress should be taken upon a man's goods without hearing him, and it would make great confusion in the administration of assets: he may have paid or retained judgment debts, prior to this distress for the rate." Mr. *Gould* said, that if the want of a demand from the representative was insisted on, he could not pretend to maintain the case. Mr. J. *Denison* and Mr. J. *Wilmot* said, that this was an essential circumstance. And by the Court (Lord *Mansfield*, C. J., and Mr. J. *Forster*, being absent), judgment was given for the plaintiff.

Servant of ambassador, when not privileged from distress.

Novello v. *Toogood*, 1 *B. & C.* 554; 2 *D. & R.* 833. Where the servant of an ambassador did not reside in his master's house, but rented and lived in another, part of which he let in lodgings, his goods in that house, not being necessary for the convenience of the ambassador, are liable to be distrained for poor-rates. *Abbott*, C. J. "I do not know how the privileges of an ambassador can be better defined than by laying it down as a principle that they extend only to what is necessary to the personal convenience, the dignity and the religion, of the ambassador himself."

Under a local act, goods of a tenant may be taken for a rate on the landlord

By a local act regulating the poor-rates of the parish of St. Martin in the Fields, the goods of any person occupying apartments, or a ready furnished house, may be distrained and sold for an assessment made on the landlord, and under a warrant against the landlord's goods; and it is not necessary to prove that the landlord had been previously summoned. *Peppercorn* v. *Hoffman*, 9 *M. & W.* 618. The constable is not authorised to impound the goods on the premises, but he may remain therein a reasonable time.—*Ib.*

When a distress was wholly illegal the owner of the goods may support

an action of *trespass* or *trover*, or may *replevy;* or if the sheriff refuse to replevy on tender of a sufficient replevin bond, he is liable to an action on the case. (*Sabourin* v. *Marshall*, 3 *Bar. & Adol.* 440.) *Case* is the remedy when there has been a seizure under several warrants, one of which is defective. (*Governor of Bristol Poor* v. *Wait*, 1 *Adol. & El.* 264); and see further, *ante*, 356.

15. *Payment of Rate, and enforcing by Distress, &c.*

Remedies for an illegal distress.

The statute of Mailbridge extends to goods distrained for poor-rate.

In an action against an overseer or other person for taking a distress for a poor-rate, the defendant may plead not guilty; and notwithstanding the general rules as to pleading the special matter, the defendant may prove that the goods seized were the property of the party assessed, and collusively sold to the plaintiff. (*Haine* v. *Davey*, 4 *A. & E.* 892).

An overseer in action for taking a distress may plead not guilty.

16. Rate for Taxing others in Aid.

16. *Rate for Taxing others in Aid.*

By 43 Eliz. c. 2, s. 3, "If the said justices of peace do perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums of money for the purposes aforesaid, that then the said two justices shall and may tax, rate, and assess, as aforesaid, any other of other parishes, or out of any parish, within the hundred where the said parish is, to pay such sum and sums of money to the churchwardens and overseers of the said poor parish, for the said purposes, as the said justices shall think fit, according to the intent of this law: and if the said hundred shall not be thought to the said justices able and fit to relieve the said several parishes not able to provide for themselves as aforesaid, then the justices of peace, at their general quarter sessions, or the greater number of them, shall rate and assess as aforesaid any other of other parishes, or out of any parish within the said county, for the purposes aforesaid, as in their discretion shall seem fit."

Anon. Fol. 25; 1 *Nol. P. L.* 241. In one parish there were two vills, and the justices recite in their order that one of the vills was very rich, and the other very poor; and further, that the vill which was rich did not pay half so much to the poor as the poor vill did. Objected, one vill ought not to contribute to another, because the statute mentions parishes only. 2. The reason given for charging the rich vill to contribute to the poor vill is uncertain; viz. because they do not pay half so much as the poor vill does, without showing that either vill pays anything to the poor. By the Court: "As to the first objection, surely this will come within the equity of the statute, though the statute only makes mention of *parishes;* and it is highly reasonable that one vill should contribute to another in the same parish. But this order must be quashed on the second objection, for the uncertainty."

A vill is within the equity of the statute.

Rex v. *St. Helen's, Worcester*, 2 *East*, 417. An order for taxing one parish in aid of another was held well; although the *two* parishes, together with others, were incorporated for the maintenance of their poor, with fixed quotas of contribution between each other, under special officers, who were empowered to purchase land for the erection of poor-houses, and for a burial-ground; there being a proviso in the act, that nothing therein should repeal or lessen the power of justices "to tax *parishes* in aid of others by virtue of the 43 Eliz. as fully as if this act had not been made."

One of several incorporated parishes may be taxed in aid.

Rex v. *Griesley, Sett. & Rem.* 259. The *sessions* rated the adjacent parishes: quashed, because the statute appoints it to be done by the two justices, and hereby they prevent an appeal. (See *Dimchurch* v. *Eastchurch*, 2 *Salk.* 480.)

The sessions cannot rate in aid.

St. Mary's v. *St. Peter and Paul's, in Marlborough*, 2 *Str.* 1114; 1 *Bott*, 406. Two justices order the overseers of *St. Peter and Paul's* to levy a sum towards the maintenance of the poor of *St. Mary's*. But the order was quashed by the Court; because the justices had delegated their power to the overseers: whereas by the statute they themselves are to make the rate on all, or on particular persons.

The assessment must be by the justices, and they cannot order the overseers to do it.

16. *Rate for Taxing others in Aid.*

Mandamus to make such rate.

In this case a mandamus was moved for to the justices, to make a rate for the support of the poor of the parish of *St. Mary's*, which was opposed, because the parish officers ought to make the rate, and the justices are only to sign it. To which it was answered, that this motion was grounded on *this clause* of the statute; and thereupon a mandamus was granted, directed to the justices; and as this is a matter of right, they ought to make a return. (16 *Vin. Abr.* 416.)

Justices, not overseers, must make it.

The justices are to make the taxation, and leave it to the churchwardens and overseers to levy it. (2 *Salk.* 480.)

The rate in aid may be on particular persons.

Resolved, that the justices may impose the charge upon any of the inhabitants of the neighbouring parishes, and are not obliged to put a general tax upon the whole parish. (*Comb.* 309; 1 *Vent.* 350; *Fol.* 29.)

The place must be different from the parish on the face of the order.

Either particular persons, or the whole parish, (*Dimchurch* v. *Eastchurch*, 2 *Salk.* 481,) may be charged.

It has been decided also, that it should appear by the order that the place on which the rate is made is not within the parish in aid of which it is assessed, and that this is necessary, although the names of both appear on the face of the order and are different. *Rex* v. *Boroughfen*, 1 *Nol. P. L.* 246. But in *Rex* v. *St. Helens*, 1 *Nol. P. L.* 246, (*n.*) Lord *Ellenborough* observed, that the diversity of name imports diversity of place, unless the contrary be shown. *Anon. Fol.* 25.

Several persons may be assessed.

Rex v. *Boroughfen*, *Fol.* 29; 1 *Barnard. B. R.* 122. There was a taxation of several persons in a parish: objected, that it should be of all the persons in a particular place or parish. The court thought it unreasonable that several persons in a parish should be charged, and not all, but that the words of the act are very strong; and did not quash the order for this objection.

The parishes must be in the same hundred.

St. Benedict v. *St. Peter's*, *Fol.* 31; 1 *Bott*, 409; 11 *Mod.* 269. Motion to quash an order on the parishes of St. Stephen and St. Mary Magdalen, in Norwich, in aid of the parish of St. Benedict, which was not able to maintain its own poor. Objection: these parishes are not in the same hundred; they are in the county of the city of Norwich, where there is no hundred, so the justices have no jurisdiction, though the sessions have in such case. Order quashed.

And so it must appear in the order.

In *Boroughfen* v. *St. Jones*, *Fol.* 27, 31; 1 *Bott*, 402, it did not appear upon the order that the parish which is charged to aid the other parish is within the same hundred. And it was quashed by the whole court.

Any division which is equivalent to a hundred is within the equity of the statute.

Rex v. *Milland*, 1 *Burr.* 576. Two justices tax the inhabitants of the tithing of Milland in aid of the parish of St. Peter's, Cheesehill, in the same county. The sessions stated that the tithing of Milland and the parish of St. Peter's, Cheesehill, both lie in the same *liberty of the soke* where the said parish lies. A soke substantially is a hundred, though called by another name. The court held they were not restrained to the particular word *hundred*, but it is sufficient if it be signified by any word equivalent. And the orders were affirmed.

Justices cannot rate in aid of a parish out of their jurisdiction.

In *Rex* v. *Holbeche*, 4 *T. R.* 778, it was determined that county justices cannot rate a parish within their jurisdiction in aid of another parish lying within a borough which has an exclusive jurisdiction.

The order must be for a time limited.

Rex v. *St. Mary's in Marlborough*, 2 *Stra.* 700; 1 *Bott*, 406. An order to contribute *so long as we the said justices shall think fit* must be quashed; for the discretion that is left in the justices is not to make a perpetual order, which this would be.

The sum may be imposed in gross for a year.

Rex v. *Knightly*, *Comb.* 309; 1 *Bott*, 399. A sum in gross was taxed upon a neighbouring parish for a whole year. This was objected to as unreasonable, because their ability may change; but the order was confirmed.

The order must be to raise a certain.

Rex v. *Telscombe*, 1 *Stra.* 314; 1 *Bott*, 403. By the court: the order for the contributory parish to make a rate at 6*d.* in the pound is ill for uncertainty; it should have been to raise such a sum certain.

The sum may be in gross.

St. Peter and Paul in Marlborough, 2 *Stra.* 1114; 1 *Bott*, 406. An order was made to contribute 60*l.* for the maintenance of the poor of the

other parish. An objection being made to their ordering such a gross sum, the court held it in that respect to be well.

16. *Rate for Taxing others in Aid.*

County contributory.

And by stat. 43 Eliz. c. 2, s. 3, if the said hundred shall not be thought by the said justices able and fit to relieve the said several parishes not able to provide for themselves as aforesaid, then the justices at their general quarter sessions, or the greater number of them, shall rate and assess as aforesaid any other of other parishes, or out of any parish within the county, &c.

The sessions may charge parishes out of the hundred, although two justices have not adjudged that the parishes within the hundred are unable to contribute.

Rex v. *Percivall*, 1 *Stra.* 56. Order of sessions, reciting that the parish is not able to maintain its own poor, nor any other parish within the hundred to contribute, therefore the justices at the sessions tax other parishes in another hundred. It was insisted that the statute gives no authority to the sessions to charge people out of the hundred till two justices have inquired whether any parish in the hundred can contribute. *Parker*, C. J. "I do not see to what purpose it would be for the two justices to make an order only to adjudge that no parish within the hundred is able to contribute. We will presume the sessions is satisfied of that, and if the two justices should make such an adjudication, yet the sessions must inquire into the truth of it; and if no order appear which charges any parish within the hundred, it is a sufficient ground for the sessions to act. If the two justices had charged any parish within the hundred, that would have stopped the sessions from proceeding; and the sufficiency of the hundred depends on this, whether two justices have ever charged the hundred. *If the said hundred shall not be thought by the said justices able*,—that is, if the two justices do not adjudge it so. If two justices should adjudge the hundred not able, yet, if other two justices adjudge the contrary, their charge would be good, and the sessions be ousted of their jurisdiction, notwithstanding the first adjudication." *Eyre*, J. "Here are two jurisdictions, that of the two justices and that of the sessions, and both are original jurisdictions. They are different in all respects, for the two justices have no power out of the hundred, nor the sessions within it. There need be no appeal from any adjudication of two justices, for that would be to appeal from a nullity." And the order was confirmed.

Rex v. *Eastchurch*, 1 *Bott*, 410. It was decided by *Holt*, C. J., that the sessions cannot make an original order on a parish within the hundred.

CHAPTER III.

OF THE ACCOUNTS OF OVERSEERS AND GUARDIANS (*a*).

1. *What Accounts to be rendered, of passing same, and the right of Inspection.*
2. *Disallowance and Reductions in Accounts.*
3. *Reimbursing Overseers.*
4. *Delivering over Balance, Books, Chattels.*
5. *Appeals relating to Overseers' Accounts.*

1. Of Overseers' Accounts, what to be delivered, and passing same.

1. Of Overseers' Accounts, what to be delivered, and passing same.

Accounts of monies received under different statutes to be kept, examined, and passed.

The funds which are placed at the disposal of the parish authorities, for the provision of the poor, though arising chiefly from rates, are augmented by receipts from various sources besides the poor rates, which render it expedient that detailed accounts should be kept, and that they should be balanced and passed at different periods. Thus, the churchwardens and overseers are to account to the quarter sessions for all monies which they may receive under 5 Geo. I. c. 8, authorising levies on the property of husbands and parents who leave their children on the parish; and for what they may receive under 17 Geo. II. c. 20, authorising levies in certain cases on the property of lunatics. And see 7 Jac. I. c. 3, as to accounts of monies *charitably* given to bind out *apprentices*.

By the militia act, 43 Geo. III. c. 47, s. 21, the overseers were directed to give an account of allowance made to militia men, &c.; but by the 60th section of 4 & 5 Will. IV. c. 76, so much of the statutes that required relief to be given to the wives and families of substitutes, hired men, or volunteers in the militia, are repealed.

Guardians' accounts.

Accounts, how kept and produced at monthly meetings, and proportions determined, (*i. e.* the monthly meetings of guardians, *ante*, s. 24.)

Proportion for each parish.

At the monthly meeting required by the 24th section of 22 Geo. III. c. 83, it is by the same section enacted, "That the treasurer shall produce, fairly written, one account of the debt incurred in the preceding month, for utensils and materials for the purpose of manufacture, and for furniture, alterations, or repairs of the buildings, and also for the salary or allowance to the governor or treasurer, and servants (if any), in which account the rent of such house or houses, buildings, and premises, if the same shall be rented, shall be charged in the month next after such rent shall become due, according to the terms of the agreement for taking the same; which account, when settled and agreed to, shall be signed by the said guardians attending such meeting: and the sums to be paid by each of such parishes, townships, and places, on that account, shall be settled and adjusted at such meeting, in proportion to the sums paid by each of such parishes, townships, and places, on account of their poor, on a medium of three

(*a*) See fully the valuable communication circulated from the Poor Law Commissioners' Office, Somerset House, 1st March, 1836, to overseers, directing them how to keep and return their accounts; and a circular to *auditors* of accounts, 25th June, 1836.

years next preceding the date of such agreement (to be settled and ascertained at such first monthly meeting, in the manner to be specified by the said agreement so to be entered into for uniting as aforesaid, and according to the mode or form and table contained or referred to in the said schedule, No. XV.) and in like manner, and in the like proportions, at every succeeding monthly meeting: and the money shall be then, or within one week after, paid into the hands of the said treasurer, to be by him applied in discharge of the several articles and debts contained in such account: and the said treasurer shall also at the same time produce, fairly written, one other account of the victuals, beer, firing, and other necessaries, for the use and maintenance of the poor, and of the governor, at such house or houses, and all other incidental expenses; which shall be then accounted for and proportioned by the said guardians according to the number of persons which shall have been sent from each of the said respective parishes, townships, and places, and for the time they shall have resided in such house or houses within such month, according to the mode or form and table, and in the manner for that purpose also mentioned in the said schedule No. XVI.; and the sum due from each parish, township, or place, shall be specified at the foot of such account, which shall, when settled and agreed to, be signed by such guardians or the major part of them, and be afterwards inspected by the visitor, if not a guardian, and allowed by him, if he shall approve thereof: and in case default shall be made in payment of the respective sums so proportioned to be paid in respect of any such parish, township, or place, for seven days after the same shall be so settled and proportioned, and the money demanded, it shall and may be lawful for any justice of the peace for the limit where such house or houses shall be situate, upon complaint made to him upon oath of such default, to levy the said respective sums to be settled and proportioned as aforesaid, by distress and sale of the goods and chattels of any guardian of the poor for any such parish, township, or place, making such default: and at the end of every year the account shall be finally closed, and the balances paid and received, according to the mode prescribed by the said schedule, No. XVI."

1. *Overseers' Accounts, delivering and passing same.*

To be paid to treasurer.

Account of food, &c.

Default of payment.

Distress on the guardian.

Rex v. *Great Farringdon*, 9 *B. & C.* 541. A rated parishioner has a right to inspect the accounts of the expenditure of the parish, kept by *guardians* of the poor, appointed under the 22 Geo. III. c. 83. Assuming that he has no right to appeal, or that the time for appeal is gone by, he may have other good reason for inspecting the books. He has a right to see what has been done, and the Court of King's Bench will grant a mandamus, commanding the guardians, &c. to allow such inspection. *Ante*, 213.

A rated inhabitant has a right to inspect guardians' accounts.

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By the 4 & 5 Will. IV. c. 76, s. 47, it is enacted, "That every person having the receipt or distribution of the monies assessed for the poor in any parish or union, or holding any books or goods relating thereto, shall once in every quarter, in addition to the annual account now by law required, and where the rules of the commissioners shall have come in force, then as often as the said rules shall direct, but not less than once in every quarter, render to the guardians, auditors, or other persons as by any statute or custom, or the said rules, may be appointed to audit such accounts, or in default of any such guardian, auditor, or other person being so appointed, then to the justices at their petty sessions, an account in writing of all monies and things committed to their charge, or received or expended by them on behalf of any such parish or union, and if required shall verify on oath the truth of the same, or subscribe a declaration to the truth thereof: and all balances due may be recovered in the same manner as any penalties and forfeitures are recoverable under this act: the proceeding not to exonerate surety."

Overseers, &c., to pass accounts *quarterly*, in addition to the annual account.

Recovery of balances.

Where a union has been formed, the 28th rule of the commissioners requires the guardians to appoint a competent person to be auditor of the

Guardians of unions to appoint an auditor, who

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shall audit the accounts quarterly.

accounts; and such auditor shall, four times in every year, that is to say, within thirty days after Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day, audit the accounts of the union and of the parishes comprised therein, according to the laws in force for the time being for the administration of the relief of the poor. A form of certificate of allowance is given.

An indictment for not accounting must show a proper order for it, but personal service of the order not necessary.

Reg. v. *Crossley*, 2 *P. & D.* 319; 10 *A. & E.* 132. An indictment stated that the Poor Law Commissioners duly made an order that the auditor of a union should audit the accounts four times every year, viz., within thirty days of Lady-day, Midsummer, Michaelmas, and Christmas days, respectively; that a copy of this order was duly sent to the defendants, overseers of a township in the union; that it was the duty of the defendants to account to the auditor when the commissioners should order; that the defendants were required by the auditor to account within thirty days of Christmas-day, and refused. Other counts charged the defendants with a breach of duty in not accounting to the auditor when requested by him. This indictment is not sustainable under 4 & 5 Will. IV. c. 76, s. 47, as the first count does not allege that the commissioners had made any order that the defendants should account at the specified periods, and as the act does not oblige them to account at the request of the auditor, a breach of which alleged duty was the offence charged in the other counts. The Poor Law Commissioners may be described in an indictment by their style of office. The averment that their order was sent to the defendants is sufficient under the 18th section, personal service of the order not being necessary.

These accounts are independent of and distinct from the *final* account which the overseers are bound to make at the expiration of their office.

The 7 Jac. I. c. 3, which entrusts them with the disposition of charitable donations given for the binding out of apprentices in places not corporate, requires that they shall, once every year in Easter-week, or within one month after Easter-day, make a true and perfect account before two or more justices of all sums employed by them in binding apprentices under that act, and of all bonds and obligations for payment of such sums, and of all monies remaining in their hands not employed; and at (or within ten days after) making the account, deliver to their successors all such obligations, bonds, and money remaining unemployed.

Accounts on going out of office to be submitted to justices.

By 43 Eliz. c. 2, s. 2, "The churchwardens and overseers so to be nominated, or such of them as shall not be let by sickness or other just excuse, to be allowed by two such justices of peace, or more, as is aforesaid, shall meet together at the least once every month in the church of the said parish, upon the Sunday in the afternoon, after divine service, there to consider of some good course to be taken, and of some meet order to be set down in the premises; and shall within four days after the end of their year, and after other overseers nominated as aforesaid, make and yield up to such two justices of peace as is aforesaid, a true and perfect account of all sums of money by them received, or rated and *sessed and not received, and also of such stock as shall be in their hands or in the hands of any of the poor to work, and of all other things concerning their said office; and such sum or sums of money as shall be in their hands, shall pay and deliver over to the said churchwardens and overseers, newly nominated and appointed as aforesaid; upon pain that every one of them absenting themselves without lawful cause as aforesaid, from such monthly meeting for the purpose aforesaid, or being negligent in their office, or in the execution of the orders aforesaid, being made by and with the assent of the said justices of peace, or any two of them before mentioned, to forfeit for every such default of absence or negligence, twenty shillings."

* *Sic.*

Proceedings for arrears.

Sect. 4. "It shall be lawful, as well for the present as subsequent churchwardens and overseers, or any of them, by warrant from any two such justices of peace as is aforesaid, to levy as well the said sums of money and all arrearages, of every one that shall refuse to contribute according as they shall be assessed, by distress and sale of the offender's goods, as the

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sums of money or stock which shall be behind upon any account to be made as aforesaid, rendering to the parties the overplus; and in defect of such distress, it shall be lawful for any such two justices of the peace to commit him or them to the common gaol of the county, there to remain without bail or mainprize, until payment of the said sum, arrearages, and stock: and the said justices of peace or any of them, to send to the house of correction or common gaol such as shall not employ themselves to work, being appointed thereunto as aforesaid; and also any such two justices of peace to commit to the said prison every one of the said churchwardens and overseers who shall refuse to account, there to remain without bail or mainprize, until he have made a true account, and satisfied and paid so much as upon the said account shall be remaining in his hands."

Parish officers shall make up and deliver their accounts to their successors.

The requisites of such accounts.

17 Geo. II. c. 38, s. 1. "The churchwardens and overseers of the poor shall yearly and every year, within fourteen days after other overseers shall be nominated and appointed to succeed them, deliver in to such succeeding overseers a just, true, and perfect account in writing, fairly entered in a book or books to be kept for that purpose, and signed by the said churchwardens and overseers hereby directed to account as aforesaid, under their hands, of all sums of money by them received, or rated and assessed and not received, and also of all goods, chattels, stock, and materials that shall be in their hands, or in the hands of any of the poor, in order to be wrought, and of all monies paid by such churchwardens and overseers so accounting, and of all things concerning their said office. And shall also pay and deliver over all sums of money, goods, chattels, and other things, as shall be in their hands, unto such succeeding overseers of the poor; which said accounts shall be verified by oath, or by the affirmation of persons called Quakers, before one or more of his majesty's justices of the peace, which said oath or affirmation such justice or justices is and are hereby authorised and required to administer, and to sign and attest the caption of the same at the foot of the said account, without fee or reward. And the said book or books shall be carefully preserved by the churchwardens and overseers, or any of them, in some public or other place in every parish, township, or place; and they shall and are hereby required to permit any person there assessed, or liable to be assessed, to inspect the same at all seasonable times, paying sixpence for such inspection; and shall, upon demand, forthwith give copies of the same or any part thereof to such person, paying at the rate of sixpence for every three hundred words, and so in proportion for any greater or less number." (*a*)

Books may be inspected, paying 6*d*., and copies taken, paying 6*d*. for three hundred words.

Penalty on parish officers not accounting as this act directs.

Sect. 2. "In case such churchwardens and overseers of the poor, or any of them, shall refuse or neglect to make and yield up such account, verified as aforesaid, within the time hereinbefore limited or appointed, or shall refuse or neglect to pay and deliver over such sum or sums of money, goods, chattels, and other things in their hands, as by this act is directed; in either of the said cases, it shall and may be lawful to and for any two or more justices of the peace to commit him or them to the common gaol until he or they shall have given such account, or shall have paid or yielded up such monies, goods, chattels, and other things in their hands as aforesaid."

Accounts of churchwardens and overseers of the poor to be submitted by them to two or more justices at a special sessions.

By 50 Geo. III. c. 49, s. 1, after reciting 43 Eliz. c. 2, s. 2, and 17 Geo. II. c. 38, s. 1, and that two or more justices should be empowered to examine and correct, and to allow and approve every such account before the same shall be signed and attested, it is enacted, "That in all cases where any such account is required to be made and yielded, and to be signed and attested as aforesaid by virtue of the said last recited act, every such account shall be submitted by the churchwardens and overseers to two or more justices of the peace of the county, dwelling in or near the parish or place to which such account shall relate, at a special sessions for that purpose to be holden within the fourteen days appointed by the said last

(*a*) This provision applies to the guardians of the poor. See *Rex* v. *Great Farringdon*, 9 *B. & C.* 541.

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recited act for delivering in such account; and such justices shall and they are hereby authorised and empowered, if they shall so think fit, to examine into the matter of every such account, and to administer an oath or affirmation to such churchwardens and overseers of the truth of such account, and to disallow and strike out of every such account all such charges and payments as they shall deem to be unfounded, and to reduce such as they shall deem to be exorbitant, specifying upon or at the foot of such account every such charge or payment and its amount, so far as such justices shall disallow or reduce the same, and the cause for which the same is disallowed or reduced; and it shall be lawful for such two or more justices, and they are hereby required to signify their allowance and approbation of any such account under their hands, and to sign and attest the caption of the same at the foot of such account, in manner directed by the said last recited act: and in case such churchwardens and overseers or any of them shall refuse or neglect to make and yield up or to submit such account, or to verify the same by oath as aforesaid, or to deliver over to their successors within ten days from the signing and attesting such accounts, any goods, chattels, or other things, which on the examination and allowance of such account in manner aforesaid shall appear to be remaining in the hands of such churchwardens or overseers, it shall and may be lawful for any two or more justices of the peace to commit him, her, or them, to the common gaol, until he, she, or they shall have made and yielded such account, and verified the same as aforesaid, or shall have delivered over such goods, chattels, and other things which shall appear to be so remaining in his, her, or their hands as aforesaid; and in case such churchwardens or overseers, or any of them, shall refuse or neglect to pay to their successors, within fourteen days from the signing and attesting such account, any sum or sums of money or arrearages which on the examination and allowance of such account in manner aforesaid shall appear or be found to be due and owing from such churchwardens or overseers, or any of them, or remaining in their hands, it shall and may be lawful for the subsequent churchwardens and overseers, by warrant from any two or more justices of the peace, to levy all such sum or sums of money by distress and sale of the offender's goods, rendering to the parties the overplus; and in default of such distress, it shall be lawful for any such two justices of the peace to commit the offender or offenders to the common gaol of the county, there to remain without bail or mainprize until payment of such sum or sums of money or arrearages as aforesaid."

Penalty for neglect, &c.

The above provision, by s. 6 of the same statute, is restrained from affecting parish officers exempted under local acts from rendering such accounts.

It is discretionary with the justices to commit an overseer refusing to account.

It is not imperative on the justices to commit an overseer who refuses to account. A very old and infirm man was elected churchwarden, but never sworn in, and although he signed the poor-rates, he had never interfered in their collection, or received any of the parish monies. He rendered no accounts, but the justices refused to commit. On an application to the King's Bench for a mandamus to compel them to commit, it was held, that although it was the duty of the party to render some account, as the statute required an account of monies rated and assessed and not received, and of all things concerning the office, yet the statute does not *compel*, but only *authorises* the justice to commit, and as the justices had exercised a discretion, the rule as to them was discharged with costs. (*Rex* v. *Justices of Norfolk*, 4 *B. & Ad.* 238; 1 *Nev. & Man.* 67.)

The 50 Geo. III. c. 49, which requires churchwardens and overseers to submit their accounts to two justices at special sessions within the fourteen days appointed by the 17

Lester's case, 16 *East*, 374. Lester, late overseer of Paddington, was in custody under a warrant by two justices for not delivering in his accounts to the succeeding overseers within fourteen days from their appointment. It was contended, that the 50 Geo. III. c. 49, which directs the accounts to be submitted to two justices at a special sessions, within the fourteen days appointed by the 17 Geo. II. c. 38, was substituted for the obligation to deliver them over to the succeeding overseers. By the 50 Geo. III. the overseers who refuse or neglect to submit the accounts to the justices, are

made liable to be committed; if, therefore, they have fourteen days allowed them for submitting their accounts to the justices, how can they be required within that time to deliver them over to the succeeding overseers? The duty imposed by one act is inconsistent with and would interfere with the other. Lord *Ellenborough*, C. J. "The provision in the 50 Geo. III. seems rather to apply to the manner of examining the accounts when yielded, leaving the accounts still as before to be delivered over to the succeeding overseers; but they are also within the fourteen days to be submitted to the justices for examination. An ulterior means is afforded of investigating them before the justices; the act only means that they shall be exhibited to the justices; it is, therefore, for a different object. It is very expedient that the succeeding overseers should have the accounts delivered in to them immediately from the former overseers, which is the object of the 17 Geo. II.; then the 50 Geo. III. directs that the account so to be delivered shall be submitted to the justices to be examined and approved by them; that, therefore, is manifestly cumulative." *Le Blanc*, J. "The churchwardens and overseers are to deliver in to the succeeding overseers their accounts verified on oath before one or more justices, who are to sign and attest the same; that is provided for by the 17 Geo. II. By the subsequent act, the accounts are to be submitted to two or more justices at a special sessions; and power is given them to examine and approve such accounts, and they are required to signify their approbation of them under their hands, and then to sign and attest as directed by the former act. This provision, therefore, is perfectly consistent with the provision in the former act."

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Geo. II. c. 38. for delivering in the said accounts to the succeeding overseers, is not a *substitution* in lieu of that provision in the 17 Geo. II. but is *cumulative*; and if the overseer refuse to deliver in such accounts to the succeeding overseers within the fourteen days, he may be committed.

Rex v. *The Justices of Colchester*, 5 *B. & A.* 535; 1 *D. & R.* 146. The sessions may hear an appeal against the overseers' accounts, passed by two justices, pursuant to 17 Geo. II. c. 38, at a petty sessions; although they have not been examined and allowed at a *special* sessions, pursuant to 50 Geo. III. c. 49.

The sessions have jurisdiction to hear an appeal against overseers' accounts which have not been previously allowed at a *special* sessions, pursuant to 50 Geo. III. c. 49.

Goff's case, 3 *M. & Sel.* 203. Goff was committed, for that he having been collector of the rates for Richmond, refused to account and pay over the moneys collected by him to W. S., the person duly authorised to receive them; and he was committed until he should have made a true and fair account, and until such money as upon the said account should appear to be remaining in his hands should be paid to W. S.; and the keeper of the gaol was required to keep him *until he should be discharged by due course of law*. It was contended that the warrant was void for directing the detention till he should be discharged by due course of law. Lord *Ellenborough*, C. J. "If there was any uncertainty on the face of the commitment, I should have agreed with the argument; but coupling the premises with the conclusion, is it not in effect the same as if the warrant had directed the gaoler to detain the party until he had accounted? We must read the warrant as if the magistrates had in the conclusion recited over again the adjudication." *Le Blanc*, J. "Some precise authority ought to be shown to justify the court in adopting the objection made to this warrant. When the party has accounted and paid over the money, he will be entitled to be discharged by due course of law." The prisoner remanded. (This case qualifies the *Mayor of Northampton's case*, *post* 377.)

Commitment of a parish collector of the rates to gaol, there to remain until he should have made a true account, and until such money as should appear to be in his hands should be paid by him or his sureties, was held well, although it concluded by directing the gaoler to keep him until he should be discharged by due course of law.

Justices cannot commit a man for not accounting before the time allowed for rendering an account has elapsed. The accounts cannot be withdrawn from the two justices to whom they were *first* submitted, for the purpose of referring them to others; and if this be done, the allowance or disallowance of such others is void, and any unreasonable delay by such justices may be corrected by an application to K. B. But although the sessions cannot delegate their authority, they may remit such accounts to such two justices before whom they were first laid, as that is merely desiring them to execute their original authority. (*Rex* v. *Townsend*, *Bott*, 323; S. C. *Vin.* 417.) This was before 17 Geo. II. c. 38.

Rex v. *The Justices of Middlesex*, 1 *Wils.* 125; 1 *Bott*, 317. A mandamus was granted to swear Carr, late overseer, to the truth of his account,

Justice refusing to swear an overseer.

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upon an affidavit made by Carr, that he had delivered in an account to the justices, and was ready to swear to the truth thereof, but that they had refused to swear him. It was objected, that the accounts consisted of gross sums, and the justices asked him some questions touching the particulars, which he refused to answer, and therefore they refused to swear him to his account. By the Court: "A mandamus is a matter of course, and we cannot refuse to grant it. If the justices have any legal objection, they may return it upon the mandamus. And if any person think himself aggrieved by the account, he may have his remedy by appeal."

to his account may be compelled by mandamus.

If a rated inhabitant makes an objection to the accounts, the justices at the special sessions are bound to examine them, and allow or disallow the items. If they refuse, and the fourteen days have expired, a mandamus will be granted. *Reg.* v. *J. Middlesex*, 8 *Dowling*, 89.

Justices must examine into objected items.

Rex v. *Peake*, 1 *Keb.* 574; 1 *Bott*, 308. The churchwarden was committed for refusing to account for all moneys received and disbursed by him, and of all such things as concerned his office. But upon an *habeas corpus* he was discharged; for if he be committed as overseer, it must be so expressed in the *mittimus*, although to be overseer be annexed to the office of churchwarden, for the justices have no power over him as churchwarden.

Churchwarden may be punished as an overseer: but in the commitment he must be called overseer.

By the stat. 23 Geo. III. for regulating the affairs of the poor of Birmingham, the guardians and overseers thereby appointed are directed to adjust their accounts at quarterly meetings of their own body; and an appeal is given to the sessions in respect of all matters done by virtue thereof: but the statute is silent as to any submission of the overseers' and guardians' accounts to magistrates, as required by the statute 50 Geo. III. c. 49; held, however, that a mandamus would lie to the guardians and overseers to pass their accounts in the manner required by that statute. *Rex* v. *Warwickshire* (*Justices*), *post*, 371.

Accounts under the Birmingham Act.

17 Geo. II. c. 38, s. 3. "If any overseer shall die, or remove from the place for which he was appointed, or become insolvent, before the expiration of his office, on oath thereof made, it shall be lawful for two justices of the peace to appoint another in his stead, who shall continue in office until new overseers are appointed; and if any overseer shall remove as aforesaid, he shall, before such removal, deliver over to such churchwarden, or other overseer of the same place, his accounts, verified as aforesaid, with all rates, assessments, books, papers, sums of money, and other things concerning his office, under the like penalties as are inflicted by this act on an overseer refusing to do the same after the expiration of his office; and if any overseer shall die as aforesaid, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office to some churchwarden or other overseer of the same place, and shall pay out of the assets left by such overseer all sums of money remaining due, which he received by virtue of his said office, before any of his other debts are paid and satisfied."

Overseer dying or removing, his accounts to be delivered to churchwarden, &c.

When a parish extends into more counties than one, or lies partly within and partly without the liberties of any corporate place, the officers of such a parish shall make one account before the head officers of the place corporate, and one other before the justices of the county. 43 Eliz. c. 2, s. 9.

Parish within a borough.

Before the 17 Geo. II. c. 38, the first section of which prescribes the manner of preparing the accounts, a very general and unsatisfactory statement of them seems to have been tolerated. Thus where two justices committed an overseer till he should make a true account, he having produced an account *in gross* of his receipts and payments, and refused to produce his books or a particular account of the moneys received on rates assessed, or of the particular payments making up the sum charged in gross; the Court of King's Bench discharged him from custody, saying that the justices had no authority to commit in this manner by the 43 Eliz. c. 2, for that an account was confessed to have been tendered. (*Rex* v. *Corrocke*, 1 *Show.* 395; 1 *Bott*, 310; *Walrond's case*, *ib.* 314).

Accounts before 17 G. 2.

Delivering in a summary or balance sheet of the moneys received and

Delivering a sum-

Overseers' Accounts.

expended, is not such an account as the statute (17 Geo. II. c. 38, s. 1) requires. The overseers must do a great deal more. They are to give to the succeeding overseers a just, true, and perfect account in writing, fairly entered in a book or books, to be kept for that purpose, of all sums of money by them received, or rated and assessed and not received. Now a mere balance sheet will not show what sums have been rated and assessed and not received. The overseers clearly ought to verify and deliver over the sort of account required by the very terms of the statute. Any usage to the contrary cannot dispense with the provisions of the act of parliament. Per *Abbott*, C. J. *Rex* v. *Justices of Worcestershire*, 3 *D. & R.* 299. And a writ of mandamus was issued to the justices to hear and determine a complaint against the ex-overseers for not properly accounting pursuant to the statute. *Ib.*

mary or balance sheet insufficient.

Rex v. *Justices of Warwickshire*, 2 *D. & R.* 299. *Abbott*, C. J. "One question is, whether these accounts have been *passed:* I mean passed so as to direct the attention of those who are to pass them to a particular item which is the subject of objection. I do not say that in the investigation of voluminous accounts, such as these, the attention of the parties is to be directed to the expenditure of every shilling which may have been paid by the guardians in the ordinary discharge of the duties of their office, such as trifling sums paid to paupers, or minute expenses of that description. The strong fact here alleged is, that a very large sum of money (*a*) had been paid for a particular purpose, the legality of which payment might be doubted. It is now supposed to have been paid under the sanction of the authority of the magistrates, before whom it was the duty of the guardians and overseers to pass their accounts, but against the opinion of many persons, who thought that such a disbursement ought not to have been made. It is alleged that the overseers and guardians were apprised of such objections, before they proceeded to pass these accounts. Under such circumstances, it was their duty, in seeking to have the allowance of such an item, to have directed the attention of the magistrates to that item, so that they might exercise their judgment upon the subject, and allow or disallow it, according as they were satisfied or dissatisfied with it. What is the allegation in this case? The party who makes the affidavit states that he was present when the accounts were submitted to the justices, but that the attention of the justices was not called to nor did they proceed to examine the whole of the items, but merely looked at the summary, in which was a lumping sum of 2000*l.* paid to the constables. There is no affidavit, on the other hand, to show that the parties inquired into or had their attention directed to the component parts of that sum. I am therefore clearly of opinion that we ought to make that part of the rule absolute which prays for a mandamus to the overseers and guardians to pass their accounts; and it will be competent for them to make a return thereto."

Mandamus will lie to compel guardians to make a fresh account, the former account having passed without calling the attention of the justices to a large objectionable item.

By 17 Geo. II. c. 38, poor-rates in hands of overseer are to be paid by his executors in preference to all other debts. (2 *Bla. Com.* 511.) As to the proof in bankruptcy against an overseer, see *Ex parte Exleigh*, 6 *Ves. Jun.* 811; *Chitty's Eq. Dig.* 725.

Payment of rate by executors.

By bankrupt.

By 17 Geo. II. *ante*, the overseers are required to permit any person assessed or liable to be assessed to inspect the accounts—a provision similar to that already considered, as to the poor-rate.

Inspection of accounts.

Rex v. *Great Farringdon*, 9 *B. & C.* 541. A rated parishioner has a right to inspect the accounts of the expenditure of the parish, kept by *guardians* of the poor, appointed under the 22 Geo. III. c. 83. Assuming that he has no right to appeal, or that the time for appeal is gone by, he may have other good reason for inspecting the books. He has a right to see what has been done, and the Court of King's Bench will grant a mandamus, commanding the guardians, &c. to allow such inspection. *Ante*, 213.

A rated inhabitant has a right to inspect guardians' accounts.

(*a*) The sum allowed was nearly 400*l.* for prosecuting a man for a libel on two justices, relating to their conduct in committing a pauper for returning to a parish from which he had been removed.

Overseers' Accounts.

The overseers are not bound to permit parties to take extracts from all parochial books.

Rex v. *The Vestrymen of St. Marylebone*, 6 *N. & M.* 600; 5 *A. & E.* 268. The court cannot compel the officers of a parish to permit the rate-payers of the parish to take copies of or extracts from a book containing all parochial rates and accounts of all moneys received for parochial purposes, but not containing any account of parochial disbursements, kept under the directions of a local act.—So although the parish have adopted the provisions of 2 Will. IV. c. 60, (the Vestry Act.)

One overseer cannot sue another for refusal.

One overseer cannot sue another for refusing an inspection of accounts. *Wethered* v. *Calcut, ante.* See *Skingley* v. *Surridge, ante,* and *Rex* v. *J. Gloucestershire, post,* 381.

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2. What may be charged in accounts.

2. What may be charged in Accounts.

The overseers are entitled to take credit for all sums properly expended in the discharge of their duty, but not for disbursements to which the poor-rates and other moneys which come into their hands are by law inapplicable. See "*Purposes of the Poor Rate,*" *ante,* 139.

Relief to the poor not registered.

By 9 Geo. I. c. 7, s. 2, no parish officer shall (except upon *sudden and emergent* occasions) bring to the account of the parish any moneys he shall give to any poor person of the same parish who is not registered in the parish books as a person entitled to receive collection, upon pain of forfeiting 5*l.* And although the act does not go on to say that such items of expenditure shall be disallowed, the justices may very properly strike them out of the accounts.

Payments contrary to Poor Law Act to be disallowed.

By 4 & 5 Will. IV. c. 76, s. 89, "all payments, charges, and allowances made by any overseer or guardian, and charged upon the rates, contrary to that act, or at variance with any rule of the commissioners, are illegal; and every justice is hereby required to disallow such payments, &c.: provided always, that no allowance by any justice shall exonerate such overseer or guardian from any penalty or legal proceeding to which he may have rendered himself liable by having acted contrary to the rules of the commissioners, or to the provisions of that act."

What expenses overseer may charge. (*a*)

Overseers may justly charge to the parish whatever they have *bonâ fide* expended in providing work for the children of indigent parents, and for persons having no means of livelihood, in relieving those paupers who have claims upon the parish, and in the disposal of the stock raised for these purposes: indeed, it has been said that they may credit themselves *with any money expended for the good and on the business of the parish.* (*Per Ashurst,* J., *Rex* v. *Micklefield, Cald.* 509. (*b*)) But it appears by the same case, that an overseer proceeding through all the stages of an expensive law-suit, without the concurrence of a vestry, is personally liable. Of course they are entitled to charge whatever they have paid under the direction of a statute, or under any order upon them, or other legal process, as under 51 Geo. III. c. 79, and 52 Geo. III. c. 160, &c., or for costs of maintenance, removal, or appeal. (*Vide Rex* v. *Essex, ante.*) But it is not decided that the expenses of a law-suit, incurred by the officers without consulting the vestry, are chargeable in the account, unless, perhaps, where the emergency of the occasion allows no time for that precaution. In order to obtain the allowance of law expenses, the overseers must not have misconducted themselves in contracting them. In some instances the statutes which direct the expenditure of money authorise the overseers in express terms to charge it in their accounts: such are the enactments of 2 & 3 Anne, c. 6, s. 2; 17 Geo. II. c. 5, s. 1; 18 Geo. III. c. 19, s. 4; and 22 Geo. III. c. 83, s. 8.

They may charge

Reg. v. *Carpenter*, 6 *A. & E.* 794. Overseers may charge in their accounts

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(*a*) It has been held that commissioners of sewers may charge for law expenses *bonâ fide* incurred in the discharge of their duty, 1 *B. & Ad.* 223; and what waywardens may charge, *Rex* v. *Fowler*, 3 N. & M. 606.

(*b*) 1 *Bott, P. L.* 113; and see 3 W. & M. c. 11, s. 11.

the instalments of money borrowed under the authority of a statute for building workhouses, &c.; and if they neglect to pay it, a mandamus will lie to compel them to make a rate for the purpose, even after the lapse of many years.

2. *What may be charged in Accounts.*

for money borrowed and repaid under the authority of a statute.

It is presumed to be undeniable that the money advanced as an inducement to paupers, between whom an illicit intercourse has taken place, to marry, is a misapplication of the parish funds; and that if objected to on passing the overseers' accounts, such items must be disallowed. The question has never yet, it is believed, been before the superior courts; but it can hardly be said that expenses so incurred are for the relief of the poor, or can be classed among any of the objects to which those funds are by law applicable.

The expenses of a constable, in prosecuting *an assault* committed on him in the execution of his duty, cannot be paid by the overseer out of the poor-rate, and are not within the 18 Geo. III. c. 19, s. 4. *Rex* v. *Bird*, 2 *B. & A.* 522. See also *Rex* v. *Seville*, 5 *B. & A.* 180.

Overseers cannot charge in their accounts for money paid as a salary to one of the overseers.

Rex v. *Glyde*, 2 *M. & Sel.* 323, *n.*; In the accounts of the overseers, 12*l.* 10*s.* paid to W. as a salary was allowed. Lord *Ellenborough.* "This rule may be enlarged, subject to a case to be stated as to what the grounds for the allowance were, that we may ascertain that the salary was not meant as a pension to the overseer, which the law will not allow. We have no doubt on the face of the order that he has no title to a salary for any meritorious services, or for any services at all; but we would wish to relieve the parties if it has been paid in reality for the maintenance and keeping of the poor. Perhaps the best way will be to quash the order, and remit the case to the sessions to rehear the appeal."

The overseers are to be allowed only for their *bare* expenses. *Per Aston*, J., in *Rex* v. *Lord Ashburnham*, 2 *Nol. P. L.* 443, 462, *n.*

Salary of assistant overseer.

By 59 Geo. III. c. 12, s. 7, the overseers may be allowed the charge of a salary for an *assistant.* But such a charge was not allowed before the passing of that act, although made under the sanction of a vestry. *Rex* v. *Welch*, 1 *Bott*, 341; 4 *Doug.* 236.

Overseers cannot charge for making or collecting poor-rate, or making out list of defaulters, although authorised by a vestry.

Rex v. *Gwyer*, 2 *Adol. & Ell.* 216; 4 *Nev. & Man.* 158. The overseers are not entitled to charge in their accounts for making poor-rates, for making divisions of the same, for making copy of the same for the collectors, for payments to an accountant for examining, making up, and entering the accounts of the year, and list of defaulters on the rates, nor poundage for collecting the rates, although such charges had been authorised by the resolution of the vestry. This was an appeal against the accounts of a parish of great extent, with a population of 13,000 persons and an annual expenditure for the poor of 8000*l.* For some years there had been an assistant-overseer, but in the year in question the vestry resolved that none should be elected, but that the overseers should have power to call in what assistance they required; and the sessions found that the sums objected to were fair and reasonable. But it was held, that although these circumstances made it extremely reasonable that the sum should be allowed, that the sessions had no power to do so; and that the situation of overseers is like that of other persons upon whom the law casts burdensome duties without remuneration.

Defence of poor-rate.

The quarter sessions may be justified in refusing to allow the expenses of defending a poor-rate. *Reg.* v. *Fouch, ante.*

Defence of appeal against their accounts not allowed.

Under no circumstances can the expense of an appeal against the overseer's account be allowed out of the poor-rates. *Rex* v. *Johnson*, 5 *A. & E.* 340; 6 *N. & M.* 627.

3. Reimbursing Overseers.

3. *Reimbursing overseers.*

What disbursements they may reimburse.

It frequently happens that the overseers advance money for the benefit and on account of the parish, and in such cases they may now reimburse themselves out of any subsequent rate made by them during their year. If there be a balance due to the overseers, the successors cannot pay them,

3. *Reimbursing Overseers.*

Cannot borrow money.

How far they may reimburse predecessors.

Sessions no power to reimburse them before these statutes

Except where one overseer has a surplus.

except in cases provided for by statute. *Rex* v. *Tawney, ante*; *Rex* v. *St. Peter's, Chichester, Fol.* 33: 1 *Bott*, 343; as a general rule, overseers cannot borrow money, unless under a special authority, and therefore a surety for the overseer is not liable for sums lent to the overseer and applied to parochial purposes. *Leigh* v. *Taylor*, 7 *B. & C.* 491.

By 17 Geo. II. c. 38, s. 11, the succeeding overseers, by levying and getting in the arrears of any rate which their predecessors made, but from refusal or neglect of the party rated were unable to get in, might, and still may, reimburse the advances of those predecessors to the extent of the arrears so got in. And by 41 Geo. III. c. 23, s. 9, it is lawful to reimburse all sums which the preceding officers may have advanced during a time when no rate has been made, or where an appeal has been depending by which the whole rate might be affected.

So that, unless the non-payment of the rate have arisen from the remissness of the officers themselves, (which being no neglect or refusal of the party rated, comes not within statute 17 Geo. II. c. 38, s. 11,) or unless the officers, having made and collected the rate, have been imprudent enough to assess it too low, in which event the relief given by stat. 41 Geo. III. (G. B.) c. 23, s. 9, would not be applicable, the advances *bonâ fide* made by parish officers seem now to be secured to them, notwithstanding any accident by which they may have been unable to repay themselves during their year of office.

Before the passing of these statutes, where it appeared that an overseer had omitted to take credit in his account for a sum of money justly expended by him, it was held that the sessions had no authority, upon appeal, to order his successors to pay the money to his executor, although the vestry consented, (*Rex* v. *Ware, Fol.* 10; 10 *Mod.* 104,) for otherwise a man who came into the parish after the overseers' year, would be charged to the expense of that preceding year, while he had been contributing to the maintenance of other poor in another parish. (*Id. Rex* v. *Goodcheap*, 6 *T. R.* 159.)

But where one overseer is money out of pocket, and one of his co-officers has received a sufficiency to reimburse him, an order may be made on such officer. (*Semble, Rex* v. *Limehouse, Fol.* 22, 1 Geo. I.; and see 2 *Nol.* 457).

4. Delivering over Balance, Books, Chattels, &c.

4. *Delivering over balance, books, chattels, &c.*

Accounts to be delivered over.

Indictment.

Commitment.

Distress.

Inspection of the books by rated

By the 43 Eliz. c. 2, s. 2, the two or more justices who took the account of the overseers, upon a balance found against them, might order all or any of them to pay such balance; and might issue warrants of distress to enforce the payment (see *Rex* v. *Topsham* 2 *Salk.* 484; *Rex* v. *Bartlett*, 1 *Bott*, 325; *Rex* v. *Whitear*, 1 *Bott*, 326); *Rex* v. *Bill*, cited by Lord *Mansfield*, in 2 *Burr.* 805, the overseers were indicted for not obeying the order of sessions in paying over the balance.

The 17 Geo. II. c. 38, s. 2, empowered any two or more justices to commit the overseers to gaol until they had given an account, and yielded up the moneys, goods, or other things in their hands.

And now by the 50 Geo. III. c. 49, s. 1, it is enacted, "that if the churchwardens and overseers, or any of them, refuse or neglect to deliver over to their successors, within ten days from the signing or attesting such accounts, any goods, chattels, or other things, which on the examination and allowance of such accounts shall be remaining in the hands of such churchwardens and overseers, the subsequent officers may, by warrant from any two or more justices, levy the same by distress and sale of the offender's goods, returning the overplus; and in default of such distress, the justices may commit the offender or offenders to the county gaol, to remain without bail or mainprize until payment." See construction, *Lester's case, ante.*

By 17 Geo. II. c. 38, s. 6, the new officers, having received the book or books containing the account, they or one of them must keep such book or

books in some public place; and shall permit any person there assessed, or liable to be assessed, to inspect the same at all reasonable times, for the fee of 6*d.*; and on demand shall give copies thereof, or of any part thereof, to such person, at the rate of 6*d.* for every 300 words, and in proportion for any greater or less number. Where there is a vestry within a parish or in a township, that assembly may direct in what custody the account shall be kept.

4. *Delivering over Balance, Books, Chattels, &c.*

inhabitants, and taking copies thereof.

Balance must be paid over to successors.

Rex v. *The Justices of Somersetshire*, 2 *Stra.* 992. Mandamus to the justices to grant a warrant for levying the balance of the last overseers' account. They return, that there was such a balance, but that the vestry had ordered them to retain it, and employ an attorney to sue for some charity-money, and get it laid out for the benefit of the poor; that one Young was so employed, and the balance exhausted in fees; and that the overseers had engaged to pay Young: and for that cause they had refused to grant the warrant. But by the Court: "There must go a peremptory mandamus; for the 43 Eliz. c. 2, s. 2, says, the balance shall be paid over to the new overseers, under a penalty: and it is not in the power of the vestry to dispense with the statute."

One overseer may pay surplus in his hands to another overseer.

Malkin v. *Vickerstaff*, 3 *B. & Ald.* 89. A parish contained two divisions, each of which had separate overseers and separate rates, and their poor were also paid separately: the overseers of both divisions met at the end of every year, and in making up their accounts, if the overseers of the one had money in hand, they paid over the *balance* to the overseers of the other.—Held, that this was in effect one joint and entire parochial account, and that all the overseers were to be considered as joint overseers of the parish at large.

An overseer is discharged by his *bankruptcy and certificate* from a debt due in respect of a sum of money in his hands as overseer at the time of his bankruptcy, although this happen before the expiration of his year of office, before which time he cannot be compelled to account.

Rex v. *Tucker*, 5 *M. & Sel.* 508. Tucker and another were appointed overseers from Lady-day, 1815, to Lady-day, 1816; and Tucker received between Lady-day, 1815, and the end of January, 1816, 952*l.* 4*s.* 6*d.*, out of which he disbursed 770*l.* 15*s.* 3*d.*, leaving a balance in his hands of 181*l.* 8*s.* 10*d.* On the 6th February, 1816, a commission of bankruptcy issued against him, and he was declared bankrupt, and accounted, under the commission, for the balance; but having, before the commission, absconded from his house, the account books in his hands, as overseer, were taken away from his house by the churchwardens and overseer. At Lady-day, 1816, new overseers having been appointed, Tucker attended a vestry meeting, and made up his accounts by checking them with the account books in the hands of the overseers; from which it appeared that the above balance was due from him to the parish before he became bankrupt, and he offered to verify the account on oath. Afterwards he obtained his certificate; notwithstanding which, the justices issued their warrant upon the complaint of one of the overseers, that Tucker had not made and given in his account, and yielded up the moneys and things claimed by the parish to them, the succeeding overseers; under which warrant he was carried before the justices and committed. And upon a rule *nisi* for a *habeas corpus*, the doubt was, if his bankruptcy and certificate discharged the debt; and *Rex* v. *Eggington*, (1 *T. R.* 369) was cited, which, however, had not been approved of in *Ex parte Exleigh* (6 *Ves.* 811). It was also argued that an overseer is not like a mere trustee; he is indictable if he does not account and pay over the balance (*Rex* v. *King*, 2 *Str.* 1268; *Rex* v. *Commins*, 5 *Mod.* 179); though he cannot be called on to bring in his account until the year expires. (*Rex* v. *Gibson*, *Bul.* 20). Now, at the time of the defendant's bankruptcy, there was not any debt due from him as overseer for which he could be sued, nor any one to whom he could pay it until his successors were appointed; consequently this is not a debt proveable under the commission within the statutes of bankrupt.

But *per Curiam*, "The money in his hands at the time of the bankruptcy was *debitum in præsenti*, although he might only be accountable for it *in futuro*." It had been held, with respect to the land-tax collectors, that any of the parishioners might prove.

Two justices out of sessions may

Rex v. *Carter*, 4 *T. R.* 246. On an appeal against the allowance of the accounts of Mr. Read, an overseer of Fareham, the sessions disallowed several

4. *Delivering over Balance, Books, Chattels, &c.*

items, amounting to 42*l.* 7*s.* 1*d.*; but the order of sessions did not direct Read to pay that sum over to the succeeding overseers. On Read's subsequent refusal to pay over this sum, an application was made to the defendants, as magistrates, to enforce payment under 43 Eliz. c. 2, ss. 2, 4; and 17 Geo. II. c. 38, s. 3; but they, conceiving they had no authority, declined to interfere. Lord *Kenyon*, C. J.: "It seems to me that these justices have jurisdiction in this case. The effect of the appeal was the ascertaining the *quantum* of the arrears; and then the statute attaches, and enables the magistrates out of sessions to enforce the payment of the balance." *Grose*, J. (*Ashurst* and *Buller*, Js. absent): "These are as much arrears now as they were before the appeal, only the *quantum* is ascertained." Rule absolute.

enforce payment of the balance of overseers' account after appeal, though the sessions do not make any order for payment.

Balance to be levied by distress, payment having been ordered by sessions on appeal.

Rex v. *Hedges*, 3 *Salk.* 533. On appeal against the allowance of the account, the sessions ordered the overseer to pay so much over, which they adjudged to be in his hands; and for not doing this they committed him. But by the Court: "They should have levied the arrears by distress and sale, and in default of distress, have committed him; for the sessions must execute their judgment in the same manner as the two justices must do."

For non-payment of balance there must be distress before commitment. (*a*)

Reg. v. *Turner*, 1 *Bott*, 341; *Vin. Ab. Poor.* (A), *s.* 4, *n.* If accounts are adjusted, and the overseers refuse to pay the balance, they cannot be committed immediately, but a warrant must issue to distrain upon them, and upon the return thereof there may be a commitment.

The warrant to levy the balance may be granted upon the application of *one* of the succeeding overseers, although the rest refuse to concur in such application.

Rex v. *Pascoe*, 2 *M. & Sel.* 343. On an application for a mandamus to two justices to grant a warrant of distress for levying 39*l.* 13*s.* 11½*d.* upon the late overseers of Ludyan, it appeared that their accounts for the year ending Easter, 1813, were submitted to the defendants for allowance, when the defendants disallowed several items, amounting to 43*l.* 1*s.* 11½*d.* and made an order for the said overseers so pay over the same to the present overseers. The late overseers appealed against the order, which appeal was dismissed for want of sufficient recognizance: but notwithstanding such dismissal, they refused to pay over the balance; whereupon application was made to the defendants for a warrant of distress, to levy the same on their goods. A summons issued, and the late overseers attended the defendants, when it appeared that they had paid over 3*l.* 8*s.*, but refused to pay the remainder; whereupon the defendants were required by one of the present overseers to issue their warrant of distress; but as the other two parish officers refused to concur with him in such application, the defendants thought they had no jurisdiction, for the want of the concurrence of the major part of the present churchwardens and overseers, and thereupon refused to issue their warrant. It was stated, that the overseer who made the request was not able to procure any other of his colleagues to concur with him. The Court said, that without imputing fraud in this case, they should be restraining the meaning of the statute too much if they did not put it into motion upon the application of any one of the overseers; that the mischief of a more strict construction would be great, for then the dissent of any one of the churchwardens and overseers would have the effect of suspending the statute. *Per Curiam.* Rule absolute.

Where a balance may be ordered to be distributed.

Borough of Banbury, 1 *Bott*, 339. Where four towns lie in one parish, having each an overseer, and there is one rate for the whole, and one account, although each overseer collected and paid that of his respective town, and the inhabitants of each were respectively assessed by their respective overseers, the justices may order a *distribution*, where there is a want of money in some and a surplusage in others.

Repayment of balance.

Rex v. *Churchwardens of Topsham*, 1 *Bott*, 340. It was held the justices might order payment of the balance to the succeeding overseers.

One overseer reimbursing another.

And in *Rex* v. *Limehouse*, 1 *Bott*, 342, that one overseer should reimburse another where the one had a surplus and the other was money out of pocket.

Warrant of dis-

Rex v. *The Justices of Essex*, 3 *B. & Adol.* 941. The overseers of

(*a*) *Semble*, no *action* will lie against an overseer to recover a balance in hand, 1 *M Cleland & Young*, 450; 2 *Burr.* 1157.

Woodford were accustomed to divide the duty of collecting the rates, each performing it for half a year Peppercorn and Wood were appointed overseers, and Wood, having discharged his own half year's duty, offered his colleague to do and did the other likewise He afterwards delivered in the annual overseers' account to the vestry, making no distinction between the half years It being urged that both overseers should sign the account, Peppercorn, after some objection, subscribed with Wood a declaration that they believed it to be correct, but on passing the account at special sessions, Peppercorn refused to swear to its accuracy, saying that he knew nothing of it except having examined the vouchers, and it was passed on the oath of Wood only A balance remained unpaid to the parish Held, that the signature of Peppercorn was not an adoption of his colleague's acts during the latter half-year, and therefore (*Parke*, J *dubitante*) that Wood could not be considered as Peppercorn's agent during that half-year, but that at all events a distress could not issue against Peppercorn, the precise arrear during that period not being ascertained

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tress cannot be issued against a co overseer on the ground that he signed the account

The Mayor and Churchwardens of Northampton, Carth 152, 1 *Bott*, 309 The mayor of Northampton committed the churchwardens, as overseers of the poor, for refusing to account, and the warrant of commitment concluded, *until they be duly discharged according to law* The court held the commitment void, because the warrant ought to conclude, *there to remain until they should account*, as the statute doth appoint And the difference is, where a man is committed as a criminal, and where only for contumacy for in the first case, the commitment must be until discharged according to law, but in the latter, until he comply and perform the thing required, for in that case he shall not lie till a sessions, but shall be discharged upon performance of his duty (See *Goff's case, ante*, 369)

Commitment should be until they account

Rex v *Clapham*, 1 *Wils* 305 A mandamus was granted to oblige the old overseer to deliver over the poor-rates to the new overseer, for, by the court, they are public books, and ought to be delivered over by one overseer to another, that all the parishioners may have access to them, and the overseer for the time being ought to have the custody thereof

Books to be delivered to the new overseers

Groome v *Forrester*, 5 *M & Sel* 314 Lord *Ellenborough* "This was a motion to set aside a verdict against the defendants, justices of Wenlock, in an action for false imprisonment This imprisonment complained of was the commitment of the plaintiff to the gaol at Shrewsbury, under the warrant of the defendants as magistrates, founded upon a conviction of the plaintiff as late overseer of the parish of Brosely, which conviction was had before the defendants, under the 17 Geo II c 38, against the plaintiff, for not delivering over to the succeeding overseers of the parish a certain book belonging to the parish, called the *Bastardy Ledger*, in breach of his duty under that statute, which required him to deliver over all such sums of money, goods, chattels, and other things, as should be in his hands, to such succeeding overseers In case of his refusal or neglect so to do, the statute (s 2,) authorises two or more justices of the peace to commit him to the common gaol, until he shall have paid and yielded up such moneys, goods, chattels, and other things in his hands The conviction, as far as relates to the withholding of the particular book in question, the offence charged in the information, is correct After finding him guilty thereof, it proceeds to adjudge that T——, the plaintiff and late overseer, for his offence aforesaid, (that is, in not delivering over the particular book, *The Bastardy Ledger*,) be forthwith committed to the common gaol at Shrewsbury, to be safely kept '*until he shall have yielded up all and every the books concerning his said office of overseer, belonging to the said parish*' This is the adjudication, and the warrant of commitment follows the adjudication, and of course directed the gaoler to keep Groome until he should have yielded up all and every the books concerning his office of overseer, thereby, in effect, casting upon the gaoler the function of inquiring and determining what were 'all and every the books concerning the office of overseer,' upon the yielding up of which the gaoler was to discharge his prisoner, instead of requiring the gaoler to detain his prisoner (as it should

An overseer was committed for refusing to deliver over a certain book called *The Bastardy Ledger*, but he was committed '*until he should have yielded up all and every the* books *concerning his said office of overseer belonging to the parish* The commitment is void

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have done) until he should have yielded up the particular book specified and described in the information, and for the non-delivery of which he was convicted. Such a commitment was certainly not authorised either by the letter or the spirit of the act of parliament, and subjected the prisoner to the risk of an imprisonment for an indefinite period, viz. until he had complied with a condition of greater extent than was imposed by the act of parliament; and where the gaoler who should have to detain him under the warrant had no adequate means of judging whether his prisoner should have, in fact, complied with the terms of such condition, and, of course, whether he was entitled to his discharge or not. This, it will be observed, is a conviction and commitment on the ground of a supposed contumacy; but the defendant could have been guilty of no contumacy in respect of the non-delivery of any other book or thing than that book which alone he had been required to deliver, viz. *The Bastardy Ledger*. The conviction and commitment, therefore, in respect of a supposed contumacy to any greater extent than that in which obedience had been previously required from him, must of course be unfounded. Previously to commitment for refusing to do a thing, there must have been a charge and proof, and the party cannot be committed '*until he does something*,' which is not charged and proved upon him that he has previously refused to do. Assuming that the warrant is in this respect illegal and void, the question is, whether it be therefore void *in toto;* and if it be, whether the defendants, as committing magistrates, are liable to an action of trespass and false imprisonment for having committed the plaintiff thereupon. And that it is void *in toto*, the case of *Milward* v. *Coffin*, *ante*, is an authority; there *Gould*, J., in the absence of *De Grey*, C. J., said, 'It is fairly and candidly conceded, that if one of the rates be illegal, the whole warrant is bad; and I take the first to be illegal, for assessing the plaintiff beyond the extent of his occupation. All that related to the assessment of lands, not in the occupation of the plaintiff, was *coram non judice;* the justices therein exceeded their jurisdiction, and their determination is a nullity.' In 2 *Inst.* 52, there are to be found several good rules in respect to commitments: the fifth of which is, 'The warrant or *mittimus*, containing a lawful cause, ought to have a lawful conclusion, viz., and him safely to keep until he be delivered by law, &c., and not until the party committing doth further order.' Likewise, in 2 *Inst.* 591, there is a further rule: 'Now as the *mittimus* must contain the cause, so the conclusion must be according to law, viz., the prisoner safely to keep, until he be delivered by due order of law, and not until he that made it shall give other order, or the like.' The case of *The Mayor and Churchwardens of Northampton* (*ante*), is a leading case upon the proper form of conclusion of a commitment until a particular act should be done by the party committed. *Bracy's case* is an authority to the same effect; it is reported in 5 *Mod.* 308; 1 *Salk.* 348; 1 *Lord Raym.* 99; also in the margin of *Carthew*, 153, from which I cite it. One Bracy was committed by commissioners of the statute of bankrupts for refusing to answer; and they concluded their warrant, that he be committed to prison, there to remain, 'until he conform himself to our authority, and be thence delivered by due course of law;' and upon the return of a *habeas corpus* he was discharged, because this conclusion was not pursuant to the statute of bankrupts, and the *Mayor of Northampton's* case was cited for an authority. In Lord *Raymond's* report it is laid down, that if he had been committed 'until he should conform to their authority,' in the special matter, it had been good. And of that opinion was Lord *Holt;* and he said, that the word 'submit,' (which is the word in the statute, and not 'conform,') does not mean an act of humble submission, but only to make answer to the question proposed. In *Salkeld's* report, the court held the word 'conform,' instead of the word 'submit,' to be well enough, because it was of the same sense; but because the commissioners had other authorities besides that of examining, and it did not appear but that it might require a submission to them in other respects, and for that all powers given in restraint of liberty must be strictly pursued, and in this case they had but a special authority, and must not exceed it, they held the return

naught. *Yaxley's case*, *Carth.* 291, was 'a commitment by the secretary of state, under the stat. 35 Eliz. for refusing to answer whether he was a Jesuit, &c., and on a *habeas corpus* he prayed to be bailed.' The exception to the commitment was, that the conclusion thereof was 'there to remain until he shall be from thence discharged by due course of law,' when the words of the statute are 'until he shall answer unto the questions:' and therefore the commitment ought to be special, according to the statute; and the *Churchwardens of Northampton's case* was cited and relied on; and for that objection the court held the commitment ill. Other cases might be cited to the same effect, such as *Rex* v. *Hall*, *Cowp.* 60. The foregoing cases are cases of discharge from commitment, on the ground of an illegality apparent on the face of the warrant. The two following cases, *Baldwin and Wife* v. *Blackmore*, 1 *Burr.* 595, and *Crepps* v. *Durden*, *Cowp.* 640, establish that in such case, that is, of warrants illegal upon the face of them, for an excess of jurisdiction in the magistrate, trespass is maintainable against the committing magistrate: and this was held in the latter case, although the conviction had not been quashed. In *Baldwin and Wife* v. *Blackmore*, a warrant to commit the wife, as an idle and disorderly person, for returning with her husband to the parish from whence removed, without a certificate, was holden to be void, and that trespass lay for the imprisonment under it. So, where the warrant ought to be to imprison for a month, and it is until discharged by due course of law. *Crepps* v. *Durden*, *Cowp.* 640, was a conviction in four penalties, for exercising his ordinary calling of a baker on a Sunday. As there can be but one offence on the same day, it was held an excess of jurisdiction, for which an action would lie before the convictions were quashed. There the question immediately before the court was, whether an objection could be made to the legality of a conviction before it was quashed, and it was held that it might. Upon these authorities, and the reason of the thing, we are obliged to pronounce that the commitment made in pursuance of the said adjudication in this case, as well as the adjudication itself, in respect to the imprisonment, being, in this particular, a clear excess of jurisdiction, was not warranted by law, and that the imprisonment thereunder was a trespass in the committing magistrates, for which this action is maintainable: which we cannot but regret, as the facts of the case would have authorised a commitment if the warrant had been framed in a manner conformable to the powers of the magistrates under the statute. The consequence is, that the rule *nisi* for setting aside the verdict must be discharged."

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The Court of K. B. will not, upon removal of an order of sessions allowing overseers' accounts, which is good upon the face of it, go into the merits of those accounts upon affidavit.

Rex v. *James*, 2 *M. & Sel.* 321. A rule was obtained for quashing an order of sessions, allowing the accounts of the overseers of Croydon. The order was general, allowing the accounts and dismissing the appeal, and ordering the appellants to pay 40*s.* costs. The defendants, in their affidavit, stated that these accounts contained sums in gross as monthly payments, without the items, some of which items were stated to be for charges illegal or excessive, and also for a salary to one of the overseers. Lord *Ellenborough* inquired "If there was any objection to the order upon the face of it, for otherwise the court would not go into the overseer's accounts upon affidavit. The sessions was the proper forum for deciding such matters: the time of the court would otherwise be absorbed in taking parish accounts." But it was urged that injustice might be done if there was no relief against accounts so made up as the present, without specifying any particulars; and *Rex* v. *Battel*, a recent case, was cited, where the court had granted relief against the overseers' accounts, upon a rule obtained upon affidavit that they contained a charge for an allowance paid to the overseer. Lord *Ellenborough* said, "If there is likely to be a defect of justice, the remedy must be by application to the legislature; for the court cannot enlarge the limits of its jurisdiction in order to supply a remedy; the sessions have jurisdiction over these matters; if, on the removal of the record by *certiorari*, it had appeared to be erroneous, this court would then have acted upon it." Rule discharged.

The reporters presume the case of *Rex* v. *Glyde* (*ante*), to be that alluded to in argument in the above case under the title of *Rex* v. *Battel*, which is

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printed by them in a note to the above case, and is stated to have been decided in Hilary Term, 1813. The rule for the *certiorari* was obtained upon an affidavit as above stated, but the case, as it appears, was decided upon objections apparent on the face of the order.

Secus, if illegal on the face of it.

But the court will disallow an item illegal on the face of it, without a special case, *Rex* v. *Johnson*, 5 *A. & E.* 340.

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5. Appeals, &c., relating to Overseers' Accounts.

Appeal against the account must be to the *next* sessions.

The grounds of appeal must be stated in the notice, as in the case of an appeal against a poor-rate. See 41 Geo. III. c. 23, *ante*.

The 43 Eliz. c. 2, s. 6, enacts, "That if any person shall find himself aggrieved by any act done by the said overseers or justices, he may appeal to the general or quarter sessions, whose order therein shall bind all parties."

And by 17 Geo. II. c. 38, s. 4, "If any person shall have any material objection to such account, or any part thereof, he may, giving reasonable notice to the churchwardens and overseers, appeal to the next sessions; but if reasonable notice was not given, then they shall adjourn the appeal to the next sessions; and the court may order and award to the party for whom the appeal shall be determined, reasonable costs, as in cases of settlement by 8 and 9 Will. III. c. 30." See the other part of this section, *ante*.

Corporations, &c.

And by s. 5, in all corporations or franchises, which have not four justices, persons aggrieved may appeal, if they think fit, to the next county sessions. See 1 Geo. IV. c. 36, *ante*.

The decisions respecting appeals against *poor-rates* will be found applicable in most cases when questions as to *notice*, the *time* of appealing, &c., arise upon appeals against overseers' accounts. See *ante*.

Where it is provided that appeals shall be first made to and determined by the governing body named in a local act, that course must be followed.

It may be expedient to repeat, that if the management of the parish poor be vested in the churchwardens, overseers, governors, and directors by a local act, which also gives an appeal to the body so constituted to any person aggrieved by any thing done under the act, and a subsequent appeal to the quarter sessions against their *determination*, if he is dissatisfied with it, this course of proceeding must be strictly pursued. See *Rex* v. *Justices of Kent*, 9 *B. & C.* 283, *ante*.

Removed by *certiorari*.

The order of the quarter sessions may be removed by *certiorari*, and objections apparent on the face of the order will be entertained.

An order of quarter sessions, on appeal against an account of overseers, is bad, if it does not appear, either by express averment or necessary intendment, to relate to the *annual* account, for otherwise it may relate to the quarterly account, which the overseers are directed to render by 4 & 5 Will. IV. c. 76, s. 47, and in respect of which there is no appeal to the quarter sessions.

Reg. v. *Spackman*, 1 *G. & D.* 619; 2 *Q. B.* 301. The following was a material part of an order of the Wiltshire quarter sessions, made in October, 1839, upon appeal against the account of the defendants, as overseers of Bradford:—"On hearing the appeal of T. Savage, an inhabitant of Bradford, against the account of C. Spackman and the other overseers, &c., this court doth order that the following charges, &c., be disallowed." Lord *Denman*. "This order cannot be supported, unless it appear that the justices who made it had jurisdiction, and it is admitted that there was no jurisdiction unless the account appears to have been an annual account. Now it does not appear from the order what sort of account it was. There is another account to be rendered by overseers besides their annual account. It may be therefore that jurisdiction has been improperly exercised by the quarter sessions over an account which was not the annual account. This may have been the case consistently with this order, and it is not enough that the order could not have legally been made, unless it related to the annual account." *Williams*, J. "The argument in support of the order was not put higher than this—that it stood indifferent, upon the face of the order, whether it related to the annual or to the quarterly account, and that therefore, if we decided the order to be bad, it would only be by making intendments against it. But it is now settled law that it must not stand indifferent upon the face of an order of justices, whether they had jurisdiction or not—it must appear that they had. Here in one case they had jurisdiction, and in the other had not: either case is consistent with the order; it therefore does not show jurisdiction." *Coleridge*, J. "I am of the same

opinion. The jurisdiction of the quarter sessions is confined to the annual account. Does this order of the quarter sessions refer to the annual account? It is said to be in the usual form, and it is said that down to the passing of the 4 Will. IV. c. 76, s. 47, no account of overseers, except the annual account, came before justices, and that there is nothing in that act to alter the usual form. That may be so, but forms grow out of the law, and, when the law is altered, forms must adapt themselves to the altered law. By the 4 Will. IV. there is another account to be rendered by overseers, over which the quarter sessions have no jurisdiction. We cannot tell to which of the two kinds of account this order relates. It is said that the recital in the order, that the account had previously been allowed by justices, shows that it could not be the new quarterly account, as the 47th section does not authorise the justices, before whom, in default of an auditor, the account is brought, to allow it, or to do any thing more than simply receive it. I do not agree in this construction of the section; I think the justices at petty sessions must have the same power with the auditor or other person for whom they are substituted, to 'examine, audit, allow or disallow' the account. This view is confirmed by what is directed as to paying over the balance of the account. The balance must mean the just balance which is found due after examination of the account." *Wightman*, J. "It is admitted that the quarter sessions had no jurisdiction unless this was the annual account of the overseers. The order contains no averment that it was the annual account; and though, before the 4 & 5 Will. IV. c. 76, s. 47, it could have been no other account, yet now it may have been either the annual or the quarterly account. It is said that this order on the face of it relates to an account which had previously been 'allowed' by justices, and that therefore it must have been the annual account, because the justices under the Poor Law Amendment Act have no jurisdiction to 'allow' the account, although they are called on in default of the auditor or other person who is expressly authorised to allow it. If this construction is right, it would seem to follow that, where there is no auditor or other person appointed, the balance from the overseers cannot be called for until the end of the year, although, if there is such auditor or other person appointed, the balance may be called for directly. I think, therefore, the construction contended for is erroneous, and that this order is bad, as it does not appear, either by express averment or necessary intendment, to relate to the annual account, over which alone the quarter sessions can have jurisdiction." Order quashed.

An overseer may appeal against his co-overseer's accounts.

Upon an appeal against an overseer's accounts, it appeared that *the appellant was a co-overseer* with the respondent. It was objected that this was, in effect, an appeal against *his own* accounts. The sessions yielded to this objection and dismissed the appeal. Upon a rule for a mandamus, it was contended that the sessions had heard and determined the case, as they had examined a witness, quashed the appeal, and given costs to the respondent; and although they might have come to a wrong conclusion, yet, as they had decided the question, the mandamus ought not to be granted. But the court said, "that it was clear the justices had dismissed the appeal, not upon the merits, but because they thought they had no jurisdiction, which was a question of law; and if they were mistaken in that, the mandamus ought to go." It was then contended that one overseer could not appeal against the accounts of the other; that, although there were several individuals, their duties were not several, both having the same authority, and the same liabilities in the management of the poor. The court, however, were of opinion that the rule ought to be made absolute, and observed, that in this case it appeared each overseer kept a separate account; and it was clear each overseer may act by himself, and make separate disbursements, against which the other would have a right to appeal. It might happen, that one overseer might have grounds for appealing against the accounts of his colleague, which would be unknown to other persons. Besides, his being an overseer does not take away his right, as a parishioner, to appeal against the accounts of the other. The

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words of the act fully bear out this interpretation; and it is obviously for the benefit and protection of parishes that it should be so acted upon whenever a proper occasion presents itself. *Rex* v. *The Justices of Gloucestershire*, 1 *B. & Adol.* 1.

An appeal lies against the accounts of an assistant overseer.

Reg. v. *Watts*, 2 *N. & P.* 367; 7 *A. & E.* 461. On a case raising the question whether an appeal will lie against the accounts of an assistant overseer, the court said, "We see no reason to doubt that the account is the subject of an appeal. The assistant overseer is not the servant of the overseers of the parish, but of the vestry, from whom he directly receives his authority; an authority which may indeed be limited by the warrant of appointment, but which does not appear to be limited in the present case."

An appeal against overseers' accounts must be to the next general quarter sessions after the allowance of the accounts. The 17 Geo. II. c. 38, s. 4, in this respect *limits* the right of appeal given *generally* by 43 Eliz. c. 2, s. 6.

Rex v. *The Justices of Worcestershire*, 5 *M. & S.* 457. The overseers' accounts of the parish of Elmley Lovett, for the years 1814 and 1815, were allowed by two justices on the 31st March, 1815. Notice of appeal was given for the sessions to be holden on the 23d of April, 1816, at which sessions an appeal was entered; but the court refused to enter upon the merits, or to hear the appeal, on the ground that it came too late. And the question was, whether the appeal was in time. Lord *Ellenborough*. "In *Rex* v. *Coode*, (*Cald.* 464,) the *Rex* v. *Lord Ashburnham* was brought under the consideration of the court, and yet they came to a decision directly contrary to it; and where good sense and convenience are all on one side, one is almost led to regret that Sergt. Kerby's note of that case ever got into print. The plain meaning of the 17 Geo. II. in enacting 'that it shall be lawful to appeal to the *next* sessions,' where by a pre-existing act the appeal was without limitation of time, is to negative the power of appealing to any but the *next*. In *Rex* v. *Coode*, Lord *Mansfield* was of opinion that the 17 Geo. II. did confine the appeal, and the court agreed that they must decide that the statute had repealed the 43 Eliz. in this particular. I feel no inclination to disturb that decision, considering how much the public convenience is in its favour. I know not to what difficulties persons whose property is liable, and those who are bound to account, might be reduced, if we were to adopt a different construction. With respect to the objection, that the time may be too short to prepare for the appeal, if, upon any occasion, this should be made appear, the appeal may be lodged, and adjourned on a proper application." *Bayley*, J. "I think that the affirmative words of the 17 Geo. II. must be taken to imply a negative. If the statute had been silent as to the time of appeal, the 43 Eliz. would have attached; and it would have been open to the party to appeal at any time. But as the statute empowers the party to appeal to the next sessions, I think it virtually implies that he must appeal to the next sessions, and to no other." *Abbott*, J. "I agree that this rule must be discharged. The construction put on these statutes by my lord and my brother *Bayley* appears to be the true construction, conformably to the rule for the construction of acts of parliament so well laid down in the old cases, and adopted in *Rex* v. *Coode*."

Where overseers' accounts were not allowed till the last day that an effectual notice of appeal to the next sessions could have been given, and it did not appear when the party objecting had notice of such allowance: Held, that a notice of appeal to the next subsequent sessions for which an effectual notice of appeal could be given was good.

Rex v. *Justices of Dorsetshire*, 15 *East*, 200. Soon after the 17th of May, 1811, when the respondents ceased to be overseers, the account of Goddard's (one of the respondents) receipts and payments as overseer was submitted to the magistrates of the borough of Shaftesbury for their allowance, when Bowles objected to certain items, and stated, that if they were allowed he should appeal against the allowance; and thereupon the justices refused the allowance of the said account, but did not strike out the items objected to, alleging that the stat. 50 Geo. III. c. 49, was not imperative upon them, but only authorised them to examine the accounts of overseers if they thought proper. On the 8th of July, and not before, the account was verified on the oath of Goddard before two magistrates of the borough, and by them allowed; and the said 8th of July was the last day permitted by the practice of the sessions for giving notice of appeals to the then next sessions, which were holden in the same month of July: and the items objected to still remaining in the account, Bowles gave notice of

appeal against such account and allowance to the next subsequent sessions holden on the 8th of October, at which sessions, the justices, conceiving that the deponent ought to have appealed at the former sessions, dismissed the appeal. Lord *Ellenborough*, C. J. "It seems to the court that in every view of the case the mandamus should go, whether this be a proceeding under the 43 Eliz., or under the 17 Geo. II.; for, supposing it to be under the 17 Geo. II., and supposing that statute in this respect to have repealed the 43 Eliz. (which from the cases cited seems by no means to be settled), still under the circumstances of this case, we think the July sessions could not be considered the *next* sessions for the purpose of appealing; for the allowance by the justices was on the 8th of July, the last day when any effectual notice of appeal could have been given; and it does not appear when the appellant had any notice of such allowance; and the transaction seems to carry with it the marks of design to defeat the appeal." Mandamus granted.

Time of appeal.

Reg. v. *Watts*, 7 *A. & E.* 461. Lord *Denman*. "The second point (as to the *notice of appeal being in due time*) may admit of some difference of opinion, but seems capable of being decided on principles of reason and convenience. Some cases have held that the time of allowance by the justices is that from which the time for giving notice must be calculated, (*Rex* v. *Coode*, *Rex* v. *Worcestershire, ante.*) The language of some others may be thought to import that every parishioner's right to appeal is kept alive as long as he is personally ignorant of the fact of such allowance. A strict adherence to either of these rules might obviously produce injustice; nor do we think that the cases, when fairly considered with reference to their circumstances, lay down either the one or the other. On the contrary, the court must on those occasions have had the words of the stat. 17 Geo. II. in their contemplation; which gives the right of appeal to the party grieved 'giving reasonable notice' to the *next* general or quarter sessions of the peace. The sessions have therefore to adjudge what notice is reasonable; which must depend on their usual practice. Still the word *next*, applied to the sessions, requires an interpretation; next to what period? Not to the period of examination by the vestry before allowance, because the justices upon their investigation, and before allowance, may have struck out every item to which parishioners feel an objection:—not to the allowance itself, because it may be unknown to all the parties interested;—nor to the fact of knowledge by any one disposed to appeal, because that would lead to an inconvenient inquiry into the particular knowledge of individuals, and might keep the officer's account subject to an appeal indefinitely. The only other period to which recourse can be had for this purpose is that when the parish had the opportunity of knowing the contents of the account. Thus, in *Rex* v. *Thackwell*, (*post*,) the time for *giving notice* was held to be properly reckoned from the time when the account was allowed *and published*. We think it may be correctly described as published at the time when it is deposited (according to the 1st sect. of 17 Geo. II.) with the churchwardens and overseers for public inspection, and the fact of depositing *bonâ fide* made known. In the present instance, the sessions have found that this was done on the 8th of May. Therefore, the June sessions, when the appeal was lodged, were the next sessions; and the notice was in due time. This makes it immaterial to inquire whether the appellant's affidavit of the time when he knew of the account was properly admitted; because the inquiry was completely immaterial. The court was consequently justified in entering on the merits of the appeal; and, having disallowed certain items, the rule for setting aside their judgment must be discharged." (*a*)

The "next" sessions, not the next after allowance by vestry.

But the next after accounts published.

Appellant's knowledge of the accounts.

Rex v. *Thackwell*, 4 *B. & C.* 62; 6 *D. & R.* 61; 3 *D. & R. Mag. Ca.* 337. In this case the overseers of Monmouth went out of office on the 25th

The justices may respite the appeal,

(*a*) The accounts were allowed in vestry on the 2nd of April; and by the justices on the 3rd. Sessions were held on the 14th of April, and the notice of appeal must have been given on the 7th.

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March Their accounts were allowed by three justices on the 27th On the 7th April the next quarter sessions were held at Usk, thirteen miles from Monmouth On the same day, at two o'clock, when it was too late to enter an appeal, they delivered their accounts, allowed as aforesaid, to their successors At the following (Midsummer) sessions an appeal against the allowance of the accounts was entered, and *respited*, although the respite was objected to by the respondents, and at the Michaelmas sessions the order for the allowance was quashed *Abbott*, C J "It is quite clear that, under the circumstances of this case, the parties were not bound to appeal at the Easter sessions, and at the Midsummer, it was for the justices and not for us to decide whether it would be proper to respite the appeal to Michaelmas" Order of sessions confirmed

although the respondents do not complain of want of sufficient notice and object to the delay

Accounts must appear to have been allowed by the justices before the appeal

Rex v *Bartlett*, 2 *Str* 983 An order made at the sessions relating to accounts of overseers was moved to be quashed, because it did not appear that the accounts had been before the justices out of sessions, and they cannot come *per saltum* to the sessions On the other side it was said that it appeared there was an allowance, for the appeal is said to be against the disbursements *and the allowance thereof*, which the court will presume was regular But by the Court "It doth not follow that this was an allowance by two justices, for the parish might do it, and therefore, for want of jurisdiction, this order must be quashed"

A person has a right to appeal against all the accounts of the overseers though he has not been rated in every rate

In *Reg* v *Gwyer*, (*ante*, 373), it was contended that the appellant, not having been a rated parishioner during the whole of the year, could not appeal against such parts of the accounts as related to the expenditure before that period for which he was rated But the court decided that he might appeal against the whole account, because he had an interest in all the money that came to the hands of the overseer. As the surplus of that money was reduced, the subsequent assessments upon him would be probably greater in proportion, and, therefore, if there was an illegal application of the fund, he is not precluded from objecting to it

Churchwardens &c may appeal to quarter sessions against reductions made in their accounts

The 50 Geo III c 49, s 2, provides, "That if such churchwardens or overseers, or any of them, shall feel themselves, himself, or herself aggrieved by the disallowance or reduction of any such charges or payments, and be desirous of appealing against any order in that respect made by any such two or more justices of the peace, it shall and may be lawful for him, her, or them, to enter an appeal against such order at the next general or quarter sessions to be holden next after the tenth day for the making of such order, he, she, or they having first paid or delivered over to the succeeding churchwardens and overseers such sum and sums of money, goods, chattels, and other things as on the face of the account which shall have been submitted by him, her, or them to such two or more justices in manner aforesaid shall appear and be admitted to be due and owing from him, her, or them, or remaining in his, her, or their hands, and having also entered into a recognizance before one or more such justice or justices with two sufficient securities to be approved of by such justice or justices before whom such recognizance shall be acknowledged, in not less than double the sum or value in dispute, to enter such appeal at such next general or quarter sessions, and abide by such order as shall at that or any subsequent sessions be made on such appeal, and it shall and may be lawful for the justices of the peace assembled at such general or quarter sessions, on proof of the matters aforesaid, and on the production of such recognizance and proof of the same having been duly entered into, to adjourn such appeal if they shall see occasion, or to hear the same, and to examine into and to confirm or reverse such disallowance or reduction in the whole or in part, as to such justices at such sessions shall seem just, and in any such case the said justices at such sessions may (if they shall think fit) make an order that such churchwardens and overseers shall have the costs by them incurred upon any such appeal defrayed out of the poor-rates of the parish or place, and the order of the general quarter sessions in the execution of the powers given to them by this act shall be binding on all parties"

Power to adjourn

Costs

Sect. 3 provides, "That nothing herein contained shall take away or be construed to take away any power of appeal against any such account, by any other person entitled to appeal against the same by virtue of the said recited acts or either of them."

5. Appeals relating to Overseers' Accounts.

Sect. 4 enacts, "That every mayor, bailiff, or other head officer of every town or place corporate and city in Great Britain, or any two magistrates of such town or place corporate or city, being justice or justices of peace respectively, shall have the same authority by virtue of this act within the limits and precincts of their jurisdictions as is by this act limited, prescribed, or appointed to justices of the peace of the county, or any two or more of them, for the execution of this act; subject nevertheless to an appeal to the general or quarter sessions in every such town or place corporate or city respectively as aforesaid: provided always, that in any town or place corporate or city where there are not four justices of the peace, it shall and may be lawful for any person or persons, where an appeal is given by this act, to appeal, if he or they shall think fit, to the next general or quarter sessions of the peace for the county, riding, or division wherein such town or place corporate or city is situate."

Appeal by any other person not taken away.

Magistrates of corporations shall have the same jurisdiction as two or more justices.

Sect. 5 enacts, "That no *certiorari* shall be granted to remove any order or proceeding of any general or quarter sessions, or of any justices, made or had under this act, into any superior court of record; but that all orders and proceedings of such sessions, and all orders and proceedings of such justices (subject to such appeal as aforesaid) under this act shall be final and conclusive to all intents and purposes."

Proceedings of quarter sessions final.

Sect. 6 provides, "That nothing in this act contained shall extend or apply, or be construed to extend or apply, to the accounts of any churchwarden or overseer of the poor in any parish or place where by the provisions of any act or acts relating to the poor of such parish or place, or by the construction of any such act or acts, such churchwardens and overseers are exempted from the rendering the accounts required by the hereinbefore recited acts of the 43rd year of the reign of her late majesty queen Elizabeth, and of the 17th year of the reign of his late majesty king Geo. II. or either of them; anything hereinbefore contained to the contrary notwithstanding: provided also, that nothing in this act contained shall extend or be construed to extend to the city of London."

Not to extend to churchwardens, &c., exempted from accounting under the recited acts.

Nor to the city of London.

Sect. 7 provides also, "That nothing in this act contained shall alter or repeal any of the provisions or regulations contained in the said recited acts of the 43rd year of the reign of her late majesty queen Elizabeth, and of the 17th year of the reign of his late majesty king George II. or either of them, other than and except only such provisions or regulations as are expressly mentioned in this act, and so far as the same are expressly amended or altered by this act."

Recited acts, unless where it is hereby expressly mentioned, not to be affected.

It will be perceived that s. 5 prevents the orders and proceedings of justices from being removed by *certiorari*, and makes the decision of the sessions *final;* but this only applies to appeals brought *by* churchwardens and overseers against the disallowance of any items in their accounts by the magistrates, leaving appeals *by other persons* as they stood under the prior act, 17 Geo. II. c. 38, s. 4. *Rex* v. *Bird*, 2 *B. & A.* 522.

When *certiorari* taken away.

Notice of Appeal.

The 41 Geo. III. c. 23, s. 4 (which see *ante*), prescribes that the notice shall be in writing, and shall specify the particular causes or grounds of appeal. The following decisions have taken place upon this enactment.

Notice of appeal.

A notice of appeal against the allowance of overseers' accounts, which is merely general, stating that the different items, enumerating all of them, will be objected to, without stating the particular cause or ground upon which any one was objected to, is clearly insufficient. The sessions overruled the objection, but reserved a case on the point; and the court quashed the order on the ground that the notice was not sufficient. (*Rex* v. *Mayall*, 3 *D. & R.* 383; and 2 *D. & R. Mag. Ca.* 88.)

Where the notice insufficient.

Rex v. *Sheard*, 2 *B. & C.* 856; 4 *D. & R.* 480. By his notice, the

Notice of Appeal.

A notice of appeal against overseers' accounts, stating that the appellant objected to certain specified payments, alleged in the accounts to have been made to persons specified by name in the notice, is bad, because it does not state the *cause* and *ground* of appeal.

The attornies, some days before the appeal was tried, agreed to admit that the sums objected to were paid to the persons alleged: This is not any waiver of the defect in the notice.

appellant objected to thirty-five items in the accounts, and set out the names of the persons on whose account the payments were made, the sums paid, and in some instances the purposes for which they were made; it also stated that the appellant would insist upon the appeal, that all these items ought to be struck out of the accounts and disallowed. On the day before the appeal came on to be heard, the attorney for the respondents and the attorney for the appellant entered into the following admissions: "We do agree to admit that all the payments charged in the accounts of the respondents, to which the appellant objects, were actually made to or for the use of the several persons to whom the same are charged to have been paid, and that the several sums charged in such accounts to have been paid to three several persons (named in the notice of appeal) respectively, were for debts contracted by the overseers in one or more years previous to the year in which the respondents were overseers, and were not contracted by the respondents for the service of their current year, and the respondents undertake to produce, upon the hearing of the appeal, the original accounts and vouchers regarding the items and sums of money objected to by the appellant." The sessions considered the admissions as a waiver of the objections to it, and entered into the merits of the said appeal, but granted a case. *Bayley*, J. delivered the judgment: "The 41 Geo. III. c. 23, requires one of two things, either notice in writing stating and specifying the particular causes or grounds of appeal; or secondly, consent by the overseers, to be signified by them or their attorney in open court, that the sessions may proceed, though there has been no proper notice. The notice in writing is to be signed by the party giving it, or his attorney, and to be left at the place of abode of the officers; and the sessions are not to examine into any other cause or ground of appeal than those which the notice specifies. Two questions therefore arise—Has there been such a notice as the statute requires? Has there been such a waiver? In this case the original notice, which was served eleven days before the commencement of the sessions, merely stated that the appellant would object to thirty-five items or charges of payment, which he specified. On what grounds he would object he did not state. The day after the sessions commenced, being the day before their adjournment day, the attornies for the appellant and respondents agreed to admit that all the payments objected to were in fact made, but that three of them were for debts contracted in prior years, not for debts contracted for the service of the year to which the accounts referred, and the respondents agreed to produce the original accounts and vouchers regarding the items objected to. The sessions expressed no opinion as to the notice, but thought these admissions a waiver of all objections to it. As to the waiver, the statute expressly provides that the sessions shall not examine or inquire into any ground of appeal not specified in the notice, with this single exception only, of consent by the overseers, signified by them or their attorney in open court: and we think that the statute has excluded, and intended to exclude, all questions of waiver in any other way, and that, as there was no such consent as the statute requires, we cannot enter into the question of any other species of waiver. Then can it be said that this notice states and specifies the particular causes and grounds of appeal? It states only that the appellant will object to thirty-five items or charges of payment; but why? It may be because they are false items that they have not been paid; it may be, because they ought not to have been paid; it may be, though paid, and rightly paid, they ought not to be brought in charge against the parish, but ought to be borne personally by the overseers. And where a notice is general, and leaves it uncertain upon which of several possible grounds of objection an item is questioned, can we say that it states and specifies a particular ground? We think not. Then will the admissions supply the defect in this notice, not as a waiver, but as making it a good notice in itself? The statute prescribes no form of notice; it specifies no time within which it shall be delivered; and its only object being that the respondents may know distinctly what objections they are prepared to meet; and so long as that

Notice of Appeal.

knowledge is fairly communicated to them in writing, it may be thought that the mode in which it is communicated is immaterial. But it can never be supposed that the respondents' attorney meant, by entering into these admissions, to waive any other objections which would other wise have been open to him; his authority would be to uphold the rights of the respondents, not to give them up; and where the statute requires notice in writing to be left at the place of abode of the persons on whom it is to be served, we think we ought not, except upon very clear grounds, to allow it to be dispensed with." Order of sessions quashed.

It is not necessary to state in the notice that the appellant is a party aggrieved, or a parishioner

A notice of appeal against overseers' accounts, merely stating that the party intended to try his appeal against the accounts, on the grounds and for the reasons thereinafter set forth, and then specifying the items against which he intended to appeal, and the objection he intended to make against each item, was held to be sufficient, although it was not stated that the party intending to appeal was a rated inhabitant of the parish, or a party aggrieved. The right of appeal given by 17 Geo. II. c. 38, s. 4, against overseers' accounts, is not within the principle of the decisions upon the 55 Geo. III. c. 68, s. 3, relating to highways; for although the same language to a certain extent is found in both, yet the former statute, in addition to giving an appeal to the "party aggrieved," extends the right to "any person who shall have any *material objection* to the accounts." Lord *Tenterden* added, "If it should turn out that he is a mere stranger, the court of quarter sessions may refuse to hear him." (*Rex* v. *Justices of Somersetshire*, 7 *B. & C.* 681.)

What is a reasonable notice.

A clear week's notice is usually considered "reasonable," and will satisfy the statute, unless by the practice of the particular sessions a longer notice is required, or there are peculiar circumstances in the case which may induce the justices to adjourn the appeal to the following sessions. (2 *Not. P. L.* 525.)

Accounts and disbursements of overseers allowed.

Rex v. *Justices of Norfolk*, 2 *B. & Ad.* 944. An appeal was entered in the following form:—*W. Rodgers*, appellant, and *The Churchwardens and Overseers of Brancaster*, respondents. The appeal was respited, and notice was given, addressed to "J. A. and T. S. now or lately overseers," but not to the churchwardens, and no notice was given to them. The sessions refused to hear the appeal, because the notice varied from the entry, and because the churchwardens had had no notice. Upon a rule for a mandamus it appeared that J. A. and T. S. were the only parish officers who received and disbursed money during the year of the accounts, and that the accounts were passed by them only, and were entered in their names only, as overseers, no mention being made of the churchwardens. It was held, that though the appeal was formerly entered as an appeal against the accounts of the churchwardens and overseers, yet it was evident to any one looking at the subject-matter of the appeal, that it was substantially an appeal against the accounts of the overseers, and to them notice was given: and it was also held, that as the accounts of several parish officers may be treated as several, where the money transactions have been separate, (and in the present case the churchwardens had in fact nothing to do with the account,) it would have been useless to serve the notice upon them; and that therefore there was no valid objection to the mode in which the notice was addressed and served. Mandamus issued.

In an appeal from the borough sessions, the appellant is confined to his grounds there.

If, however, it is an appeal from the borough sessions, the notice of appeal cannot be enlarged; the appellant can enter at the county sessions into those grounds only which he took at the borough sessions. 50 Geo. III. c. 49, s. 4, gives this appeal.

CHAPTER IV.

PARISH PROPERTY VESTED IN PARISH OFFICERS, AND THE MODE OF RECOVERING POSSESSION.

Churchwardens and overseers may take and sue as bodies corporate.

THE 59 Geo. III. c. 12, s. 17, enacts, "that all buildings, lands, and hereditaments, which shall be purchased, hired, or taken on lease, by the churchwardens and overseers of the poor of any parish, by the authority and for any of the purposes of this act, shall be conveyed, demised, and assured to the churchwardens and overseers of the poor of every such parish respectively, and their successors, in trust for the parish; and such churchwardens and overseers of the poor, and their successors, shall and may, and they are hereby empowered, to accept, take, and hold, in the nature of a body corporate, for and on behalf of the parish, all such buildings, lands, and hereditaments, and also all other buildings, lands, and hereditaments belonging to such parish; and in all actions, suits, indictments, and other proceedings, for or in relation to any such buildings, lands, or hereditaments, or the rent thereof, or for or in relation to any other buildings, lands, or hereditaments belonging to such parish, or the rent thereof; and in all actions and proceedings upon, or in relation to, any bond to be given for the faithful execution of the office of an assistant overseer, it shall be sufficient to name the churchwardens and overseers of the poor for the time being, describing them as the churchwardens and overseers of the poor of the parish for which they shall act, and naming such parish; and no action or suit, indictment or other proceeding, shall cease, abate, or be discontinued, quashed, defeated, or impeded, by the death of the churchwardens and overseers named in such proceeding, or the deaths or death of any of them, or by their removal or the removal of any of them from, or the expiration of, their respective offices."

Indictments.

Bonds.

To constitute a body corporate there must be two overseers *and* a churchwarden.

Woodcock v. *Gibson*, 4 *B. & C.* 462; 6 *D. & R.* 524; 3 *D. & R. M. Ca.* 277. In order to constitute the body corporate intended by this act, there must be two overseers and a churchwarden or churchwardens; and that where there were two overseers appointed, one of whom was afterwards appointed (by custom) sole churchwarden, the act did not vest parish property in them, so as to support a plea stating that the freehold was in them.

Churchwardens alone have no title.

Phillips v. *Pearce*, 5 *B. & C.* 433; 8 *D. & R.* 43, S.C. Land belonging to a parish was occupied by A., and he paid rent to the churchwardens. They executed a lease of the same land for a term of years to B., and gave A. notice of the lease. In an action for use and occupation by B. against A.: held, that A. was not estopped by having paid rent to the churchwardens from disputing B.'s title, and that the latter could not derive a valid title from the churchwardens.—*Abbott*, C. J. "The legislature has provided for the inconveniences experienced in consequence of lands belonging to parishioners, who are not by law a corporation, in certain cases, by the 59 Geo. III. c. 12, s. 17, which enacts, that the churchwardens *and overseers* shall take and hold, in the nature of a body corporate, for and on behalf of the parish, all buildings, lands, and tenements belonging to the parish. That statute does not extend to this case.

I think, therefore, that the churchwardens *alone* had no title to the land, or the rent which issues from it." And see *Rogers* v. *Pitcher*, 6 *Taunt.* 202; 1 *Marsh.* 541, S. P.

Parish Property vested &c.

Smith v. *Adkins*, 8 *M. & W.* 362. The churchwardens and overseers are not by this statute made a complete body corporate, and but only empowered to hold "in the nature of a body corporate." It is not, therefore, necessary to aver the acceptance of a lease to them by an instrument under a common seal. Nor is it necessary to specify the names of the parish officers, as a grant to them, by the name of office, is good. See the report for a plea justifying a trespass under these statutes.

Overseers need not accept a lease under a common seal. Grant to them, by the name of office, is good.

Doe d. *Higgs* v. *Cockell*, 4 *A. & E.* 478; 6 *N. & M.* 179. Leases by churchwardens, in which the demised tenement is described as parcel of the lands of the parish church, and payment of rent to them, are *primâ facie* evidence that the tenement is parish property. See also *Doe* v. *Terry*, 5 *N. & M.* 566.

Furnival v. *Coombs*, 7 *Jurist*, 399. A., B., C., D., E., & F., churchwardens and overseers, contracted with the plaintiff for themselves and their successors, churchwardens and overseers. Proviso, that nothing &c. should be construed to extend to any personal covenant, or in anywise to affect them in their private capacity:—Held, that although the churchwardens and overseers might be a corporation, yet, having no common seal of office, they could not bind their successors; that the contract, therefore, constituted a personal covenant, and the proviso, being repugnant to it, is void.

Covenant by overseers, not binding on successors, is personal.

The 59 Geo. III. c. 12, s. 17, is not confined to lands held merely for the benefit of the poor. In *Doe* v. *Hiley*, 10 *B. & C.* 885, Lord *Tenterden* observed, "There were demises in the name of the parish officers, and the tenements were certainly held for parish purposes. The lessors of the plaintiffs contended, that the premises were vested in the parish officers by the 59 Geo. III. c. 12. The other side contended, that the statute was inapplicable for two reasons:—1. Because the persons in whom the legal estate was vested were trustees only; 2. Because the profits of the premises were applicable, not to the relief of the poor, but solely to those purposes for which a church-rate was levied. As to the first of these objections, we are of opinion that there is nothing in the act to limit the right of persons under that act to those who fill the situation of parish officers, and it would be highly inconvenient to give the act so limited a construction. It is often difficult for persons who claim under an ancient trust, (where the trustees are numerous,) to show who was the survivor of those trustees; and even if they should succeed in ascertaining that fact, it will not be less difficult to show who is the heir-at-law of that survivor. Upon the second point, whether this act extends to tenements the profits of which are applicable to the purposes for which church-rate is levied, or is confined to those which are applicable merely for the benefit of the poor, it is undoubtedly correct, as that the primary object of the act was directed to tenements of the latter description. But s. 17 goes in its terms much further. It uses the words, 'and also all others.' To these there is no limitation. We think, therefore, that the safest course will be to give full effect to that generality of expression, as nothing appears to show that that which is held for the benefit of the church does not, under these circumstances, require the assistance of this act, as well as that which is held for the benefit of the poor. In both cases, the difficulty is the same; and we see no reason to doubt that the operation of the act was intended to be co-extensive with the mischief."

Lands purchased by churchwardens and overseers to vest in them as a corporation.

Alderman v. *Neate*, 4 *M. & W.* 704. By a written instrument, with a lease stamp, dated 25th Feb. 1782, E. S. let a house and premises to a committee for the parish of Hungerford, and the committee agreed to take them for the purpose of converting them into a poor-house, to hold for 99 years, at the yearly rent of 27*l.*: the committee to keep the premises in good repair. It was agreed that a lease should be executed, and a power was given to the committee to purchase the fee. No lease was executed,

Property leased to a committee for a poor-house vests in overseers.

Parish Property vested &c

but the premises had been always used as a poor house by the parish, and the overseers for the time being paid the rent An action of assumpsit will lie against the overseers for non-repair, as the agreement operated as a demise, and lease vested in the overseers by force of 59 Geo III c 12

The legal estate of charity lands does not vest in the parish officers, where there are known feoffees in existence and where the funds are applicable only to certain specific objects partially in aid of the parish funds

Allasan v *Stack*, 9 *A & E* 255 Where lands were vested in trustees, and the rents to be applied towards the relief of the poor people of good life and conversation in the parish, and for apprenticing poor boys of the parish. These do not vest in the parish officers, although by a local act a portion of the rents was applied to the erection of a parish workhouse, and the case was distinguished from *Doe* v *Hiley*, on the ground that in the latter case no feoffee appeared.

When sale of parish property exempt from stamp

The Guardians of the Banbury Union v *Robinson*, 7 *Jurist*, 599. A contract for the purchase of parish property sold by the guardians of a union, in pursuance of an order of the poor-law commissioners, is exempt from stamp duty, as it is a contract within the words of s 86 of 4 & 5 Will IV c 76 It is a contract made in pursuance of 4 & 5 Will IV c 76, because, though the 5 & 6 Will IV c 69, is the first which expressly gives authority to the parish officers to sell parish property, yet the third section contains a clause, which declares, that all sales made before the passing of the act, with the consent or approbation of the commissioners, which must have been under the Poor Law Amendment Act, shall be as valid as if they had been directed by their order, under the authority of the subsequent act

Poor houses may be sold, and occupiers removed

22 Geo III c 83, s 43 "That it shall and may be lawful for the guardians of the poor of any parish, township, or place, which shall adopt the provisions of this act, with the approbation of the persons within such parish, township, or place, qualified as hereinbefore mentioned, obtained at a public meeting, held for that purpose, to sell or dispose of any house, cottage, or building, which shall have been erected or purchased for the use of any poor person or persons, at the expense of such parish, township, or place, and apply the money arising therefrom for the purposes of this act, and also to remove, by order from a justice or justices of the peace, the person or persons who shall inhabit the same, or any other house or dwelling rented or provided at the expense of such parish, township, or place, if he, she, or they refuse to quit, after receiving fourteen days' notice for that purpose"

Power to overseers and guardians of the poor to sell purchase, and dispose of workhouses, &c

By 5 & 6 Will IV c 69, s 3, (*a*) in order to insure the due application of the property of parishes and unions, it is enacted, "That it shall be lawful for the guardians of any parish or union, and for the overseers of any parish not under the management of a board of guardians, and for the guardians or trustees, guardian or trustee of any dissolved union, or the person or persons who were the guardians or trustees, guardian or trustee, of any dissolved union at the time of its dissolution, or a majority of such guardians or trustees, or persons, if more than one, with the approbation, and subject to the rules, orders, and regulations of the poor law commissioners, to sell, exchange, let, or otherwise to dispose of any workhouses, tenements, buildings, land, effects, or other property belonging to any such parish or union, or vested in trustees or feoffees in trust for such parish or union, or for the parishioners, rate-payers, or inhabitants thereof, or which belong or did belong to any dissolved union, and every and any part of such property, and to convey, assign, or transfer the same accordingly to the purchasers or parties exchanging, as they shall direct, and, in case of a sale, to apply the produce arising therefrom (after deducting the reasonable expenses thereof) towards the purchase or building of any workhouse, or as or in part of the proportion of such parish or union towards the expense of any workhouse erected, purchased, or provided on behalf of such parish or union, or as a loan to the board of guardians of such union, upon the security of the rates, for the purpose of erecting a workhouse, or

Workhouse

Application of profits of sale

(*a*) This statute does not *expressly* repeal former statutes on this subject, but it is more ample than 1 & 2 Geo IV. c 56, ss. 1, 2.

in liquidation of any debt contracted by such parish or union or dissolved union, or in such other manner for the permanent advantage of such parish or union, or dissolved union, as the said poor-law commissioners may approve; and in case of an exchange, the hereditaments to be taken in exchange shall be conveyed to the guardians of such parish or union, or the overseers of such parish, upon the same trusts, and the rents and profits thereof shall be applied to the same purposes as the hereditaments given in exchange were held, and the rents and profits thereof would have been applicable under the provisions of the law or of this act if the same hereditaments had not been exchanged; and it shall be lawful for the said poor-law commissioners to direct the mode and proportions on parishes in which any money required for the purchase of any such property shall be raised, paid, and secured, and also to direct the mode in which the persons by whom, and the objects relating to the management of the poor to which the rents, profits, beneficial occupation, or income of such property shall be applied, assigned, or distributed; and wheresoever the workhouse or workhouses of any parish in any union may have become or shall hereafter become convertible to the common use of such union, it shall be lawful for the said poor-law commissioners to direct such an annual sum, in the nature of rent or other compensation, to be paid to such parish out of the common fund of the union, and to vary the amount of such annual sum or compensation from time to time as they the said poor-law commissioners shall see fit: provided always, that no such sale or exchange or letting of any workhouses, tenements, buildings, or land of any parish shall take place except with the consent of a majority of the rate-payers of such parish, and of the owners of property therein, entitled to vote under and by virtue of the act passed in the fourth and fifth years of the reign of his present Majesty, intituled 'An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales,' assembled at a meeting to be duly convened and held for the purpose, after public notice of the time and place and purpose of holding such meeting shall have been given in like manner as notices of vestry meetings are published and given, such majority to be ascertained in manner provided by the said act: provided also, that every sale and exchange or lease of any such workhouse, tenements, buildings, land, or other property, which may have been made before the passing of this act, with the consent or approbation in writing of the said poor-law commissioners, shall be as valid and effectual as if the same had been directed by their order under the authority of this act; and that any moneys or rents which have become or shall become payable in respect of any such sale, exchange, or lease, and have not been applied, shall be applied in the same manner as such moneys or rents would have been applicable if such sale or exchange or lease had been made under this act."

Parish Property vested &c.

Proportions of purchase-money how applied.

4 & 5 Will. IV. c. 76.

Previous sales made with consent of poor-law commissioners ratified.

The guardians of the poor of every union formed under 4 & 5 Will. IV. c. 76, and of every parish placed under the control of a board of guardians by virtue of that act, and their successors in office, shall be, for all the purposes of this act, a corporation, by the name of the Guardians of the Poor of the Union (or of the Parish of) in the County of ; and, as such corporation, may accept, take, and hold any lands, hereditaments, goods, or other property, and use a common seal; and may by that name bring actions, prefer indictments, and sue and be sued, and to take all other proceedings in relation to such property, or any contracts or securities; and in every such action and indictment it shall be sufficient to state the property to be that of the guardians of the union, or of the parish of ; and in case of any addition to or separation of any parishes from any such union, the board of guardians for the time being shall (notwithstanding such alteration) enjoy the same corporate existence, property, and privileges as the regular board of guardians.

Guardians incorporated.

Doe d. *Norton* v. *Webster*, 12 *A. & E.* 442. The legal estate in parish property is not divested out of the churchwardens and overseers of the parish by sect. 21 of the Poor Law Amendment Act, or by 5 & 6 Will. IV. c. 69, for facilitating the conveyance of parish property, but a power to sell

Parish property not divested by the Poor Law Amendment Act.

Parish Property vested &c

is only thereby given to the guardians. See also *Worge* v *Relly*, 10 *L. J* 125

Justices empowered, in certain cases, to deliver possession of parish houses to overseers

By 59 Geo. III. c 12, s 24, (*a*) reciting "That difficulties have frequently arisen, and considerable expenses have sometimes been incurred, by reason of the refusal of persons who have been permitted to occupy, or who have intruded themselves into parish or town houses, or other tenements or dwellings built or provided for the habitation of the poor, or otherwise belonging to such parishes, to deliver up the possession of such houses, tenements, or dwellings, when thereto required, and it is expedient to provide a remedy for the same," it is enacted, "that if any person who shall have been permitted to occupy any parish or town house, or any other tenement or dwelling belonging to or provided by or at the charge of any parish, for the habitation of the poor thereof, or who shall have unlawfully intruded himself or herself into any such house, tenement, or dwelling, or into any house, tenement, or hereditament belonging to such parish, shall refuse or neglect to quit the same, and deliver up the possession thereof to the churchwardens and overseers of the poor of any such parish, within one month after notice and demand in writing for that purpose, signed by such churchwardens and overseers, or the major part of them, shall have been delivered to the person in possession, or in his or her absence affixed on some notorious part of the premises, it shall be lawful for any two (*b*) of his Majesty's justices of the peace, upon complaint to them made by one or more of the churchwardens and overseers of the poor of the parish in which any such house, tenement, or dwelling shall be situated, to issue their summons to the person against whom such complaint shall be made, to appear before such justices at a time and place to be appointed by them, and to cause such summons to be delivered to the party against whom the complaint shall be made, or in his or her absence to be affixed on the premises, seven days at the least before the time appointed for hearing such complaint; and such justices are hereby empowered and required, upon the appearance of the defendant, or upon proof on oath that such summons hath been delivered or affixed as is hereby directed, to proceed to hear and determine the matter of such complaint; and if they shall find and adjudge the same to be true, then by warrant under their hands and seals to cause possession of the premises in question to be delivered to the churchwardens and overseers of the poor of the parish, or to some of them."

Recovering possession of parish houses, &c

Mode of proceeding See also 5 & 6 Will IV c 69, s 5, Appendix

Summons

Justices empowered to deliver possession of land appropriated for the poor

Sect 25 "If any person to whom any land appropriated, purchased, or taken under the authority of this act, for the employment of the poor of any parish, or to whom any other lands belonging to such parish, or to the churchwardens and overseers thereof, or to either of them, shall have been let for his or her own occupation, shall refuse to quit and to deliver up the possession thereof to the churchwardens and overseers of the poor of such parish, at the expiration of the term for which the same shall have been demised or let to him or her, or if any person or persons shall unlawfully enter upon, or take or hold possession of any such land, or any other land or hereditaments belonging to such parish, or to the churchwardens or overseers, or to either of them, it shall be lawful for such churchwardens and overseers of the poor, or any of them, after such notice and demand of possession as is by this act directed in the case of parish houses, to exhibit a complaint against the person or persons in possession of such land, before two of his majesty's justices of the peace, who are hereby authorised and required to proceed thereon, and to hear and determine the matter thereof; and if they shall find and adjudge the same to be true, to cause possession of such land to be delivered to the churchwardens and overseers of the poor, or some of them, in such and the like course and manner as are by this act directed with regard to parish houses (*c*)

Power extended to property of union

The power of this act is extended to property belonging to any union,

(*a*) See the words of the statute, and cases, 1 *Chitty's Col. Stat* 680, 847.

(*b*) One justice may receive the information and issue the summons. 3 Geo. IV. c 23, s. 2.

(*c*) There is a similar power given to guardians under Gilbert's Act, *ante*, p 45.

Parish Property vested &c.

by 5 & 6 Will. IV. c. 69, s. 5. But the legal estate in parish property is not by that statute transferred from the overseers to the guardians of the union. *Worge* v. *Relf*, 12 *L. J.* 125, *M. C.*

The Poor Law Act has not transferred parish property to the guardians of the union.

By 22 Geo. III. c. 83 (Gilbert's Act), s. 2, the visitor and guardians are incorporated and empowered to sue and be sued, and to hold lands, &c.; and there is this further provision, "and the said corporation is also authorised and enabled to accept, take, and hold all voluntary grants and donations of lands, tenements, or hereditaments of inheritance, or for lives or years, or for years determinable on lives, or of personal property which shall be made to them for the use and benefit of the poor within such respective parishes, townships, or places."

Visitors and guardians may hold lands and personalty voluntarily granted for the poor.

The statute was not intended to take away a right, which the owner of property had at common law, to enter and take possession, if it could be done peaceably, but to provide an expeditious mode whereby parish officers might obtain possession where it was obstinately withheld; and that they might not do that which had before been sometimes done, viz. might not turn occupiers out *vi et armis*, which led to further expense and litigation. Where, therefore, a pauper had been permitted to occupy a parish house, but having gone from home, leaving three children there, for whose support she received an allowance from the parish, the overseers on the second day afterwards entered, took the children to the workhouse, and put locks upon the doors. She having returned in about ten days, and, by breaking the locks, resumed possession of the house, the overseers went there, and, upon her refusal to open the door, broke it open, and carried away the furniture, which belonged to the parish. In an action of trespass by her, it was held, that the overseers might lawfully enter and resume possession, without giving any notice to quit, and were not bound to pursue the mode pointed out by the 59 Geo. III. c. 12, s. 24. (*Wildbore* v. *Rainforth*, 2 *Man. & R.* 185; 8 *B. & C.* 4; and see *Turner* v. *Meymott*, 7 *Moore*, 574; 1 *Bing.* 158; *Taunton & Costar*, 7 *Term Rep.*; 1 *Price Rep.* 4) (*a*).

Possession may still at common law be taken peaceably.

A poor man who pays rent is not within the Statute.

A poor man in possession of parish property under a *rent* is not within the statute, as he does not occupy a house "provided for the habitation of the poor," nor does he "intrude himself." (*Rex* v. *J. Middlesex*, 7 *Dowl.* 767.)

Reg. v. *Bolton*, 4 *P. & D.* 679; 12 *Q. B.* 66. Where magistrates make an order, under 59 Geo. III. c. 12, s. 24, directing possession of a parish house to be given up to parish officers, upon an information stating that a pauper who had been permitted to occupy a parish house had refused to give it up on proper demand, the court would not admit affidavits in contradiction of any of the statements in the information, for the purpose of showing that the magistrates had acted without jurisdiction.

(*a*) The paupers in a workhouse are not to be considered as tenants, no more than lunatics are the tenants of their cells. *Martin* v. *Goble*, 1 *Camp.* 321.

CHAPTER V.

OF THE POWERS, DUTIES, LIABILITIES AND PRIVILEGES OF OVERSEERS (*a*).

Privileges.

In the discharge of their various duties, churchwardens and overseers may occasionally be subjected to vexatious actions. To afford them protection, under such circumstances, the legislature has given them various advantages.

May plead the general issue, &c

By 7 Jac. I. c. 5, if any action shall be brought against any *justice of the peace* or *constable*, (and by 21 Jac. I. c. 12, against any *churchwarden* or *overseer of the poor*, or other person who in their aid, or by their commandment, should do anything concerning their offices,) he may plead the general issue, and give the special matter in evidence: and if a verdict shall pass for him, or the plaintiff shall be nonsuit or suffer discontinuance, he shall have double costs (*b*). And such action shall be laid in the county where the act was committed, and not elsewhere.

Venue local.

By 43 Eliz. c. 2, s. 19, persons sued for anything done on that act may plead the general issue, and give the special matter in evidence; and if a verdict be found for the defendant, or the plaintiff be nonsuit, the defendant shall have treble damages with costs, to be assessed by the jury in case of the issue tried, or by a writ to inquire of the damages in case the plaintiff is nonsuit.

Treble damages with costs.

No action to be brought until copy of warrant demanded and refused.

And by 24 Geo. II. c. 44, "No action shall be brought against any constable, headborough, or other officer, or against any person or persons acting by his order and in his aid, for anything done in obedience to any warrant under the hand or seal of any justice of the peace, until demand hath been made or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her, or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, and the same hath been refused or neglected for the space of six days after such demand; and in case after such demand and compliance therewith, by showing the said warrant to, and permitting a copy to be taken thereof by the party demanding the same, any action shall be brought against such constable, headborough, or other officer, or against such person or persons acting in his aid, for any such cause as aforesaid, without making the justice or justices who signed or sealed the said warrant defendant or defendants, that on producing or proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect of jurisdiction in such justice or justices, and if such action be brought jointly against such justice or justices, and also against such constable, headborough, or other officer, or person or persons acting in his or their aid as aforesaid, then, on proof of such warrant, the jury shall find for such constable, headborough,

(*a*) See *ante*, 33.

(*b*) This relates only to *torts* and acts *done*, and does not extend to a nonsuit in an action against overseers for the price of goods supplied for the use of the poor. *Blanchard* v. *Bramble*, 3 *M. & Sel.* 131; *Atkins* v. *Bunwell*, 3 *East*, 92. The provisions as to costs are repealed by 5 & 6 Vict. c. 97, and in lieu thereof costs may be recovered as between party and party.

or other officer, and for such person and persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the justice or justices, that in such case the plaintiff or plaintiffs shall recover his, her, or their costs against him or them, to be taxed in such manner by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants for whom such verdict shall be found as aforesaid."

Overseers of the poor, and all officers acting under a justice's warrant, are within the protection of the 24 Geo. II. c. 44.

Jackson's case, Lofft, 249; *Bull. N. P.* 24. Trespass against overseers for taking the plaintiff's gelding. They alleged, that by virtue of their office and in pursuance of a justice's order, they levied satisfaction for a poor-rate. It was objected, that demand should have been made under this statute, and that *churchwardens* and *overseers* were within the remedy, and comprehended under "*other officers*." By the court: "They are clearly within the act of 24 Geo. II. The justice's warrant is the authority under which they act. To extend the benefit of the statute of 21 James was the intent of the statute of 24 Geo. II., and all officers acting under a justice's warrant are included in it." Plaintiff was nonsuited.

Demand of surplus after distress.

A demand is necessary before an action can be maintained against overseers for the surplus arising from a distress for poor-rates. The 27 Geo. II. c. 20, s. 2, states, that the officer making the distress shall deduct the reasonable charges of taking, keeping, and selling such distress, out of the money arising by the sale; and the overplus (if any), after such charges and also the said penalty or sum of money shall be fully satisfied and paid, shall be returned *on demand* to the owner of the goods and chattels so distrained. And in this case, where a demand is necessary to give a right of action, the commencement of the action is not of itself a sufficient demand, nor does a tender of a sum, which the plaintiff at the time refused to accept, saying it was too late, but not claiming a larger sum, supply the place of a demand; there must be an express demand, or that which is equivalent to it. (*Simpson* v. *Routh*, 4 *D. & R.* 181; 2 *B. & C.* 682.)

Abuse of Office.

Remedies against abuse of office.

Punishable for neglect of duty.

The law very properly will not sanction overseers in refusing to receive and provide for a pauper sent to them by an order of justices, however satisfied they may be that such order cannot, upon being appealed against, be supported. For if this were permitted, the pauper might perish while his settlement was being disputed. It has therefore been held that overseers are indictable for not receiving a pauper sent to them by an order of justices. *Rex* v. *Davies*, 1 *Bott*, 378; S. C. cited and approved, 2 *Burr.* 803. And it appears that formerly, for very gross abuses in office, a criminal information might be obtained; but the court came to the resolution, some time ago, to leave their official delinquencies, however flagrant, to the ordinary punishment by indictment. *Rex* v. *Slaughter*, *Cald.* 247, (*a*). An overseer is not liable to any proceeding for neglecting to inoculate paupers so as to guard against the consequences. (*Anon.*, 5 *Nev. & Man.* 12.)

In many instances penalties are inflicted, to be recovered by action, or levied on conviction by magistrates. See the enactments of 43 Eliz. c. 2, s. 2; 3 & 4 W. & M. c. 11, s. 10; 17 Geo. II. c. 5, s. 1; 19 Geo. III. c. 37; 56 Geo. III. c. 139, s. 6; and more particularly 33 Geo. III. c. 55, s. 1, *post*, 263.

The 43 Eliz. c. 2, s. 2, provides, that overseers absenting themselves without lawful cause from the monthly meeting therein enjoined, or being negligent in their office, shall forfeit for every default 20*s.* to the poor, to be levied by one of the churchwardens or overseers by warrant of two justices (one being of the quorum) by distress; or in default thereof, any two such justices may commit the offender to the common gaol, there to remain, without bail or mainprize, till the said forfeiture shall be paid.

But this penalty for not meeting in the church shall not be inflicted on overseers of extra-parochial places, because they have no church to meet in. (8 *Mod.* 40.) Nor can an overseer be adjudged guilty of absenting

Abuse of Office.

himself from the meeting until he has had personal notice of his appointment. (*Rex* v. *Harman*, 1 *Bott*, 376; *ante*, p. 234, note.)

Overseers indictable for not relieving poor.

If an overseer do not provide for the poor, he is indictable, *post;* and if he relieve the poor when there is no necessity for it, it is a misdemeanor. (*Tawney's case*, 16 *Vin. Abr.*, tit. *Poor*, 415; 1 *Bott*, 371.)

Omission by an overseer to sign the burgess list, 5 & 6 Will. IV. subjects each to the penalty. Signature by one overseer of a list for his own ward only, is not sufficient.

King v. *Share*, 2 *G. & D.* 457. Debt against an overseer for not making out a list of burgesses entitled to be on the burgess roll. *Cur. adv. vult.* Lord *Denman:* "This was an action against the defendant, as an overseer, to recover a penalty of 50*l.* under the 48th section of the 5 & 6 Will. IV. c. 76, for having neglected to make out and sign a list of persons entitled to be enrolled in the burgess roll. It is by the 15th sect. of the act required in terms that a list of all persons who shall be entitled to be enrolled in the burgess roll of the year, in respect of property within the parish, shall be made out and signed by the overseers of the parish. In the present case no such list has been made out. Separate lists have indeed been made out for each ward, eight of which have been signed respectively by the overseer acting for each ward, and one has not been signed at all. Neither the defendant, therefore, nor any other of the overseers, has signed any list, as required by the statute, of the persons entitled to be on the burgess roll in respect of property within the parish of St. Margaret. The present case has in effect been already decided in that of *King* v. *Burrell* (*a*), and in principle and almost in circumstances is the same. Here the defendant did sign a list of the persons within his ward who were entitled, and there the defendant did not, although he delivered one; but in neither case did the defendant sign any lists of the persons entitled within the parish, as required by the statute. The individual case may be one of hardship; but it arises from pursuing a mode of making out and signing the lists not warranted by the terms of the act. It is said that only one penalty can be incurred by all the overseers; but we are of opinion that by the express words of the statute, as well as the nature of the offence, separate penalties are incurred by each. The words of the 48th sect. of the statute are, that "if any overseer of any parish shall neglect to make out, sign and deliver such lists as aforesaid, *every* such overseer for every such offence shall forfeit and pay 50*l.* We are therefore of opinion that the verdict ought to be entered for the plaintiff for the penalty of 50*l.*

(*a*) 4 P. & D. 207. 12 A. & E. 460.

Gross sum received for a bastard, improper.

An overseer is not entitled to take a gross sum as a compensation for the maintenance of a bastard child. If such child, therefore, should die, the overseer must repay the money not expended, and he cannot protect himself by a payment over to his successors in office. *Chappell* v. *Poles*, 2 *M. & W.* 867.

Overseers are not liable for the overplus of a rate reduced on appeal, the money having been paid to the guardians.

Where an overseer distrains for a rate, not knowing there is an appeal against it, and immediately pays over the money so levied to a guardian under 22 Geo. 2, c. 83, and the rate is afterwards lowered on the appeal being heard, the overseer not being a wrong-doer will not be liable in money had and received. (*Priestley* v. *Watson*, 2 *C. & M.* 691.)

Penalty of 20*s.* and not exceeding 5*l.*

By 17 Geo. II. c. 38, s. 14, it is enacted, "That if any churchwarden, overseer of the poor, or officer of any parish, township, or place, shall neglect or refuse to obey and perform the several orders and directions of this act or any of them, where no penalty is before provided by this act, or shall act contrary thereto, every such churchwarden, overseer of the poor, or other officer so offending in the premises, shall for every such offence, on oath thereof made, within two calendar months after the offence committed, before any two or more of his Majesty's justices of the peace, forfeit for the use of the poor of such parish, township, or place, a sum not exceeding 5*l.* nor less than 20*s.*, to be levied by distress and sale of the offender's goods, by warrant from such justices; which sum shall be paid to some churchwarden or overseer of the poor of such parish, township, or place, for the purpose aforesaid."

Punishment for neglect of duty, or disobedience of order of justices.

By 33 Geo. III. c. 55, s. 1, it is enacted, "That it shall and may be lawful for any two or more of his Majesty's justices of the peace, assembled at any special or petty sessions of the peace, upon complaint being made upon oath before them of any neglect of duty, or of any disobedience of any law-

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ful warrant or order of any justice or justices of the peace by any constable, overseer of the poor, or other peace or parish officer, or upon complaint made to such two or more justices upon oath, by or on the behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township, or otherwise, provided that not more than the sum of 10*l.* be paid upon the binding of such apprentice, against his or her master or mistress, of any ill usage of such apprentice by such master or mistress (such constable, overseer, or other officer, master or mistress, having been duly summoned to appear and answer such charge or complaint), to impose, upon conviction, any reasonable fine or fines, not exceeding the sum of 40*s.* upon such constable, overseer, or other officer, master or mistress respectively, as a punishment for such disobedience, neglect of duty, or ill usage, and by warrant under the hands and seals of any two or more of such justices assembled at any such special or petty sessions as aforesaid, to direct such fine or fines, if not paid, to be levied by distress and sale of the goods and chattels of the person or persons so offending, rendering the overplus (if any) after deducting the amount of such fine or fines, and the charges of such distress and sale, to such offenders; and such fine or fines which may be imposed upon any such constable, overseer, or other officer as aforesaid, shall be applied and disposed of for the relief of the poor of the parish, township, or place where the offenders shall respectively reside, at the discretion of the justices imposing the same; and such fine or fines, which may be imposed upon any such master or mistress, shall, at the discretion of the justices imposing the same, be either so applied and disposed of aforesaid, or be otherwise paid and applied to or for the use and benefit of such apprentice, for or towards a recompence or compensation for the injury which may have been by him or her sustained by reason of such ill usage as aforesaid; and if any person shall be aggrieved by the imposition of such fine or fines as aforesaid, or by any order or warrant of distress for raising and levying the same, or by the judgment or determination of the said justices, or by any act to be done in the execution of such warrant of distress, such person or persons so aggrieved shall and may appeal to the next general or quarter sessions of the peace to be held for the county, riding, or division within which such person shall reside, of which appeal ten days' notice at the least shall be given; and for want of such distress, such person or persons shall be committed to the house of correction for any space of time not exceeding ten days."

Sect. 2 provides that no person acting under any such warrant of distress shall be deemed a trespasser *ab initio*, by reason of any irregularity in such warrant or proceedings thereupon.

Appeal.

Any person who thinks himself aggrieved may appeal to the next sessions, upon giving ten days' notice thereof.

A penalty is imposed on overseers who neglect to publish the rules of commissioners, 4 & 5 Will. IV. c. 76, s. 18.

***Wilful* misapplication of money.**

By the 97th sect. of 4 & 5 Will. IV. c. 76, overseers and others are liable to a penalty for wilfully wasting or misapplying any money or goods of the parish. A conviction which omits to allege that the misapplication was *wilful* is bad. (*Carpenter* v. *Mason*, 12 *A. & E.* 629.)

Witnesses.

And by 3 W. & M. c. 11, s. 12, in all actions to be brought in the courts at Westminster, or at the assizes, for the recovery of any sum mis-spent or taken to their own use by the churchwardens or overseers, the evidence of the parishioners, other than such as receive alms, shall be admitted.

Contracts of overseers.

The overseers are liable, like all other persons, upon their contracts, express or implied, for necessaries furnished to the use of the poor or otherwise, in the common action of *assumpsit;* and they are liable in damages for acts done by them without authority or in abuse of their office. (See *Simmons* v. *Wilmot*, 3 *Esp. Rep.* 92; *Lamb* v. *Bunce*, 4 *M. & S.* 275. An overseer proceeding through all the stages of an expensive suit, without the concurrence of the vestry, is personally liable. (*Rex* v. *Micklefield.* See also *Furnival* v. *Coombs*, p. 389.)

Overseers not to be Contractors.

Overseers not to be concerned in Contracts relating to the Poor.

Persons having the management of the poor not to be concerned in contracts, &c., whilst in office (*a*).

The overseers of one parish may give a bond of indemnity to the overseers of another parish against costs, charges, and expenses which may be incurred by reason of a pauper of one parish becoming apprentice to a resident in the other. (*Hill* v. *Eastaff*, 6 *Bing.* 170.)

One overseer is not liable for the other's voluntary *contract*. (*Rex* v. *Justices of Gloucester*, 1 *B. & Adol.* 2, *ante*, *per Parke*, J.) But where a joint *duty* is imposed they may be so. (*Rex* v. *Essex*, 3 *B. & Adol.* 941; and see *Eden* v. *Tutchmarsh*, 3 *Nev. & M.* 712.)

The 55 Geo. III. c. 137, s. 6, (*a*) enacts, "That from and after the twenty-fifth day of March next after the passing of this act, no churchwarden or overseer of the poor, or other person or persons in whose hands the collection of the rates for the relief of the poor, or the providing for, ordering, management, control, or direction of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, shall or may be placed jointly with or independent of such churchwardens and overseers, or any of them, under or by virtue of any act or acts of parliament, shall, either in his own name, or in the name of any other person or persons, provide, furnish or supply, for his or their own profit, any goods, materials or provisions, for the use of any workhouse or workhouses, or otherwise, for the support and maintenance of the poor, in any parish or parishes, township or townships, hamlet or hamlets, place or places, for which he or they shall be appointed as such, during the time which he or they shall retain such appointment; nor shall be concerned, directly or indirectly, in furnishing or supplying the same, or in any contract or contracts relating thereto, under pain of forfeiting one hundred pounds, with full costs of suit, to any person or persons who shall sue for the same by action of debt, or on the case, in any of his Majesty's courts of record at Westminster; in which action or actions no essoign, protection, wager of law, or more than one imparlance shall be allowed: provided, nevertheless, that if it shall happen in any parish or parishes, township or townships, hamlet or hamlets, place or places, that a person or persons competent and willing to undertake the supply of any of the articles or things required for such workhouse or workhouses, or for the use of the poor there, cannot be found within a convenient distance therefrom, other than and except some or one of the churchwardens and overseers of the poor, or other person or persons having the ordering, managing, control or direction of the poor, in such parish or parishes, township or townships, hamlet or hamlets, place or places, then and in every such case it shall and may be lawful to and for any two or more neighbouring justices of the peace, (proof thereof having been first duly made before them upon oath, and which oath such justices or any one of them are and is hereby authorised and empowered to administer,) by certificate under their hands and seals, to permit and suffer any one or more of such churchwardens and overseers, or other such person or persons as aforesaid, to contract and agree for the furnishing and supplying of any articles or things which may be required for such workhouse or workhouses, or otherwise, for the use of the poor of such parish or parishes, township or townships, hamlet or hamlets, place or places, during the time which he or they may retain such appointment; any thing herein contained to the contrary notwithstanding; and such certificate shall be entered with the clerk of the peace, or town clerk of the county, city, town or district in which such person or persons shall reside, and a copy thereof left with

Penalty 100*l.*

Exceptions in certain cases.

(*a*) See the statutes and notes of decisions, 1 *Chitty's Col. Stat.* 840. An assistant overseer is within this act (*Bennett* v. *Edwards*, 1 *Man. & R.* 482; 7 *B. & C.* 586; 6 *Bing.* 230; 3 *Young & J.* 464, S. C.) A parishioner, *ipso facto* a guardian of the poor, though he do not act as such, is within the act. (*Stanley* v. *Dodd*, 1 *D. & Ryl.* 397.)

him, for which entry every such clerk shall receive one shilling and no more; and, from that time, every person and persons named in any such certificate shall be discharged from any penalty to which he or they would otherwise be liable under this act, for furnishing or supplying any such article or things as aforesaid; and in case any action or suit for the recovery of any such penalty as aforesaid shall be commenced against any person or persons to whom such certificate shall have been granted as aforesaid, it shall and may be lawful to and for such person or persons to plead generally, that he or they was or were duly discharged from any liability to such forfeiture, by a certificate granted according to the provisions of this act; and upon due proof being given of such certificate, and of such entry thereof as aforesaid, the jury shall find a verdict for the defendant in such action or suit; and if the plaintiff or plaintiffs shall become nonsuited, or discontinue his, her, or their action, or if verdict shall pass against him, her or them, or if judgment shall be had against him, her or them, on demurrer, then the defendant or defendants in such action shall have double costs, and have such and the like remedy for the recovery of the same as any defendant or defendants have or hath for recovering costs of suit in any other cases by law."

Overseers not to be Contractors.

The remedies and penalties of this act are extended to every commissioner, guardian, treasurer, master of the workhouse, and other officers appointed under 4 & 5 Will. IV. c. 72.

Extended to officers appointed under 4 & 5 Will. IV. c. 72.

And by s. 77, it is enacted, "That no person filling any office concerned in the administration of the laws for the relief of the poor shall supply, for his own profit or on his own account, any goods, materials or provisions ordered to be given in parochial relief, or in respect of the money ordered to be given in parochial relief, to any person in such parish or union, under a penalty of five pounds, on conviction before two justices."

No person employed in administration of poor laws to furnish, for his own profit, goods or provisions given in parochial relief.

Several actions have been brought to recover penalties under 55 Geo. III. c. 137.

Procter v. *Mainwaring*, 3 *B. & Adol.* 145. The defendant, an overseer, kept a chandler's shop, and paid the pauper her allowance on several occasions, partly with goods from his shop and partly with money. The jury found, that the pauper voluntarily took part in goods. *Abbott*, C. J. after remarking that this penal clause must not be extended to cases which may be suggested as falling within the mishief, added: "That *this* case was not within the statute. It would have been easy for the legislature, had they so intended it, to have said that it should not be lawful for an overseer to deliver to any pauper articles in lieu of money ordered for relief, but they have not so expressed themselves." *Bayley*, J. said: "The object of the act was to prevent imposition upon the parish by the overseers. If, therefore, goods are required for the parish workhouse, or if any other general supply for the poor is wanted, the overseer is not to furnish that supply: but it seems to me these are the only cases contemplated by the act. Where a pauper carries an order for relief to the overseer, he has a right to demand it in money; and, in case of refusal, has a speedy remedy, by complaint to the justice who made the order. If the conduct of the overseer, in selling the articles, be oppressive, the justice may punish him for it; but if the overseer be absolutely prohibited from selling, it might be a hardship upon the pauper. For there being no words distinguishing the case of money laid out by the pauper, after full payment by the overseer, from that of a payment partly in goods and partly in money, a pauper might be compelled, in case the overseer kept the only shop in the village where the articles were supplied, to go to a very inconvenient distance for the purpose of purchasing them from some one else." *Holroyd*, J. "However desirable it may perhaps be to prevent the mischief attending such cases as the present, yet we cannot extend a penal statute so as to bring this case within it. The words of this statute appear to me applicable only to a general supply of the poor by the parish officers."

Supply of goods to individual paupers not within the statute.

Henderson v. *Sherbone*, 2 *M. & W.* 236. Debt for the penalty. The

Same point.—

Overseers not to be Contractors.

Quære if the penalty is repealed by s. 77 of the Poor Law Act.

defendant was an assistant overseer, and an order having been made by the vestry that a coat should be given to pauper, the defendant supplied him with an old coat of his own, and charged it in his accounts. Lord *Abinger:* "I think there is sufficient doubt in the words of 55 Geo. III. c. 137, s. 6, to have made me say, that I should have been better satisfied if the Court had granted a rule in *Procter* v. *Mainwaring:* yet I am very far from being prepared to say that the decision was wrong. The principle adopted by Lord *Tenterden*, that a penal law ought to be construed strictly, is not only a sound one, but the only one consistent with our free institutions. The interpretation of statutes has always been, in modern times, favourable to the personal liberty of the subject, and I hope always will be so. But I think there is another ground for not disturbing this nonsuit. If section 77 of the new poor-law act embraces this case, I do not agree that it does not amount to a repeal of the former enactment. If a crime be created by statute with a given penalty, and be afterwards repealed by another statute with a less penalty, I cannot say that the party ought to be held liable to both. There may be, no doubt, two remedies for the same act, but they must be of a different nature. The new act then would be a repeal of the former penalty. It appears to me, therefore, reasonable to suppose, that in enacting this clause of the poor-law act, the legislature had in contemplation the decision in *Procter* v. *Mainwaring*, and accordingly provided for this particular case, and annexed to it a specific penalty. Under these circumstances, although I might originally have entertained some doubt, I think it right to adhere to the decision in *Procter* v. *Mainwaring*." *Parke*, B. "I also think we are bound by *Procter* v. *Mainwaring*, although, if I had to form an opinion on the facts of the case for the first time, I am not prepared to say that I should quite have assented to the reasons assigned by the Court for their judgment. But after that decision, I think we are bound by it; and certainly a considerable argument arises in support of it from the 77th section of the poor-law act, that appears very much like a legislative recognition of the decease of the former statute." Rule for a nonsuit discharged.

An overseer, a glazier, repairing a window of a workhouse, and supplying glass, is not liable to the penalty.

Barber v. *Waite*, 3 *Nev. & M.* 611; 1 *Ad. & E.* 514. This was an action for penalties against the defendant, a plumber, painter, and glazier, who was also overseer of Boston, and, while holding that office, had repaired the windows of the workhouse. In so doing he supplied glass, lead pipe and paint, and was paid for it and his labour by the parish; and it was held that this was not within the statute. That the words "for the use of the workhouse," mean for the use of the persons in the workhouse. It was also observed, that the thing did come properly under the description of work and labour, and not of goods supplied; and that work and labour was not within the meaning of the act. In *West* v. *Andrews* (*infra*), sheep were supplied, which came within the act, as they were provisions, though something remained to be done to make them fit for consumption. Coals also are within the act; and so is anything in respect of which an action for goods sold would lie. In this case, it is true, glass, paint, and other things were supplied, but the contract was substantially for work and labour, and materials used in the course of it. If the defendant had declared in assumpsit for the repairs done by him, a count for goods sold would not have been applicable. Verdict for defendant.

I. S being the master of the workhouse appointed by, and receiving orders from, the guardians of the poor of the parish of W., bought provisions from A. B., one of such guardians: Held, that A. B. was liable to the penalty of 100*l.* in-

West v. *Andrews*, 5 *B. & Ald.* 328. The defendant was one of the guardians of the poor; the poor-house was under their control, being managed by one Griffiths, who was the master of the poor-house appointed by the guardians, and receiving his orders from them. Griffiths, having a contract at so much per head, found all the meat, and he bought of the defendant, then being a guardian, four live sheep for the use of the poor, and paid him for them. *Abbott*, C. J. "Here the defendant has made a bargain for the supply of provisions with a third person, who has the contract for providing for the poor, and whom the defendant, in conjunction with others, appoints to his situation, and whose conduct it is his duty to superintend. Under these circumstances, it seems to me, that all the mis-

chief which was contemplated by the legislature would arise, if we were to hold that it was lawful. I am, therefore, clearly of opinion, that the defendant's case falls both within the words and spirit of the act of parliament."

Overseers not to be Contractors.

Pope v. *Backhouse*, 2 *B. Moore*, 186; 8 *Taunt.* 239, S. C. The defendant was a farmer, and had supplied corn and flour to some of the poor of the parish for which he was churchwarden, and the jury found that he sold it only at a fair market price; and it was contended, that, to bring the case within the statute, it was necessary for the jury to find that the defendant sold at a profit. *Gibbs*, C. J. "It is to be presumed that a farmer does make a profit by selling the produce of his land at a fair market price. If a churchwarden or overseer purchase provisions at a certain price, and afterwards, in the event of a scarcity which presses on the poor, let them have them at that price, he would not come within the act; but if he should sell them to the poor as he would to other individuals, at the market price, and make a profit on them, he would be within the act. The defendant is certainly liable, and the verdict properly entered for the plaintiff." The rest of the court concurred.

posed by statute 55 Geo. III. c. 137, s. 6.

It is no defence that the articles were furnished at a fair market price.

West v. *Andrews*, 1 *B. & C.* 77; 2 *D. & R.* 184; 1 *D. & Ryl. Mag. Ca.* 213, S. C. There were several counts in this action, but the third stated that the defendant was a person in whose hands the providing for, ordering, management, control, and direction of the poor of the parish of Westhamprett was placed, by virtue of certain acts of parliament, and that the goods were supplied for the use of the poor of the said parish. The defendant was guardian of the poor of the parish of Westhamprett. The poor of that parish, together with the poor of four parishes, were jointly maintained in a workhouse, but Westhamprett was regularly united according to the 22 Geo. III. c. 83, s. 43, with only one of those parishes. The provisions were supplied to the master of the workhouse, who bought of the defendant four sheep for the use of the poor, and paid him for them. The master of the workhouse had a contract for providing for the poor at so much a head, and found all the meat, &c. *Abbott*, C. J. "If the evidence given be sufficient to sustain any one count, there ought not to be a nonsuit entered. The first objection is, that this was provided for, and must fall under 22 Geo. III. c. 83, s. 42. But if 53 Geo. III. c. 137, s. 6, does not extend to a case like the present, a great many words in it would be altogether insensible. For that clause speaks of persons having the providing for, ordering, management, control, or direction of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places. It therefore clearly extends to persons having the control of the poor in more parishes than one, and applies, as it seems to me, to the present case. The next objection is, that the character of the defendant is not properly described. He is described in the third count as a person in whose hands the providing for, ordering, management, control, and direction of the poor of the parish of Westhamprett was placed. How is that allegation sustained? It appears that under Gilbert's Act, (22 Geo. III. c. 83,) where more parishes than one are united, every guardian of the poor appointed under that act has, and is invested with, all the powers and authorities given to overseers of the poor by any act of parliament, and is, to all intents and purposes, except with regard to the making and collecting rates, an overseer of the poor for the parish for which he is appointed guardian. If then this defendant was lawfully appointed guardian of the poor of Westhamprett, he is a person in whose hands was placed the control of the poor of that parish for which he was so appointed guardian. The objection, therefore, that his character is improperly described, cannot prevail. The last objection is, that in the third count the supply is stated to have been for the support and maintenance of the poor of the said parish; whereas, by the proof, it appears to have been for their support and maintenance in the workhouse, and it is urged that as the 55 Geo. III. c. 137, s. 6, describes these as two distinct classes, the allegation should have strictly

A guardian of the poor appointed under 22 Geo. III. c. 83, is within the 55 Geo. III. c. 137, s. 6, notwithstanding the former act, s. 42, imposes a penalty for the supply of the provisions for the poor by such guardian.

An allegation that A. supplied the poor of the parish of W. with provisions is supported by evidence that he supplied the poor of the parish of W., and other parishes in a workhouse.

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conformed to the proof. I am by no means satisfied that this objection, even if taken at *nisi prius*, could have prevailed. But I am clearly of opinion, that a mere formal objection of this sort, if not so taken, cannot be available afterwards. I think, therefore, that all the objections are insufficient." *Bayley*, J. "The 55 Geo. III. c. 137, s. 6, seems to have been intended as a general provision, and the legislature could not have meant that there should be one rule for parishes united under 22 Geo. III. c. 83, and another in cases of parishes not so united. It may be true, that this case would have fallen under Gilbert's Act, previously to 55 Geo. III.; but the latter statute, when passed, contained a general provision, within which this case, if not excepted, would fall. I can see no reason for any such exception being made, and in the absence of any express exception, it seems to me that no exception can be implied from Gilbert's Act. I am also of opinion that a guardian appointed under 22 Geo. III. is clearly a person having the ordering, management, control and direction of the poor of the parish for which he is appointed, and that he falls under the provisions of the 55 Geo. III. The guardians have the power of recommending the master of the workhouse, and may make agreements with respect to the diet of the poor over which they are to exercise a strict control. It is the duty, therefore, of each of them to take care that wholesome food is supplied. Now all these objects will be defeated if the guardian, who is to inspect the conduct of the governor, supplies the workhouse with provisions. The case, therefore, is clearly within the mischief to be remedied. As to the objection that the declaration does not sufficiently describe the persons for whose care and support the goods were supplied, it seems to me that the allegation is substantially proved, for if a person supplies the poor of any parish, it is immaterial whether he supplies them in or out of the workhouse; and if he supplies a workhouse which contains the poor of the parishes A., B., C., and D., he does in fact supply the poor of each of these parishes." *Holroyd*, J. "I am of the same opinion. The 55 Geo. III. c. 137, is not confined to cases not falling under Gilbert's Act. The words seem intended to include cases like the present, and we ought to give them a liberal construction, so as to remedy the mischief contemplated. It is contended that inasmuch as this defendant was only guardian of the poor, he was not charged with the maintenance of the poor of this particular parish, and that the allegation to that effect in the declaration is not proved. It appears, in fact, that he had a control over the maintenance of the poor of the parish. And as to the description of his character in the declaration, it is sufficiently proved by the evidence; for in pleading it is not necessary that the allegation should be as extensive as the proof. Where a prescription is pleaded for a right of common for sheep, and the proof is of a right for all commonable cattle, it is sufficient; (*a*) and so here the allegation is, that he had the ordering and direction of the poor of one parish, and the proof is, that he had the ordering and direction of the poor of that parish and others. As to the third objection, I agree with my lord chief justice, that it not being taken at the trial, it cannot prevail now." *Best*, J., concurred.

An overseer is not liable unless he sell with a view to profit.

Skinner v. *Buckee*, 3 *B. & C.* 6; 4 *D. & R.* 628. The defendant was a coal merchant, and overseer of the liberty of Saffron Hill, &c.; and during the time that he was overseer, coals were provided for the workhouse nominally by the brother-in-law of the defendant, but the latter had an interest in them. The jury found that the defendant did not send in the coals with a view of making a profit. *Abbott*, C. J. "The question in this case arises upon the 55 Geo. III. c. 137, s. 6; the words are, that no 'churchwarden or overseer of the poor, either in his own name, or in the name of any other person or persons, shall provide, furnish, or supply, for his or their own profit, any goods, materials, or provisions, for the use of any workhouse, or otherwise for the support or maintenance of the poor in

(*a*) See *Bushwood* v. *Pond*, *Cro. Eliz.* 722; *Bruges* v. *Searl*, *Carth.* 219; *Bailiffs, &c. of Tewkesbury* v. *Bricknett*, 1 *Taunt.* 142.

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any parish or place for which he shall be appointed such overseer, during the time which he shall retain such appointment; nor shall be concerned, directly or indirectly, in furnishing or supplying the same, or in any contract or contracts relating thereto, under the penalty of 100*l.*' Now if the overseer himself in this case had supplied all the provisions required for the support of the poor at prime cost, and not with a view to his own profit, it is quite clear that he would not have committed any offence within the words of this part of that act of parliament: that was laid down by *Gibbs*, C.J., in *Pope* v. *Backhouse* (*ante*, 401). Inasmuch, therefore, as an overseer, providing in his own name the poor of his parish with all the provisions and goods required for their support, would not be liable to any penalty, provided he made no profit, it cannot be supposed that the legislature intended that the same overseer who is concerned directly or indirectly in any contract for supplying any part of the provisions, however small, should be liable to a penalty, although he derived no profit from it; that would involve a manifest contradiction. I think, therefore, that the words, 'for his own profit,' must be taken to override the whole clause; and that the legislature intended that no overseer, for his own profit, either in his own name, or in that of any other person, should supply the poor with provisions, nor be concerned, directly or indirectly, in any contract relating to it." And the court refused to disturb the verdict found for the defendant.

CHAPTER VI.

OF THE SETTLEMENT OF THE POOR.

Of Settlements in General.
Of the Place in which a Settlement may be acquired.
Of the Persons who may acquire it.
Of Settlements by Birth.
1. *Of a legitimate Child.*
2. *Of a Bastard.*
Of Settlements by Parentage, and herein of Emancipation.
Of Settlements by Marriage.
Of Settlements by Hiring and Service, abolished prospectively by 4 & 5 Will. IV. c. 76, ss. 64, 65.
Of Settlements by Apprenticeship.
Of Settlements by Renting a Tenement.
Of Settlements by Estate.
Of Settlements by Office, abolished prospectively by 4 & 5 Will. IV. c. 76, s. 64.
Of Settlements by Payment of Rates.
Of Settlements by Acknowledgment by Certificate.
Of the Evidence of Settlements.
By Relief.
By a former Order of Removal.

1. Of Settlements in General. (a).

1. *Settlements in general.*

The Poor Law Amendment Act has made some alteration in the law of settlement: s. 6, prevents the acquisition of a settlement by *hiring and service*, or by *office*, after the passing of that act; and s. 65 prevents any

(a) As the Poor Laws, or at least those parts which relate to *settlements*, are administered chiefly by the magistracy of the kingdom, it may be convenient to repeat in this place the 16 Geo. II. c. 18, which enacts, s. 1, "that it shall and may be lawful to and for all and every justice or justices of the peace for any county, riding, city, liberty, franchise, borough, or town corporate within their respective jurisdictions, to make, do, and execute all and every act or acts, matter or matters, thing or things appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, *and settlement of poor persons; for passing and punishing vagrants;* for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithstanding any such justice or justices of the peace is or are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place affected by any such act or acts of such justice or justices as aforesaid."

Sect. 2 enacts, "That no act or acts, matter or matters, thing or things, which hath or have been before the making this act done, made, or executed by any such justice or justices of the peace, shall hereafter be quashed or declared void, because the same hath or have been so made, done, or executed by any such justice or justices so rated or chargeable as aforesaid; any law, usage, or custom whatsoever to the contrary notwithstanding."

Sect. 3 provides, "That this act, or any thing therein contained, shall not authorise or empower any justice or justices of the peace for any county or riding

settlement by hiring and service not completed at the passing of the act; s. 67 prevents all settlement by apprenticeship in the sea-service.

1. *Settlements in general.*

Definition of a settlement.

"By the term *settlement* is to be understood *a permanent indestructible right* to take the benefit of the poor laws in a particular parish or place which maintains its own poor."—*Gambier on Par. Sett.* 1.

"A settlement is the *right acquired* in any one of the modes pointed out by the poor laws to become a recipient of the benefit of those laws, in that parish or place, which provides for its own poor, where the right has been *last* acquired. It is not *forfeitable*, and may be *communicated* from person to person, notwithstanding an attainder, which works a forfeiture of most civil rights." (*Rex* v. *St. Mary, Cardigan, post*, 408 (*a*)). It may cease, or be *destroyed for ever* in the parish or place where it once existed, upon the acquisition of the same right, or any other new right, in any other such parish or place. It will be observed that, from the *language* of the Acts 13 & 14 Car. II, c. 12, and the other statute relating to the removal of paupers, a pauper is always to be removed to the parish where his *last* settlement was acquired; so that where a person may have *successively* acquired *several* different settlements he has *no option*, but must seek relief in the parish where he acquired his *last* settlement.

By the earliest statute on this subject (12 Rich. II. c. 7,) in which punishment was awarded against beggars able to serve, and provision made for impotent beggars, the poor were to repair, in order to be maintained, to the places where they were *born*. By 11 Hen. VII. c. 2, beggars not able to work were to resort to the *hundred* where they last *dwelled*, or *were best known* or *were born;* and by 19 Hen. VII. c. 12, to where *born*, or *to where they had made their last abode by the space of three years*. By 1 Ed. VI. c. 3, this was explained to be, where they had been *most conversant* by the space of three years. By 1 Jac. I. c. 7, they were to be sent to the place of their *dwelling*, if they had any; if not, to the place where *they last dwelt* by the space of *one* year; if that could not be known, then to the place of their *birth*. So that beggars not able to work were to be maintained where they were born, or where they had inhabited,—*first*, for any indeterminate time, *next* for three years, and lastly for *one year*. In *Rex* v. *St. George, Exeter*, 5 *Nev. & Man.* 66, 3 *A. & E.* 373, *Denman*, C.J., said, "At the time of passing 43 Eliz. c. 2, there was no law of settlement, nor could the children of paupers, if at a distance from their parents, be sent home by the parish officers."

Poor people going from one parish to another.

This last regulation as to the place where paupers were to be supported continued to the time of 13 & 14 Car. II. c. 12, by which, after reciting that "Whereas the number of poor within England and Wales is very great and burthensome; and whereas, by reason of some defects in the law, poor people are not restrained from going from one parish to another, and therefore do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most wood for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks where it is liable to be devoured by strangers:" it is enacted, "that it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the quorum, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to

How to be removed to the parish where last settled.

at large, to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place, where such justice or justices of the peace is or are so charged, taxed, or chargeable as aforesaid; any thing herein contained to the contrary in any wise notwithstanding."

(*a*) A settlement is not a *property*. *Ibid.* It is not at all analogous to an *inheritance*. *Per* Lord Ellenborough. *Rex* v. *Haddenham*, 408.

1. *Settlements in general.*

remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

The forty days' residence.

By the above act any person might gain a settlement by *residence of forty days in the parish.* But by 1 Jac. II. c. 17, the forty days were to be reckoned from the delivery to the parish officers by the new comers of a *notice* of the place of abode and the number of the family; and by 3 & 4 Will. & M. c. 11, from the *publication* of such *notice* in the *church.* The object of this regulation was *notoriety*, in order that persons likely to be chargeable might be removed. But the latter act contemplated four cases in which no notice was to be given. First, when the person had served an annual office. Secondly, when he had *paid* parish rates. Thirdly, when he had been *hired* (and by 8 & 9 Will. III. c. 30, s. 4, *served*) for a year, being unmarried and having no children. And fourthly, persons *bound apprentice* by indenture. Notice however was never necessary when the tenement on which the person came to settle was of more than 10*l.* value by the year. The power of gaining a settlement by delivery and publication of such notice was altogether taken away by 35 Geo. III. c. 101.

Notice.

2. The Place in which a Settlement may be acquired.

In what place a settlement may be gained.

Wherever a district of known limits contributes to one common fund raised within it, and which is disbursed within it, for the relief of its own poor, this right may be acquired, whether such district be a parish, a township, or hamlet, even though the township or hamlet be extra-parochial, for overseers may be appointed to an extra-parochial township or village. (*Rex* v. *Rafford*, 1 *Stra.* 512.)

The above rule has at different times been modified in favour of parishes in which prisons, hospitals, and other public charitable institutions are situated. The provisions to this effect in local acts have given way to the following general enactment.

All enactments and provisions in respect of gaining settlements contained in local acts repealed.

By 54 Geo. III. c. 170, it is enacted, "That all enactments and provisions contained in any act or acts of parliament since the commencement of the reign of his late majesty, Geo. I., whereby an alteration is made in respect of gaining or not gaining a settlement within any particular district, parish, township, or hamlet, shall be, and the same are hereby repealed; and that all and every person shall be deemed and taken to have acquired and to acquire a settlement in every such district, parish, township, or hamlet, by any ways and means he, she, or they would or might have done, or would or might do, in case such act or acts, or any of them, had not been made and passed; and notwithstanding the same or any of them are or was in force and operation."

Persons born in prisons, or houses licensed for the reception of pregnant women, not to gain a settlement thereby.

Sect. 2 provides, "That no person shall be deemed or taken to acquire any settlement in any district, parish, township, or hamlet, by reason of such person being born of the body of any mother actually confined as a prisoner within the walls of any prison; or any house licensed for the reception of pregnant women, in pursuance of an act made and passed in the thirteenth year of his present Majesty's reign, for the better regulation of lying-in-hospitals, and other places appropriated for the charitable reception of pregnant women, in which any such prison or house shall be situated."

Provisions respecting settlements by reason of birth in any poorhouse or house of industry belonging to united parishes.

Sect. 3 provides, "That whensoever any person shall be born of the body of any poor person in any house of industry, or house for the reception and care of the poor of any district, parish, township, or hamlet which shall be locally situated in any district, parish, township, or hamlet, contributing to the expenses of maintaining the poor in such house, or in any other district, parish, township, or hamlet, not contributing to such expense, such person shall, so far as regards the settlement of such person, be deemed and taken to be born in the district, parish, township, or hamlet, by whom the mother of such person was sent to, and on whose account the mother of such person was received and maintained in, such house."

Sect. 4 provides and enacts, "That no person shall be deemed or taken to gain any settlement by reason of any residence within any district, parish, township, or hamlet, while he, she, or they shall be detained or confined as a prisoner within any such district, parish, township, or hamlet, on any civil process, or for any contempt whatsoever."

2. *The Place in which a Settlement may be acquired.*

Prisoners for debt or contempt not to gain settlements while in custody.

Sect. 5 provides and enacts, "That no gate-keeper or toll-keeper of any turnpike-road or navigation, or person renting the tolls and residing in any toll-house of any turnpike-road or navigation, shall thereby gain any settlement in any district, parish, township, or hamlet." (The general turnpike act, 3 Geo. IV. c. 126, s. 51, is to the like effect.)

No gate-keeper or person residing in any toll-house to gain a settlement thereby.

Sect. 6 provides and enacts, "That no person or persons shall gain any settlement in any district, parish, township, or hamlet, by reason of any residence in any house or other dwelling-place provided for the residence of such person or persons by any charitable institution, while such person or persons shall be supported and maintained at the expense of such charitable institution as an object or objects of such charity."

No person maintained in any charitable institution to gain any settlement by residence therein.

And by 59 Geo. III. c. 12, s. 11, it is enacted, that every house and building which shall be purchased or hired under the authority of that act, shall, in all questions relative to the settlement of persons born or lodged therein, be deemed and taken to be part of the parish, on behalf of which the same shall be purchased or hired, and by which the same shall be used as a poorhouse or workhouse.

Building hired under 59 Geo. III. c. 12, taken to be in the parish, &c., hiring, in questions of settlement.

By 1 & 2 Will. 4, c. 42, which enables the parish officers to provide land for the employment of the poor, and inclose waste lands for cultivation, it is provided by the fifth section, that no poor inhabitant of the parish, to whom land shall be let which shall have been hired or inclosed under that act, shall gain a settlement by renting, or occupying or paying parochial taxes for such land, either alone or with any other land or tenement.

Similar power is given by the 1 & 2 Will. IV. c. 59, for inclosing land belonging to the Crown; and that act contains the same restriction as to gaining settlements.

By 5 & 6 Vict. c. 48, the Forest of Dean is divided into two townships, each to maintain its own poor.

Forest of Dean divided into two townships.

Reg. v. *Hunnington*, 13 *L. J.* 24. Previous to 1834, the parish of Halesowen consisted of the township of Halesowen, and the township of Oldbury, and other townships. Only one set of overseers was appointed for the whole parish, who made a joint poor-rate for such parish, which rate formed a common fund for parochial purposes. In 1834, under the authority of a mandamus, (see *Reg.* v. *Salop*, *ante*, p. 18), separate overseers were appointed for the township of Halesowen, which from that time maintained its own poor separately. No settlement can be gained in Halesowen as a distinct township prior to 1834, and a pauper, whose husband's father was hired and served for a year in that township in 1790, is not removable to such township.

Halesowen not a township for the purpose of settlement till 1834.

By the 4 & 5 Will. IV. c. 76, s. 33, (see Appendix), the guardians of the parishes forming any union are empowered to agree that, for the purpose of *settlement*, such parishes shall be considered as *one* parish.

Union of parishes for purpose of settlement.

As to the place in which a settlement may be acquired, see further title "*Place to which an order of removal may be made.*"

3. Of the Persons who may acquire a Settlement.

A settlement attaches to those persons only, concerning whom those circumstances may be affirmed, which acts of parliament say shall give a settlement. It is not universally true that *every* person in this country *must have a settlement* to which he may be removed, for bastard children born in an *extra-parochial* place which is not a vill have no settlement, nor foreigners who come into this country. (*Rex* v. *St. Nicholas, Leicester*, *p.* 411.) Such persons are denominated *casual* poor, and must be provided for in the parish where they happen to be. See *Casual Poor*, *ante*, 111.

It is not *every* person who has a settlement.

Although a *foreigner* has not necessarily a settlement in this country, he *may acquire one* in some of the modes by which natural-born subjects obtain

Foreigners.

2. *The Place in which a Settlement may be acquired.*

this privilege; thus, the wife of a foreigner was removed to Eastbourne (the place of her maiden settlement) from Seaford, where he had for two years before, and at the time of the removal, resided, and rented a house of above the value of 10*l.*, exercising the trade of a baker. The husband acquiesced in the removal, and accompanied them to Eastbourne. The sessions confirmed the order of removal, and the question was, whether a foreigner can gain a settlement in this country? *St. Giles's* v. *St. Margaret's* was cited, and it was urged that the 13 & 14 Car. II. referred only to the poor of *this* kingdom, *i. e.* England and Wales. *Per* Lord *Ellenborough*, C. J. "This man was not an alien enemy, but a German by birth, an alien *amy*. And as such, though he may not take *a lease* (*a*) of a dwelling-house or shop, by reason of the statute 32 Hen. VIII. c. 16, yet he may occupy a tenement of 10*l.* a-year, and carry on his trade there like any other person. Then if he may do so, he has that interest which enables him to gain a settlement by the provision of the legislature: the law of humanity obliges us to afford relief to poor foreigners, to save them from starving." *Lawrence*, J., in answer to the observation, that the statute of Car. II. did not extend to any but the poor of England and Wales, said, that, "without dispute, Scotchmen and Irishmen may gain settlements here." Both orders quashed. (*Rex* v. *Eastbourne*, 4 *East*, 103.)

A foreigner may gain a settlement by occupying a tenement of 10*l.* for a year.

A foreigner does not gain a settlement by mere residence of 40 days in a parish.

St. Giles v. *St. Margaret's*, 1 *Sess. Ca.* 97. An Englishwoman was married to a foreigner who had no settlement in England: the husband continued for the space of forty days in a parish irremovable, for that there was no place to which he could be removed; and it was urged that the wife continuing with him as part of his family for forty days, in a place whence he hath not a right to be removed, gains a settlement. But Lord *Holt*, C. J., thought "That where a person stays forty days in a place whence he hath a right *not to be removed*, that gains a settlement; otherwise, where he only stays in a place because they do not know whither to remove him."

Same point.

Ellinor Conred's Case, Comb. 287; 2 *Bott*, 17. She and her two children landed at Harwich from Holland, and removing to another place, were sent back to Harwich by order of two justices. *Darnel*, Serj. "Landing makes no settlement." Sir *Barth. Shower*. "'Tis within the equity of the act." *Eyres*, J. (*absente Holt*), "You must keep them where you have them for aught I know; it seems to me to be *casus omissus*." The order was quashed.

Married women (*b*) can acquire no settlement.

Married women, during their *coverture*, cannot *by any act of their own* acquire a settlement. What is their proper settlement will be considered in another place.

There never was an instance where a wife was held to acquire a settlement during the life of her husband." Lord *Hardwicke*, in *Berkhampstead* v. *St. Mary, North Church*, 2 *Bott*, 51. "Nor can she, by residence of her husband on an estate devised to her, acquire a settlement either for her husband or her children. If she only be irremovable (*R.* v. *Oakley*, *post*), and if her husband resides with her, he will acquire a settlement; and thereby, indirectly, she will acquire one.

Infants.

Infants cannot be removed from the parish in which they have a freehold (*Rex* v. *Hasfield*, *Burr. S. C.* 147; 2 *Bott*, 613); but no case has decided, though it has been intimated in some, that a settlement could not be gained under such circumstances. (*Ib.*) A child under seven years of age, removed with a parent for nurture, will gain no settlement. *Rex* v. *Cummew*, 2 *Bott*, 36.)

Attainted persons.

Persons attainted may communicate their settlement to children born after the attainder (*Rex* v. *St. Mary, Cardigan*, 6 *T. R.* 116, *post*); and in *Rex* v. *Haddenham* (15 *East*, 463, *post*), an attainted felon, who had been discharged upon the sign-manual, but never received a *formal* pardon, acquired a settlement by the purchase of an estate.

(*a*) This section applies only to *leases* of dwelling-houses or shops granted to stranger *artificers* or handicraftsmen. A vintner is not within the statute, 3 *Mod.* 94; 1 *Saunders*, 3.

(*b*) A *feme coverte*, who is the guardian in socage of the children by a former husband, may be irremovable from their estate. See, *post*, *Rex* v. *Oakley*.

In some former editions of this work it has been said that a deserter can gain no settlement, and *Rex* v. *Norton* (9 *East*, 206) is cited as an authority. But that case determined only that he could not gain a settlement by *hiring and service*, on account of the superior claim to his service by the country. But suppose a deserter and before the recent Act executed an annual office, or rented a tenement openly, and *boná fide*, he could have acquired a settlement.

2. *The Place in which a Settlement may be acquired.*

Deserters.

In *Rex* v. *Ashton-under-Lyne*, 4 *M. & Sel.* 357, the wife took the premises, and the husband never entered into the contract. (*Rex* v. *Brightelmstone*, 1 *B. & A.* 270; *Rex* v. *Beaulieu*, *post.*) A soldier may, during his service in the army, gain a settlement by renting a tenement, although he could not by hiring and service; and, on that ground chiefly, it was decided that he gained no settlement. It is no objection that his estate was defeasible. (*Rex* v. *Haddenham*, 15 *East*, 460.)

II. Of Settlement by Birth.

II. *Of Settlement by Birth.*

1. *Of a Legitimate Child.*
2. *Of a Bastard.*
   1. *In general.*
   2. *How Settlement of Bastard affected by a Certificate.*
   3. *When Removable from Mother.*
3. *Evidence of a Settlement by Birth.*

1. Of a Legitimate Child.

1. *Of a legitimate Child.*

The settlement of a legitimate child is that of the father, or of the mother; but until one of these is ascertained, the place of birth is, *primâ facie*, the place of settlement.

Legitimate children take the settlement of their father; if the father has no settlement, they are entitled to the settlement of their mother; and it is only when both these sources fail, that their right accrues to a settlement in the place in which they were born. But until the settlement of the father or of the mother has been ascertained, the settlement of a legitimate child, like that of a bastard, is *primâ facie* in the parish where the birth took place; and if that cannot be ascertained, then the child is not removable from the place where it was *found*, and must be relieved there as a *casual* pauper.

A child was removed to the place of its birth, neither father nor mother having a settlement; and on appeal the sessions were of opinion that birth gains no settlement, but only in case of bastardy. *Per Curiam* (*absente Holt*, C. J.) "Birth makes a good settlement, and the labour lies on them where it was born to find another." The order made on appeal was quashed. (*Spitalfields and St. Andrew's, Holborn, Fort.* 307; *Rex* v. *St. Mary, Leicestershire*, 5 *Nev. & Mann.* 215.)

Cripplegate v. *St. Saviour's*, 2 *Bott*, 27. A child of three years of age was removed from one of these parishes to the other; and it appeared in the order that they removed him there because he was born there, not having any other settlement. By the Court: "The father's settlement is the settlement of the children, when it can be found out; otherwise, the birth of the child *primâ facie* is the settlement of the child, until there is another settlement found out."

Place of birth.

The place of birth is *primâ facie* the place of settlement (*Rex* v. *Heaton*, 6 *T. R.* 653); even if the pauper is a widow or a married woman. (See *Rex* v. *Ryton*, *post.*) But *per Bayley*, J. "I cannot concur in the argument, that the mere fact of a pauper being first *found* in a particular parish is presumptive evidence of his having been *born* there; and if the cases that have been referred to go that length, I, for one, must be allowed to doubt their authority." (*Rex* v. *Trowbridge* 1 *M. & R.* 12; 7 *B. & C.* 252.) And in many cases, proof of the place of birth will afford but slight evidence of settlement, though of course it may be acted upon if no proof tending to fix the settlement elsewhere be offered. (See *Rex* v. *Wakefield*, 5 *East*, 335.)

Proof thereof.

1. *Of a Legitimate Child.*

In *Clavely* v. *Burton*, 2 *Bulst.* 351, it was holden by the judges, that if the mother of a child born in one parish die in another parish, while passing to a third, such child shall be settled where it was born, and not in the parish where it was left destitute by the death of the mother.

Whitechapel v. *Stepney*, *Carth.* 433 ; 2 *Bott*, 24. It was holden that a legitimate child, where its parent is a vagabond, gains a settlement by birth ; but where the settlement of the parent of a legitimate child is known, such child must follow the settlement of the parent.

The place of birth of a legitimate child, as a vagrant, is its settlement, until another be found.

A travelling woman, having a nurse child, was apprehended for felony, and sent to gaol, and was hanged ; this child is to be sent to the place of its birth, if it can be known, otherwise it must be sent to the town where the mother was apprehended, because that town ought not to have sent the child to gaol, being the malefactor. (*Dalt.* c. 73, p. 168.)

First known place of abode.

And where a child is first known to be, that parish must provide for it till they find another. (*Comb.* 364, 372.)

Children born in England, but of Irish or Scotch parents, may be sent to Ireland and Scotland. (See *Rex* v. *Great Clacton*, p. 126 ; *Rex* v. *Whitehaven*. p. 126.

Foundlings maintained in hospitals.

By 13 Geo. II. c. 29, for confirming and enlarging the powers conferred by charter upon the governors and guardians of the hospital for the maintenance and education of exposed and deserted young children, it is provided by s. 7, that no child, nurse, or servant, received or employed in such hospital shall, by virtue thereof, gain any settlement in the parish where such hospital shall be situate. The settlement of *foundlings*, therefore, is left to be determined by the same rule as prevails in all other cases wherein those particulars as to their birth and parentage can be ascertained, which determine the settlement of the child in such other cases. According, however, to the popular notion of a *foundling*, these facts are not made known, nor are they easy to be discovered. But it is to be inferred that the institution to which the above statute relates, is not limited to the reception of children whose destitution is of that aggravated description. It involves no absurdity, therefore, to say that *foundlings*, if they are legitimate children, follow their father's settlement, if it is known ; if not, they take their mother's ; and if neither of these be known, or they are bastards, their settlement will be in the place of their birth. But if that also cannot be discovered, they must be provided for in the place in which they may happen to be, as casual poor. The effect of an admission upon this charitable establishment, is only to take those children from the parish where they must otherwise have been supported, and to give them the benefit of the provisions of the hospital. See 54 Geo. III. c. 170, ss. 2 and 3, *ante*, 406, as to children born in workhouses. According to the case of *R.* v. *St. Peter* and *St. Paul*, *ante*, p. 56, *n*, persons born in gaols and workhouses before that statute acquired no settlement in such places.

Persons in workhouses, &c.

2. *Of a Bastard.*

2. Of a Bastard.

1. *By Birth of a Bastard in general.*

An illegitimate child could not *derive* a settlement from either of its parents, and generally speaking was settled in the place where it was born. But by 4 & 5 Will. IV. c. 76, s. 71, it was enacted, "That every child born a bastard after the passing of that act, shall have and follow the settlement of the mother of such child until such child shall attain the age of sixteen, or shall acquire a settlement in its own right ; and such mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family until such child shall attain the age of sixteen ; and all relief granted to such child while under the age of sixteen shall be considered as granted to such mother : provided always, that such liability of such mother as aforesaid shall cease on the marriage of such child, if a female." See *Reg.* v. *St. Mary Newington*, *post*, 433.

Illegitimate child follows the mother's settlement till the age of sixteen.

Liability of second husband.

If the mother of the bastard afterwards marry, then, under the 57th section, her husband is bound to maintain such child till the age of sixteen

or the death of the mother; and the liability of the putative father is suspended whilst the husband is of ability to maintain the child. *Lang* v. *Spicer*, 1 *Tyr. & Gr.* 58; 3 *Crom., M. & Ros.* 129.

1. *By Birth of a Bastard in general.*

The place of birth in general.

A settlement by *birth* seems to be founded on the 13 & 14 Car. II. c. 12, by which justices are directed to remove any poor person come to inhabit and likely to become chargeable to the parish where he or she was last legally settled, either as a *native*, householder, &c., for the space of forty days at the least, and therefore it would seem that a residence of forty days is essential to the acquisition of a *birth* settlement. But there is no decision to this effect, and the tacit convention of parishes not to insist upon it would most probably induce the Court of King's Bench to overrule such an objection, if it were now attempted to be set up. (See 1 *Nol. P. L.* 288, n. (1).)

And this is so, whether the parent be a housekeeper or a lodger merely. (*Rex* v. *Spitalfields*, 1 *Lord Raym.* 567.) In *Whitechapel* v. *Stepney* (*Carth.* 433), it is said that a bastard gains a settlement in its place of birth *ex necessitate*, for being *nullius filius*, it cannot otherwise be provided for, except a reputed father can be found. But this proposition is laid down rather too largely, because if the birth happen in an extra-parochial place, which does not maintain its poor, no settlement is gained, and such child can only be relieved as casual poor till it acquires a settlement in some other way, as appears by

A bastard child, born in an extra-parochial place, which is not a vill, has no settlement.

Rex v. *St. Nicholas, Leicester*, 2 *B. & C.* 889; 4 *D. & R.* 462. Caroline Littlewood was removed from All Saints, in Derby, to Saint Nicholas, in Leicester. Order confirmed. Case:—The pauper was the illegitimate child of Elizabeth Littlewood, deceased, and was born in May, 1822, in an extra-parochial place, called the Black Friars, in Leicester, which is not a vill, and for which no overseers have ever been appointed. She was shortly afterwards taken by her mother to All Saints, Derby, where she remained until the death of her mother, and up to the time of this order of removal. The mother was settled in St. Nicholas, Leicester, at the time of the pauper's birth and of her own death. *Bayley*, J. "The argument in support of the order of sessions is founded upon the assumption that every person is by law entitled to a settlement in some place; but that is by no means the case, *for foreigners have not any settlement in this country*. A settlement attaches to those persons only concerning whom those circumstances may be affirmed, which acts of parliament say shall give a settlement. Generally speaking, an illegitimate child is settled in the parish where it is born. There are some exceptions to this general rule, noticed in the treatises on the poor laws. In most of the excepted cases, the mother, at the time of the birth, is in law supposed to be in the place of her settlement, where she ought to be: as where a woman with child is removed out of one parish into another, through the fraud or collusion of its officers, or where the child is born pending an order of removal. In one of these cases the child, when born, is settled in the parish from which the mother has been fraudulently removed; in the other, in the parish to which she is ordered to be removed. In this case, the child was born in an extra-parochial place. It therefore has not any settlement by birth, and, being a bastard, it can derive none from its parent. In such cases, however, it is entitled to remain with its mother as long as the purposes of nurture require it, and it will afterwards be entitled to relief as *casual poor*, although it has not any settlement. We are all of opinion that the order of sessions must be quashed."

Bastard born in a place by collusion.

If a woman come into a place by privity and *collusion of the officers where she belongs*, and be there delivered of a bastard, such bastard gains no settlement there, notwithstanding its birth. (*Sett. & Rem.* 66.)

The collusion must be by the parish officers. Where the occupier of land and putative father caused a

Rex v. *Mattersey*, 4 *B. & Adol.* 211; 1 *Nev. & M.* 49. W. G. Otter was removed from Kettering to Mattersey. Order confirmed. Case:—Elizabeth Otter, the mother of the pauper, lived with William Green, in Mattersey, for eight years, during which time she was delivered of two illegitimate children, of whom William Green was the putative father.

1. *By Birth of a Bastard in general.*

pregnant woman to remove out of the parish during her confinement to an extra-parochial place, the child will not be settled in the parish from whence she removed.

The pauper was one of them, and was born at the Lodge-on-the-Wolds, an extra-parochial place. The mother was sent there by W. Green, her master, when she was far advanced in her pregnancy, in order to prevent the pauper from being born in Mattersey. He was proprietor and occupier of considerable land in the parish. He had never, to the knowledge of E. Otter, spoken to the parish officers on the subject of so removing her. She returned to the house and service of W. Green as soon as she was recovered, namely, in six weeks after her confinement, the expenses of which, and also of her maintenance during her stay at the Lodge-on-the-Wolds, were paid by W. Green. *Denman*, C. J. "The general rule is, that an illegitimate child is settled in the parish in which it is born. Unless this case, therefore, comes within some of the exceptions to that rule, W. G. Otter would be settled in the place of his birth, if it were not extra-parochial, and certainly not in Mattersey. It is said that he is settled in Mattersey, because the mother, when pregnant, was fraudulently removed from that parish by a parishioner liable to pay rates there. But I think it may be collected from *Tewksbury* v. *Twyning* and *Masters* v. *Child*, *p.* 413, that in order to fix the settlement of an illegitimate child in the parish from which the mother has been fraudulently removed, *the fraudulent removal must have been by the parish officers.* Here it was not so. No case has gone so far as to show that if the fraud be by an individual, not a parish officer, the child shall be settled in the parish where the fraud was committed." *Parke*, J. concurred. *Taunton*, J. "It does not appear by the statement in the case that the mother of the pauper was settled in Mattersey. It is merely said that she lived there. In *Masters* v. *Child*, it is stated that, if a woman being with child of a bastard, and settled in one parish, is persuaded by the parish officers to go into another, and there to be delivered, this fraud will make the parish chargeable where the mother was settled, though the child was not born there. But if the woman accidentally come into a parish, and is persuaded by some of the parishioners to go into another, which she doth, and there is delivered, this shall not charge that parish which persuaded her. That is precisely in point. Here, the mother of the pauper was persuaded by one of the parishioners to go to an extra-parochial place. Independently of that decision, I should have been bold enough to come to the same conclusion. The general rule is, that an illegitimate child shall be settled in the place where it is born, and the fewer exceptions there are to that rule the better." *Patteson*, J., concurred.

The fraud must be of the parish officers.

The fraud of collusion must be found by the sessions.

Rex v. *Llanfihangel, Abercowin*, 4 *Nev. & M.* 355. An order of removal of Hannah Thomas from Mydrim to Llanfihangel, Abercowin, was confirmed. Case:—Esther Walters, single woman, in January, 1833, being pregnant of the pauper, was removed by an order to Llanfihangel, and was, together with the order, delivered to one of the overseers of Llanfihangel; she was left there by the overseer of Mydrim, but on the same day returned to her mother's house in Mydrim, under a promise from the overseer of Llanfihangel, made after the departure of the overseer of Mydrim, that a certificate should in a few days after be given to Mydrim, acknowledging her to be legally settled in Llanfihangel, Abercowin; she was at the same time told by the overseer of Llanfihangel, Abercowin, to go to the parish of Mydrim and look for a place for herself there, until a few days, when she could bring such certificate, and in the mean time to conceal herself from the parishioners of Mydrim. She accordingly returned that day to Mydrim, and concealed herself until the child was born. The overseer of Llanfihangel did not bring the certificate, nor was such certificate ever after given to Mydrim. In about three weeks after her return, E. Walters was, at her mother's in Mydrim, delivered of the pauper, a bastard, she having directed her mother and sister to conceal the fact of her being there, and three weeks after, the parish of Llanfihangel paid the nurse for nursing the pauper. Upon the discontinuance of such payment, the parish of Mydrim, on 14th September, 1833, by the order of the two justices, removed the pauper (who had become chargeable to Mydrim) from Mydrim, where the pauper

1. *By Birth of a Bastard in general.*

then was at nurse with her mother, to Llanfihangel. Upon the hearing of this appeal, it was on the behalf of the parish of Llanfihangel objected, that the two justices who removed the pauper from Mydrim had no jurisdiction to do so, inasmuch as the pauper was under the age of seven years, and at the time with her mother at nurse in Mydrim. Lord *Denman.* "It is quite clear that we cannot infer fraud; but we think that, upon the whole matter stated, there is enough to warrant us in sending the case back to the sessions to be re-stated."

What is not collusion.

In *Masters* v. *Child* (3 *Salk.* 66; 2 *Bott*, 5), and *Tewkesbury* v. *Twining* (2 *Bott*, 3), if a woman with child of a bastard, and settled in one parish, *is persuaded* to go into another, and there be delivered, this fraud will make the parish chargeable where the mother was settled, though the child were not born there; but if a woman with child of a bastard come *accidentally into one parish*, and is persuaded by some of the parishioners to go into another parish, which she doth, and there be delivered, this shall not charge that parish which persuaded her. (*Rex* v. *Astley*, 4 *Doug.* 389.)

Bastard born after the order of removal is made. (*a*)

2. Also if a bastard be born after an order of removal has been made, and before the mother can be sent to her place of settlement, being hindered by water or otherwise; such bastard shall not be settled where so born, but at the mother's settlement. (*Reg.* v. *Ickleford*, 1 *Sess. Cas.* 33; *Sett. and Rem.* 66; 2 *Bott*, 9.)

Bastard born where the removal of the mother was suspended.

3. By 35 Geo. III. c. 101, the removal of persons during sickness may be suspended; and by s. 6, if during such suspension any unmarried woman shall be delivered of a bastard child, every such bastard shall be deemed and taken to be settled in the parish, township, or place in which was the legal settlement of such mother at the time of her delivery: Provided that all acts heretofore made touching bastard children, or concerning the mothers or reputed fathers of such children, shall remain in full force, as well in cases where by this act the settlement of such child is directed to be the same as that of the mother, as where the settlement remains as it did before the passing of this act.

Bastard born in removing.

4. If the officers be carrying a woman, by virtue of an order of removal, to another parish, and she be delivered on the road *in transitu*, the bastard shall go with the mother where she is going by virtue of the order, notwithstanding the birth. (*Jane Gray's case, Sett. & Rem.* 66; 2 *Bott*, 8.)

A bastard born pending an appeal against the order of removal of the mother, which was quashed, is settled in the removing parish.

5. *Rex* v. *Great Salkeld*, 6 *M. & Sel.* 408. Order of removal of Lancelot Walker, otherwise Nicholson, from Morland to Great Salkeld, confirmed. Case:—The mother of the pauper, Catherine Nicholson, whilst a single woman and pregnant with the pauper, was removed from Great Salkeld to Lowther, and the order was confirmed on appeal; but, on a case stated, was quashed by K. B. Whilst the appeal was depending, and before the decision of the court, Catherine was delivered of the pauper in Lowther, born a bastard. Lord *Ellenborough:* "The birth settlement of the pauper, though in fact born at Lowther, was in Great Salkeld, for there he was in judgment of law born, because the order of removal being vacated, the mother's right to be in Lowther was void *ab initio.*" *Abbott*, J. "An illegitimate child is, as it cannot derive a settlement from its parents, in the first instance settled where born; but where the mother is improperly removed, the law says that the parish whence the removal was made, and where, but for this, the child would have been born, is to be considered the place of its birth." Order confirmed.

A bastard born in a parish to which his mother had been removed, which order was quashed, cannot follow his mother's settlement.

Rex v. *Martlesham*, 5 *Man. & R.* 82; 10 *B. & C.* 77. Order of removal of Athrol from Playford to Martlesham confirmed. Case:—Sarah Athrol, single woman, being pregnant, was removed by an order from Playford to Stutton. Before the sessions she was delivered at Stutton of the pauper, a bastard. At the sessions, Stutton appealed, and the order was quashed. At the time of the bastard's birth, the mother belonged to Martlesham.

(*a*) "Here the act of God prevents the execution of the order." Lord *Tenterden* in *Rex* v. *Halifax*, *post*, 414.

1. *By Birth of a Bastard in general.*

Bayley, J. "It is quite clear that a bastard cannot gain a settlement by parentage: the pauper therefore was not settled in Martlesham, and the order of sessions must be quashed."

So also if the order is quashed for misdirection.

Rex v. *St. Andrew, Holborn*, 6 *M. & Sel.* 411. Order of removal of Mary Aldridge and child from Painswick to St. Andrew, Holborn, confirmed. Case:—The division of St. Andrew, Holborn, Saffron-hill, Middlesex, and St. Andrew, Holborn, London, although divisions of the same parish, are separate districts as far as the maintenance of the poor is concerned. Pending an appeal upon an order removing the pauper as a single woman with child from Painswick to St. Andrew, Holborn, London, she was delivered of a child in the latter district. The judgment, on appeal, was against Painswick, for misdirection of the order of removal. Another, the present, order was then obtained to St. Andrew, Holborn, Saffron-hill, the admitted settlement of the mother.—*Per curiam.* "The statute has no regard to orders of removal improperly made, so as to give them a kind of floating existence until the blunder is cured by a fresh order. The order in question being to a wrong district, is the same as if it had been directed to the wrong parish." Order quashed as to the child.

35 Geo. III. c. 101.

Same point.

The same principle had previously been acted upon in *Much Waltham* v. *Peram*, 2 *Salk.* 474, and also in *Westbury* v. *Coston*, 2 *Salk.* 532; 1 *Salk.* 121; in which it was held, that if a woman, pregnant, be removed by an order, and she be delivered, and there be an appeal, and the order be reversed, the child must be sent back; and *Holt*, C. J., said, "Though there be no fraud in this case, yet here is a wrongful removal, and the reversal makes all void *ab initio:* fraud or not fraud is not material in this case; but the settlement of the child depends upon the removal; for if that was wrong, they shall not ease themselves by it."

If after an order executed, the woman returns to the removing parish without the knowledge of the overseers, the child is settled where born.

Rex v. *Halifax*, 2 *B. & Adol.* 211. An order of removal of Ann Smith and Thomas her child was confirmed as to Ann, and quashed as to the child. Case:—Ann Smith, who was settled in Manchester, lived at Halifax in January, 1829, and was then pregnant of a child likely to be born a bastard. On the 30th of January, by an order of two justices, made before, but executed after, the Epiphany quarter sessions, she was removed to Manchester, and delivered to the overseers of the poor there. They requested her to go into the workhouse, but she refused, and on the next day (January 31st) returned to Halifax, where she remained till the 20th of February following, and was on that day delivered of a bastard, the child mentioned in the order. The Easter sessions, for the riding in which Halifax is situate, were holden on the 27th of April, and by the practice of those sessions, when an order of removal is appealed against, there must be ten days' notice previous to the sessions; but no notice of appeal was given against this order, nor was any appeal entered against it at the Easter sessions. The return of Ann Smith from Manchester to Halifax was without the knowledge of the appellants or respondents, and no fraud was imputable to either. The point made for the respondents was, that as the pauper Ann Smith had been removed after the Epiphany sessions, and had returned of her own accord, and without any notice, into the respondent township, and had been there delivered of a bastard child, whose settlement was in question, without the knowledge of the respondents, before the time of giving notice of appeal for the next sessions had expired, the order must be considered as pending, and the settlement of the child must follow that of the mother. Lord *Tenterden*, C. J. "I am of opinion that the order of sessions was right." *Littledale*, J. "It seems to me that in this case the child was settled in the place of its birth according to the general rule on the subject of bastards. There is an exception to that rule where the child is born while the order is under execution, and before it can be completely fulfilled, the interruption happening by the act of God, and the officers having done all in their power to carry the order into effect, as where the birth takes place on the road, or during detention by floods. But here, the order had been executed, and the woman afterwards returned from the appellant to the respondent township, without any fraud on the

1. *By Birth of a Bastard in general.*

part of either. It is admitted, that if the child had been born after the time for appealing had expired, the settlement would have been good; and I think it is the same in this case, as there was no appeal depending at the time of the birth. *Laudinaboe* v. *Much Birch* seems an authority to the contrary, but the reporter himself questions that case, and admits that it was not well considered." *Parke*, J. "The order in this case had been executed, and the parish officers of Manchester had received the pauper, and after that, she returned to Halifax, and was there delivered. The parties stand on just the same footing as if this had happened after the order had been appealed against and confirmed at sessions. An order can no more be said to be pending during the time in which an appeal may be instituted, than a judgment while a writ of error may be brought. Here was a complete execution of the order; no fraud appears in the appellants, and the overseers of Manchester had no power to detain the pauper there. The order of sessions must therefore be confirmed." *Patteson*, J. "The order had been completely executed, and was not depending. Although the pauper became a vagrant by returning to Halifax, that can make no difference in the question between these parishes." Order of sessions confirmed.

Bastard born in the house of correction.

6. A child born in the house of correction shall be sent to the parish from which the mother was sent to the house of correction, this being the place where she was last settled. (*Suckley* v. *Whitborn*, 2 *Bulst.* 358.)

In prison.

And in *Elsing and the county gaol of Hereford*, 1 *Sess. Ca.* 94; 1 *Nol. P. L.* 290, a bastard was born in the county gaol: Resolved, that the settlement was with the mother. (*Rex* v. *Astley*, 4 *Doug.* 391.) See 54 Geo. III. c. 170, s. 2, (*ante*, 406.)

In the house of industry of an incorporated district.

7. By 20 Geo. III. c. 36, all bastard children born in the house of industry, of any hundred, or other district, incorporated by act of parliament for the relief and employment of the poor, shall be deemed to belong to the parish or place where the mother of such bastard child was legally settled.

8. Although the 10 Geo. IV. c. 56, for consolidating the laws relating to friendly societies, repeals the following enactment, and makes no similar provision, yet as cases may arise upon the law as it stood prior to the repeal, it has been thought best to retain it.

Bastard born under the act for establishing friendly societies.

By 33 Geo. III. c. 54, s. 25, for the encouragement and relief of friendly societies, every child which shall be born a bastard in any parish or place, the mother whereof shall at the time of the birth of such child be a member of any such benefit society, and be residing in such parish or place under the authority of that act; such child shall have the same settlement which the mother had at the birth of such child. *Vide* Vol. II. title, "Friendly Societies."

If she is residing with her father, as a member of his family, and he has a certificate under this act; she is residing under the authority of the act, and her bastard will follow her settlement.

Rex v. *Idle*, 2 *B. & Ald.* 149. Order of removal of M. W. and her bastard child from Idle to Rawden: confirmed by the sessions as to the mother, but discharged as to the child. Case:—For several years prior to the 4th October, 1817, J. W., father of M. W., was an efficient member of a friendly society, established in pursuance of the 33 Geo. III., "*An Act for the encouragement and relief of friendly societies.*" On the 4th October, 1817, a certificate as to that fact was duly made and verified. [The case then set out the certificate, which was regular.] This certificate and the verification were, on the 7th October, 1817, delivered to the overseers of Idle. The bastard child was born in that township on the 19th November, 1817, whilst J. W. and his family (of which M. W. was then a member) were residing there under the supposed authority of the certificate and the acts relating to friendly societies. *Abbott*, C. J. "I am of opinion that the original order of the two magistrates was good, and that the sessions were mistaken in their judgment. It has been argued that the friendly society Act was repealed by the 35 Geo. III. c. 101, which provides that no person shall be removable from any parish until actually chargeable, and thus, it is said, rendered wholly unnecessary the former protection by certificate under the friendly society Act. But I think

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that it is not so; for it may be very convenient, notwithstanding the effect of the 35 Geo. III., to keep the provisions of the 33 Geo. III. in force. In many cases, a labourer, who might wish to come into a parish, might not be able to obtain employment there, for fear that by so doing he might bring burthens upon the parish. But if he came with a certificate from a friendly society, that fear would be removed. It would, therefore, be depriving the members of such societies of a material benefit, if we were to hold the 35 Geo. III. to be a virtual repeal of the provisions of the 33 Geo. III. Then the question arises, who are the persons protected by the latter Act? The object of the Act being to facilitate the finding of employment, it should receive a liberal construction. I think, therefore, that the certificate granted to the head of the family protected not only him, but also all the members of the family, and placed them in the same situation in which he stood. If so, then they would not be removable till they became actually chargeable. According to *Rex* v. *Great Yarmouth* (8 *T. R.* 68), this woman, under the circumstances stated to us, was removable; but although that was so, still it may be very questionable, whether, in this particular case, the parish officers were bound to remove the mother. There is an obvious distinction between the effect of a certificate under the 33 Geo. III. and that of one under 8 & 9 Will. III. For the former of these two statutes enacts, "that every child born a bastard in a parish, during the mother's residence therein, under the authority of that Act, shall have the same settlement as the mother." The attention, therefore, of the parish officers would naturally not be called to the situation of a woman residing under a certificate granted under 33 Geo. III.: and I think, therefore, that they were justified in not removing in this case. No inconvenience can arise to the other parish from this; for, if the mother had been actually removed, the child would have been born in their parish, and so would have been settled there. They, therefore, are placed in no worse situation by our holding that the child shall follow the mother's settlement, though she was not removed. I think, therefore, that the parish officers were not bound in this case to remove the mother, and that the child being born in Idle, whilst the mother was residing there under the authority of the 33 Geo. III. c. 54, followed her settlement in Rawden, and that the order of sessions was therefore wrong." *Bayley* and *Holroyd*, Js., gave similar judgments.

Bastard born in a lying-in hospital.

9. By 13 Geo. III. c. 12, s. 5, a bastard born in a lying-in hospital shall follow the mother's settlement. It may be observed that no such hospital can be established without licence from the justices in sessions. See 54 Geo. III. c. 170, s. 2, *ante*, 406.

A room in a parish workhouse, licensed pursuant to 13 Geo. III c. 82, and appropriated to the reception of, and used for the purpose of, delivery of pregnant women resident within the parish, whether settled there or elsewhere, and the expense of which room was defrayed in common with the general expenses of the workhouse out of the parish rates, is not an hospital or place within the 13 Geo. III. c. 82, s. 3.

Rex v. *Manchester*, 4 *B. & Ald.* 504. M. the wife of J. C. and her two children, E. aged eight years, and J. aged six weeks, were removed from Manchester to St. Andrew's, Canterbury. Upon appeal, the order was confirmed as to the wife and E., her daughter, and quashed as far as it respected J. Case:—In the Manchester workhouse there is a room, for which a licence has been obtained, for the reception of lying-in women. This room has been duly licensed pursuant to the 13 Geo. III. c. 82. The room is appropriated by the officers of the town of Manchester to the reception of women resident within the township, but settled elsewhere, and pregnant with children likely to be born bastards, and also to the reception of pregnant women chargeable to the township, and settled in Manchester; and in some few instances, pregnant women have been received from other districts, upon a compensation paid by the overseers of the place in which such pregnant women were resident. Women having settlements elsewhere than in Manchester, if too far advanced to be safely removed to their settlements, are placed by the town's officers in this room for the purpose of being delivered. The expenses incurred in respect of the room are defrayed, in common with the general expenses of the workhouse, out of the parish rates. M. C. being settled in St. Andrew's, Canterbury, but resident in Manchester, and pregnant with a child likely to be born a bastard, was placed by the officers of Manchester in this room,

and was there delivered of the pauper J., who was born a bastard. The question was, whether this room is an hospital, or place within the act referred to, and whether, by the force of that act, the settlement of J. is in St. Andrew's, or whether it is in Manchester. *Abbott*, C. J. "It seems to me that in this case we cannot consider this an hospital or place within the act. By the 10th section, the person having the management of it is directed, before the admission of any pregnant woman into such hospital, to take her before a justice to be examined whether she be married or single; and other duties are cast upon them for that purpose. By the 4th section, an inscription is to be placed over the door or public entrance of every such hospital, stating that it is licensed for the public reception of pregnant women, and supported by charitable contributions. In the present case, it is only a room set apart for this purpose in the workhouse, the expenses of which are defrayed out of the poor's rate. I think, therefore, that this cannot be said to be used for the public reception of pregnant women, nor supported by charitable contributions. Manchester, therefore, is not protected by the 5th section; and the sessions have come to a right conclusion." Order of sessions confirmed.

1. *By Birth of a Bastard in general.*

10. By 9 Geo. IV. c. 40, s. 49, no bastard child which shall be born of any insane person, in any such county lunatic asylum, shall thereby gain a settlement in the parish in which such asylum shall be situated; but that the place of the legal settlement of any such child so born as aforesaid shall be in the parish where the mother of such child was last legally settled. See tit. "Lunatic," Vol. III.

Bastard of lunatic born in county lunatic asylum.

The 51 Geo. III. c. 79, was repealed by the 9 Geo. IV. c. 40. The latter act applies only to county asylums; the former act was general.

11. By 17 Geo. II. c. 5, s. 25, if a *vagrant* woman were delivered of a bastard, the overseers might take her before a justice, and then the settlement of the child would follow that of the mother. By 3 Geo. IV. c. 40, s. 41, (24th June, 1822) the bastard child of any vagrant woman followed her mother's settlement. But these acts are repealed by the 5 Geo. IV. c. 83, (21st of June, 1824) and no similar provision re-enacted. A bastard is not "a child" within the vagrant act, *Reg.* v. *Maude*, 1 *L. J.* 120. As to legitimate children of vagrants, see *Coxwell* v. *Shellingford*, 426; and see 4 *Dougl.* 391.

Vagrant's child.

12. Bastards born in the workhouse of a Union will follow the mother's settlement till the age of sixteen (*ante*), but after that period, it seems that the child will be settled in the parish to which it was chargeable, and not in the parish in which the workhouse may be situate. See 4 & 5 Will. IV. c. 76, s. 20 & 21, Appendix.

By 22 Geo. III. c. 83, s. 39, an illegitimate child born in any workhouse established under that act would follow the settlement of the mother.

2. *How Settlement of a Bastard affected by a Certificate.*

The nature and general effect of *certificates*, given by parishes to enable their poor to reside in other parishes where they can best earn a subsistence, is explained under the head, "*Acknowledgment of Settlement by Certificate.*" But the settlement of a *bastard* in the place where he is actually born, may be affected by the mother being certificated at the time.

The general rule is, that bastards born in a place in which the mother resides under a certificate, are settled where born. But a bastard of which the mother is pregnant at the time the certificate is given, *may* be included in the certificate, but is not comprehended under the term "family."

Windsor v. *White Waltham*, 1 *Stra.* 186. John P. being settled in Waltham, where he had lived two years with a woman his reputed wife, went with a certificate, owning them as man and wife, from thence to Windsor, where they had six children. The man died, and the woman swearing they had never been married, the justices adjudged the children to be bastards, and settled in Windsor where they were born. And by the

Bastard born under certificate is settled where born.

1. *By Birth of a Bastard in general.*

Court: "There is no doubt but the bastard of a certificate person is settled in the place of his birth, for he is not such an issue as will follow the settlement of his father or mother, neither is such bastard *his* or *her* child within the intention of the statute, so as to be sent back with the parent." (*a*)

A bastard is not included in the word "family" in the certificate acts, and, therefore, is settled where born.

In *Hilton* v. *Lidlinch*, 2 *Stra.* 1168; *Burr. S. C.* 187; 2 *Bott*, 13, a single woman went into Lidlinch with a certificate from Hilton, where she lived a year, and then had a bastard child. The only question was, whether the child should be settled in the parish where it was born, or in the parish which gave the certificate? By the Court: "The certificate must be taken to be good, and all fraud to be laid out of this case, it being a year that she dwelt in the parish before she was delivered of the child; and wherever this court in determining a settlement, adjudges upon the point of fraud, that fraud must be expressly stated: for as fraud is odious, it is never to be presumed. The cases hitherto adjudged as to this point have either depended upon some point of fraud or an illegal removal. So where the child is born in a gaol, he shall be settled in the parish where his mother is: for she shall be construed to be in custody of the law, and in all other respects a parishioner. But the present case stands entirely on 8 & 9 Will. III. c. 30, which, for the encouragement of labour and industry, gave power of removing persons by certificate, which certificate obliges the parish to whom given to receive and continue them in that parish till they become actually chargeable; and then such person is to be removed, together with his or her *family*, and in another place with his or her *children*, to the place from whence the certificate was brought. The question then is, whether the bastard is included under the words *family* or *children*? And we take it he is not; for the law takes no notice of bastard children; they are *filii nullius*, *filii populi*, and are *primâ facie* settled where born."

A certificate undertaking to provide for a woman *and her child*, she being then pregnant of a bastard, will not embrace an illegitimate child.

Rex v. *Wyke*, *Burr. S. C.* 264; 2, *Bott*, 14. John Catton, a bastard, was removed from Wyke to Hipperholm, the place of his birth. Order quashed. Case:—S. Catton, mother of the pauper, came on the 25th of March, by certificate, from Shelfe to Hipperholme, being then pregnant with the pauper, and was in April following delivered of him at Hipperholme. The certificate undertook that Shelfe should provide for her *and her child*, whenever they should become chargeable, and it was insisted, that the certificate expressly undertakes to provide for her *and her child*, and had this very child in contemplation, no other child being hinted at. Lord C. J. *Lee* and Mr. J. *Wright* agreed, that they must take the child referred to by the certificate to be a legitimate child then in being. And Mr. J. *Foster* observed, (to which observation the other two justices agreed) that it did not at all appear that the parish who gave the certificate *knew* that the woman was then with child.

But a certificate acknowledging a woman as unmarried, and "the child she *now* goeth with," embraces the child when born, although illegitimate.

Rex v. *Ipsley*, *Burr. S. C.* 650; 2 *Bott.* 15. Anne Causier came into Ipsley with a certificate from Studley, acknowledging Anne Causier, spinster, *and the child or children* that she *now* goeth with, (*b*) to be legally settled in Studley: and if at any time Anne or her child or children which she now goeth with shall become chargeable to Ipsley, Studley thereby promised, when requested, to receive and provide for them as their inhabitants. The child was born at Ipsley, within about a month after she came to reside there under the certificate. The court were clearly of opinion that Studley was bound by this certificate, which takes notice of the woman's being then unmarried and with child, and acknowledges the child she then went with to be legally settled with them in their parish. And Lord *Mansfield*, C. J. observed, "that the woman was very big with child, and was understood by both parishes to be so: and Studley expressly promised to provide for the infant she then went with. Therefore they

(*a*) The decision turned chiefly upon the certificate's being conclusive that the man and woman were acknowledged.

(*b*) This distinguishes this case from *Rex* v. *Wyke*.

ought to be bound by their certificate. An infant *in ventre sa mère* may be, to a variety of purposes, considered as born."

1. *By Birth of a Bastard in general.*

A certificate engaging to relieve a woman and her child, with which she was pregnant, and *all other children which she may have*, will not include bastards born eight years afterwards.

Rex v. *Mathon*, 7 *T. R.* 362. R. Cagear was removed from Cradley to Mathon. Order confirmed. Case:—Margaret Cagear, a single woman settled at Mathon, and pregnant of an illegitimate child that was afterwards born a bastard, went to Cradley in 1738, under a certificate from Mathon, wherein Mathon "engaged to relieve and receive Margaret Cagear with *the child of which she was then pregnant*, and all other *children that she might thereafter have*, until she or they should acquire a subsequent settlement, whenever she or any of them should become chargeable." She resided in Cradley under that certificate until her death; and in 1746 had the present pauper, an illegitimate child, who continued to reside in Cradley until removed by the present order, without having done any act to gain a settlement for himself. *Rex* v. *Ipsley* was cited, and it was urged that there was the same reason to extend the present certificate to this pauper; the certificate mentioning the mother's situation, and extending to all after-born children. Lord *Kenyon*, C. J. "It is not now necessary to question the propriety of *Rex* v. *Ipsley*. That certainly went much beyond the former cases on this subject. However, that is distinguishable from the present case: that only extended to the child with which the woman was then pregnant, and a child in *ventre sa mère* is capable of being described. But this child was not born until eight years after the certificate was granted, and being illegitimate, he is not included in the general words in the certificate, which extends only to legitimate children." Order of sessions quashed. [It does not appear that the woman was stated to be unmarried in the certificate; but the case called her "single woman."]

3. *When removeable from Mother.* (*a*)

Bastard not to be removed whilst a nurse child.

It will have appeared from the above cases, that the settlement of the mother will frequently be in a different parish from that in which her child is settled; and as both may stand in need of parochial relief, the burthen will have to be divided between the two parishes. The many objections to the separation of the child from the mother, in the earlier period of infancy, need not be described; they are sufficiently obvious, and have yielded to the humane maxim of the law, that children shall go with the mother for nurture until the age of seven years, and during that time be inseparable from her. Thus, in *Cripplegate* v. *St. Saviour's*, *Fol.* 265; 2 *Bott*, 27, it was agreed by the whole court, that the age of a nurse-child, so as not to be separated from its mother, is until seven years of age. *Skeffreth* v. *Walford*, 2 *Sess. Ca.* 90; 2 *Bott*, 11. The order was to remove a woman to her settlement; and her child of two years of age to a different parish at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse-child, they could not separate it from the mother, on account of the care necessary to nurture so young a child, which none can be supposed so fit to administer as its mother; and therefore it should have been sent with her to the place of her settlement. And the orders were quashed by the court. (See *Rex* v. *Bennett*, *ante*.)

Except when deserted by the mother.

But the reason upon which this rule is founded does not apply if the mother voluntarily desert her child; and in that case it may be sent to its place of settlement. (*Reg.* v. *Wendron*, p. 431.)

To be maintained whilst a nurse-child by its own parish.

Where the child continues with its mother as a nurse-child, and during that time is not removable to its place of settlement, the parish where the child's proper settlement is, shall maintain the child in the parish where it resides with the mother. (See *Rex* v. *Henlington*, *post*, and the form of an order for relief, *Appendix*).

(*a*) And see *post*, title "Removal."

3. *Evidence of Settlement by Birth.*

3. Evidence of Settlement by Birth.

The place of birth is *primâ facie* the place of settlement, as well of legitimate as of illegitimate children. But, to establish a conclusive settlement by birth it must be made to appear either that the child is illegitimate, or, if legitimate, that *neither* of its parents had obtained a settlement at any time before the question arises. To this must be added, proof of the place in which the birth happened.

The ordinary cases of illegitimacy arise from the circumstance of the mother being single down to the time that the child is born; but the child of a married woman may be a bastard, in which case it also takes a birth settlement.

But what is termed a birth settlement is the weakest species of settlement, and exists only when no other settlement can be ascertained; and it may be answered by proof of the maiden settlement of the mother, without showing that the father had no settlement. (*Rex* v. *St. Mary, Leicester*, p. 428, *ante*.)

Presumptions as to legitimacy.

After proof of the marriage, a child is presumed to be legitimate, though the contrary may be proved. The presumption will still be in favour of legitimacy, though the parents were separated by voluntary deed; but the presumption is the other way, if they are separated by a divorce *a mensâ et thoro;* and the child is, of course, a bastard, if begotten and born after a divorce *a vinculo matrimonii*.

Time of birth may be proved by parents.

The parents may prove the *time* of birth; and after their death, their declarations, made in their lifetime, are evidence of that fact; but the register is only evidence of the christening; and *non constat* thence, when the child was born. Per Lord *Mansfield*, C. J. (*Goodright* v. *Moss*, *Cowp.* 591.)

Place of birth, how proved.

The locality of the birth may be proved by some person who saw the mother in the parish just before and immediately after that event, and who also saw the offspring, and can give evidence of identity. The party himself can have no recollection of the place of his birth, and the fact of his remembering himself when he was four years of age, in the parish of A., is no proof that he was born there. (*Rex* v. *Trowbridge*, 1 *Man. & R.* 7; 7 *B. & C.* 252).

Hearsay declaration of the father, as to the *place* of his son's birth, is not evidence.

Rex v. *Erith*, 8 *East*, 539. It appeared on the evidence of the pauper, that he remembered being at Erith with his father; that they had no fixed residence; and that his father, who was now dead, had told him that he was born a bastard at Erith, and had pointed to that place as they were passing, telling him that that was the place of his (the pauper's) birth. A search was made in the books of the parish of E., and no register of the pauper's baptism was to be found there. The sessions thought this sufficient evidence of the pauper's birth at E. Lord *Ellenborough*. "The controversy was not, as in a case of pedigree, from *what parents* the child derived its birth, but in *what place* an undisputed birth, derived from known and acknowledged parents, has happened. The point thus stated turns on a single fact, involving no question but that of locality, and therefore not governed by the rules applicable to places of pedigree; and is to be proved, therefore, as other facts generally are proved, according to the ordinary course of the common law; that is, by evidence to which the objection of *hearsay* does not apply. We are, therefore, upon this ground, of opinion that the evidence of the father's declaration as to the birthplace of the pauper, the bastard, ought not to have been received." Order of sessions quashed, (*post*, "*Hearsay Evidence*." See *Phill. Ev.* 229, *6th edit.*; 3 *Stark. on Evid.* 1115.)

The declaration of a deceased mother as to the *time* of birth is admissible in evidence, upon a question as to the *place* of birth of the child, though the father be living. *Rex* v. *Birmingham; Rex* v. *Aston, K. B., Oct.* 1829; *Steer's Par. L.* 599. See *post*, "*Hearsay Evidence*."

The register of

Rex v. *North Petherton*, 5 *B. & C.* 508; 8 *D. & R.* 325. Joseph

Rich was removed from North Petherton to West Monckton. Order quashed. Case :—To make out the settlement of the pauper's father, it was proved by a copy of the parish register of Spaxton that he was baptised in that parish. There was no other evidence of his having been born in that parish, and the sessions thought, on the authority of *Creech St. Michael* v. *Pitminster*, that they were bound to consider the register by itself, *primâ facie* proof of the place of his birth. When that case was quoted in King's Bench, *Bayley*, J. said, " We do not know at what age the pauper's father was baptised. It was urged that he was baptised within a very short time after his birth. According to the doctrine of the church touching baptism, 'the pastors and curates are directed to admonish the people, that they defer not the baptism of infants any longer than the Sunday next after the child be born, unless upon great and reasonable cause declared by the curate and by him approved.'" (*Gibson's Codex. Jur. Ecc. Bap. tit.* 18, c. 9.) *Bayley*, J. " The register of baptism *per se* is not evidence of the place of birth. If the age of the child at the time when it was baptised could be ascertained, the register might in some cases be evidence of the place of birth. If the child were then very young, the register would be presumptive evidence that it was born in that parish where it was baptised ; but if the child were not then young, the circumstance of its having been baptised in a particular parish would afford no presumption that it was born there. Here there was no evidence to show the age of the child when it was baptised. We think, therefore, that the case must go back to the sessions to be reheard, in order that they may ascertain by other evidence whether the father of the pauper was born in the parish of Spaxton or not. We do not say that a register of baptism is not evidence of the place of birth, when accompanied with proof of other circumstances, but that, taken by itself, it is not evidence of the place of birth." *Holroyd*, J. " I am of the same opinion. I think the register alone is not sufficient to establish the place of birth. It would be sufficient, coupled with proof that the pauper's parents were living within the same parish at the time of the baptism, or that the birth had been shortly previous to the baptism, which latter circumstance would afford a strong presumption that the child was born in the same parish where it was baptised." *Littledale*, J. concurred. (*a*)

3. *Evidence of Settlement by Birth.*

baptism is not *alone* sufficient evidence of the place of a person's birth.

Creech St. Michael v. *Pitminster*, *Burr. S. C.* 765 ; 2 *Bott.* 28. A copy of the parish register of Pitminster was produced. " Christenings, 1735, John, son of John Every and Mary his wife, baptised Dec. 5." And one of the witnesses swore that the pauper lived many years ago with him ; that John Every, who lived in Pitminster, and died long since, was considered as the pauper's father ; and that he knew Mary Every, who lives in Pitminster, and whom he understood to be the pauper's mother, and has heard the pauper call her mother. Lord *Mansfield*, C. J. seemed to think, and so it was afterwards determined, that this evidence was sufficient.

Birth settlement may be proved by the copy of the parish register of christenings, and by identifying the person.

St. Peter's v. *Old Swinford*, *Burr. S. C.* 25. The son of J. H. was removed from St. Peter's to Old Swinford, as a bastard, born there of Hannah Ashe. Order quashed. Case :—J. H. the father, proved that for seven years together he travelled with H. A., as wandering persons, till the death of H. A., about fifteen weeks since ; during that time they cohabited as man and wife, and it did not appear that the marriage was ever questioned in the lifetime of H. A. During the time she was delivered of three children, one of whom, the pauper, was born in O. S. They were reputed to be his children, and the pauper was baptised as the legitimate child of him and H. A. He and H. A. *were never married.* The sessions were of opinion that the evidence of J. H. was not admissible

Illegitimate children.

Evidence of bastardy after the mother's death, by the father, who contradicted his own assertions made during the mother's life, that he had been married.

(*a*) This is not altered by the Registry Act. That enacts, " That certified copies of entries purporting to be sealed with the seal of the register office, shall be received as evidence of the birth, death, or marriage, without any further proof of such entry," 6 & 7 Will. IV. c. 86, s. 38. This regulates the *mode* of proof, but does not touch the *effect* of the proof.

3. *Evidence of Settlement by Birth.*

to bastardise the pauper. Lord *Hardwicke*, C. J. "There is no ground to support the order of sessions. It is an apparent fact, that this man and this woman were never married. The evidence of the man is admissible to prove this fact. The child is therefore a bastard, and must be settled where born."

Parents may prove that they were never married.

In *Rex* v. *Bramley*, 6 *T. R.* 330, the sessions refused to receive the mother as a witness, to prove that she never had been married, or had been illegally married: and also the declarations of the father and mother to that effect, they having cohabited together, and been reputed as man and wife till the death of the father. But Lord *Kenyon*, C. J., held that this evidence was certainly admissible; that parents may be called to prove the children illegitimate. But he observed that such evidence was open to very great observation.

It had been doubted whether, after thirty years' cohabitation as man and wife, the husband shall be permitted to deny his marriage.

Rex v. *Stockland*, *Burr. S. C.* 508; 2 *Bott*, 91. Case:—John Moes and Elizabeth Mason, father and mother of the pauper, being both resident in Chardland, about 1723, went from thence together, declaring they were going to be married, and soon returned, declaring they had been married; and from thenceforward cohabited as man and wife for about thirty years, until the death of Elizabeth. The pauper was born at Chardland in 1725, and there baptised, and his baptism registered as the son of John and Elizabeth Moes. John and Elizabeth Moes, some years before the death of Elizabeth, removed from Chardland to Stockland, and there acquired a settlement. They carried with them the pauper, whose settlement depended upon this question, viz., "whether John and Elizabeth were to be considered as husband and wife at the time of his birth?" It was contended at the sessions that they were never married; or, if they were, that Elizabeth had a former husband then living. Concerning which, several witnesses having been examined on both sides, John Moes, the father, was produced, in order to prove that he and Elizabeth were never married, and that the supposed other husband was then living. But the court refused to receive his testimony, and were of opinion that the marriage of John and Elizabeth was proved, and that the pauper gained a settlement at Stockland. Lord *Mansfield*, C. J. seemed to think that thirty years' cohabitation as man and wife was sufficient proof to the justices to found an order of removal upon. However, a rule was made to show cause; but on the last day of term the objection was given up, and, by consent, the order of sessions was affirmed.

The wife may prove the fact of connection with the person she charges as the father of the child.

Rex v. *Luffe*, 8 *East*, 193. An order of bastardy was made, adjudging M. Taylor to be the mother of a bastard child: and the order stated her to be the wife of J. T., and that it appeared *as well on the oath of the said M. T., as otherwise*, that her husband had been beyond the seas, and that she did not see her said husband, or *had access to him*, from, &c. &c., and that her husband returned only fourteen days before the birth, and adjudging *as well on the oath of the said M. T. as otherwise*, the said H. L. to be the reputed father of the said bastard child. One point was, that the wife was admitted to prove non-access, which, it was contended, ought not to have been. Lord *Ellenborough*, C. J. "The wife might prove the fact of her connection with that person whom she charged as being the real father of the child. And the whole of the judgment of the C. J. and the other judges went upon the supposition that she was not a witness to the fact of non-access, but only to the fact of criminal connection; and that the words '*as otherwise*' implied that other persons were examined on oath." Another point was, that the non-access of the husband ought to have been proved during the *whole time* of pregnancy. In answer to this, it was said by the court, that natural impossibility, the being within the age of puberty, and great infirmity, would bastardise the issue though the husband had access. And that it was always a matter of evidence, whether the husband could, by possibility, be the father of the child. But they left in full force the rule of law, that marriage before the birth made the after-born child, the conception of which commenced before marriage, the legitimate child of the parties marrying. (See tit. "Bastard," Vol. I.)

In *Rex* v *Kea*, 11 *East*, 132, the sessions received the evidence of a person who had been the wife of the father (since deceased) of the pauper, and was now the wife of another, to prove that her first husband had not had access to her during a certain period, viz at the time of the conception of the pauper, and for many months before Lord *Ellenborough*, C J said, "that to hold this evidence receivable, would be to overthrow *Rex* v *Reading*, which was not meant to be overruled in *Rex* v *Luffe*, the court intending in that case that the wife had only been examined to the facts she might legally prove, and not to the non-access of the husband And the court also said that the death of the husband made no difference Where the husband is within the realm, it is not incumbent on the party alleging bastardy to prove that the husband could not, by any possibility, have had access to the wife, it is sufficient to adduce such circumstantial evidence as satisfies the minds of the jury The removal of the husband to a place distant from the wife, her cohabiting with another man, and the fact that the son, whose legitimacy is questioned, took the name of the latter from his birth, and which he and his descendants afterwards retained, is strong evidence of illegitimacy"

But not the non-access of the husband

Rex v *Sourton*, 6 *N & M* 575, 5 *Ad & E* 180 Ann Tickle Soper was removed from Lamerton to Sourton, in Devonshire Order confirmed Case —The respondents proved the birth of the pauper, twenty-five years ago, in Sourton The appellants called John Tickle, who proved that he had been married to the pauper's mother, in Sourton, seven years before the pauper was born, which was further proved from the marriage register He then proved that he had since gained a settlement by renting a tenement, which he had occupied about twenty-five years, at Clifton The respondents relied on proving the non-access of John Tickle to his wife, and thereby the illegitimacy of the pauper They called one Soper, and partly from his evidence, and partly from the cross-examination of John Tickle, the sessions found, that the mother's general residence, for a year previous to the birth of the pauper, was in Sourton, that the pauper went by the name of Ann Tickle, though called Ann Tickle Soper in the order of removal, that John Tickle had removed from Sourton to Clifton (one hundred miles distant) about five years before the pauper's birth, and that his general residence from that period to the present time had been at the latter place It further appeared from the cross examination of John Tickle, that during his residence at Clifton he had been living in incestuous intercourse with his wife's sister, who had born him children The sessions were satisfied with the proof of non access, if they were right in admitting the evidence of John Tickle, without which they had not sufficient grounds to find the fact of non-access If that evidence was inadmissible, the order was to be quashed, if it was admissible, the order was to be confirmed Lord *Denman* "We do not think it necessary that we should hear the other side. Indeed it is desirable that we should not do any thing which may imply *any doubt whatever* as to the rule. The rule is, that *neither the mother nor her husband* is competent to prove non-access It is to be taken as an indisputable rule of law, that for the purpose of proving non-access neither the husband nor the wife can be admitted. Although the precise questions and answers put to and given by John Tickle are not stated in the case, yet it is impossible not to draw the conclusion from what is stated, that this person, who was called on the part of the appellants, was cross-examined for the purpose of making out circumstances from which it was intended to raise the inference of the fact of non-access When the husband was questioned as to his course of life, with the avowed purpose of proving non-access to his wife, the rule of law immediately applied The sessions were satisfied of the fact of non-access, provided they were right in admitting the evidence of John Tickle, but without it they had not sufficient ground for finding that fact It is quite evident that the sessions have admitted the husband to prove facts which, by the clear and obvious rule of law, he was incompetent to prove" *Littledale*, J "The sessions have stated that they were satisfied with the

Upon the trial of a question as to the legitimacy of a child procreated during the marriage of A and B, neither A or B is a competent witness to prove the non access of A

Nor can their evidence of facts, from which non-access may be *inferred*, be received for that purpose

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proof of non-access, *if* they were right in admitting the evidence of Tickle, without which they had not sufficient grounds to find the fact of non-access; and the question is, whether they were right in admitting that evidence. I entirely concur in the rule laid down by Mr. *Starkie.* (*a*) Upon that it might be a question whether the rule went further than this,—that the husband or wife cannot be asked as to the direct fact of non-access; but it appears to me to go a great deal farther, and that the rule ought to be extended to all questions whatever which have a tendency to prove the fact of access or non-access. Suppose an issue as to legitimacy to be sent to be tried upon a question whether the husband had access to the wife from such a time to such a time. In that case neither husband nor wife could be admitted to prove the negative. Their evidence ought to be rejected altogether. Now, in the present case the whole object of the cross-examination of John Tickle was to prove the fact of non-access by him to his wife. It is admitted that the questions were asked with that object, and though he might have proved the facts stated by him for any other purpose, yet, in as far as his evidence went to prove non-access, it ought not to have been allowed. His evidence ought to be regarded as if it had never been given at all. It was as much inadmissible as if he had been asked as to the direct fact of non-access." *Patteson*, J. "It is very much to be regretted that the sessions have stated this case in the manner in which they have done it. I have very great difficulty in finding what the sessions received and what they rejected; but according to my apprehension it seems that they mean to submit the question, whether the evidence of John Tickle, as far as it related to the fact of non-access, was admissible. There is no doubt that as John Tickle was called by the appellants, he was admissible for some purposes. No doubt he was competent to prove many of the facts, as the birth, the settlement acquired by himself in Clifton, the residence there; but the respondents went on to cross-examine him, in order to show that there was not *access.* It seems to be admitted that John Tickle could not legally be asked as to the *direct* fact of non-access. It is quite trifling to say that you are not to put the question directly, but may put any question leading up to it. Upon the issue of access or non-access, whether arising at the sessions or upon the trial of an issue out of Chancery, I am of opinion that neither the husband nor the wife can be examined at all." *Williams*, J. "I was rather disposed to send the case back, that the evidence of John Tickle might be set out; but I shall assume, with the rest of the Court, that he was examined with a view to establish the fact of non-access, and that without his testimony the sessions would not have found the fact. Beyond all question, Tickle was incompetent to give testimony on the issue of access or non-access; and as the finding of the sessions proceeded upon evidence given by him as to that fact, the order of sessions cannot be supported."

The illegitimacy of a child is not to be inferred from the single fact that the mother cohabited notoriously with

Reg. v. *Mansfield*, 1 *G. & D.* 7; 1 *Q. B.* 444. Ann Fletcher and children were removed from Mansfield to Tewkesbury. Order confirmed as to the children. Case:—Ann Fletcher, the pauper, was married to Thomas Fletcher in 1812. The paupers Henry and Elizabeth are her children. T. Fletcher, the husband of Ann Fletcher, is still living. The children removed by the order are the bastard children of Ann by Henry Parsons,

(*a*) The rule is thus laid down by Mr. Starkie in the first edition of his Treatise on Evidence, vol. ii. p. 223: "It has been said that the *mother*, being a married woman, is not competent to prove the non-access of the husband, as it seems, upon a principle of public policy, which prohibits the wife from being examined against her husband in any matter which affects his interest or character, unless in cases of necessity." He, however, adds this note:—"In the case of *Goodright* v. *Moss*, Cowp. 591, Lord *Mansfield* says, 'It is a rule, founded in decency, morality, and policy, that *the parties* shall not be permitted, after marriage, to say that they had *no connexion.*'"

The same passage occurs without alteration in the second edition of the work, vol ii. p. 139.

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and were christened by the names of Henry and Elizabeth Parsons, and have never gone by the name of Fletcher, or any other name but that of Parsons. Henry is of the age of nineteen and upwards, and Elizabeth is of the age of seventeen and upwards. The pauper Ann was married to Parsons by banns at Mansfield in 1818, and cohabited with him at Mansfield from 1818 to 1832, and during such time the paupers Henry and Elizabeth were born. The settlement of T. Fletcher, the husband of the pauper, is at Tewkesbury. The above facts were proved by Ann, the pauper, who was the only witness for the respondents. No evidence was given by the appellants. If the court shall be of opinion that the sessions were justified on the evidence before them in finding the facts above stated, then the order of sessions is to be confirmed, otherwise to be discharged. Lord *Denman.* "The question is, whether there was any evidence of illegitimacy, to make out which there must be evidence of non-access. Non-access may, no doubt, be inferred from circumstances. But here the only fact proved was that the mother lived with a man in a state of adultery. We are not told where the husband was during the period of her adulterous intercourse. The case of *Cope* v. *Cope*, as reported in 5 *C. & P.* 604, and abstracted in Harrison's Digest, has been relied on. Even in this report it does not appear to me that the learned judge was laying down a rule of law, but merely that he was making strong observations for the direction of the jury upon the circumstances of the particular case. I may remark, in passing, that a proposition is often taken from the summing up of a judge as a proposition of law, which has been addressed merely by way of observation to the jury. But in the report of *Cope* v. *Cope*, in 1 *M. & Rob.* 275, I find no such proposition as that which has been relied upon, but rather the contrary, for the learned judge says, 'Where the wife is living in open and notorious adultery, and the husband on one single occasion only had opportunity of access to her, and then at a time and under circumstances rendering it extremely improbable that he availed himself of the opportunity, those facts might perhaps be urged as a reasonable ground for concluding that sexual intercourse did not take place.' So that it seems the opinion of the jury must be taken upon the very question of non-access, notwithstanding the wife be living in adultery; the fact of non-access, therefore, is not to be assumed. There is nothing in the cases cited to show that proof of non-access can be dispensed with." *Patteson*, J. "On referring to *Cope* v. *Cope*, I find it is no authority in support of the conclusion come to by the sessions, for all the learned judge said was that access was to be presumed, but whether it took place or not, under a particular state of circumstances, was for the consideration of the jury. The facts of this case are, that the woman was married in 1812, that her husband is living at this moment, that in 1818 she went through the ceremony of marriage with another man notwithstanding, lived with him and had children. We are asked from these facts to say there was non-access, although her husband might be living next door to her." *Williams*, J., concurred. Order of sessions quashed.

another man, unless some evidence is also given of the non-access of the husband.

A woman, married in 1812, went through the form of marriage in 1818, her husband living, and cohabited with her paramour down to 1832. These facts alone do not furnish sufficient evidence of non access.

Goodright v. *Saul*, 4 *T. R.* 356. A parish may also be estopped by a certificate acknowledging the bastard to be settled with them.

III. Of Settlement by Parentage.

1. *Derived from the Father.*
2. *Derived from the Mother.*
3. *Of Emancipation.*

1. Derived from the Father.

1. *Derived from the Father.*

Legitimate children derive their settlement

Settlement by parentage and settlement by marriage, form the two species of what are called *derivative settlements*, and legitimate children only can acquire a settlement by parentage; for a bastard, according to

1. *Derived from the Father.*

from their parents.

Holt, C. J., has no father, or rather none that the law looks upon as such, and consequently can derive no settlement from the relation of child and parent. (*Hard's Case*, 2 *Salk.* 427.) But bastards born after the passing of 4 & 5 Will. IV. c. 76, will follow the mother's settlement, till the age of sixteen.

It seems to have been erroneously thought at one time, that if a legitimate child were born whilst the parents were in a state of vagrancy, or in a parish different from that in which the parents were settled, or was born an idiot, that it was settled where born. (*Ib.; Coxwell* v. *Shillingford*, *Fost.* 313 ; *Fol.* 269.)

But the rule is, that a legitimate child is only entitled to a settlement where it is born, in case the parents have no settlement, or none that is known in this country. This applies to foreigners who come into England and have children here—they themselves having acquired no settlement. But in the case of children of Irish and Scotch parents, and forming part of the family of such parents, they are not to be relieved in the place of their birth if their parents become chargeable, but must be removed with their parents to Ireland or Scotland (*ante*, p. 121).

Children, wherever, born take their parents' settlement, and each successive settlement acquired by him.

If a father whose settlement is in A. removes to B.; and before he has gained a settlement there, has a son born in B., the son is settled in A. But if the father gain a new settlement either in B. or any other parish, he gains it for his son as well as for himself, *so long as the son remains part of his family, or is (as it is called) unemancipated.* Such was the judgment of *Holt*, C. J., in *Cumner* v. *Milton*, 2 *Salk.* 528; where a man settled at Cumner, and. having several children born in that parish, afterwards removed to Milton with his children, and gained a settlement there, where he, becoming chargeable, the justices erroneously supposed the children were removable to Cumner, and made an order accordingly, which was quashed.

Where the father gains a settlement after the child's birth, the child takes it also.

St. Giles's, Reading, v. *Eversly, Blackwater*, 1 *Stra.* 580; 2 *Ld. Raym.* 1332. It was ruled by all the court, that where a father gains a second settlement after the birth of his child, that settlement is immediately communicated to the child. And a child may be sent to the place of his father's settlement without ever having been there before.

Therefore a child may be removed with the father to his settlement, though it have never been there before.

In *Sowton* v. *Sydbury*, *Andr.* 345, *Lee*, C. J. said, "The true distinction, I think, is, that where children have gained no settlement, but continue part of their father's family, they shall follow their father's settlement."

A child born after the father's death follows his settlement.

The death of the father before the child is born will not defeat its right to a *settlement where the father* was last settled before his death. (*Rex* v. *Clifton*, *Vin. Abr.* 382; 2 *Bott*, 38.)

Proof of the father's settlement will establish the settlement of the child, if nothing appear to the contrary.

Rex v. *Stone*, 6 *T. R.* 56. M., the wife of T. Davenport, and her infant daughter, were removed from Stone to Leighford in Staffordshire. The sessions quashed the order, stating that T. had left his wife and family for three quarters of a year, during which time she had not heard of him, nor had he since been in either township. The settlement of T.'s father was in Leighford, but T. himself was not *born* there, and it did not appear by any evidence that he had gained any settlement in his own right. It was further stated, that the removal had been made without any examination of Thomas, the husband of Mary, and that due diligence had not been used by the respondents to find him out. Lord *Kenyon*, C. J. said, "That there was nothing in the case: that the evidence produced was legal evidence, and, if not contradicted, sufficient to establish the settlement in Leighford; but that the sessions seemed to have thought it indispensably necessary to procure further evidence, in which they were mistaken." The order of sessions was therefore quashed.

The children take the father's settlement, derived from their grandmother, in preference to that of their own mother.

Rex v. *St. Matthew's, Bethnal Green, Burr. S. C.* 482; 2 *Bott*, 54. A man whose settlement was not known married a woman who was settled in the precincts of St. Katherine's; they had a son born in Bethnal Green, which son married a woman settled in St. Leonard, Shoreditch, and had several children by her. It was argued that these children ought to follow

the acquired settlement of their mother, and not their father's, which was only a derivative one from their grandmother, who had married a Frenchman, who had no settlement. But the court said, that there is no difference between an acquired and a derivative settlement. And the rule laid down was this: that the child's settlement follows that of its father, if its father's can be found, and that no recourse shall be had to the mother's settlement, till that of the father can be traced no further. And these children were adjudged to be settled at St. Katherine's.

2. *Derived from the Mother.*

Rex v. *St. Mary, Cardigan*, 6 *T. R.* 116. E. J., her daughter M., and J. and J. J., sons of her husband by a former wife, were removed from St. Mary, Cardigan, to L. Order quashed. Case:—The pauper's husband was settled in L.: he was convicted of sheep-stealing in 1770, and sentenced to death, but before execution he escaped from gaol. Two years afterwards he returned to Cardigan, and continued there till 1792; during that time he married, and his wife had by him John, one of the persons removed; on her decease, he married the pauper C., and had the pauper Mary; he afterwards absconded in 1792. The wife's settlement before marriage was in St. Mary, Cardigan. It was argued that the father's settlement was destroyed by his attainder. Lord *Kenyon*, C. J. "A settlement is not the property of any man; it cannot escheat, neither can it be called a franchise: in the case of a franchise it was rightly decided, that by attainder the franchise was lost, and that the party had no right to vote at an election. But this person was before his attainder settled in the parish to which the paupers were removed, and I think that the father's settlement was communicated to them. It would be another question whether the man himself could acquire a settlement after the attainder."

The settlement of a parent, acquired before his attainder, is communicated to his children born afterwards.

A settlement not a property.

Rex v. *Haddenham*, 15 *East*, 463. A convicted felon, discharged under the sign manual, may acquire a settlement by purchase.

2. Derived from the Mother.

2. *Derived from the mother.*

The child's settlement follows that of its father, whether acquired by his own act or derived from *his* parents, till it can be traced no further; recourse shall then be had to the settlement of the mother.

Rex. v. *St. Mary's, Leicester*, 3 *A. & E.* 644; 5 *N. & M.* 215. J. Cuthbert was removed from Swetstone to St. Mary's, Leicester. Order confirmed. Case:—The respondents proved that the pauper was born in the appellants' parish. The appellants proved that the pauper's mother, before her marriage unto the pauper's father, acquired a settlement in St. Martin's, Leicester. The sessions confirmed the order, upon the ground that no evidence was offered to show that the pauper's father had no settlement. Lord *Denman*. "My first impression was, that, upon the authority of the rule laid down in *Rex* v. *St. Matthew's, Bethnal Green*, (p. 427,) it was incumbent on the appellants to prove either the father's settlement, or that inquiries had been made as to his settlement, and that none had been found; neither of which has been done. But the respondents rely upon the birth settlement. If the father had a settlement in the same place, they should have shown it; but they rely upon the *primâ facie* case of the birth: that is good till a settlement by parentage is shown: here that is shown by proof of the mother's settlement. It is argued that the mother's settlement cannot be taken to be that of the child, till the fact of the father's settlement be disproved; but that is not so here, because the mother's is good as against a birth settlement." *Littledale*, J. "The respondents, without giving any account of the parents, show a *primâ facie* settlement by birth. The appellants, to get rid of that, show a settlement in one parent—the mother: but neither party gives any proof as to the father. The father's settlement would displace that of the mother; but it would also displace the birth settlement. How then does the case stand? It may be presumed, indeed, that every man had a settlement; but if the father had one, it would displace the settlement relied on by the respondents,

A *primâ facie* case of settlement, by evidence of the place of birth of the pauper, may be answered by proof of the maiden settlement of his mother, without showing that his father had no settlement.

2. *Derived from the Mother.*

as that of the mother will do in the absence of the father's settlement." *Patteson*, J. "The birth settlement is the lowest and weakest. If you show a better, you get rid of that: the birth-place is the place of settlement, because no better settlement is found. Here a better is found." *Williams*, J. "I accede to the view of the case taken by the appellants. How do the respondents make good a settlement by birth? Only by supposing that the father has no settlement. Then the appellants show the mother's settlement. On what supposition is that a good settlement? On the very supposition necessarily made on the other side." Order of sessions quashed.

Berkhamstead v. *St. Mary, North Church*, 2 *Sess. Ca.* 182; 2 *Bott*, 51. The father ran away, and the mother went and resided on an estate devised to her. One question was whether the children could gain a settlement by residing with the mother (*a*) on such estate, where the father had *never lived?* Lord *Hardwicke*, C. J. held, "That as it did not appear that the father was dead, the court must suppose him to be living; and in such case the children could gain no settlement but what was derived from their father."

Father having no known settlement and run away, the child shall be settled with the mother.

Rex v. *Westerham, Fol.* 252; 2 *Bott*, 108. An Englishman, whose settlement was not known, married, had a child, and ran away: the child was then nine years of age. By the Court: "The mother and children ought to be settled where the mother was settled before marriage.

So where the father was an Irishman, having no settlement.

St. Giles's v. *St. Margaret's, Fol.* 251; 2 *Bott*, 107. S. E., with her daughter, aged five years, was removed from St. Margaret's to St. Giles's, as being the place of their mother's settlement before her marriage, she having married an Irishman who had no settlement. And it was adjudged that her daughter should be settled with her mother in St. Giles's, where her mother's settlement was before marriage. (S. P. *St. Botolph* v. *St. John's, Burr. S. C.* 367; 2 *Bott*, 109).

So where the father was a foreigner.

Rex v. *St. Paul's, Shadwell*, 2 *Sess. Ca.* 113. Resolved by *Eyre* and *Fortescue*, Js., that where the father, being a foreigner, had no settlement, the children should have the benefit of their mother's settlement; for that her right should descend to them, and they should not be sent to the place of their birth.

Children follow the settlement of the mother, acquired after the death of the father, and during her widowhood.

St. George's v. *St. Katherine's, Ld. Raym.* 1474; 2 *Bott*, 47. A man settled in St. Katherine's married, and had six children born there, and died. After his death, the widow went into St. George's with her children, and rented a house of 12*l.* a-year, and lived in it with her children four months. The question was, whether the children should have the settlement of the mother in St. George's? And the whole court were of opinion that they followed the mother's newly-acquired settlement. *Parker*, C. J. "There is no distinction between the settlement of children with the father or mother; for they are as much her's as the father's, and nature obliges her, as much as the father, to provide for them; so does the law: and every argument that holds for their settlement with the father, holds as to their settlement with the mother. (*b*) The reason why children shall not gain a settlement where the widow gains a settlement only by intermarriage is, because it is then not her family, but her husband's; and she cannot give the children any sustenance without the husband's leave. But in this case, since she is equally punishable with her husband for deserting her children, and therefore could not leave them behind her, they must gain a settlement with her."

Same point.

Woodend v. *Paulspury*, 2 *Ld. Raym.* 1473; 2 *Stra.* 746. J. Buncher was settled at Woodend, and died, leaving a widow and one daughter, aged 14 years. The widow removed to Paulspury, into a messuage of her

(*a*) The mother herself could gain no settlement by this estate, as her husband was living; and as he had not resided on the estate at all, no settlement in that parish could be derived from him in that parish.

(*b*) *Patteson*, J. "I do not very well understand this reasoning."

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own for life, and took her daughter with her, and the daughter lived with her there two years. And the question was, whether the daughter gained a settlement at Paulspury? And it was judged that she did, because the mother being a widow, having gained a new settlement after her husband's death, the daughter gained a settlement also as part of her family. And there is no difference between a father's gaining a settlement and a mother's, in such cases as this for the mother is obliged to provide for her children after her husband's death, as the father was when living, and she could not leave this daughter behind her, neither could she be removed from her.

Same point.

Barton Turfe v. *Happisburg, Burr. S. C.* 49; 2 *Bott*, 52. T. Man being settled in Barton Turfe, died After his death his widow removed to Happisburg, and occupied lands there, devised to her by her father. Her daughter, of the age of thirteen years, lived with her mother as part of her family for a year and a half By the Court: "The daughter gained a new settlement in Happisburg, by living with her mother there, as part of her family, upon the mother's own estate. For a child may gain a settlement under its mother after the father's death, equally as under its father whilst alive. The mother's settlement has the same effect upon the child as the father's had."

Same point, *Rex* v. *Oulton*, 2 *Burr. S C.* 64; 2 *Bott*, 53.

But if the mother gain a subsequent settlement by intermarriage, the children by the first marriage will not follow such settlement.

Wangford v *Brandon, Carth.* 449, 2 *Salk* 482 Three men of Wangford married three widows of Brandon, each of which widows had children by their former husbands, some under seven, some above seven years of age. It was holden that the children did not gain a settlement in Wangford, nor were removeable thither, to charge that parish. As to the nurse children, they indeed might be sent thither for *nurture only*, yet still Brandon must relieve them there, and not Wangford. But the children above the age of seven years ought not to be removed at all, being settled inhabitants of Brandon, and the removal of the mother shall have no influence on the settlement of her children.

In *Cumner* v *Milton* (*ante*, 426), it was said that if, after the death of the father, the mother marry again to a husband who is settled in another parish, this is an accidental settlement of the mother, and as she is now become one person with him, shall not gain a settlement for her children.

Same point.

St Giles's in the Fields v. *St. Clement's, Burr. S. C.* 2, 2 *Bott*, 49 J M, the pauper, was an infant of nine years of age. His father's settlement was not known. his mother's settlement before their marriage was known. his father died his mother married a second husband, who had a settlement; and she gained a new settlement by this second marriage. By the court. "J M's settlement is where his mother was last settled before her marriage with J.'s father; the new-gained settlement of his mother not being gained in her own right, but only in right of her second husband" And in this case the court agreed, that where children are sent with their mother for nurture, they are to be supported at the expense of the parish where their legal settlement is.

Now every man who marries a woman having children, legitimate or illegitimate, is liable to maintain them till they are sixteen, or the mother dies; and for the purpose of the 4 & 5 Will. IV. c. 76, they are to be deemed part of his family, and such bastard children will follow the mother's settlement, if born after 14th August, 1834.

The legitimate children (within the age of nurture) of a wife married to a second husband, cannot be removed to the settlement of her husband.

Rex v. *Walthamstow*, 1 *N. & P.* 460, 6 *A. & E.* 301. An order was confirmed as to William Hammond, Eliza his wife, and Mary Ann, their lawful child, but quashed as to the three other children of the said Eliza, by her former husband, all under seven years of age. The order adjudged the place of legal settlement of the said W. Hammond, Eliza his wife, and the children aforesaid, to be in the parish of St Leonard, Shoreditch. W. Hammond was married to the said Eliza his wife in September, 1834, and his settlement at that time, and from thence up to the time of the above removal, was in the parish of St. Leonard, Shoreditch.

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At the time of the marriage of the pauper and his said wife, she had by a former husband, who was not settled in either of the contending parishes, the three children named in the order, all of whom were unemancipated The question was, whether the three children of E Hammond, by her former husband, were removeable to the parish of St Leonard by virtue of the said order During the argument, Lord *Denman* said, "Suppose that order had been confirmed on appeal, how would the parish of Walthamstow ever have been able to get rid of their obligation to support these children?" And afterwards he added, "Justices have no power to remove paupers unless they are settled in another parish, but it is argued, that as children within the age of nurture are not to be separated from their mother, and are to be supported by the husband, under the 57th section of the Poor Law Amendment Act, it follows, that if the husband is removeable, the children are to be removed likewise I do not think that consequence springs from the provisions of the act It may be assumed that the children will not be separated from their parents, but I do not think the justices have any power to remove them to a parish in which they are not settled" *Williams*, J "In sect 71, an express provision is contained as to the settlement of a bastard child, and the argument to be derived from that section, which is *in pari materia*, is strong to show, that settlement, not being mentioned in sect 57, was not intended to be affected The order of the justices in this case adjudicates upon the settlement of these children, and I do not think that the difficulty suggested by my lord as to the future effect of that order has been satisfactorily answered If such an order is only to be valid for the settlement of the children for a certain time, that must be by the construction of sect 57, but that clause contains no such provisions, and I cannot make the inference that such is the construction, there being no terms to warrant it" *Coleridge*, J "The court is called upon here to say whether the children of a woman (legitimate or illegitimate), being within the age of nurture, gain a settlement upon the marriage of their mother Now the words of the 57th section do not necessarily import this, though I will not say that such a result might not be raised by implication But as it is only an inference that may under certain circumstances be raised, I ask myself whether I must not look at all the consequences arising from such an inference, and see whether there is any thing that forces the court to go beyond the literal interpretation of the act I see nothing to throw such an obligation upon us, but, on the contrary, great inconvenience and novelties introduced into the law of settlement Whereas adhering to the words of the act seems quite consistent with the purposes for which this enactment was passed, viz not so much to keep the mother and children together, as to throw upon a husband all the expenses of supporting the children of the woman whom he may marry These purposes may be effected by making him liable to support the children till they attain the age of sixteen, who for such purposes are to be deemed a part of his family, and nothing else need be implied The 71st section corroborates this view, because there, on a similar subject, the legislature has expressly enacted what the settlement of an illegitimate child shall be As there is nothing to the same effect in sect 57, I do not think we ought to give the clause a similar interpretation" Order of sessions quashed

A bastard child, born *before* the passing of the 4 & 5 Will IV c 70 living apart from her mother, who had married, and whose husband was alive, is removeable to the parish of her birth, although

Reg v *Wendron*, 3 *N & P* 62, 7 *A & E* 817 Sophia Hellings, aged about four years, was removed from Wendron to Constantine Order quashed Case —The pauper is the illegitimate child of Sophia Bowswarrick, who, before her marriage, was settled in Constantine, and in which parish the pauper, in 1832, was born After her birth the pauper was placed at nurse in Wendron, by and in which latter parish she was relieved and maintained as a pauper before and at the time of the order In November, 1835, the pauper's mother intermarried with John Bowswarrick, of Kenwyn, and a settled inhabitant of that parish, and both she and her husband have resided in Kenwyn ever since Neither John Bows-

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within the age of nurture.

warrick or his wife ever resided in Wendron. The sessions were of opinion, that by the 4 & 5 Will. IV. c. 76, the settlement of the pauper, in Constantine, was *suspended* during the lives of her mother and her husband, until she attained the age of sixteen. Lord *Denman*, C. J. "The 57th sect. of 3 & 4 Will. IV. c. 76, may certainly be argued with much plausibility to make the bastard child of a female pauper part of the father-in-law's family for all purposes whatever; but considering that that act was passed principally for the relief of the poor, and not to effect changes in settlement, and more particularly when I find, that in sect. 71 it is expressly enacted, that a bastard child shall follow its mother's settlement, I think it is a fair deduction, that if sect. 57 intended to make any alteration in the law of settlement for such a child, when the mother married, that it would have done so in terms. The words of that section are, that the child shall become a part of the husband's family for *the purposes of the act*, which are, first, the receiving of maintenance, and, secondly, receiving it in such proportion as every other member of his family would be entitled to. In *Rex* v. *Walthamstow* (p. 430) we held that the settlement of the child is not changed, but still the parish where the child is settled may come upon the husband and compel him to maintain it. Now, the parish of Wendron has nothing to do with this matter, the father and mother not living there; and their only obligation arising from the child being found in their parish, and being chargeable to them, it is clear that they cannot be liable. Then to what place can the child be removed, except to its settlement by birth? I therefore think the order of removal was right, and the order of sessions wrong." *Littledale*, J. "The 57th section says, the child shall be part of the husband's family, but it does not say a word about settlement. There is no objection, therefore, to its being removed to Constantine, for it may still be considered as part of the husband's family, and an order may be made on him for its support. When the husband shall have provided for the maintenance of the child, he will have done all that is required by the act. The terms of sect. 71 are different, for they are express as to the settlement of a bastard child, but the 57th section contains no provision on the subject." *Williams*, J. "The question as to the removeability of a child during the period of nurture, does not occur, because the child was living apart from its mother. The comparison of sect. 57 with sect. 71 goes far to show that the decision in *Rex* v. *Walthamstow* was right, because all that is said in sect. 57 is, that the child shall be deemed part of the husband's family; but sect. 71 goes further, and enacts, that the child shall follow the mother's settlement. A strong inference arises from that provision, that sect. 57 was not intended to alter the child's settlement in the cases provided for in that section. The child, therefore, is settled in its birth-parish, and I think that no suspension of its settlement should be considered to take place. If steps are to be taken against the father-in-law for contribution to the support of the child, it is highly reasonable that the parish where the settlement is should be the parish to do so, and not the parish where the child may by accident happen to be." *Coleridge*, J. "I entirely concur. The tender age of the child is out of the question, because she is already living apart from her mother. *Lang* v. *Spicer* (a) only decided that the mother of a bastard child, having married, the liability of the putative father ceased. Only three possible cases can be conceived with regard to this child. It must either remain at Wendron, or be removed to Kenwyn, or to Constantine. As to the first case, there is no provision of the act which enacts that the child shall have no settlement at all, or which makes it irremoveable from the parish where it happens to be till the age of sixteen. According to the terms of sect. 57, the husband is bound to maintain the child; but if he refuse so to do,—why is a stranger parish, like Wendron, to bear the burden of putting that law in force? If it is to be removed to the husband's parish, a new form of order must be devised. It is admitted, that the child is not settled in that parish. But it is essential that the justices should adjudicate upon the settlement, when an order of removal is to be

(a) M. & W. 129.

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made. I see no proviso in the act under which a removal could be made to any other than the settlement-parish. Then what is to prevent the removal being made to the settlement-parish? There are no words strong enough in the act to destroy that settlement. The literal meaning of the words in sect. 57 does not warrant that construction; and on comparing it with sect. 71, where there is an express provision on a correlative subject, no implication can be made that a similar provision was intended in the former clause. It is a much safer course to construe these sections according to the language used, and not to give them an extended sense, unwarranted by the words." Order of sessions quashed.

Secus, born after that act.

Reg. v. *St. Mary, Newington*, 7 *Jurist*, 440; 11 *L. J.* 68, *N. C.* Illegitimate children born *after* the passing of 4 & 5 Will. IV. c. 76, s. 71, (14th August, 1834), have the settlement acquired by their mother by her subsequent marriage.

Legitimate children above seven years of age, but under sixteen, of a woman who has married again, if chargeable to the parish where they reside with their mother and father-in-law, may be removed to their late father's settlement parish, notwithstanding 4 & 5 Will. IV. c. 76, s. 57.

Reg. v. *Stafford*, 1 *P. & D.* 414; 10 *A. & E.* 417. J. Blackbourne, and two other children of John Blackbourne deceased, by Ann his wife, were removed from Maltby to Stafford. Order confirmed as to the two elder children (the youngest child being within the age of nurture). Case:—Ann Ford, the mother of the three children named in the order, is now the wife of James Ford, to whom she was married in October, 1836. Her late husband, who died in 1834, was settled in Stafford. The question is, whether the two elder children of John Blackbourne, both of whom, at the time of making the order, were above the age of seven years, and have gained no settlement in their own right, are removeable from Maltby to Stafford, their late father's settlement, James Ford, their stepfather, (whose settlement is in Maltby), having run away and left his wife and her aforesaid children chargeable to the township of Maltby.

Reg. v. *Costock* was argued at the same time as *Reg.* v. *Stafford*. Lucy and Joseph Dexter were removed from Radford to Costock. Order confirmed. Case:—The paupers, Lucy Dexter, aged eight years, and Joseph Dexter, aged six years, are the legitimate children of Joseph Dexter and Susannah his wife. In September, 1834, Joseph Dexter died, being at the time of his death lawfully settled in Costock. In August, 1836, Susannah, his widow, was married to William Marville, who is settled in Radford. At the time of the order the children were resident with the mother in the workhouse of Radford, and chargeable to that parish. Lord *Denman*. "I am of opinion that the sessions have come to a right conclusion in these cases. The settlement of the paupers is not at all affected by the liability of the stepfather to maintain them, and there is nothing in the act to lead to a contrary doctrine." *Littledale*, J., concurred. *Patteson*, J. "*Rex* v. *Walthamstow* has decided that the 57th section does not operate to change the settlement of children, under the circumstances therein provided for; and *Rex* v. *Wendron*, that it is not suspended for all purposes. Were these children, then, properly removed? It is said that the legislature intended that they should not be separated, before the age of sixteen, from their parents. Suppose the stepfather to die, when one of these children is only eight years old; the mother would remain in his parish, and the children would be removed from her to the place of their deceased father's settlement. So much for the alleged object of the legislature to keep them with the mother. I was struck with the ingenious argument as to the difficulty of carrying into execution the 59th section, if the children are held removeable from the family of the stepfather. The inconvenience mentioned may certainly happen, and the children might be removed to Cornwall, and justices of that county have to attach wages in the hands of his employer in Lancashire. But the words of the 57th section are satisfied by holding that the stepfather is liable to reimburse the settlement parish of the children the costs of any relief given to them. If he should return and be of ability to maintain them, the question, whether he may be compelled to have them removed back again, may be settled when it arises." *Williams*, J. "It has been suggested that the construction con-

tended for by the appellants may be justified by intendment drawn from the 71st section. We have, however, had sufficient warning against liberal intendments, from the number of cases in our books with respect to binding of apprentices for a less period than expressed in the statute, and with respect to constructive service and dispensations, and other matters which have complicated our poor-law with difficulties and niceties equal to any that may be met with in the most abstruse question on contingent remainders." Order of sessions confirmed.

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3. Of Emancipation.

3. *Of emancipation.*

A child will follow each newly-acquired settlement of his parents so long as he continues a member of the family, that is, until he is *emancipated*, and no longer. In case the father have no settlement, the mother is the head of the family, for the purpose of communicating a settlement to the children, or subordinate members thereof; and she assumes the same rank, with the like capacity to confer the same privilege, after the death of her husband, who had a settlement, until she herself becomes again a *subordinate* member of another family, by contracting a fresh marriage.

Emancipation is effected when the child ceases to be a subordinate member of his father's or mother's family. In *Rex* v. *Wilmington*, p. 446, Lord *Tenterden* said, "It is of importance to lay down a general rule for the guidance of magistrates on the subject of emancipation, and the best which I can suggest is this, 'that during the minority of a child there can be no emancipation *unless he marries*, and so becomes himself the head of a family, *or contracts some other relation, so as wholly and permanently to exclude the parental control.*' I say nothing about his acquiring a settlement of his own, because that does not, as it seems to me, properly fall under this head. There can be, however, no question, that in that case he is only removable to his own acquired settlement. Here the pauper *was under* twenty-one, and had neither married nor contracted any such relation as I have described at the time when his father had acquired the settlement at Bow. He was, therefore, not emancipated."

General rule for children under twenty-one.

To the same effect is the rule laid down by Lord *Kenyon*, in *Rex* v. *Roach*, p. 446. "The rule to be extracted from the cases is this: if the child be separated from the parents, and without marrying or obtaining any settlement for himself, return to them again during the age of pupilage, he is to all intents a part of his father's family, and his settlement will vary with that of his father; but if, when that time arrives when, in estimation of law, the child wants no further protection from the father, the child remove from the father's family, he is not, for the purpose of a derivative settlement, to be deemed part of that family; this rule will reconcile all the cases, and will be found to be an intelligible one."

General rule.

Subject to the above exceptions of marriage, and the acquiring a settlement of his own, it may be further stated that, "during the minority of the child he will remain, under almost any circumstances, unemancipated; but where a new settlement is acquired by the parent after the child has attained the age of twenty-one, it will not be communicated to the child unless *in fact the child continues part of the family*. Where therefore at that period he is absent, employed in gaining a livelihood for himself, or serving in the militia, he no longer remains a member of the family."—Lord *Tenterden*. *Rex* v. *Hardwick*, p. 444.

General rule for adults.

An infant then will be emancipated by marriage; by acquiring a settlement; but absence in any service, and independence of his parents, if he return to the parental control before twenty-one, does not emancipate him.

Adults may be emancipated by actual separation, or by remaining separate after coming of age.

Although it is said that the acquisition of a settlement by a child does not properly fall under the head of emancipation, yet as it has been gene-

3. *Of Emancipation.* rally classed under that title, the decisions upon that point are enumerated here.

As to the presumption of emancipation.

In *Rex* v. *Yeavely*, 8 *A. & E.*, *post*, it appeared that the pauper was unemancipated in 1817; the onus is cast on the parish contending that he was emancipated in 1824, to prove it, although in 1824 he was 26 years old, and in an order then made for the removal of the mother, he was not included as part of her family.

An idiot is always a minor, and not emancipated.

Rex v. *Much Cowarne*, 2 *B. & Ad.* 861. J. Yarnold was removed from Great Wittley to Much Cowarne. Order confirmed. The pauper was born in 1793, and was always an idiot. He and his parents resided in Great Wittley, the place of his father's settlement, till 1822, when the mother died. In 1824 the father left the pauper (then 31 years old) in Wittley, and hired himself as servant, and in 1826 married a second wife, and then went to Much Cowarne, and resided there upon some property belonging to his second wife until her death in 1830, and there gained a settlement. After the father left Wittley he never returned to it, but the overseers took care of the pauper, and never applied to the father for any assistance or remuneration for what they paid. The sessions found that the pauper was incapable of taking care of himself through imbecility of mind at the time of the separation from his father, seven years since, and that previously he was not emancipated from the same cause. Lord *Tenterden*. "The general rule is, that until a child reaches twenty-one he is not emancipated, unless he becomes the head of a family or gains a settlement; but if after twenty-one, he separates himself from his father's family, he is emancipated. Why is twenty-one the period thus fixed by the law? Because at that age the party is presumed by law to be competent to take the management of his own affairs. Here the pauper never was and never will be competent to do so. The reason therefore for which that period was fixed upon in other cases wholly fails in this." *Parke*, J. "If the pauper were a minor, he would continue unemancipated. Now it is found that he is incapable of maintaining and taking care of himself, he must therefore be considered in the same situation as if he had remained a minor." *Taunton*, J. "The rule has been correctly stated to be, that where a party after twenty-one separates from his father's family, and can provide for himself, and requires no further protection, he is emancipated. That rule does not apply here." *Patteson*, J. "The words in *Rex* v. *Hardwick*, p. 437, must apply only to a member of the family capable of supporting himself." Order confirmed.

Physical incapacity.

So also where a child was rendered incapable of work by her hands being burnt off, she followed her father's settlement, although she continued in the workhouse after twenty-one. (*Rex* v. *Broadhembury*, 4 *Doug.* 241.)

By marriage.

Marriage by a son is an emancipation, although he continue to reside with his father's family.

Rex v. *Everton*, 1 *East*, 526. The pauper's father was settled in E., and resided there from 1779 to 1790, with his family, including the pauper. In 1782, the pauper, then twenty-two years of age, married, still living in the family of the father as part of it: in 1783 his wife died. The pauper still continued with his father. In 1790 he removed with his father to Great Barford, and while the pauper continued there with the father, the father acquired a settlement there. In 1796 the pauper married again, still continuing with his father, and had children, but he gained no settlement in his own right. The pauper and his family were removed from G. B. to E., and the sessions affirmed the order; considering that the pauper was emancipated by the first marriage. And Lord *Kenyon*, C. J., said, "The sessions could not intend more by the statement that he continued a part of his father's family, than to inform us that locally and personally the pauper lived in the same house with his father, and took his fare at the same board with him; but they wish to be informed, whether that so far constituted him in point of law one of his father's family under the circumstances, as that after his marriage he would follow a newly acquired settlement of the father, and I am of opinion that it did not." Order affirmed.

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Before this case, *separation* from the family, as well as marriage, seems to have been thought requisite.

A son is emancipated by the father's removing to another parish and the son remaining behind and marrying, and his settlement will be in the parish where he and his father last lived together.

Eastwoodhay v. *Westwoodhay*, 1 *Stra.* 438; 2 *Bott*, 57. Thomas Baker, the father of the pauper, in 1699 purchased a copyhold estate of 11*l.* a year in Westwoodhay, whither he and his family and servants removed, and stayed there till 1716: in 1716 he purchased a cottage of 1*l.* 12*s.* 6*d.* a year in Eastwoodhay, and went and lived upon it till his death; but Robert his son, the pauper, who in 1716 was of age, stayed behind in Westwoodhay, where he married, and had worked ever since on his own account. *Pratt*, C. J. "The question is not, where this man and his family are settled, but whether there appears a settlement of him in Eastwoodhay. If he had gone thither with his father, as part of the family, possibly it might have been a settlement of him there: but by staying behind, he was divided from his father, and therefore there is no colour to make it a settlement in Eastwoodhay. I think his settlement is in Westwoodhay, which was the last place where he lived as part of his father's family." To which the rest of the Court agreed.

A son at nineteen, leaving his father and going into another parish, and marrying, is emancipated, and his children can derive no settlement from their grandfather.

St. Michael's Coslany in Norwich v. *St. Matthew's in Ipswich*, 2 *Sess. C.* 129; 2 *Stra.* 831; 2 *Bott*, 58. E. Williams, Anne his wife, and E., S., and A., children of the said E., the father, were removed from St. Michael in Norwich, to St. Matthew in Ipswich. Case:—Edmund Williams, the grandfather, was settled at Shepton Mallet and removed to Bruton, with a certificate from Shepton Mallet, where Edmund the son was born; he continued there with his father till he was nineteen years of age. Then E. the son left his father and came to Norwich, and there he married two wives; by the first he had E. the grandson; and ten years after his wife died. Then he married Anne, his now wife, by whom he had S. and A. two other children; since whose birth, about two years ago, E. Williams, the grandfather, gained a new settlement at St. Matthew's, Ipswich: but Edmund the son hath never lived with his father at Ipswich, or any where else, since he lived with him at Bruton. *Reynolds*, J. "I do not see how the father can gain a settlement for the son, nineteen years after the son has left him." Lord *Raymond*, C. J. "I think it odd, that an old man of sixty, who has left his father for forty years, shall follow the settlement of his father as often as his father removes. In the case of young children it is otherwise; for they cannot be severed from their parents because of nurture." And *per Cur.* "The reason why we inquire into the ages of children is, because if they are grown up, and above seven years old, they may gain a settlement by their own act: but it is almost a contradiction in terms to say, that a man, who has left his father forty years, shall follow the settlement of his father."

Marriage and living separate from the father, amounts to emancipation.

Bugden v. *Ampthill*, *Burr. S. C.* 270; 2 *Bott*, 60. J. G., the father of the pauper, came by certificate from R. to A. They remained together at A., under the certificate, till the pauper came of age. After which, the pauper married in A., and left his father, and lived there with his wife and children, distinct from his father, till removed by this order. Three years after the marriage the father removed to B. and there gained a settlement, but the pauper never lived there. And it was held that "the pauper ceased to be part of his father's family, upon his marrying and living separate and distinct from his father."

Same point in *Rex* v. *Heath*, 5 *T. R.* 583, and *Rex* v. *Mortlake*, 6 *East*, 397. See *post*, "*Certificate*."

By enlisting.

A son enlisted for a soldier, and was absent four years, and then returned to his father: Held to be emancipated.

Rex v. *Walpole St. Peter's*, *Burr. S. C.* 638; 1 *Bla. Rep.* 669. The pauper being settled at Outwell as part of his father's family, enlisted for a soldier, and continued in the service four years; after his discharge he *came home* to his father, who had removed from Outwell, and then lived at Walpole, and rented and occupied a farm there of about 50*l.* a-year, and continued there with his father about twelve or fourteen weeks, and afterwards worked at different places as a labourer, till he was removed by an order from Wisbech to Walpole. He had never gained any settlement of

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his own. The sessions confirmed the order. But both the orders were quashed by the court, no cause being shown.

It does not appear whether the pauper was under age or not at the time of the discharge, and therefore the case is of very little authority; for it is clear that if the return to the father's family be while the son is still a minor, the emancipation is not complete. See *Rex* v. *Rotherfield Greys*, *post*, 438; and *Rex* v. *Whitehaven*, *ante*, 126.

Where the son enlists as a soldier, and thereby puts himself under the control of others, it is an emancipation. (*a*)

Rex v. *Stanwix*, 5 *T. R.* 670. Jane and Isabella Campbell, and the five children of Isabella, were removed from St. Mary's, Carlisle, to Stanwix. Order confirmed. Case:—Jane (since dead) was the widow of A. Campbell, a Scotchman: Isabella is the widow of W. Campbell, the son of Alexander and Jane; and the five children are the children of William and Isabella. Alexander became seised of a messuage and tenement in Stanwix by descent, upon which he resided upwards of a year, about 1774 and 1775. Some time before, and until the premises in Stanwix descended to Alexander, he resided in Scotland, where William, about nineteen years of age, enlisted and left his father's family in Scotland, which was some *years* before the above premises descended to his father. William, after having been for some time beyond the seas as a soldier, returned to England, (his father being then dead,) and married the pauper Isabella at Plymouth, and went beyond sea again as a soldier, and at the end of two years returned again to England; and he came to Rickergate quarter, adjoining to Stanwix, where he lived six years, and then removed into St. Mary's, where he lived four years, but never acquired any settlement by any act of his own. Alexander sold part of the estate in Stanwix in his lifetime, and resided upon the residue, consisting of a house and garden of the yearly value of 2*l.* 5*s.* till his death, which premises he devised to Jane his wife for life, and after her death to William his son, his heirs and assigns for ever. But William never became possessed thereof, nor resided thereon, having died in the life-time of Jane; who, after her husband's death, continued to reside upon the premises for several years, when she removed to her son in St. Mary's, about four years ago, and continued to live with him there till his death, and afterwards with his widow, until Jane herself died in January last. And it being urged, that in *Rex* v. *Cold Ashton* it was said that a child cannot be emancipated unless he has gained a settlement of his own, for that until that time the derivative settlement of his parents is not abandoned, Lord *Kenyon*, C. J., said, "that means as long as the son continues a part of his father's family. But here the son was emancipated when the father acquired a settlement in Stanwix; (*b*) he had ceased to be a part of his father's family some years before, and had put himself under the control and government of others; and it is immaterial whether or not he had gained a settlement for himself. The case of *Rex* v. *Walpole* (*ante*, 435), where the son had enlisted himself as a soldier, was considered so clearly to be the case of an emancipation, that it was not even argued." Both orders quashed.

Serving in the militia is not, of itself, an emancipation, although he continues after twenty-one. (*c*)

Rex v. *Woburn*, 8 *T. R.* 479. J. Williams, the father of T. Williams, the pauper, previous to 1756 was settled with his family at Leighton Buzzard. The pauper was born in that parish and baptised there in 1756. In 1763 J. W., with his family (including T. W.), removed to Woburn, and gained a settlement there in 1774. In 1772, previous to such settlement, the pauper entered into the militia with the consent of his father, then a serjeant in the same militia; the pauper continued therein a drummer till

(*a*) But see how this doctrine is limited and explained by the subsequent cases.

(*b*) At which time it appears by the facts that the son was of *full age and a soldier.*

(*c*) It will be observed, that in *Rex* v. *Woburn* the pauper remained with the father's family during the whole period when he was on duty as a militia-man, and then when he was on duty he was still in some sense under the parental control, the father being in the same service, and receiving his pay. In *Rex* v. *Hardwick* these facts did not exist, and this seems to be the ground of distinction between the two cases.

he was twenty-three years of age: during which time his pay was received by his father. From the time of the pauper's entering into the militia until the year 1788, when he married, he lived in his father's family, except at the times when he and his father were absent upon duty in the militia. He was removed from L. B. to Woburn, and the sessions affirmed the order. *Per* Lord *Kenyon*, C. J. "The argument that has been used in support of the present rule, if it proves any thing, proves too much; for it tends to show that if a child be for any period of time, however short, under any other control than that of the father, he is thereby emancipated from his father's family. That is the case of every private in the militia, even in time of peace; he is subject to military control during a part of the year, and therefore not under the father's control during that time; and yet it was contended that such a person is by that means emancipated. A drummer is generally taken at a very early period of life, and if he only continue in that situation for twenty-four hours, he is, it is said, emancipated from his father, he is to be taken from the protection of his father, and if his father is removed elsewhere, the child is to remain unprotected. The proposition is monstrous. In *Rex* v. *Walpole St. Peter's* (*ante*, 435), the court proceeded on this ground, that he was engaged to serve for life, and was liable to be sent into foreign countries. But a son is not emancipated by the circumstance of his being under some other control than that of his father. For in *Rex* v. *Halifax* (*post*, 442), where the son served an apprenticeship for four years, it was decided that he was not emancipated. There may be two kinds of control: a son may be under the control of his father and also under the control of the law; as if he be ordered to assist a constable in the execution of his duty, that is a temporary control. I am, therefore, of opinion that this pauper was not emancipated from his father at the time when the latter gained a settlement at W." *Grose*, J., Of the same opinion, as it appeared that he was only sixteen years of age when he entered; that he did so with his father's consent, a serjeant in the same militia; that his father *received his pay:* and that till he married he lived in his father's family. *Le Blanc*, J., said, "That in *Rex* v. *Walpole St. Peter's*, the son was totally independent of his father for four years." He added, "suppose he had engaged to live as a servant unto a farmer in the neighbourhood for six months, he would during that time have been under the control of his master, but on returning to his father's family he would again become subject to his father's control and would not have been emancipated."

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A person serving in the militia when he comes of age is emancipated.

Rex v. *Hardwick*, 5 *B. & Ald.* 176. Removal from Stanton Harcourt to Hardwick. Order confirmed. Case:—The pauper was born in Hardwick, and resided there as a part of the family of his father, who was settled there. In 1817, when the pauper was eighteen years of age, he was drawn for the militia, and served therein for five years as a balloted man, the regiment during that period being embodied and in actual service. He joined the regiment in 1808, and in 1809, having obtained a furlough for three weeks, he returned to the house of his father, who was still residing at Hardwick, and lived with him for about a fortnight. In 1811 the pauper obtained a second furlough for a fortnight, and went again to his father's, who was then residing in Stanton Harcourt, where he remained for about twelve days. The pauper was discharged from the militia in 1813, when he returned to his father in Stanton Harcourt, who gave him lodgings in his house till his marriage. After the pauper's return from the militia, and before his marriage, his father gained a settlement in Stanton Harcourt. *Abbott*, C. J. "The rule of law is, that every new settlement acquired by the parent is communicated to the children so long as they remain members of his family; and the question in this case is, whether at the time the father gained his settlement in Stanton Harcourt, this pauper remained a member of his family. Now, during the minority of the child, he will remain almost under any circumstances unemancipated; but where the new settlement is acquired by the parent after the child has attained

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twenty-one, it will not be communicated unless the child in fact continues part of the family. Where therefore at that period he is absent, employed in gaining a livelihood for himself, or serving, as in this case, in the militia, I think he no longer remains a member of the family. In the present case, I think that the sessions have come to a right conclusion, in deciding that the legal settlement of the pauper was at Hardwick." *Bayley*, J. "If a child be separated from his father's family, and does not return till after twenty-one, he ceases to be a member of that family, and consequently his settlement will not, after twenty-one, shift with that of his father. I think therefore that the sessions are right, and that this case is hardly distinguishable from *Rex* v. *Walpole St. Peter's.*" *Holroyd*, J. "The distinction between a compulsory and a voluntary separation seems to me to be immaterial. The case must follow the same rule as *Rex* v. *Walpole St. Peter's.*" Order of sessions confirmed.

A minor who enlisted into the marines, was discharged, and returned to his father's family before he attained the age of twenty-one, is not emancipated.

Rex v. *Rotherfield Greys*, 1 *B. & C.* 345; 2 *D. & R.* 268. Thomas Binfield was removed from Tooting Graveney to Rotherfield Greys. Order confirmed. Case:—In 1807, the pauper's father removed with his wife and family, including the pauper, to Tooting, and took a cottage there, which he has held ever since at 3*s.* per week. The pauper resided at Tooting with his parents till 1813, when he enlisted in the marines, and went abroad in that service. He remained in the marines till the 8th September, 1815, when in consequence of the reduction of that corps he received his discharge, and returned the same day to his parents at Tooting, *being then under the age of twenty-one years*, and resided with them from that time until some time after his father hired a stable in Streatham. About a year after the pauper's return home, the pauper being then more than twenty-one years of age, his father hired a stable in Streatham, at 4*s.* a week, which he held for about nine months, still continuing to reside at the cottage at Tooting. The cottage and the stable together were above the annual value of 10*l.* The pauper had never done any act to acquire a settlement for himself. *Bayley*, J. "I am of opinion that the pauper was not emancipated. In order to constitute emancipation, the party ought to be wholly and permanently free from the parental control. In this case, the pauper by enlisting into the marines, became subject to the control of the crown, and continued subject to that control as long as the period of his service continued; and if he had remained in the army till the age of twenty-one years, his emancipation would undoubtedly relate back to the time of his enlistment: but before he attained the age of twenty-one years, the relation between him and the crown ceased, and he returned to and constituted part of his father's family, and of course again became subject to the parental control. He, therefore, was not emancipated. This is consistent with the opinion of Lord *Kenyon*, C. J. and *Lawrence*, J. in *Rex* v. *Roach*, p. 446, with the general rule laid down by Lord *Tenterden* in *Rex* v. *Wilmington*, and *Rex* v. *Hardwick* (*ante*, 437). The pauper, therefore, was not emancipated, and he acquires his father's settlement in Tooting." *Holroyd*, J. "By entering into the marines, the pauper ceased to be under the control of his father, and became subject to the control of the crown, as long as that state of circumstances continued. But before he attained the age of twenty-one, he ceased also to be under the control of the crown, returned to his father's family, and again became subject to his control, and consequently was not emancipated. It has been said, that this, being an engagement for life, constitutes in itself a complete and perfect emancipation. It was an engagement for life, so as to bind the pauper to serve for life, if required; but the duration of the service depends on the discretion of the crown." *Best*, J. "By the general policy of the law of England, the parental authority continues until the child attains the age of twenty-one years: but the same policy also requires that a minor shall be at liberty to contract an engagement to serve the state. When such an engagement is contracted, it becomes inconsistent with the duty which he owes to the public that the parental authority should continue. The parental authority, however, is suspended,

Emancipation relates back to the time of enlistment.

but not destroyed. When the reason for its suspension ceases, the parental authority returns." Order of sessions quashed.

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By gaining a settlement.

If a child gains a settlement in his own right, though in the parish in which he was previously settled by parentage, he is thereby emancipated.

Rex v. *Bleasby*, 3 *B. & Ald.* 377. Removal from Bleasby to Thurgarton. Order discharged. Case:—The pauper was born in Gonalstone, the place of his father's settlement, in June, 1785; and at thirteen years of age was hired and served for a year with J. Hind, of Gonalstone. When the pauper was about sixteen years of age, his father gained a settlement in Thurgarton by renting a tenement of the yearly value of 10*l.*, on which the father continued to reside during the remainder of the pauper's minority, and the pauper continued during such period (that is, from about two years after the expiration of his service in Gonalstone, until he was twenty-one years of age,) to reside in his father's house at Thurgarton, working during the time as a journeyman frame-work knitter, and occasionally paying part of his earnings to his father, who was a labourer, as a compensation for his board. *Abbott*, C. J. "I take it to be settled law, that if a child acquire a settlement of his own, although he may afterwards during his minority return and live with his father's family, he does not follow the settlement of his father subsequently obtained. In this case the pauper did acquire a settlement by the hiring and service in Gonalstone, and after that time he derived his settlement no longer from his father, but from the contract of hiring." *Bayley*, J. "I cannot agree with what is stated in *Rex* v. *Keel* (*a*) (*Cald.* 144), on this subject; and indeed the point was no part of the decision in that case. Both there and *Rex* v. *Ingworth* (8 *Term R.* 339), the question was, whether a certificate was discharged by a hiring and service in the certifying parish. And the court held it was not, probably on the ground that it was better to hold that no settlement gained in the parish granting the certificate should affect the parish to whom it was granted, it not being a question into which the latter would be likely to inquire. These cases are only distinguishable from the present. The cases relating to certificated persons ought to be wholly laid out of the question. It has long been settled that the settlement of a child, who has acquired one of his own, does not shift with that of the father. It is said that the pauper has not gained a settlement of his own in Gonalstone, because he had one there before; but the words of 3 Will. & M. expressly provide, that if an unmarried person shall so be hired and serve, he shall be judged and deemed to have a good settlement." *Holroyd*, J. "I can see no reason why a party should not gain a new settlement in the parish in which he had one before, where originally he had it in another right, as derived from his father, and subsequently in his own right, under the contract of hiring and service." Order confirmed.

If provision be made for a child under age, and independently of the parents, and the child lives away from the father's family, so that he exercises no superintendence or immediate actual control over the child, still this will not amount to an emancipation, as is established by the following cases.

By absence.

Residence of a child by his father's direction at an uncle's house for support, the child visiting his father's house occasionally as his home, is not an emancipation.

Rex v. *Tottington Lower End*, *Cald.* 284; 2 *Bott*, 64. E. Holt, wife and family, were removed from Broughton to Tottington Lower End, Lancashire. Order confirmed. The pauper was the son of T. Holt, who at the time of the pauper's birth was settled in Tottington. When he was seven years old his mother died, and he and his father went to live with his uncle in Pilkington; his father boarded; but his uncle, *out of charity* to his father, who had four other children, and to keep him off the town, *took the pauper* and provided for him meat, drink, lodging, and clothes; in about eighteen months his father went to reside in the adjoining township of Ratcliff, but the pauper continued with his uncle till he was ten years old, about which time his uncle's wife beat him (his uncle being from home), and *he went to his father's house* and stayed there about a fortnight;

(*a*) The dictum quoted in *Rex* v. *Keel* was, "that the party can acquire no new settlement in the place where he was settled before."

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but *his father*, not having a loom to accommodate him as a weaver, *desired him to return* to his uncle, which he did, and his uncle taught him to weave in the day, and sent him to school in the evenings; his uncle provided him with meat and clothing, and received the money he earned; he stayed with his uncle on these terms until he *was* sixteen *years old;* but from his first going to his uncle to that time, he now and then went to see his father at a holiday time or so, and sometimes stayed all night. When he was fourteen years old, his father came into Pilkington, and gained a new settlement there by renting, 15*l.* a-year. The pauper considered his father's house as his proper home, because he was his father; and that he could have gone to him when he pleased, and his father would have received him. The father thought himself obliged to provide for the pauper whenever the uncle turned him away; and when he was sixteen years of age, having been struck by his uncle, *he told him he would leave him and return home to his father;* his uncle said he might; upon which *he went* to his father and told him the circumstances. *The father* said he was liable to take him in, and *did receive him as part of his family;* he stayed with his father about a week, and helped him to get his hay; and when that was done, his father not having a loom, *desired him to return* to his uncle and see if he would take him in. *He did* return, and agreed with his uncle to work for himself, and pay for his board; and it did not appear to the sessions he ever returned to his father. Some time after his last return to his uncle, having taken 2*s.* 6*d.* or more of him, his father gave his uncle 2*s.* 6*d.* as amends for the same. The pauper had gained no settlement in his own right. The father says, if the uncle had gone to live a great distance from him, he would not have suffered the pauper to have gone with him. Lord *Mansfield*, C. J. "The pauper considered himself as part of his father's family, and the father considered him the same. When a man acquires a settlement, he acquires it for himself and his family. There is no reason to say this boy was not a part of his father's family. The uncle was under no obligation to do anything for him, or to keep him an hour; and the boy, in point of fact, on every disagreement went to his father's house as his home, and he received him, as he was bound to do. I see no ground for considering this as an emancipation."

Where pauper, at the time of hiring himself, had a daughter *of the age of eighteen*, who, from the age of four, had lived with her grandfather, and had been maintained by him until his death, and afterwards by her grandmother, the grandfather having by his will directed the grandmother to educate and maintain her out of a fund given to the grandmother for life, and after her decease to the daughter: Held, that the daughter was not emancipated, and consequently the pauper was not within stat. 3 & 4 Will. & Mary, a person *not having a child* at the time of the hiring.

Rex v. *Uckfield*, 5 *M. & Sel.* 214. The sessions confirmed an order for the removal of J. Marshall from Hurstperpoint to Uckfield. Case:—The pauper, being settled in Uckfield, on the 10th of April, 1802, was hired and served for a year to Jeffery, residing in Tonbridge. The pauper was a widower at the time of this hiring, and had one daughter, Frances, eighteen years of age, who had been separated from him at the age of four years, and had lived with her grandfather until his death in 1801, during which time she was entirely supported by the grandfather, the pauper contributing nothing for her maintenance. The grandfather, by his will, devised the residue of his estate (which amounted to 1600*l.*) to his executors, in trust to place the same out upon security, and pay the interest to his wife, for life, for her own use; and he directed that his wife should, during her life, thereout educate and maintain Elizabeth and Frances, the children of his late daughter Elizabeth Marshall; and, after the decease of his wife, he gave the residue equally to be divided between the said Elizabeth and Frances; but in case his wife should die before they attained twenty-one, the interest was to be applied to their maintenance and education during their minority; and upon their attaining twenty-one respectively, the principal to be paid to them; and if either of them should die under age and without leaving issue, her share to go to the survivor; but if either should die under age leaving issue, her share to be equally divided between such issue, as they attained twenty-one; the interest, in the mean time, to be applied towards their maintenance and education. After her grandfather's death, Frances continued to live with her grandmother, and was entirely supported by her until she had attained twenty-one, and was living with her at the time when the pauper hired himself to Jeffery, and never returned to her father. The question was, if the pauper gained

a settlement in Tonbridge by this hiring and service. It was contended, that from the death of the grandfather the daughter became *suo jure* entitled to a maintenance of her own, for such was the effect of the direction in her grandfather's will: (*a*) so that from that time, which was prior to the hiring and service, she was no longer dependent on any one for support; and the relation between the parent and child, so far as regards any dependence or support, was entirely at an end. Lord *Ellenborough*, C. J. "This is a perfectly new head of emancipation. The question is, if, on account of a testamentary bounty left to this child by her relation, the child shall be deemed to be emancipated from all control of the father, and the father to be discharged from all claims of the child for maintenance, if that should become necessary. If such a provision as this amounts to an emancipation, the consequence will be, that the devolution of an estate to a child, from the mother for instance, would operate in the same way, and discharge the father from the duty of maintenance. This, then, is quite a new head of emancipation. The cases of emancipation put by Lord *Kenyon*, *Rex* v. *Witton-cum-Twambrookes* (*post* 445,) are, the child's attaining its full age; or being married; or gaining a settlement for itself; or, as in the case of the soldier, contracting a relation inconsistent with the idea of his being in a subordinate situation in his father's family. Not one of these is the case here; it is a case *sui generis*. If, therefore, it is to be considered as an emancipation, it must be on some reason or principle. Now, the reason why it should be so considered is said to be this, that the provision made for the child secures to her an independence and maintenance, and to the parish a discharge from all probability of burthen on her account. The statute 3 Will. & Mary enacts, 'that if any unmarried person, not having child or children, shall be lawfully hired, &c.,' which has been construed to mean, that if he has no child that can be a burthen to the parish in consequence of his acquiring a settlement there, he shall be considered as not having a child within the meaning of the statute. But was that the case of this pauper when he hired himself? The property devised was merely in trust for the use and benefit of the grandmother, in the first instance; with a direction to her, certainly amounting in equity to an obligation, to maintain the child, and, after the grandmother's death, to the child. But this trust might have failed; the trustees might have violated it and not paid the interest to the grandmother; or she might have proved unfaithful to her trust, and refused or neglected to maintain the child; in which events, so long at least as they continued, the child must have resorted to her father for maintenance, who was not discharged by any emancipation of the child from the parental obligation of providing for her maintenance. It seems to me, therefore, under these circumstances, that the father was not in the situation of a person not having a child within the meaning of the statute; because he had a child who would have a right to share with him, if he should be unable to provide one, a maintenance from the parish where he should have become settled, and who consequently might be a burthen to the parish. He was a person having a child who might, in the eventual failure of the funds bequeathed for her support, claim a provision from him; and he again might have claimed to have the control and custody of her at any time. The case has certainly been ingeniously argued; but I think it does not amount to an emancipation, either to discharge the rights of the one or the duties of the other." *Bayley*, J. "I am of the same opinion. The question is, if such a provision can be said to deprive the parent of his rights over his child, to resume to himself the care and custody of her; or can relieve him from the duty of maintaining her. If this case amounts to an emancipation, would it not be the same, under the like circumstances, at whatever age the child might be? For the law makes no distinction in respect of the different ages of infants under twenty-one, at which time the parental authority ceases,

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(*a*) See *Eacles* v. *England*, 2 *Vern.* 466.

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and the father has no right to reclaim his child. Let us then put the case of an infant of very tender years, for whose maintenance the grandfather should make a provision by his will; could it be contended that such a provision would preclude the father from insisting upon having his child returned to him? I think that could hardly be contended. But to come nearer to the present case, suppose, after the year's service of the father, the child, then being of the age of nineteen, had returned to the roof of her father, the father having then acquired a new settlement by such service, can there be a doubt that the child would have taken that settlement? And yet, if she was once emancipated, she could not, because she would be emancipated for ever. If then she would have been entitled to the father's subsequent settlement, that shows that the separate provision made for her by her grandfather's will could not operate as an emancipation; I therefore think that as she was not emancipated, but, notwithstanding the separate provision made for her, continued part of her father's family, and capable of deriving from her father any settlement which he might acquire, she was a child who might become chargeable to the parish in consequence of his acquiring a settlement. If so, it follows that the father was not in the situation of a person who is capable of acquiring a settlement by hiring and service; that is, a person not having a child within the meaning of the statute." *Holroyd*, J. "The maintenance provided for the child by the will was precarious, and the obligation of the father to maintain her still continued. The father's control over the child also continued; and, therefore, there is no ground upon the cases, or upon principle, to hold that the child was emancipated. I therefore think that the father was not in a situation to acquire a settlement by hiring and service" Order confirmed.

An unmarried son carrying on business for himself, but living with his father's widow as part of her family, is not thereby emancipated.

Rex v. *Sowerby*, 2 *East*, 276. R. Murdock and his children were removed from St Mary to Sowerby. Order confirmed. Case:—Richard Stokell went with a *certificate* from D. to Sowerby, and there had a son born: R S died, and the son, being arrived at manhood, followed his father's business at Sowerby, hiring servants for it, but living with his mother in a house which she hired and rented after his father's death; and he never left this house or his mother, except for a few weeks in harvest time in one year. She had no concern with the business. The pauper was during this time, and ten years after the father's death, engaged by the son as his servant, and continued so for eleven years; and during that time was hired by him for a year, and served the time. The main question was, whether the son was or was not emancipated. Lord *Ellenborough*, C J., said, "That here was nothing like emancipation; that while the father was living, the son resided under his roof, and after the father's death he continued to reside with his mother, who was the representative of the father, and equally protected by the certificate: and this brought it within *Rex* v. *Hampton*." *Grose*, J. "There is no pretence for saying that his going out for a few weeks at harvest time would operate as an emancipation." (See however *Rex* v. *Oulton*)

A son, nineteen years of age, treating his father's house as his home, and so considering it, is not emancipated,

Rex v. *Halifax*, *Burr S. C* 806; 2 *Bott*, 63, John Bragg, the father of the pauper, went with a *certificate* from Skircoat to Halifax, where the pauper was born. The pauper, when about fifteen years of age, bound himself apprentice by indenture to W. Smith of Halifax for four years, and served his master there for that time (*a*). After he was out of his

(*a*) In the above case the son went to Halifax with his father under *a certificate*, and the 9 & 10 Will. III. provides that no person whatever, who comes into a parish by a certificate, shall gain a settlement there except by renting a tenement of 10*l.* a-year, or serving some annual office therein. The certificate not only disqualifies the certificated person from gaining a settlement for himself, but none can be derived from or gained by a service under him. Besides, a pauper cannot gain a settlement by apprenticeship in a parish into which the family, of which he continues a member, is certificated, unless the binding and inhabiting there *both* takes place after he is twenty-one. (See *Rex* v *Manningtree*, 6 *M. & Sel.* 214; *Rex* v. *Morley*, *post.*)

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though he goes about the country working for himself.

apprenticeship, and when he was about nineteen years of age, his father took a farm of 12*l.* a-year in Warley, and went and resided there several years; his son, the pauper, always after the father went to Warley, worked about the country as a stuff-weaver, but came to his father, at Warley, when he pleased, and kept his holiday clothes there, and considered his father's house as his own home: when he came to his father's house he paid for what he had, and was his own master to go and work for himself whenever he pleased. Lord *Mansfield*, C. J., was absent. The other three judges thought that the son could not be considered as emancipated, or independent of or separated from his father. He went to his house when he pleased, and had his clothes there. Mr. J. *Aston* said, "That where a son is become independent of his father's family, or emancipated from it, he would not acquire a settlement where his father goes to reside; but if he remains part of his father's family, he will acquire a derivative settlement where his father goes and settles." The distinction was well laid down, he said, in the *Bugden case;* and he observed, that in the case of *Walpole St. Peter's* the son had been four years a soldier, and was emancipated from his father's family, and had ceased to be part of it.

Where a pauper was bound apprentice to a certificated man, and during his apprenticeship, he being of the age of eighteen, his father gained a new settlement, and the pauper did not return to his father's till after twenty-one: Held to be not emancipated, but to follow his father's settlement.

Rex v. *Huggate*, 2 *B. & Ald.* 582. Removed from Nunburnholme to Huggate. Order confirmed. Case:—Thomas Lazenby, the father of the pauper, was originally settled in Huggate, where his father rented a farm. During the time that William L., the father of Thomas L., so rented the farm at Huggate, the latter was bound out apprentice till his coming of age. The master, during the whole of the apprenticeship, resided at Spaldington, under a certificate, at which place the apprentice served him until the expiration of the term. About the middle of the apprenticeship, William L. took another farm, of 80*l.* a year, at Storthwaite, where he went to reside, and continued there during the remainder of his son's apprenticeship and after it expired. He found his son, the apprentice, with clothes, except shoes and aprons, during the apprenticeship. Thomas L. occasionally visited his father during that time; and on one occasion, when he was ill, went to reside with him there for a fortnight during his illness. At the time when William L. went to reside at Storthwaite, Thomas L. was between eighteen and nineteen years of age, and, when the apprenticeship expired, he went home for one night. The next day he went away, and went to work at various places for himself, but never gained any settlement by so doing. *Bayley*, J. "It seems to me, that Thomas L. was not emancipated. He is bound apprentice to a certificated person, and consequently could not by such service gain any settlement. Unless he does so, his domicile continues to be his father's house, and he is liable to be removed thither at any time. If, indeed, he had withdrawn himself from his father's family after twenty-one, no doubt it would be an emancipation from that period. But a separation, whilst under twenty-one, does not produce that effect, unless a subsequent settlement be gained. Here none was gained, and, therefore, his settlement shifted to Storthwaite with that of his father." *Holroyd* and *Best*, Js., concurred. Order of sessions quashed.

Absence from the father's family does not emancipate the child if the return be before he is twenty-one years of age.

Rex v. *Collingbourn Ducis*, 4 *T. R.* 199. E. Chandler and his wife were removed from Collingbourn Ducis to Collingbourn Kingston. Order quashed. Case:— E. Chandler was born in Collingbourn Kingston, where his parents were residing, under a certificate from Froxfield. At the age of nineteen he was hired for a year to serve J. Childs, of Buckholt Farm, as a carter, which he served. Buckholt Farm is extra-parochial, and has no parish officers. After the pauper had served the year at Buckholt, he returned to Collingbourn Kingston, and then being unmarried, under age, and not having done any act to gain a settlement in his own right, further than aforesaid, was hired to and served S. Andrews, of that parish, for a year. The sessions being of opinion that the pauper was not emancipated, and that the certificate was not discharged, so as to enable him to gain a settlement in Collingbourn Kingston, by hiring and service, quashed the order of removal. Lord *Kenyon*, C. J. (after observing upon the certificate), "In cases of this kind, where the decisions of this court are to guide the

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judgments of the magistrates, it is of great importance that they should be consistent. Now, I am not able to distinguish this case from the principle laid down in *Rex* v. *Witton-cum-Twambrookes.* It was there held, that a person under age, who, after being absent from his father's family for a considerable time, returned to it before he was an adult, or married, and before he had acquired a settlement for himself, was not emancipated, but was entitled to the benefit of his father's settlement. So, in this case, the son returned before he had attained the age of twenty-one, not having gained any settlement for himself distinct from that of his father, nor having become the head of a family, and, therefore, this case must be governed by that of *Witton-cum-Twambrookes.* The distinction which has been attempted to be taken between some of the former cases and the present, that here the son put himself out to service, is not material; for, until the age of twenty-one, not having done either of the acts above alluded to, he continued a part of his father's family." Order of sessions confirmed.

A son was apprenticed to a certificated person for four years, and after serving the time, returned to his father at the age of nineteen: Held not emancipated.

Rex v. *Hardwicke,* 11 *East,* 578. (Among many points in this case, one related to *emancipation.*) An appeal against an order for removal of J. Vipond, his wife and children. The sessions confirmed the order, and stated that John V., the father of Joseph, was settled in Forncett St. Mary, in Norfolk, and about forty years ago came to reside in Hardwicke, on a tenement at 5*l.* 10*s. per annum.* The pauper, Joseph, was born in that parish; and at the age of fifteen, his father then residing on the said tenement, was apprenticed to S. W. of Besthorpe, and regularly served his time with his master, who resided in Besthorpe, under a certificate from Bunwell. During the first year of the son's apprenticeship, John, the father, purchased the tenement on which he resided at Hardwicke, for 87*l.* During his apprenticeship he was clothed by his father, and he occasionally visited him. At the expiration of the apprenticeship, the pauper, being then nineteen years of age, returned to his father's house in Hardwicke, where he stayed two days, and received some new clothes: he then went back to his former master, and engaged to work with him by the piece; and did so work at Besthorpe for a year and a quarter. Lord *Ellenborough,* C. J., said, "As to the point of emancipation, that the son must be considered as having been re-incorporated in his father's family, having returned, and required and received his father's assistance, and therefore he followed his father's settlement, which he had acquired in the mean time;" and he said "that none of the cases of emancipation which had been decided on the ground of the children's marriage, or obtaining a settlement of their own in another parish, or being under a different control, incompatible with that of their parents, till after the age of twenty-one, applied to this case." Order confirmed.

Child under age, residing away from his father with relations, who maintain him, and for whom he works without being hired, is not emancipated.

Rex v. *Offchurch,* 3 *T. R.* 114. H. West and his wife were removed from Thurlaston to Offchurch. Order confirmed. Case:—The pauper was born in Offchurch, in 1765, and resided there with his father until 1770. On his father's leaving Offchurch, the pauper was left with one Leeson, at Offchurch, to be taken care of, his father paying for his lodging and board. The pauper continued at Leeson's at Offchurch for two years, and then went to reside with his uncle, who also lived at Offchurch, and continued to reside with him about two years, during which his uncle provided him with board, clothes, lodging, and pocket-money, and he worked with his uncle, but received no wages, and was not hired as a servant. At the end of two years the pauper went to his father's at Ladbroke, and stayed there a week; and then went to reside with another uncle, Salmon, of Weston, with whom he lived six years as he had done at his uncle Haddon's. Salmon provided him with board, clothes, lodging, and pocket-money, he working for Salmon without having been hired as a servant, or receiving any wages. On leaving Salmon, he went and lived three weeks with his father at Ladbroke, where his father had obtained a settlement. The pauper had never done any act to gain a settlement. Lord *Kenyon,* C. J. "This is the weakest case of emancipation that ever was attempted to be made out. When the father left Offchurch, the son

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was only five years old; now it cannot be pretended at that time he was emancipated, and yet he then ceased to reside in his father's family. Ordinarily speaking, one of these things must happen before the son can be said to be emancipated; either he must have obtained a settlement for himself, or have become the head of a family, or at most he must have arrived at that age when he may set up in the world for himself. But here the son does not fall within either of those descriptions: no time can be stated when the emancipation may be said to have commenced. For when he went to live with his uncle Haddon, he was only eight years old at the most; and he could gain no settlement either by living with that uncle, or his other uncle Salmon as a servant, because the case states that he was not hired as a servant by either of them. Now during all this time the father had a right to the custody of the son, and might have obtained him by *habeas corpus*, for the parental care was not then done away. It is not necessary in these cases of derivative settlements, that the child should remove with the father from place to place, for the settlement of the father will be communicated to the child: otherwise children who are sent out into the world for education, and are of course separated for a time from the father, might lose the benefit of their father's settlement; and when they were about to return home, would find themselves excluded from parental care, if their parents had in the mean time gained a new settlement. How long the power of communicating a derivative settlement may continue it is not necessary to determine; for in this case it certainly remained longer than till the child was nine or ten years old, and that is sufficient for the determination of this question." Both orders quashed.

A child is not emancipated till he has gained a settlement in his own right, or has contracted a relation inconsistent with the idea of his being part of his father's family; and a person at the age of nineteen (his father having run away), hiring himself for four years, but not gaining a settlement thereby, is not emancipated.

Rex v. *Witton-cum-Twambrookes*, 3 *T. R.* 355. G. Hewitt and his wife and family were removed from Stockport to Witton-cum-Twambrookes. Order confirmed. Case:—The pauper's father, J. Hewitt, rented a tenement of 16*l.* a-year in Witton, and resided upon it above a year, when the pauper was about six years old. The father then went to Widdlewich, where he did no act to gain a settlement; and about two years after ran away from his family; and the pauper's mother, taking the pauper with her to Congleton, died in half a-year; the pauper was there left in the care of Jane Brookes, with whom he lived at Congleton, and worked at the silk mills there. The overseers of Witton paid for his maintenance for four years to J. Brookes, after which the pauper supported himself to the age of sixteen, at which time he got 3*s.* 9*d.* per week, and boarded himself where he liked. During the first part of the time he lived at Congleton he saw his father twice, at the distance of about four years, at which time his father did not give him anything (except a pair of breeches, and 2½*d.* the first, and 1½*d.* in money the second time). At eighteen or nineteen years of age, the pauper went from Congleton to Sheffield, and hired himself for four years, but gained no settlement. He heard that his father had been to inquire after him at Congleton, and that he then lived at Dunham, to which place he went to see him, and was at that time twenty-three years of age, and married. (*a*) The father had made the above inquiry of the pauper's sister, with intent, as he said, to give him a suit of clothes, as he had done less for him than any of his other children. The father married a second wife, and held a tenement in Dunham of 11*l.* a-year, and he had lived upon it eight years, when his son went to see him there, upon which visit he stayed only one hour, and never saw his father but as above. Lord *Kenyon*, C. J., said "It was never conceived in any case that a son who was only sixteen years of age, and who had not gained any settlement in his own right, was not part of his father's family. The cases of emancipation have always been decided on the circumstances either of the son's being twenty-one (*Rex* v. *Roach*, *post*, 446), or married, or having gained a settlement in his own right, or (as in the case of the soldier), having

(*a*) The pauper in this case was absent from his father's family when he came of age. This would be emancipation. (See *Rex* v. *Lawford*, *post*.)

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A child bound apprentice by and serving under a void indenture, is not thereby emancipated

contracted a relation which was inconsistent with the idea of his being in a subordinate situation in his father's family" Order confirmed

Rex v *Edgeworth*, 3 *T R* 353 H Rothwell and family were removed from Castleton to Edgeworth Order confirmed Case —H Rothwell, the father of the pauper, when the pauper was about thirteen or fourteen years old, came to live upon a tenement at Edgeworth of 5*l* a-year, and resided there about two years, during which time he put out the pauper to J Pollit, who then resided in Spotland, for four years, to learn the trade of a woolcomber (*a*) The pauper accordingly left his father's house, to which he never afterwards returned but as a guest, and resided with and worked for Pollit, at Spotland, for four years, and by him was provided all that time with meat and clothes, and was considered by his mother as part of Pollit's family During these four years the pauper was sometimes a quarter or half a year without seeing his father or mother, but sometimes came to his father's house on a Saturday evening, and returned home to his master's either on the Sunday evening or Monday morning following After the expiration of the four years he never returned to his father's family, but worked at his trade of a woolcomber at different places about the country, and supported himself thereby until he married, and resided with his wife and family in a house of his own After the pauper was put out to Pollit, and before the four years expired, Henry, the father, took another tenement in Edgeworth, of the yearly value of 8*l*, which he occupied with the former tenement for a year, whereby he gained a settlement at Edgeworth The pauper never gained any settlement for himself, he had been put out *apprentice by indenture*, which was void for want of the stamp denoting the payment of the additional duty The court (without argument) confirmed the order

Emancipation takes place by becoming head of a family or contracting some other relation, so as wholly and permanently to exclude the parental control

It seems that the acquiring a settlement of his own does not properly constitute an emancipation

Rex v *Wilmington*, 5 *B & Ald* 525, 1 *D & R* 140 The order of removal of J Moore from Crayford to Wilmington was confirmed Case —The pauper in 1814 was removed with his father to Wilmington The pauper in the same year returned with his father into Crayford, and was hired by the week to Sir H Crewe in that parish, in whose service he continued as a weekly servant for nearly two years Upon leaving Sir H he followed the occupation of mole catching in Crayford, by which he obtained his own living He never resided with his father's family, nor did his father exercise any control over him In 1815, when the pauper was about seventeen, his father left Crayford, and went to live at Poplar, and about February, 1817, went to Bow, where he rented a house and orchard at 20*l* *per annum*, and in which he still continues to reside Whilst the pauper followed the business of mole-catching in Crayford, he used occasionally to visit his father both at Poplar and at Bow, and once slept at the father's house in Poplar, but he did not receive any maintenance or assistance from his father After the father had occupied the house at Bow for rather more than a year, the pauper, who was then about nineteen years of age, married The question was whether the pauper before his marriage was emancipated *Abbott*, C J "It is of importance to lay down some general rule for the guidance of magistrates on the subject of emancipation, and the best which I can suggest is this, *that during the majority of a child there can be no emancipation, unless he marries, and so becomes himself the head of a family, or contract some other relation, so as wholly and permanently to exclude the parental control* I say nothing about his acquiring a settlement of his own, because that does not, as it seems to me, properly fall under this head There can be however no question that in that case he is only removable to his own acquired settlement Here the pauper was under twenty-one, and had neither married nor contracted any such relation as I have described, at the time when his father acquired the settlement at Bow He was therefore not emancipated, and the order of sessions must be quashed'

General rule

An adult who

Rex v *Roach*, 6 *T R* 247 Order confirmed for the removal of E R

(*a*) The indenture was void for want of a stamp.

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from St. Columb Major to Roach. Case:—The father of the pauper lived in Roach, and gained a settlement there, and the pauper lived with him until after she was twenty-one years of age; when she was twenty-two she had a bastard child, for the maintenance of which a bond of indemnity was given to Roach, and she continued still living with her father. About half a year after, she left her father's house, and went to Mr. Henwood's in Roach, as a wet-nurse, and lived there eight weeks, for which she was paid 8*s*. A few days after she left her father's house, the father removed to St. Columb, where he rented some mills at 12*l*. a-year, and has lived there from that time; at the end of the eight weeks the pauper returned to her father in St. Columb, where she has since remained, but made no contract with him as a servant, nor gained any settlement for herself except as aforesaid. Lord *Kenyon*, C. J. "It has been very properly observed on former occasions, that this court ought to be anxious, in determining questions arising on the settlement laws, to lay down clear and distinct rules for the information of a very useful class of persons, the magistrates, who are to decide in cases of this kind. And I hope that the rule of decision which we are about to establish in this case, will fall in with every case that has been cited. For with regard to a supposed expression of mine in *Rex* v. *Witton-cum-Twambrookes*, p. 445, there is an inaccuracy in it. I think I could not have said, because it never was my opinion, that the mere circumstance of a son's attaining the age of twenty-one was an emancipation, so as to prevent his having a derivative settlement, gained by his father afterwards, if the son continued to live with the father; for if the son, with unbroken continuance, remain with and a member of the father's family, he is not emancipated. But this proposition will not break in upon any of the cases, but may be reconciled with all of them, namely, that 'if a child under the age of twenty-one leave his father's home, and is thereby *quà* severed from his father's family, and return to his father during a state of pupilage, during which time policy requires that the child should be under the protection of his father, he must be considered as incorporated with his father's family, unless he have gained a distinct settlement of his own, or have become the head of a family himself: but if a child, after a state of pupilage, sever himself from his father's family, he cannot afterwards be incorporated with it.' The case of the soldier proceeded upon that principle; he had neither gained a settlement nor was in a situation to gain one, but he had ceased to be under the control of his parents, and had become liable to the control of others; and as he did not return to his father until after he was of age, the case was thought too clear to be argued. But it must not be inferred from the circumstances of that case not having been argued, that it passed without consideration, and is not entitled to much notice; because in *Rex* v. *Halifax*, p. 442, *Aston*, J., who was a very good sessions lawyer, alluded to it as a case properly decided. And if so, it must govern the present, for I cannot distinguish between them. Some stress, however, has been laid in the argument to-day on the circumstance of that person having engaged in the situation of a soldier; but that cannot be material in any other way than as showing that the son was no longer under the control of his father. So in this case this woman was about twenty-one; she had contracted the relation of servant with another family; she was out of her father's family; she was under no control to him other than that arising from moral obligation and gratitude; and I cannot see how she could afterwards be deemed to be incorporated with the father's family." The court agreed. Order confirmed.

removes from her father's house, and goes into service, becomes thereby emancipated.

General rule.

Rex v. *Cowhoneyborne*, 10 *East*, 88. Removal from Teddington to Cowhoneyborne. Order confirmed. Case:—The pauper being settled in Cowhoneyborne, after the death of his wife went to service, and hired himself to Clarke, of Cowhoneyborne, who afterwards removed to Teddington, and the pauper left him at Michaelmas, 1806, having served him five years under a hiring for a year in Teddington. On the death of the pauper's wife, W. Nightingale, who had married his sister, maintained his infant,

A widower having a daughter, placed her, at eleven years of age, with an uncle, by whom she was wholly maintained, and with whom she con-

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tinued to reside after she came of age, doing service for him, but without any contract of hiring, to give her a settlement of her own; the father in the mean time having gone out to service: Held, that on coming of age she was emancipated.

out of kindness to the pauper; and the pauper's daughter, Elizabeth, then about eleven years of age, went, with the pauper's consent, to Nightingale, to nurse her infant sister. The infant died in about a year; and from that time to this Elizabeth continued to live in the house of Nightingale as one of the family, but doing the work of a servant. Nightingale, previous to the pauper's daughter living with him, kept a servant, and would have hired one if she had left him; but he never hired her, or paid her any wages, though he found her in board, clothes, and such pocket money as he thought fit. Elizabeth will be twenty-seven years of age in June, 1808. During the time she so lived with Nightingale, she considered herself liable to be sent away whenever he pleased; and he considered her at liberty to quit him when she chose; and the pauper considered himself, as her father, bound to receive and support her if Nightingale ceased so to do. But the pauper was not a housekeeper at any time after he went into Clarke's service. The question was, whether Elizabeth was so emancipated as to enable the pauper (her father) to gain a settlement by his hiring and service with Clarke in Teddington. Lord *Ellenborough*, C. J. "The daughter having been originally placed, when an infant, by her father in her uncle's family, continued to live with her uncle after she came of age, as part of his family, receiving no assistance from her father, and being at liberty to depart from her uncle when she chose. She was of age, living apart from her father, having her support from sources independent of him, and was at liberty to quit her uncle when she pleased, as she herself considered. If this be not emancipation, it would be difficult to say what is so, and when it can take effect. Then if she were emancipated after she came of age, it follows that the father, by the construction which has been put upon the statute of Will. III., gained a settlement by the subsequent hiring and service for a year in Teddington, as 'an unmarried person, not having any child.'" *Grose*, J. "The daughter lived apart from her father, after she was twenty-one, not under his control, nor having any contemplation of it, nor receiving any assistance from him: she was therefore emancipated when her father was hired for a year, and served in Teddington." *Le Blanc*, J. "Under these circumstances, living away from her father before and after the age of twenty-one, he having no house of his own, nor giving her any support; I think she ceased, after she came of age, to be part of her father's family, and consequently no future settlement gained by him could be communicated to her; and if so, he gained a settlement by the hiring and service in Teddington." *Bayley*, J. "To constitute emancipation, it is clearly not necessary for the child to have acquired a new settlement of his own: *Rex* v. *Roach* is in point to that. Where is the difference between going out from the father's house after twenty-one to seek a livelihood, and continuing out for the same purpose after that age, where the absence from the father is so long as it was here; the father too during all that time having no house of his own, and having indeed contracted a relation which precluded him from receiving his daughter at home." Orders quashed.

Hiring by an adult for the harvest is an emancipation.

Rex v. *Oulton*, 5 *Bar. & Adol.* 958; 3 *Nev. & M.* 62, S. C. Hannah Barnes was removed from Arkton to Oulton. Order confirmed. Case:—John Barnes, the father of the pauper, had a settlement in Oulton until 1830, when he acquired a settlement in Arkton, the pauper at that time living with him as part of his family. The pauper was born in 1806, and had never gained any settlement in her own right, but up to the time of the removal lived with her father as part of his family. She did the work of her father's house, and before and at the time of the appeal was the main support of his family. In the autumn of 1829, the pauper then being of the age of twenty-three years, with the consent and at the desire of her father, hired herself to William Wilson, residing at some miles distance, in an adjoining parish, at weekly wages, to work for him during his harvest. She remained living with Wilson and working for him under the hiring for three weeks and upwards, when she received her wages and returned home, having been absent from her father's house three weeks and two days. In the following autumn she hired herself again, with the consent

and at the desire of her father, to Wilson, to assist him in his harvest. On this occasion she served Wilson, living with him under this hiring a fortnight, received her wages, and returned home as before, having been absent from her father's house at this time two weeks and two days. On this latter occasion she gave her wages to her father, who expended them for the use of the family. The pauper had not on either of these occasions any intention of abandoning her home, but on both occasions she fully intended to return, and her father expected that she would return to him as soon as the harvest work at Wilson's was done. The sessions found that the pauper was emancipated, and did not follow the settlement acquired by her father in Arkton in 1830. *Denman*, C. J. "It seems to me that the sessions were right in finding that the daughter was emancipated. It appears that she and her father were on very good terms, and that on one occasion she paid her wages to him; but she being twenty-one years of age, and having hired herself during the harvest, it was in her option to pay her wages to her father or not. *Rex* v. *Lytchet Matravers*, p. 453, tends strongly to show that a pauper who hires himself under twenty-one years of age, and continues to serve after that period, will be emancipated. We are extremely anxious to make the rules on this subject as clear as possible. A party under age is not considered to be emancipated unless some distinct act be shown producing that effect; as if he marries, and so becomes the head of a family; or contracts some other relation, so as wholly and permanently to exclude the parental control; but where a child has attained the age of twenty-one, and is then separated from the father's family, the burden of proof that the child is not thereby emancipated lies on the party asserting that fact." His lordship then read the words of *Abbott*, C. J. in *Rex* v. *Hardwicke* (*ante*). "Now here the pauper, after she attained twenty-one, made a contract whereby she bound herself to work during a certain period. In performance of that contract she was absent from her father's house three weeks, employed in gaining a livelihood for herself. During that period, consequently, she no longer remained a member of his family; and I am, therefore, of opinion that the sessions were warranted in the conclusion they came to, that she was emancipated." *Littledale*, J. "I am of opinion that the pauper was not emancipated. It appears to me that her temporary absence from her father's house during the harvest was not, under the circumstances stated in this case, a severance from his family, and therefore does not amount to emancipation. It is the common practice for country people to hire themselves during the harvest, and their temporary absence from home under such a hiring, and when they are of full age, has never been considered such a severance from the father's family as amounts to emancipation. In this case the daughter did not intend to separate from her father's family, and her intention is very material in a case like the present, where her absence from the parent was for so short a period. For anything that appears, her room or her bed may have been kept for her during her absence. She maintained her father, and her hiring herself during the harvest may have been intended as a means of making her earn something towards his support. It is said that the pauper is emancipated, because, having contracted to work during the harvest, she had for a time put herself out of her father's control. That argument would equally apply if she had agreed to work by the day, because during the hours of work she would be free from her father's control. There must be a severance of the child from the family of the parent to constitute emancipation. I think that the pauper here, during the harvest time while she was working for another, continued, under the circumstances stated in this case, part of her father's family. In *Rex* v. *Roach* (*ante*), Lord *Kenyon* said, 'This woman (the pauper) 'was above the age of twenty-one, she had contracted the relation of servant with another family, she was out of her father's family, she was under no other control to him than that arising from moral obligation and gratitude, and I cannot see how she could afterwards be deemed to be incorporated with the father's family.' In this case the pauper never contracted the relation of household servant with

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The intention of the child material.

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another family, she was to work in the fields, not in the house She was therefore never out of her father's family, to use Lord *Kenyon's* expression, her wages contributed to his support, she intended to return home, and her father expected she would, as soon as the harvest work was done. In *Rex* v *Roach*, *Ashhurst*, J, considered the question, whether absence from the father's family amounted to emancipation, to depend upon the intent He there says, 'In some cases, perhaps, it may be difficult to say what shall amount to a severance from the father's family When a child becomes of age, it is optional in him either to continue with his parents or not, as he pleases He is then *sui juris*, and if he leave his father's house and put himself under some other control, this is a kind of public notification that he means to leave his father's family' Now I think here that the fact of the pauper having left her father's house, and put herself under the control of another during the harvest, was not, under the circumstances of the case, any indication of an intent to leave her father's family In *Rex* v *Sowerby* (2 *East*, 276), it was found that the son of the certificated person never left his father or mother's house, except for a few weeks in harvest time in one year, and it was then considered that he was not thereby emancipated" *Taunton*, J "Certainty in the administration of every department of the law is of the greatest importance, and in none more so than in sessions law The yearly expense of the country is increased greatly by splitting hairs in questions of this description I cannot distinguish this case from *Rex* v *Roach* That decision, whether wisely come to or not, is binding on us It certainly is not in contravention of any leading principles of law, if it were, I might think it right to reconsider it It is true, that in this case the pauper hired herself at the desire and with the consent of her father, but every parent consents and desires (if his mind be properly constituted) that his children should go to service to obtain an honest livelihood Here the pauper agreed not merely to do the harvest work, but to work for Wilson during his harvest It is by no means uncommon for farmers to employ their own domestic servants to do the harvest work, and to hire others to do the household work Whether that was the case here does not appear, but the pauper lived with her master during the whole harvest time, and slept in his house, and she was absent on the first occasion three weeks and two days And as it is expressly found that on the second occasion she gave her wages to her father, it may be fairly inferred that on the first she kept them for herself Then the only difference between *Rex* v *Roach* and this case is, that there the pauper served eight weeks, here only three weeks and two days In each case the pauper served under a contract, and as it was held in the former case that the pauper was emancipated by having been absent from his father's family eight weeks, I think we are bound to adhere to that decision, and to hold that the pauper was emancipated here by her absence for three weeks" *Patteson*, J "I cannot distinguish this case from *Rex* v *Roach* The only difference is, that in that case the pauper served eight weeks, here she served three weeks and two days, but she was bound by her contract, and compellable to serve her master during that period It is found, indeed, that she hired herself with the consent and at the desire of her father, but he could not enforce or prevent her so doing, for she was of full age, and that being the case, the onus of showing that she was not emancipated is thrown on that party who contends that she was not so As to *Rex* v *Sowerby*, the decision there did not turn on the question of the emancipation of the son, he was born after the father had come into the certificated parish, and always resided with him during his lifetime, and after his death with his mother, and the question was, whether or not after that time he still resided under the certificate by living with his mother as part of a family of which she was the head, in which case his hired servant was prevented by the statute 12 Anne, c 18, s. 2, from gaining a settlement" Order of sessions confirmed

The son of a cer

Rex v *Morley*, 2 *M & Sel* 417 Removal from Armley to Morley

tificated person, not named in the certificate, upon the death of his father, was bound apprentice in the certifying parish, where he served for some years, and then, with his master's consent, served the remainder of his time, till twenty-one, with a person in the certified parish, where his mother and family resided under the certificate, and afterwards he hired himself to the same person for a year, and served that and three successive years in the certified parish: Held, that he gained a settlement by such hiring and service.

Order confirmed. Case:—The pauper's father resided in Armley under a certificate from Morley, dated 1st June, 1761, acknowledging him, his wife, and three children, not the pauper, to be settled in Morley. The pauper, when about twelve years old (his father being then lately dead, and he residing with his mother in Armley under the certificate, as part of his late father's family), was bound apprentice by the overseers of Morley to one Lister, of Morley, till twenty-one. He served in Morley under the indenture seven years, and then with his master's consent returned to Armley, where his mother and family then resided under the certificate, and still reside, to serve one Gaunt, in Armley. The pauper continued in Gaunt's service till the expiration of his indentures. He was then hired by Gaunt for a year, and served a year, and remained with Gaunt four years in the whole, living with him in Armley during all that time. Upon the pauper's going to Armley to serve out the remainder of his apprenticeship with Gaunt, he did not go to his mother's house, nor at any time, during the rest of his apprenticeship, resided at his mother's as part of her family. The question made was, whether the pauper gained a settlement in Armley by hiring and service with Gaunt? Lord *Ellenborough*, C. J., after observing on the effect of the certificate, said, "That brings it to the question whether he was a part of his father's family. In the case of *Collingbourne Ducis*, the pauper, after leaving his father's family, returned to the parish where his father was living under the certificate, being under age, and was hired in the certified parish, at which time he continued a part of his father's family. So in *Rex* v. *Keel*, the pauper returned to a branch of her family in the certified parish, and was there hired and served whilst under age. *Rex* v. *Ingworth* is the nearest to the present case; but there is this distinction, that there the pauper returned under age to the father's house, and hired himself whilst under age to a person in the same parish; and although by comparing his age when he first let himself, with the time when he last let himself, it does appear that he must have been of age at the commencement of the second year's service under the last letting, yet that circumstance seems to have escaped the notice both of the counsel and the court; and the case was decided entirely on the authority of *Rex* v. *Keel*, which it was supposed exactly to resemble, but which, for the above reason, is not so. We do not think, however, that this is an authority to warrant us in deciding that where a child, not named in the certificate, separates himself from his father's family at an age when he is by law capable of supporting himself, he shall either derive a settlement acquired subsequently by his father, or shall be prevented by the certificate from gaining a settlement for himself, which is a disability that can only attach on him as being one of the family. This is illustrated by *Rex* v. *Roach*, where a daughter, being of age, left her father's family, and hired herself to a farmer for eight weeks; during the time of her absence her father acquired a subsequent settlement, and it was determined that she was not entitled to such subsequent settlement, on the ground that she had ceased to be a part of the father's family, or in the language of the cases, was emancipated. That case was fully argued and considered, and it lays down a rule in precise terms, which may serve to govern others in future. The same point was determined in *Rex* v. *Cowhoneybourne*. It is true that these latter were cases where the question did not arise upon a certificate; but they establish a principle which shows what it is that constitutes a child a part of his father's family; and whatever divests him of the capacity as one of his father's family in the one case, divests him of the incapacity in the other. We are of opinion, therefore, that the pauper ceased to be a part of his father's family, and by the hiring and service gained a settlement in Armley." Order quashed. (*a*)

(*a*) If the pauper is still one of the family, he cannot acquire a settlement in the certified parish by apprenticeship, unless *both* the binding and inhabiting take place *after* his emancipation. *Rex* v. *Manningtree*, 6 *M. & S.* 214, *post.* (See title, "Apprenticeship.")

3. *Of Emancipation.*

Where a pauper left his father's family at fifteen, and entered the sea service, where he remained till twenty-one: Held, that he was *then* emancipated, and was settled in the parish where his father was *then* settled.

Rex v. *Lawford*, 8 *B. & C.* 271; 2 *M. & R.* 556. H. Nunn and her children were removed from Lawford to St. Anne's, Limehouse. Order quashed. Case:—J. Nunn, the late husband of the pauper, in 1802, when about fifteen years of age, quitted his parents, and went to sea, where he continued till the period of his marriage, sometimes serving on board a king's cutter, and at other times on board trading vessels, gaining his own living. Up to the age of eighteen, his parents resided at Manningtree, and, while there, the vessel on board of which their son was serving being stationed on the river near that town, his mother washed for him, and occasional visits were paid by the son to the parents, sometimes of a few days' continuance. During the period from 1805 to 1810, the parents having quitted Manningtree, removed to St. Anne's, Limehouse, and resided on a tenement of the value of twelve guineas a year; and twice during those five years the son visited them there, and stayed eight or ten days at a time, returning to his ship after each visit. The distance prevented the mother from continuing to wash for the son while she and her husband were resident at St. Anne's; but she occasionally sent him small sums for pocket-money. The son attained the age of twenty-one while his parents were residing in St. Anne's, Limehouse. In 1810 the parents quitted that parish, and took a tenement of 24*l.* a year at Gravesend, on which they resided when the son married, having been in the occupation of it upwards of a year before such marriage. *Bayley*, J. "It is extremely desirable in cases of this nature to preserve an uniformity of decision, and to act, wherever it is possible, upon broad and general principles, and not to give effect to such nice and subtle distinctions as have been advanced in the argument in support of this order of sessions. It was laid down as the rule, by *Lawrence*, J., in *Rex* v. *Roach*, that if a child leaves his father's family under twenty-one, and returns while he is under age, he continues to be part of that family, and his settlement will shift with that of his father; but that if the child, when he attains twenty-one, is absent from his father's family, the father thereby loses all control over him, he becomes emancipated, and his settlement will not shift with that of his father, but will continue to be in that parish where the father was settled when the child attained twenty-one. That learned judge there says, 'In the case of the soldier, the son was enlisted when he was under age, and if he had returned home before he was twenty-one, he would have been considered part of his father's family; or if he had quitted the army before twenty-one, without returning home, the father might have reclaimed him by suing out a *habeas corpus;* but it appears from the case that he had attained the age of twenty-one before he left the army: therefore, during the time that he continued a soldier, his father lost all control over him, he being of age; and the subsequent settlement gained by the father was not communicated to him. After applying the reasoning in that case to the one before the court, the learned judge adds, 'If, after such a service as this, the daughter had returned to her father before she was of age, she would have continued as part of her father's family; but not returning till after, she can no longer be considered as part of his family. *Rex* v. *Cowhoneybourne*, was decided upon the same principle. There, a widower having a daughter, placed her at eleven years of age with an uncle, by whom she was wholly maintained after that time, and with whom she continued to reside after she came of age, doing service for him, but without any contract of hiring to give her a settlement of her own; the father in the meantime having gone out to service. It was held, that on her coming of age she was emancipated. There, at the time she became twenty-one, she continued absent from her father's family. The same doctrine was laid down in *Rex* v. *Hardwicke*, the only distinction between that and the former cases being that the original separation of the child from his father's family was not voluntary; he having been drawn for the militia while he was under age, and served in it until he was twenty-three years of age. That distinction, however, does not vary the question of emancipation; and the principle deducible from that latter case is, that a child is

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not part of his father's while he remains subject to a control paramount to that of his father; and that if, while under age, he contract a relation inconsistent with the parental control, which relation continues until after he attains twenty-one, the authority of the father thereby wholly ceases, and he can no longer insist upon the child's returning into his family, and the child is emancipated. In this case, when the pauper's husband attained twenty-one, his father's settlement was at Limehouse, and he was absent from his father's family, in a service, in which he voluntarily continued after he was twenty-one. The consequence was, that he then became emancipated, and that his settlement continued at Limehouse, though his father's had been transferred to Gravesend." The order of sessions must be quashed.

If a son at sixteen hire himself for a year, and serve that year, the emancipation commences from the termination of the service.

Rex. v. *New Forest*, 5 *T. R.* 478. On old Martinmas-day, 1777, E. Coates hired himself for a year to G. Bowe, of New Forest, and served that year: on the 22nd December, 1777, E. Coates married his present wife: William Coates, a legitimate son of his by a former wife, being within one month of the age of sixteen years, and having gained no settlement in his own right, on the same Martinmas-day, 1777, hired himself for a year to R. Nelson, of Ellerton, which he served. The question was, whether, by reason of the service and settlement thereby gained by the son under his hiring, the father could be considered as being an unmarried man, by the emancipation (which, it was contended, was by relation at that moment complete,) of his son? Lord *Kenyon*, C. J., (after reciting the 3 Will. & Mary c. 11, s. 6,) said, "That in this case the son was not separated from the father; when the father was hired, the son had gained no settlement for himself; he indeed did on the same day enter into a contract which might or might not have been completed, and which, when completed, would confer a settlement on the son, but at the time when the father entered into the relation of servant at New Forest, the son formed a part of his family."

A pauper, under age, hired himself to serve on board a ship trading to Newfoundland. While he was so serving, and before he attained twenty-one, his father acquired a new settlement. After he had attained the age of twenty one, the pauper returned to his father's house: Held, that the pauper was not emancipated when his father acquired the new settlement, and that his settlement shifted with that of his father.

Rex v. *Lytchet Matravers*, 7 *B. & C.* 226; 1 *M. & R.* 25. Isaac Orchard and his wife were removed from Lytchet Matravers, Dorset, to St. James, Poole. Order quashed. Case:—The father of the pauper was settled in Lytchet Matravers, and while he was so settled, the pauper hired himself to serve for two summers and a winter on board a ship trading to Newfoundland. In February or March, 1816, being then twenty years of age, he entered upon that service, during which he continued during the stipulated time. There was no evidence that his father ever exercised any control over him during his service. He attained the age of twenty-one years before his return from the voyage. Shortly after he had left this country, and before he had attained the age of twenty-one years, his father acquired a settlement in St. James, Poole. On the pauper's return from Newfoundland, he went to reside in his father's house, who, before that time, had left Poole, and returned to Lytchet. After a few weeks, he left his father's residence, and lived with his sister, working on his own account as well there as during his residence with his father. The sessions were of opinion that the pauper was emancipated at the time when his father acquired the settlement in Poole. *Bayley*, J. "The question in this case is, whether at the time when the father had gained a settlement in St. James, Poole, the pauper was emancipated? There can be doubt that the settlement of a son, if he have none of his own, shifts with that of the parent, so long as the son continues part of the parent's family. When he ceases to constitute part of the parent's family, he is emancipated. The different instances of emancipation put by Lord *Kenyon* in *Rex* v. *Offchurch*, and *Rex* v. *Witton-cum-Twambrookes*, and recognised by Lord *Ellenborough*, in *Rex* v. *Uckfield*, are, the child's attaining its full age, or being married, or gaining a settlement, or, as in the case of the soldier, contracting a relation inconsistent with the idea of his being in a subordinate situation in his father's family. In *Rex* v. *Roach*, Lord *Kenyon* qualified what he was reported to have said as to a son's being emancipated on attaining the age of twenty-one years, by limiting that

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observation to cases where the son at that age was severed from his father's family; and then adverting to the case of the soldier, he observes that the soldier had ceased to be under the control of his parents, and had become subject to the control of others; and that as he did not return to the father until after he was of age, the case was thought too clear for argument. It is insisted that this case falls within the fourth class of cases mentioned by Lord *Kenyon*, and that the pauper, as soon as he entered into the contract, like the soldier who had enlisted, was emancipated, because he had subjected himself to the control of others, and continued so subject until he had attained twenty-one. But there is this distinction between the case of the soldier and the present: the soldier, by enlisting, became subject to an authority paramount to that of his parent: here the pauper, by contracting to serve the owner or the captain of the ship, subjected himself to an authority not paramount but subordinate to that of his parent; for, by the law of England, the parental authority continues until the son attains the age of twenty-one. This distinction is pointed out by *Holroyd* and *Best*, Js., in *Rex* v. *Rotherfield Greys;* the latter there says, 'by the general policy of the law of England, the parental authority continues until the child attains the age of twenty-one years; but the same policy also requires that a minor shall be at liberty to contract an engagement to serve the state. When such an engagement is contracted, it becomes inconsistent with the duty which he owes to the public that the parental authority should continue.' *Lawrence*, J., in *Rex* v. *Roach*, seems to take the same view of the subject, and to consider the authority of the state paramount to that of the parents, so long as the minor continues in the public service; but as soon as he leaves it, then the parental authority is restored. He there says, 'In the case of the soldier the son was enlisted when he was under age, and if he had returned home before he was twenty-one he would have been considered as part of his father's family; or if he had quitted the army before twenty-one without returning home, the father might have reclaimed him by suing out a *habeas corpus*.' *Blackstone*, in his Commentaries, vol. 1, p. 453, says, 'The legal power of a father over the persons of his children ceases at the age of twenty-one, for they are then enfranchised by arriving at the years of discretion, or that point which the law has established, when the empire of the father or other guardian gives place to the empire of reason. Yet, till after that age arrive, the empire of the father continues even after his death; for he may, by his will, appoint a guardian to his children. He may also delegate part of his parental authority during his life to the tutor or schoolmaster of his child, who is then in *loco parentis*, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed.' It appears then that in ordinary cases the authority of a father over his child continues until the age of twenty-one; but the case of a soldier is an exemption from the general rule. For an infant may by law enlist, and become bound to serve the state; and if he does contract to serve, and the state adopt him as their servant, that adoption severs him from his father's family, and he then becomes subject to the paramount control of the state. In *Rex* v. *Woburn*, the son enlisted at the age of sixteen into the same regiment of militia in which his father served, and lived with him to the age of twenty-three. Lord *Kenyon* thought as he lived in his father's family, the parent's control was not altogether destroyed, the guidance and direction of the child to a certain extent not being inconsistent with the occasional military situation in which he was. He seems to have thought that such a person might be subject to a double control. So in this case, if the father did not interfere, the son might be subject to the control of his master whom he had contracted to serve: but being part of his father's family, and subject to his paramount authority, the latter might have claimed his services at any time before he attained the age of twenty-one years. But in the case of a minor who enters into the army, the state will be entitled to his services, and against the public the father cannot claim them. Considering the principle upon

which a minor who enlists as a soldier becomes emancipated to be that he thereby contracts a relation inconsistent with a subordinate situation in his father's family; and considering that a minor who contracts to serve a subject, thereby makes himself liable to the double control of his father and his master, the authority of the parent being paramount to that of the master, I think that the pauper, in this case, when he agreed to serve the owner or captain of a ship, did not contract any relation inconsistent with a subordinate situation in his father's family; but that until he attained twenty-one, he continued part of his father's family, and subject to his paramount authority. Consequently, the sessions were wrong in holding that the pauper was emancipated, and his settlement shifted with that of his father." Order of sessions quashed.

3. *Of Emancipation.*

IV. Of Settlement by Marriage.

4. *Of Settlement by Marriage.*

The effect of marriage upon settlements.

If a woman marry a man who hath a known settlement she acquires the husband's settlement; and she takes every subsequent settlement which he may obtain until his death; but if the husband has no settlement, then the prior settlement of the wife continues.

Residence with a husband in the place where he is settled, is not necessary to give the wife his settlement. (*a*)

St. Giles v. *Eversley*, 2 *Sess. Ca.* 116; 2 *Bott.* 103. The objection to the removal of the wife and children to the husband's settlement was, that she could not take the benefit of her husband's right of settlement after his death, as she had not taken any advantage of it in his life-time, but had waived it, and fixed in another place; but *Eyre* and *Fortescue*, Js., held that the wife and children must be sent to the last legal settlement of the husband and father; and they confirmed the order.

A wife cannot gain a separate and distinct settlement during coverture.

In *Rex* v. *Aythorp Rooding*, 2 *Bott*, 104, the wife, after the husband had deserted her, went with her children from White Rooding, and lived upon a copyhold tenement of her husband's forty days without him, in Aythorp Rooding. Before the forty days expired the parish officers gave her notice to remove out of the parish; and as she refused to depart, the justices removed her from thence to White Rooding as a person likely to become chargeable. The court were unanimously of opinion, that although the wife could not gain a settlement by thus residing forty days upon her husband's estate, yet at the same time that she was irremovable from the property of her husband upon being only likely to become chargeable. And even if she go and reside upon an estate devised to her after her husband has deserted her, she cannot thereby gain a settlement for herself. Lord *Hardwicke*, C. J., said, "There never was an instance where the wife was held to acquire a settlement during *the life* of her husband. A *feme covert* cannot by residence gain a settlement for her husband." (*Berkhampstead* v. *St. Mary, Northchurch*, 2 *Bott*, 32; 1 *Nol. P. L.* 291.)

Nor complete the imperfect settlement of the husband.

If the husband is in the progress of acquiring a settlement, by renting a tenement for a year, and he dies a few days before it is completed, the widow cannot, by continuing to reside and paying the year's rent, perfect the settlement for herself and children, as she was not the person who hired the tenement. (*Rex* v. *Crayford*, 6 *B. & C.* 68; 9 *D. & R.* 80.)

Though the marriage be fraudulently obtained, the wife will take the husband's settlement. (*b*)

In *Rex* v. *Birmingham*, 8 *B. & C.* 29; 1 *M. & R. Mag. Ca.* 408. The pauper, L. S., was married to E. S. when he was a minor, by license, and without the consent of his father. The appellants offered to prove that the marriage of the pauper was effected by a fraudulent contrivance and conspiracy of the overseers of Little Packington, for the purpose of changing the settlement of the pauper from Little Packington to Birmingham, where

(*a*) A contrary doctrine had been held in *Uphottery* v. *Dunkswell, S. and R.* 89; 2 *Bott*, 102.

(*b*) An information will be granted against the overseers for procuring the marriage of an idiot woman, or of a woman pregnant with a bastard, with a view to change her settlement. (*Rex* v. *Watson*, 1 *Wils.* 41; *Rex* v. *Tanant*, 4 *Burr.* 2106; *Rex* v. *Edwards*, 8 *Mod.* 321.)

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the husband was settled; but the sessions refused to receive this evidence, and confirmed the order. Lord *Tenterden*, C. J. "It is difficult to say, that if the marriage is valid in other respects it could be invalidated by the fraud of other parties, and thus cause a separation of the husband from the wife." *Contra*, it was urged, that Mr. Nolan cites Dalton to show that no settlement brought about by fraud should be considered valid. Lord *Tenterden*, C. J. "Does the rule go further than this, that the court will prevent a fraud from having its effect when that can be done without violating some higher and more important rule?" *Bayley*, J. "Mr. Nolan treats the case of marriage as an exception from the general rule." And see *Rex* v. *Parkens*, 1 *Sess. E.* 276.

So also where a widow was married in her maiden name, but without fraud.

A woman, on the death of her husband, resumed her maiden name, and after several years was again married by banns in that name, describing herself as a widow; it was held, that in the absence of fraud such marriage was legal, and that her settlement followed that of her second husband. (*Rex* v. *St. Faith's, Newton*, 3 *D. & R.* 348.)

Husband dead and his place of settlement not known, the wife's maiden settlement remains.

St. Giles's v. *St. Margaret's*, 1 *Sess. Ca.* 97; 2 *Bott*, 107. A woman marries an Irishman, and her husband dies. The court: "She must be sent to the place of her settlement before marriage."

Rex v. *Chiddingstone*, 1 *Stra.* 683. A single woman was married to a man who was since dead, but his settlement did not appear. The court: "Her settlement before marriage stands." S. P. *Uphottery* v. *Dunkswell*, 2 *Bott*, 108; 1 *Sess. Cas.* 80; *Sett. & Rem.* 89.

If a woman who has a settlement marries a man who has none, and is deserted by him, she may be removed to her maiden settlement.

St. John's, Wapping, and *St. Botolph's, Bishopsgate, Burr. S. C.* 367; 2 *Bott*, 109. E. Kinley married T. Kinley, an Irishman, who had no settlement in England. About two years ago, the husband entered on board a man-of-war bound for the West Indies, but E. about two months ago heard he was living: and the question was, whether her settlement which she had before marriage ceased, or was in suspense, during the coverture. *Cur. adv. vult.*—*Ryder*, C. J. "1. It is certain St. Botolph's was once her settlement. 2. That settlement continues till she gains a new one. 3. That she has never yet gained a new one." To the second point he said, "A settlement is a permanent thing; it lasts during life, or till a new one is acquired; and there is no case where a settlement ceases by any other method; a man cannot give away, or release, or suspend his settlement, for the public is concerned as well as himself. The question is not, whether she gained any new settlement by marriage, but whether her old settlement were discontinued by her marriage with a person who had none? It is absurd to say she shall lose her own without getting another. The objection that the husband and wife would be separated is of no weight here, for they are separated already; for he has left her: I must own the case of *Stretford* v. *Norton* (*a*) is not to be distinguished from the present, and is

(*a*) In *Stretford* v. *Norton*, *Andr.* 307; 19 *Vin. Abr.* 376; *Burr. S. C.* 122. An Englishwoman married an Irishman who had no settlement in England. He ran away; his wife was removed to her maiden settlement. *Lee*, C. J. "It is now a settled point, that by the marriage the woman's settlement is suspended, whether the husband have or have not a settlement; for otherwise the justices might separate husband and wife; and therefore, to make the order good, it should have appeared that the man was dead." In *Hanway* v. *Marston*, *T.* 1 Geo. I. the Ch. J. said, "that the settlement of a woman who marries a vagrant is suspended during the coverture; and that as the husband cannot be sent to the place of the wife's settlement, so neither can the wife herself, because a husband and wife being as it were but one person cannot be parted." (*Shadwell* v. *St. John's, Wapping*, *T.* 9 Geo. I.) One Ridley, a vagrant, having no settlement, married a woman who had a settlement in St. John's, Wapping, and had four children by her, born in Stepney. And it was held, that the children were not settled in the place where they were born, but where the wife had a settlement; but that this was suspended during the coverture, and it revived again upon the death of the husband.

This last case is that which is said by Sir *James Burrow* (*Burr. S. C.* 124),

against our present opinion; to be sure we must have great regard to former resolutions in this court, but we must judge upon the case before us. How that case came to be determined so I do not know; but there are at least four authorities the other way (which perhaps might not then be cited), and we think the reason is with the old cases. The husband may come to her in one parish as well as the other, for he will be a vagrant in both, and liable to be treated as such. The wife's settlement remains having never been determined, but only, as it were, suspended during the time that she continued under the power and protection of her husband, and was maintained and supported by him.

The wife may be removed to her maiden settlement, if the husband's be not known:

Rex v. *Westerham, Fol.* 252; 2 *Bott*, 108. It appeared by the testimony of E. P., that she was at the time of the order a married woman, and that her husband was born in Wiltshire, but in what place he had a settlement she did not know; but he is run away, and still living, for what she knows. By the court: "Whether the husband be living or dead signifies nothing. For unless it appear that he has a settlement, the woman must be sent to the place of her settlement before her marriage: for, supposing the husband was born upon the high seas, or in Ireland, or a foreign country, if the woman might not be sent to the place of her settlement before marriage, she might be starved."

Husband living, but having no known settlement in England.

Dunsfold v. *Wilsborough Green, Fol.* 249; 2 *Bott*, 105. A woman who was settled at Wilsborough married a Scotchman, who had no settlement in England. She was removed to the place of her settlement before marriage. It was urged that as her husband was a Scotchman, they ought to send her, as part of his family, to the bordering counties of Scotland, according to the 39 Eliz. c. 4, s. 6. The court held, though she were a married woman, yet if her husband had no settlement, she could not gain any other settlement than she had before marriage; and as for divorce it was none; for the husband might come to her as well at Wilsborough as at Dunsfold; and as to the husband, nothing in the order appears as to him, whether in England or not.

Wife of Irishman, &c. removable to Ireland; but if deserted, to her own settlement.

It may be expedient here to observe, that by the 59 Geo. III. c. 12, s. 33, the whole family of a Scotchman or an Irishman must be sent to his country, upon becoming chargeable; but the statute does not authorise the removal of the *wife alone* to the place of her husband's birth. The law, therefore, remains as it stood before that statute, in cases where the husband deserts his wife. In *Rex* v. *Leeds*, (*ante*, 122) the husband and wife were living together, and it was held that she must be passed with him to Scotland, and could not be removed to her maiden settlement. But if such husband dies or quits his family, and they become chargeable, the removal must be to the wife's maiden settlement. (*Rex* v. *Cottingham, ante*, 127.)

On removal of a wife, it is sufficient in the first instance to prove her maiden settlement.

Rex v. *Ryton, Cald.* 39; 2 *Bott*, 114. S. Kidson and her child were removed from Winlayton to Ryton. The order stated that S. K., the wife of B. K., a soldier in his Majesty's regiment of foot, now in America, and Hannah their daughter, have come to inhabit, &c. S.'s maiden settlement was in Ryton; and her husband was at the time of the order in America, and it was not known whether he were living or dead; his settlement was unknown. Lord *Mansfield*, C. J. "The sessions say that the evidence laid before them proved that which would make the order of the two justices right; and I think that upon the evidence they did right." The

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to have been turned into a catch, in which form alone he had been able to meet with it. The metrical report is as follows:

A woman having a settlement,
Married a man with none:
The question was, He being dead,
If that she had was gone?

Quoth Sir *John Pratt**—Her settlement
Suspended did remain,
Living the husband; but, him dead,
It doth revive again.

Chorus of Puisne Judges.
Living the husband; but, him dead,
It doth revive again.

* Then Lord Chief Justice.

4. *Of Settlement by Marriage.*

other judges concurred. Both orders affirmed. (See also *Rex* v. *St. Mary, Leicester, ante*, p. 427.)

Same point.

Rex v. *Edisore, Cald.* 371; *Rex* v. *Woodford, Cald.* 236; 2 *Bott*, 118. M. P., widow, and her four children, were removed from Woodsford to Wimbourne Minster, in Dorsetshire. Order quashed. Case:—By rule of the sessions in Dorsetshire, on appeals against orders of removal, the appellants begin, and show some settlement of the pauper out of the parish appealing: for this purpose the appellants produced a copy of the register of the birth of the pauper. It was objected that this was not sufficient, but that the settlement of the husband ought to have been shown, and that to identify the pauper it was necessary to prove her marriage. The sessions adjudged that the proof of the birth of the pauper was sufficient, and that the *onus probandi* of the marriage lay upon the respondents in order to prove their case, and quashed the order. It was argued, that the pauper having been removed as a widow, it imported that it was a removal to her late husband's settlement, and that her maiden settlement was nothing to the purpose. But the court said: "It may be the husband had no settlement; and if he had, till discovered, her own would in the mean time remain. It is enough in the first instance: the sessions have done right."

Primâ facie evidence of the maiden settlement in the appellant parish is sufficient to call for an answer.

Rex v. *Harberton*, 13 *East*, 311. Elizabeth, the wife of Charles Hill, and her daughters by her said husband, were removed from Harberton to Drewsteignton. The respondents proved that in 1806 the pauper married Charles Hill, in Chagford: and from a copy of the registry of the marriage, which was produced, it appeared that he was therein described to be of the parish of Alverdiscott, and Elizabeth was therein described to be of Drewsteignton. They also examined the wife, who proved that the children mentioned in the order were born after the marriage, and also that her husband was with her in Harberton a little after Christmas last, since which time he had left her, and she had not seen him since; that he was not there when she was examined before the justices previous to, nor at the time of her removal, and that she did not know her husband's settlement. The respondents gave no evidence to account for the absence of the husband, or of any further search having been made for him, or inquiry as to his settlement. The appellants produced no witnesses, nor did they offer any evidence of the husband's settlement. The sessions quashed the order. Soon after this case had been opened at the bar, the court said that there could be no doubt but that the evidence offered by the respondents, of the wife's maiden settlement, was *primâ facie* sufficient, and that it lay upon the appellants to rebut it, by giving evidence of the husband's settlement in a different parish: but the sessions having decided against the respondents, upon the supposition that they had not used due diligence in endeavouring to procure the attendance of the husband, or in accounting for his absence, or inquiring as to his settlement, without going further into the consideration of the case, this court sent it back to be reheard by the sessions, to give the appellants an opportunity of entering into their own case, and of giving evidence of the husband's settlement; and the description in the copy of the marriage register of the husband, that he was of the parish of Alverdiscott, was considered to be no evidence of his having a settlement there.

But proof of a settlement of the husband, though the parish cannot be ascertained, supersedes the wife's settlement.

Rex v. *St. Mary, Beverley*, 1 *B. & Adol.* 201. Harriet, wife of W. Owen, and their children, were removed from St. Martin to St. Mary, in Beverley. Order confirmed. Case:—The maiden settlement of Harriet was in St. Mary's, and both the children were born there. No proof was offered that Owen had gained a settlement in his own right; but on the part of the respondents, Ann Rogers, the mother of Owen, proved that she was the wife of a serjeant in the 30th regiment of foot; that she never heard or knew where his place of settlement was; that about twenty-seven years since, whilst the regiment was on the march, she was suddenly taken in labour upon a baggage waggon; that her son, William Owen (the husband

of Harriet Owen), was born in the stable of an inn at Ipswich; that she never was in Ipswich before, nor had she ever been there since; that there were several parishes in Ipswich, but that she did not know in which parish the stable was situate, or to what it belonged; and that, even if she was now in Ipswich, she could not point out the stable or inn where she was confined. No proof was given of any other endeavour having been made on the part of the respondents to ascertain the parish in which William Owen was born. At the time of making the order of removal, William Owen was living with his wife and family in the parish of St. Martin, in Beverley. The husband, William Owen, gave his consent to the removal of his wife and family to the parish of St. Mary, in Beverley, but no proof was given of any consent on the part of Harriet Owen to her removal. The question was whether H. Owen and her children could be removed to her maiden settlement. *Bayley*, J. "We are of opinion that both the orders in this case ought to be quashed. To justify the confirmation of an order of removal, it ought to appear upon the evidence adduced by the respondents that the party removed is settled in the parish to which the removal is made; if that do not appear, and *à fortiori* if the contrary appear, the removal cannot be supported. Now the evidence in this case does not prove that the person removed is settled in the parish of St. Mary, to which she is removed, but in one of the parishes in Ipswich. It is argued, however, that as the respondents' witness did not know in which of the parishes in Ipswich the settlement was, and had proved a maiden settlement in the appellant parish, in the wife who was removed, the *onus* of proving in which of the parishes in Ipswich the husband was born was upon the appellant parish; and that in the absence of such proof, a removal to the wife's maiden settlement was warrantable. We do not concur in this reasoning. Where the respondents' evidence makes out a maiden settlement, and contains nothing to show that any subsequent settlement which would supersede the maiden setlement has been gained that constitutes a *primâ facie* case, and the *onus* of proof that the pauper was not settled there lies upon the appellants, but not that of proving the precise place where the pauper was settled. It is enough to disprove by clear evidence the obligation of the appellant parish to maintain the pauper; and the question may be considered for this purpose, as being in substance the same as if there were an issue to be tried between the two parishes whether the pauper was settled in the parish of St. Mary or not. None of the cases cited in argument go anything like the length for which the respondents must contend. In *Rex* v. *Woodford*, p. 458, there was no proof of any settlement but the maiden settlement of the wife. The same was the case in *Rex* v. *Harberton*, p. 458. In *Rex* v. *Hensingham* there was indeed proof that the husband had told his wife that he was born in Yorkshire; but what a man says as to the place of his birth is not receivable in evidence to prove it; and a similar observation applies to the case of *Rex* v. *Westerham*, of which there is a note in *Burn's Justice*, tit. *Poor* (*ante*, 457). The only remaining case cited by the respondents was that of *Rex* v. *Eltham*, where the husband was a Scotchman, and had no settlement of his own. I am not aware of any other case in favour of the respondents. Now what do these cases prove? They prove at the utmost, that where there is no sufficient evidence of any settlement in the husband, and where the only settlement as to which there is any is the wife's maiden settlement, the wife may be removed to that settlement; but they do not bear upon the point where it appears upon the evidence that there is a settlement in the husband. Upon the ground, therefore, that in this it appears upon the respondents' evidence that the husband has a settlement in a parish at Ipswich, we are of opinion that a removal to the wife's maiden settlement cannot be supported, and that the order of sessions ought to be quashed."

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EVIDENCE OF SETTLEMENT BY MARRIAGE.

The most usual evidence of the marriage is, by a person who was present (and either husband or wife is a competent witness for this purpose), and the production of the parish register, with proof of the identity of the parties.

Reputation evidence of marriage.

A marriage may be proved by reputation, as that the parties cohabited together, and were received by relations and friends as man and wife.

Morris v. *Miller*, 4 *Burr.* 2057. In all cases but of prosecution for bigamy and actions of crim. con. reputation is good proof of marriage.

A marriage is presumed to have been celebrated with the formalities necessary to its validity till the contrary be shown; and it is not necessary to prove that the minister was in orders, or to prove any of the proceedings preliminary to the actual solemnisation of the marriage. (*St. Devereux* v. *Much Dewchurch*, 1 *Bla. R.* 367. See *Stark. Ev.* 932.)

After solemnisation under banns, proof of affidavit made not necessary.

The 3 Geo. IV. c. 75, s. 19, enacts, "That after the solemnisation of any marriage under a publication of banns, it shall not be necessary in support of such marriage to give any proof of any such affidavit, nor shall any evidence be received to prove that such affidavit was not made and delivered as required by this act, in any suit touching the validity of such marriage; nor shall such marriage be avoided for want of or by reason of any defect in any such affidavit, or on account of the true name or names of either party not being used in the publication of such banns, or for such name or names not having been affixed as aforesaid; but it shall be lawful in support of such marriage to give evidence that the persons who are actually married by the names specified in such publication of banns were so married, and such marriage shall be deemed good and valid to all intents and purposes, notwithstanding false names or a false name, assumed by both or either of the said parties in the publication of such banns, or at the time of the solemnisation of such marriage."

But after proof of an actual marriage, it may be shown that the solemnities required by statute, and without which the marriage would be void, have not been observed. (*Standen* v. *Standen*, *Peake's Rep.* 32).

The first statute requiring the observance of particular forms, was the 26 Geo. II. c. 33, the 11th section of which was repealed by 3 Geo. IV. c. 75. That section enacted, that marriages by banns, without consent of parents, should be void. The 3 Geo. IV. c. 76, contained a retrospective clause legalising marriages in such cases. As to the then state of the law, Lord *Tenterden* has observed, "The 4 Geo. IV. c. 17, repeals the 3 Geo. IV. c. 75, except as to things done under its provisions, and except so far as it repealed any former act, or any clause, matter, or thing therein contained. The retrospective clause in 3 Geo. IV. c. 75, did operate, with respect to the particular marriages to which it applied, as a repeal of the clauses in 26 Geo. II. c. 33, which rendered them invalid; it therefore was not repealed by the subsequent statutes, and the marriage of an illegitimate minor is perfectly good, even if by license; if by banns it was so before 3 Geo. IV. c. 75. (*Rose* v. *Blakemore*, *R. & M.* 382.) The 4 Geo. IV. c. 17, and 26 Geo. II., were repealed by 4 Geo. IV. c. 76, by stat. 4 Geo. IV. c. 76, s. 8, which enacts that "No minister, &c. solemnising marriage between persons, both or one of whom shall be under the age of twenty-one years, after banns published, shall be punished by ecclesiastical censures for so doing, without consent of parents or guardians required by law, unless such minister, &c., shall have notice of their dissent: and if such parents or guardians shall publicly declare, or cause to be declared, in the church or chapel where and at the time the banns are so published, their dissent to such marriage, such publication of banns shall be absolutely void."

Of dissent of parents, &c. of minors under this act.

Marriages void where persons wilfully marry in any other place

Sect. 22 provided, "That if any person shall knowingly and wilfully intermarry in any other place than a church, or such public chapel wherein banns shall be lawfully published, unless by special license as aforesaid, or

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shall knowingly and wilfully intermarry without due publication of banns or license from a person or persons having authority to grant the same first had and obtained: or shall knowingly and wilfully consent to, or acquiesce in, the solemnisation of such marriage by any person not being in holy orders, the marriages of such persons shall be null and void to all intents and purposes whatsoever."

than a church, &c. by 4 Geo. IV. c. 76.

By the 6 & 7 Will. IV. c. 85 (an Act for Marriages in England), marriage may be solemnised after license, or banns (as before), or upon the registrar's certificate. Quakers and Jews may be married according to their peculiar custom, if both parties are Quakers or Jews; but they must obtain the registrar's certificate. A notice of the intended marriage is required to be given to the registrar of the district in which the parties have dwelt for seven days, or one of the parties for a month. Seven days after notice, if the marriage is by license, and twenty-one days, otherwise, the registrar will give a certificate. Consent is required to marriages by license as before. Places of worship may be registered for marriage. In support of a marriage, proof of the required residence, or the consent shall not be necessary, nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage. If any persons knowingly and wilfully intermarry in any place not allowed by the act, or in any other place than the one specified in the notice and certificate, or without license where license is required, or in the absence of the registrar when required, the marriage is null and void.

Marriage Act of 6 & 7 Will. IV. c. 85.

By the 6 & 7 Will. IV. c. 86, marriages must be registered, and certified copies of entries, purporting to be sealed with the registrar-general's seal, shall be received as evidence of the marriage, without further proof: no certified copy shall be of any force which is not sealed.

Evidence.

Rex v. *Birmingham*, 8 *B. & C.* 29; 2 *M. & R.* 230. L. Smith and Elizabeth his wife were removed from St. Michael and the Holy Trinity, in Coventry, to Birmingham. Order confirmed. Case:—Luke was married to Elizabeth in 1826, by license, he then being a minor and his father living, who did not consent to his marriage. It was objected that his marriage was void under the 4 Geo. IV. c. 76, for want of the father's consent. Lord *Tenterden*. "We are all of opinion that the marriage in question is valid. A marriage under such circumstances would, by the 26 Geo. II. c. 33, s. 11, have been void, but the 3 Geo. IV. c. 75, s. 1, recites that section, and that it had been productive of great evils and injustice, and then proceeds to enact, 'That so much of the said statute as is hereinbefore recited, as far as the same relates to any marriage to be hereafter solemnised, shall be and the same is hereby repealed.' The second section enacted, 'that marriages theretofore solemnised by license, without such consent as required by the former act, shall be valid,' with certain limitations imposed by the third and fourth following sections. Then the eighth and subsequent sections contained the new provisions as to granting licenses in future. These were repealed by the 4 Geo. IV. c. 17, which restored certain parts of the 26 Geo. II. c. 33, and some question might be raised as to whether that part of the 3 Geo. IV. c. 76, remained in force, which repealed the 11th section of the 26 Geo. II. But that question is now rendered immaterial by the 4 Geo. IV. c. 75, which repealed the 4 Geo. IV. c. 17, and so much of the 26 Geo. II. c. 33, as was then in force. The only statute therefore now to be considered, is the 4 Geo. IV. c. 75, the fourteenth section of which points out the mode in which licenses are to be obtained, and the matters to be sworn to by the parties, or one of them; and one of those matters, where either of the parties, not being a widower or widow, shall be under the age of twenty-one years, is, that the consent of the person or persons whose consent to such marriage is required under the provisions of this act, has been obtained thereto. Then the sixteenth section specifies the persons who shall have power to consent, and proceeds, 'and such consent is hereby required for the marriage of such party so under age, unless there shall be no person authorised to give

The marriage of a minor by license, without the consent required by 4 Geo. IV. c. 75, s. 16, is valid.

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such consent.' The language of this section is merely to *require* consent; it does not proceed to make the marriage void, if solemnised without consent. Then the twenty-second section declares that certain marriages shall be null and void, and a marriage by license without consent is not specified. Thus far, therefore, the question depends upon the direction in the sixteenth section; and if there were any doubt upon the construction of that section, it would be removed by the twenty-third, which enacts, that 'If any valid marriage, solemnised by license, shall be procured by a party to such marriage to be solemnised between persons, one or both of whom shall be under age, by means of falsely swearing to any matter to which such party is required personally to depose,' *not* that the marriage shall be void, but that all the property accruing from the marriage shall be forfeited, and shall be secured for the benefit of the innocent party, or the issue of the marriage. This is a penalty for disobeying the direction of the legislature given in the sixteenth section, and is calculated to prevent fraudulent and clandestine marriages, by depriving the guilty party of the pecuniary benefit, which is most commonly the inducement moving to the fraud. For these reasons it appears to us that the marriage in this case is valid, and the order of sessions right."

A marriage void by s. 11, of 26 Geo. II. c. 33 (Marriage Act), but *made valid* by s. 2. of 3 Geo. IV. c. 75, shall not subsequently be rendered invalid by the marriage of either of the parties during the life of the other with a third party.

Rex v. *St. John Delpike* 2 *B. & Ald.* 226. Mary Laycock was removed from St. Mary Castlegate, York, to St. John Delpike. Order confirmed. Case: — In the year 1808, the pauper, not then being a widow, and being under the age of twenty-one years, intermarried with one James Laycock. This marriage was solemnised by license in the parish church of St. Lawrence, in the city of York, without the consent of the pauper's father, who was then living. She continued to live with James Laycock, as his wife, till 1825, when she intermarried with one Thomas Laycock, the said James Laycock then and still being alive. The question for the opinion of the court was, whether the former marriage with James Laycock was or was not valid: if it were declared valid, then the order of sessions was to be quashed; if invalid, then to be affirmed. Lord *Tenterden*, C. J. "We must construe the proviso in the third section as intended to apply to cases which occurred before the passing of the 3 Geo. IV. c. 75. Section 2 applies to marriages which, under certain circumstances, were rendered invalid by the 26 Geo. II. c. 33, and which are, by that section, rendered valid in cases where the parties shall have continued to live together as husband and wife till the death of one of them, or till the passing of that act. The provision in section 3, that 'the act shall not extend to render valid any marriage where either of the parties shall at any time afterwards during the life of the other party, have lawfully intermarried with any other person,' may have been wholly unnecessary. At the same time, it may possibly have occurred to those who framed the act, that it might occasionally happen, that one of the two parties to the first marriage might, during the life of the other, have lawfully intermarried with a third; and might afterwards have cohabited again with the original husband or wife, till the death of one, or the passing of the act. I think, however, that clause was introduced only for greater caution, and that we ought not to construe the act so that a marriage may first be treated as valid, and afterwards as invalid. The first marriage, therefore, was valid; and consequently the order of sessions must be quashed." *Littledale*, J. "The second section renders valid marriages which, by the 26 Geo. II. c. 33, would be void. I think the words of that and the following section are, in their natural construction, retrospective. And, without express words to a contrary effect, we could not say that the validity given by this act to marriages was intended to be shifting and uncertain. The proviso in the third section, that 'the act shall not extend to render valid any marriage declared invalid by any court of competent jurisdiction before the passing of that act, nor any marriage where either of the parties shall at any time afterwards, during the life of the other party, have lawfully intermarried with any other person,' seems

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to contemplate cases not very likely to happen in conjunction with the circumstances pointed out in the second section. But such cases are possible. Parties might continue to cohabit, yet friends might choose to render the marriage invalid. So the parties to the original marriage might cohabit together, though one had been lawfully married in the mean time to another. But if there could be a floating shifting validity, the consequence might be, that children might be legitimate one day and not another; and it appears to me that this is not contemplated by the act." *Parke*, J. "I think this is a very clear case. The second section renders valid marriages otherwise invalid by the 26 Geo. II. c. 33, in cases where the parties shall have continued to live together as husband and wife till the death of one of them, or till the passing of that act. Under that section, therefore, the first marriage would be valid; because here the parties did continue to live together till the passing of the act. Then, the third section enacts, that the act shall not render valid any marriage where one of the parties shall, during the other's life, have lawfully intermarried with any other person. It is said that this clause is prospective. If it be retrospective only, there can be no question in the case. If it be prospective, this absurdity will follow,—that parties, whose marriage is rendered valid by the second section, may at any time they please bastardise their issue by contracting a subsequent marriage. Such a construction ought not to be given to the words of the act, unless it be absolutely necessary. But then it is said that if the construction be retrospective only, this clause is useless. That would not be a sufficient reason for so absurd a construction as that contended for by the respondent parish: but in truth, the clause is not altogether useless; for two parties may be living together, and yet one have married another person; and this case is provided for by the last part of the third section. The argument assumes that a party cannot commit bigamy, without ceasing to live with his first wife. A man may have continued to cohabit with his first wife till the passing of the act, or the death of one of the parties, and yet have contracted another and a valid marriage in the mean time." *Patteson*, J. "I think the original marriage was rendered valid by the second section, and that the third section has a retrospective operation only; and, therefore, that the marriage of the pauper to Thomas Laycock after the passing of the act does not take the case out of the second section." Order of sessions quashed.

Marriage under age of children, without consent of parents.

In *Chilham* v. *Preston*, 1 *Bla. Rep.* 192. E. Young, Rebecca his wife, and child, were removed from Chilham to Preston. Order confirmed. Case:—E. Young was, in 1758, without the consent of his father, married by license in the parish church of Tenham, to Rebecca, E. Young being then an infant. Afterwards Rebecca was brought to bed in Chilham of the child removed by the order. By Lord *Mansfield*, C. J. "The marriage act is avowedly made *against* both the contracting parties; and, therefore, they shall not waive the disabilities of it at their own option. The marriage is void and null to all intents and purposes, even though the parties should afterwards agree to it, wherever the fact appears directly contrary to the statute." And by the whole court: "Let the order be quashed as to Rebecca and the child."

Consent to marriage of illegitimate minors before repeal of 26 Geo. II. c. 33, s. 11, by 3 Geo. IV. c. 75, s. 1. (*a*)

Before the repeal of 26 Geo. II. c. 33, it was held in *Rex* v. *Hodnet*, (1 *T. R.* 96), that a marriage of illegitimate minors, without consent, was void under sect. 11. (*a*) In *Horner* v. *Liddiard* (1 *Hagg. Rep.* 337, 360), Lord *Stowell* held the same point, and that the necessary consent could be only given by a guardian appointed by Chancery; and in *Priestly* v.

(*a*) 26 Geo. II. c. 33, s. 11. (repealed by 3 Geo. IV. c. 75, s. 1, from and after 22nd July, 1822,) provided that marriages by license, where either party, not being a widow or widower, is under twenty-one years of age, had without the previous consent of the father or lawful guardian, or one of them, or if no guardian, then of the mother, if living and unmarried, or if none such, then of a guardian appointed by Chancery, shall be null and void.

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Hughes (11 *East*, 1), it was decided that the consent of the natural mother to a marriage by licence was not sufficient.

Marriage in foreign countries.

"It is part of the law of England, that the law of the country where a marriage is solemnised shall be adopted." *Holroyd*, J. (*Doe* in d. *Birtwhistle* v. *Vardill*, 5 *B. & C.* 438; 8 *D. & R.* 189; *Dalrymple* v. *Dalrymple*, 2 *Hagg. C. R.* 54; *Ruding* v. *Smith*, *id.* 371.) (*a*)

"By the ancient general law of Europe, a contract *per verba de præsenti*, or a promise *per verba de futuro cum copulâ*, constitutes a valid marriage. The intervention of a priest was first required by the council of Trent." Lord *Stowell* in *Dalrymple* v. *Dalrymple*. This general rule prevails in Scotland, but there the intervention of a priest is unnecessary.

Marriage in Scotland.

It is an undoubted proposition, that a marriage celebrated in Scotland is such a marriage as would entitle the woman to a dower in England. (*Ilderton* v. *Ilderton*, 2 *Hen. Bla.* 145.)

By Romish priests.

Marriages by Romish priests, whose orders are acknowledged by the church of England, have been deemed to have the effect of legal marriages in some instances, (at least before the 26 Geo. II. *per* Lord *Ellenborough*, 10 *East*, 288.)

Marriage abroad by a French Catholic priest in the French tongue, according to the English rite.

Rex v. *Brampton*, 10 *East*, 282. Whilst the British army was at St. Domingo, the pauper and a man belonging to that army went to a chapel, in order to be married; and there a service was read in the French language by a person dressed like a priest, and interpreted into the English language by a person who officiated as clerk. The pauper did not understand French, but by the interpreter she understood it was the marriage service of the established church of England read in French. She did not know that the person officiating was a priest. She received a certificate of marriage, which she lost. There was no chaplain with the British forces at that time in St. Domingo. No evidence was given of the laws or usage of the island respecting the marriage ritual there. She and the man lived together as man and wife till his death, and she was removed to his settlement. Order quashed. Lord *Ellenborough*, C. J. "First, considering it as a marriage celebrated in a place where the law of England prevailed; for I may suppose, in the absence of any evidence to the contrary, that the law of England, ecclesiastical and civil, was recognised by subjects of England in a place occupied by the King's troops, who would impliedly carry that law with them; then, Was it a good marriage before the marriage act? Certainly, before that act, a contract of marriage *per verba de præsenti* would have bound the parties; this was such a marriage, and performed by one who publicly assumed the office of a priest, and appeared habited

(*a*) In that case Lord *Stowell* observes, that "it is not *e converso* established that marriages of British subjects, not good according to the law of the place where celebrated, are universally, and under all possible circumstances, to be regarded as invalid in England: the safest course is to be married according to the law of the country; but if this cannot be done, on account of legal or religious difficulties, the law of this country does not say that its subjects shall not marry abroad. And where no difficulties of that insuperable magnitude exist, yet if a contrary practice has been sanctioned by long acquiescence and acceptance of the one country, the courts of this country, I presume, would not incline to shake their validity, upon these large and general theories, encountered, as they are, by numerous exceptions, and the practice of nations." And by 4 Geo. IV. c. 91, after reciting "that it is expedient to relieve the minds of all his Majesty's subjects from any doubt concerning the validity of marriages solemnised by a minister of the church of England, in the chapel or house of any British ambassador or minister residing within the country, to the court of which he is accredited, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing at such factory, as well as from any possibility of doubt concerning the validity of marriages solemnised within the British lines, by any chaplain or officer, officiating under the orders of the commanding officer of a British army serving abroad," it is declared and enacted, "That all such marriages as aforesaid shall be deemed and held to be as valid in law as if the same had been solemnised within his Majesty's dominions, with a due observance of all form required by law."

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as such; of what persuasion does not appear: but even if it were performed by a Roman Catholic priest, the case would be the same; for such a person would be recognised by our church as a priest, capable of officiating as such, upon his mere renunciation of the errors of the church of Rome. But *Rex* v. *Fielding* (*a*) shows that a marriage by a Roman Catholic priest (before the marriage act) was effectual for that purpose, which was considered as a contract *per verba de præsenti.* In this case the ceremony was performed in a public chapel, instead of in private lodgings, as in *Fielding's case.* Considering, therefore, the case to be that the king's forces carried with them the law of England to St. Domingo, by which they and other subjects who accompanied them (in the absence of proof that any other law was in force there) may be considered as continuing to be governed, this would be a good marriage by that law. But supposing this law of England not to have been carried to St. Domingo by the king's forces, nor obligatory upon them in this particular, let us consider whether the facts stated would not be evidence of a good marriage, according to the law of that country, whatever it might be. And, indeed, after the ceremony of marriage, as it was understood and intended by the parties at the time to be, performed openly in a chapel, by a person appearing there as a priest authorised to perform the ceremony of marriage, and this followed by a cohabitation between the two parties for eleven years afterwards, every presumption is to be raised in favour of its validity. I should have considered myself as safe, in resting my opinion in favour of this marriage upon the law of England, independent of the provisions of the marriage act: but without the aid of that, I think every presumption must be made in favour of its validity, according to the law of the country where it was so celebrated: having been performed there in a proper place, and by a person officiating as one competent to perform that function." The other judges agreed.

(*a*) 5 St. Trials, 610.

To prove settlement of pauper, her husband was called to prove his marriage with her: Held, that it was competent in answer to call a female to show that the husband had been previously married to herself, and consequently that the second marriage was a nullity.

Rex v. *Bathwick*, 2 *B. & Ad.* 639. Removal of Elizabeth, the wife of W. J. Cook, from Bathwick to St. Pancras. Order quashed. Case:—The respondents proved, by the testimony of W. J. Cook, his settlement in St. Pancras, and his marriage with the pauper at Bath in 1829, and he stated her to be now his wife. The appellants insisted that the marriage was void, Cook having been previously married in Dublin in 1826 to Mary Byrne. To prove their case, they called the said Mary, to whose competency the respondents objected. The court admitted her evidence, and she proved that she, being a Roman Catholic, and Cook, being a Protestant, went on the 21st of May, 1826, before Mr. Wood, a clergyman, residing in Dublin, who in his private house read to them the marriage ceremony, and in the course of it asked her whether she would be the wife of Cook, and asked him whether he would be her husband, to which question both of them answered, "I will;" and after the ceremony they returned to the house of Cook's father, whose servant she was, and there secretly cohabited for two months and upwards. It was proved by parol that Wood was reputed to be a clergyman of the established church, and the appellants put in a document purporting to be the letters of orders, signed and sealed by William, late Lord Archbishop of Tuam, dated the 18th of October, 1799, whereby the archbishop certified that he had ordained Wood a priest, and which letters were proved to have been among Wood's papers at the time of his death, in July, 1829. Lord *Tenterden.* "We are of opinion that the witness Mary, assuming to be the first and lawful wife of W. J. Cook, was a competent witness. The question arose on the settlement of another woman, considered to be the wife of Cook; Cook was examined, and proved his marriage with this woman: but he was not asked, and did not say, that he had not been previously married to the witness Mary. The witness Mary was afterwards called to prove her previous marriage with this person. In deposing to this marriage, she did not contradict anything that he had said. I notice this fact; but we do not mean to say that if she had been called to contradict what he had sworn, she would not, in a case like this, have been a competent witness to do so. It is not necessary to

A document purporting to be letters of orders from an archbishop, more than thirty years old, and produced from the proper custody, is evidence, without proving the archiepiscopal seal, which, used for this purpose, is to be considered a private, and not a corporate seal.

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decide that question at present; but it may well be doubted whether the competency of a witness can depend upon the marshalling of the evidence, or the particular stage of the cause at which the witness may be called. In the present case, however, the witness not having been called to contradict her husband, and her testimony not being inconsistent with the fact to which he had deposed, her incompetence, if it can be established, can be so only upon the authority of the case of *Rex* v. *Cliviger*. (*a*) The authority of that case was much shaken by *Rex* v. *All Saints, Worcester* (*b*), in which Lord *Ellenborough* said, 'The objection rests only on the language of *Rex* v. *Cliviger*, that it may tend to criminate him; for it has not an immediate tendency, inasmuch as what she stated could not be used in evidence against him. The passage from Lord *Hale* (*P. C.* 301) has been pressed upon us, where it is said the wife is not bound to give evidence against another in a case of theft, if her husband be concerned, though her evidence be material against another, and not directly against her husband. Admitting the authority of that passage, it assumes that the husband was under the criminal charge; that he was included in the *simul cum aliis*. But if we were to determine, without regard to the form of proceeding, whether the husband was implicated in it or not, that the wife is an incompetent witness as to every fact which may possibly have a tendency to criminate her husband, or which, connected with other facts, may perhaps go to form a link in a complicated chain of evidence against him, such a decision, as I think, would go beyond all bounds; and there is not any authority to sustain it; unless, indeed, what has been laid down, as it seems to me, somewhat too largely, in *Rex* v. *Cliviger*, may be supposed to do so.' The decision in *Rex* v. *Cliviger* appears to have been founded on a supposed legal maxim of policy, *viz.*, that a wife cannot be a witness to give testimony in any degree to criminate her husband. This will undoubtedly be true in the case of a direct charge and proceeding against him for any offence; but in such a case she cannot be a witness to prove his innocence of the charge. The present case is not a direct charge or proceeding against the husband. It is true, that if the testimony given by both be considered as true, the husband, Cook, has been guilty of the crime of bigamy; but nothing that was said by the wife in this case, or any decision of the court of sessions, founded upon her testimony, can hereafter be received in evidence to support an indictment against him for that crime. This is altogether *res inter alios acta;* neither the husband nor the wife has any interest in the decision of the question, and the interest of the parish of Pancras required that the illegality of the second marriage should be established, if it was in fact illegal. Secondly, we are also of opinion that the certificate of the ordination of Mr. Wood, by whom the first marriage was celebrated in Ireland, was properly received in evidence. This certificate came from the proper custody. It was produced by the widow of Wood, and was found among his papers at his death. It was dated in 1799, more than thirty years before the time of its production in evidence; and if it had been signed only, there could have been no question as to its inadmissibility; but, in fact, it was also sealed; and it was contended that this must be considered as the seal of a court or of a corporation, and therefore not within the rule as to thirty years, but requiring to be proved. It is not necessary to decide whether such a seal be within the rule; it may be argued that it is not within the principle of the rule, because, although the witnesses to a private deed, or persons acquainted with a private seal, may be supposed to be dead, or not capable of being accounted for after such a lapse of time, yet the seals of courts and corporations, being of a permanent character, may be proved by persons at any distance of time from the date of the instrument to which they are affixed. We think it not necessary to decide this question, because a certificate of ordination is not the act of any court; and although an archbishop is a corporation sole for many purposes, such as those relating to the temporalities of his see, yet such a certificate has no relation to his corporate character, and the seal must be considered as the seal of the natural

(*a*) 2 T. R. 26.
(*b*) 6 M. & S. 194.

person, and not of the corporation. The result of this is, that the order of sessions must be confirmed."

Westbrooke v. *Stratville*, 1 *Stra.* 79. A prior marriage subsisting at the time of a second marriage, renders the second void *ab initio*.

A first subsisting marriage.

Rex v. *Twining*, 2 *B & Ald.* 386. Mary Burns, the wife of Francis Burns, an Irishman, then absent, was removed from Manchester to Twyning. Order confirmed. Case:—About seven years ago the pauper married R. Winter, with whom she lived a few months, when he enlisted as a soldier, went abroad on foreign service, and has never been heard of since. In a little more than twelve months after her departure, the pauper being settled in Twyning, married Francis Burns, with whom she has ever since cohabited; the children mentioned in the order were born during such cohabitation, and are the children of Francis Burns; but were not born in Twyning. *Bayley*, J. "Are we to presume that Winter was alive at the time of the second marriage, and the woman guilty of bigamy? If the pauper had been indicted for bigamy, it would clearly not be sufficient. In that case, Winter must have been proved to have been alive at the time of the second marriage. It is contended that his death ought to have been proved; but the answer is, that the presumption of law is, that he was not alive, when the consequence of his being so is, that another person has committed a criminal act. I think, therefore, that the sessions decided right in holding the second marriage to have been valid, unless proof had been given that the first husband was alive at the time."

To render a second marriage void, the existence of the first husband must be strictly proved. (*a*)

Rex v. *Harborne*, 4 *N. & M.* 341. 2 *A. & E.* 540. An order for the removal of Ann Smith, the wife of Henry Smith (who had deserted her), from Harborne to East Haddon, was quashed. Case:—The respondents proved that Henry Smith, being settled in East Haddon, married the pauper on the 11th of April, 1831, and afterwards deserted her. The appellants then proved that, on the 4th of October, 1821, Henry Smith had married one Elizabeth Meadows; and in order to show that she was alive at the time when he married, the pauper called the father of Elizabeth, who proved that his daughter and Henry Smith continued to live together till 1825, when he left her, and she went into Northampton hospital, that he had since received several letters from her, dated from Van Diemen's Land; and he produced a letter, dated Hobart Town, 17th of March, 1831, which he proved to be in her handwriting. The sessions received the letter in evidence, and quashed the order. The question was, whether the sessions were justified in presuming that Elizabeth, the first wife of Henry Smith, was alive at the time of his marriage with the pauper. Lord *Denman*, C. J. "The question is, whether the sessions were justified in coming to the conclusion, that a party who was proved to have been alive on the 17th of March, was alive on the 11th of April. If that conclusion was right, the marriage was invalid. It appears to me that the evidence was properly admitted, and that the sessions have come to a correct conclusion. There was strong evidence to show that the party was alive; and there were no circumstances from which a contrary inference of fact could be drawn. The only matter that raised any doubt in my mind was the doctrine laid down by *Bayley*, J., in *Rex* v. *Twyning*. In that case, however, the sessions came to a different conclusion; they did not choose to presume that the first husband was alive at the time of the second marriage of the wife; and the court said, that there was no legal presumption to countervail that finding of fact; but it was totally unnecessary to enter into the question of conflicting presumptions. Lord *Tenterden*, C. J., and *Holroyd*, J., did not happen to be present. *Bayley*, J., seems to have taken up the matter on a principle which certainly was not necessary for the decision of the case. "Here the sessions have said, 'The circumstances are of such a nature, that we will not presume that the wife was not alive.' It appears to me, that nothing could be more absurd, than that there should be a presumption

Letters from abroad may be received as evidence of the existence of the first wife (the writer). The sessions may presume that a woman alive on 17th March, was alive on 11th April.

(*a*) A parish may be precluded even from this evidence, where, by a certificate, they have recognised the man and woman as husband and wife, *post*.

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of life or death without reference to the age, circumstances, situation of life, and common habits of the party. Can there be the same presumption as to a party who is 100 and one who is 35? As to a party who was in good health when last heard of, and one who was proved to have then a disorder upon him, which was likely speedily to terminate in his death? It cannot be. It is altogether a question of fact. The only question that can be is, whether the sessions or a jury have competent evidence before them. In *Doe* v. *Nepean* (*a*) the question arose much in the same manner. In that case the question was, whether there had been an adverse possession for twenty years, and this depended upon the question, whether a party who went abroad, and was never again heard of, must necessarily be taken to be alive up to the end of seven years after his departure. The learned judge said that the law was so; and he did not leave it to the jury to say whether the party was alive up to that time. When, however, the case came before the court, they held that there was no *legal presumption* of the continuance of life until the last period. That is perfectly consistent with our decision in the present case. In *Rex* v. *Twyning* the point arose exactly the same manner as in this case. The sessions having found one way, the question was, whether there was any legal presumption against that finding. In every case the only question that can arise is, whether the evidence was in its nature admissible; for otherwise, supposing even that it had been proved that the party was alive on the 10th, and that the marriage had taken place on the 11th, you could not presume that the party was alive at the time of the marriage. The sessions were justified in forming their own opinions upon the facts laid before them; and they have given an opinion from which no persons can dissent."

(*a*) 5 B. & Ad. 86.

Marriage solemnised in chapels erected since 26 Geo. II. were held to be void.

King's Norton v. *Northfield*, *Doug.* 659. Abigail, widow of Joseph Jones, was removed from King's Norton to Northfield. Order confirmed. Case:—The pauper, in 1775, married J. Jones, at Buerlyhill chapel, in Kingswinford, which was erected in 1765, and then duly consecrated, and in which divine service had been regularly celebrated ever since; and wherein banns of matrimony had been often published, and marriages celebrated previous to the marriage in question. The chapel was erected since the marriage act, and not erected on the foundation of one that was ancient. No act of parliament was obtained for erecting it, or for celebrating marriages there. The question was, "Whether the marriage was void by the provisions of the said act?" It was contended, that the words *usually published*, in the act, ought to be considered to mean, usually at the time when the marriage in question took place. If so, there was enough stated in the case for the court to consider this as a chapel, in which banns had been usually published. Lord *Mansfield*, C. J., was for some time averse to determine a question of such serious consequence in a collateral way on a settlement case. "But, upon more consideration," he said, "I think we ought now to decide it. If there has been an abuse, we ought to stop it as early as possible. A delay might lead to a supposition that we doubt, when in truth we do not. The act clearly meant chapels existing at the time. I am of opinion that this marriage was void by the provisions of the statute. [Soon after this determination marriages solemnised in any parish church, or public chapel, erected since the 26 Geo. II. and consecrated, were rendered valid in law.]

But legalised by 21 Geo. III. c. 73.

The Banns must be published in the true Names of the Parties.

A person whose baptismal and surname was A. L., was married by banns by the name of G. S., having been known in the parish where he resided, and was married by that

Rex v. *Billingshurst*, 3 *M. & Sel.* 250. Removal from Salehurst to Billingshurst. Case:—The pauper, whose name is Abraham Langley, was married to his present wife in Lamberhurst, by banns, about four years ago, by the name of George Smith. Previously to his marriage he had resided about three years at Lamberhurst, and from his first coming, and during all the time he remained there, he was known by the name of George Smith only. Lord *Ellenborough*, C. J. "All that the law requires on this subject is, that marriages shall be solemnised either by license, or publication

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of banns, otherwise the 26 Geo. II. c. 36, s. 8, declares that they shall be void. The statute does not specify what shall be necessary to be observed in the publication of banns; or that the banns shall be published in the true names; but certainly it must be understood as the clear intention of the legislature, that the banns shall be published in the true names, because it requires that notice in writing shall be delivered to the minister of the true Christian and surnames of the parties, seven days before the publication: and unless such notice be given, he is not obliged to publish the banns. The question then is, has there been, in this case, that which is required, a due notification by the minister, on a Sunday, in time of divine service, of one of the persons intending to contract marriage? Now it appears that such notification has been made by the name of George Smith, by which name alone the party was known in the place where he resided, and which he had borne for three years prior to the celebration of the marriage, in that place, and that he was not known there by any other name. It would lead to perilous consequences, if, in every case, an inquiry were to be instituted, at the hazard of endangering the marriage of a woman, who had every reason to think she was acquiring a legitimate husband, whether the name by which the husband was notified in the banns were strictly his baptismal name, or whether at the period of his baptism he may not have received some other name. What the consequences might be of encouraging such inquiries, as to the avoiding of marriages, and bastardising the issue of them, it is not very difficult to imagine. The object of the statute, in the publication of banns, was to secure notoriety, to apprise all persons of the intention of the parties to contract marriage; and how can that object be better attained, than by a publication in the name by which the party is known? If the publication here had been in the name of Abraham Langley, it would not of itself have drawn any attention to the party, because he was unknown by that name, and its being coupled with the name of the woman who probably was known, would perhaps have led those who knew her, and knew that she was about to be married to a person of another name, to suppose, either that these were not the same parties, or that there was some mistake. Therefore, the publication in the real name, instead of being notice to all persons, would have operated as a deception; and it is strictly correct to say, that the original name, in this case, would not have been the true name within the meaning of the statute. On these grounds I think that the act only meant to require that the parties should be published by their known and acknowledged names, and to hold a different construction would make a marriage by banns a snare, and in many instances a ruin upon innocent parties. The court, therefore, cannot lend itself to a construction which would be pregnant with such consequences." *Le Blanc*, J., "The object of the marriage act was to insure notoriety to the transaction, and, I think, the court recollecting that, cannot say that a marriage by banns, published in the names by which alone the party was known, is a marriage without publication of banns. The argument is, that a marriage by publication of banns means, by publication of banns in the real names of the parties only; but the statute has said no such thing. If the banns be published in the names of the party by which alone he is known, and there is no fraud, whether that be the true Christian or surname of the party or not, I think the marriage is good within the meaning of the statute. Therefore, I am of opinion, that upon the present occasion everything was done that was sufficient to give that notification of the marriage which it was the object of the marriage act to insure." Order of sessions confirmed.

A marriage by license, not in the man's real name, but in the name which he had assumed because he had deserted, he being known name only, from his first coming into the parish till his marriage, which was about three years: Held, that the marriage was valid.

Rex v. *Burton-upon-Trent*, 3 *M. & Sel.* 537. Removal from Grooby to Burton-upon-Trent. Case:—The pauper's father, whose real name was Joseph Price, was married at Leicester, by license, by the name of Joseph Grew, having changed his name to Grew because he had deserted from the army, and he was known by that name only at Leicester, where he lodged at the time of his marriage, and where he had resided sixteen weeks. He

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by that name only in the place where he lodged and was married, and where he had resided sixteen weeks, was held a valid marriage.

never passed by any name but Price in his father's family, and in the place where they resided. His wife did not know his real name till a fortnight after the marriage, when he told it her. The pauper was the issue of this marriage, and was born at Burton-upon-Trent, and after his birth his parents were married by the true name. The sessions considered the first marriage as invalid, and therefore that the pauper was not entitled to his father's settlement. Lord *Ellenborough*, C. J. "If this name had been assumed for the purpose of fraud, in order to enable the party to contract marriage, and to conceal himself from the party to whom he was about to be married, that would have been a fraud on the marriage act, and the rights of marriage, and the court would not have given effect to any such corrupt purpose. But where a name has been previously assumed, so as to have become the name which the party has acquired by reputation, that is, within the meaning of the marriage act, the party's true name. The same law has been recognised in the case of negotiable instruments, where, if a party sign an instrument in a name assumed by him for other purposes a considerable time before, such signature will not amount to a forgery; but otherwise, if he assume a name by which he had never been known before, for the purpose of the fraud. Now, here the party assumed the name for the purpose of concealment, and not of fraud upon the marriage, and he was known by that name alone for sixteen weeks in the place where he was married. It seems to me, therefore, that he had acquired the name, and that to have had a license in any other name would have been a fraud on the marriage act." *Le Blanc*, J. "The name was assumed by the father for the purpose of concealing himself as a deserter from his Majesty's service, and not with a view to impose upon the woman whom he married." *Bayley*, J. "The sessions may always draw the line, whether the name was assumed for a fraudulent purpose, as it regards the marriage, or not." Order quashed. (See 2 *East's P. C.* 967, 968.)

Marriage by maiden name used by a widow is valid, unless assumed for a fraudulent purpose.

Rex v. *St. Faith's, Newton*, 3 *D. & R.* 348; 2 *D. & R. Mag. Ca.* 34. Order of removal of Ann Lovick from Norwich to St. Faith's, Newton, confirmed. Case:—The pauper, whose maiden name was Ann Lovick, was married on the 14th of September, 1812, to James Browne, a man of colour, whose settlement is unknown, and who was then a private in the 69th regiment. About half-a-year afterwards, Brown went to Ipswich, and the pauper, at his request, followed him thither, and remained with him there a few weeks, when she returned to Norwich, and never saw or heard anything of her husband afterwards, except that a report reached her of his death by drowning, but it is not otherwise known when he died, or whether he is dead. On the 31st March, 1822, and after the pauper had received such information of the death of Browne, she was married, by banns, to William Rigg, widower, by the name and description of Ann Lovick, widow. Both at Ipswich, and after her return to Norwich, the pauper went by the name of Ann Lovick only, till her marriage with Rigg." *Bayley*, J. "The object of the statute was to make it notorious to the world who were the parties that were about to enter into the married state, and, therefore, wherever the name is fraudulently assumed or concealed, that object is defeated, and the marriage is void. But when the party has assumed a new name, not for any fraudulent purpose, but fairly and openly, and has, for a considerable period, used and been known by that name, then, it has been in several cases decided, a marriage under that name is valid. The name, in this case, does not appear to have been assumed for the purposes of the marriage, or for any improper purpose; and, under the circumstances of this case, at least as much notoriety was given of the person of the pauper by the name of Lovick, as could have been given by that of Browne. The former was her maiden name, she had gone by it for many years, and was, therefore, more likely to be recognised by that name than by the other. The mere fact that some one individual *may* be deceived is not sufficient to annul the marriage; the name must be assumed fraudulently. That has long been the rule of construction upon this subject, and that rule is acted upon in the cases that have been cited. I am,

therefore, of opinion that this is a valid marriage, and that a different decision would be very likely to produce much mischief; for where a party has several names, one of them may be easily omitted by accident or mistake, and it would be a most grievous thing if every marriage solemnised under such circumstances were to be deemed illegal."

The Banns must be in the true names.

Rex v. *Tibshelf*, 1 *B. & Adol.* 190. The pauper and her husband were married, in 1817, by banns, by the names of Joseph Betts and Mary White. The husband had been baptised as the son of John and Mary Betts. Mary Betts was the daughter of Samuel Wilson, and her husband having absconded shortly after their marriage, her son, the pauper's husband, was brought up by his maternal grandfather, and was always called by the name of Wilson, was bound apprentice by that name, with the consent of his grandfather, and was never called or known by the name of Betts, or by any other name than Wilson, either before or after his marriage with the pauper. The pauper, Mary, was the legitimate daughter of Job and Martha Hodgkinson, and was never called or known by any name, except Hodgkinson, till after her marriage; but in the register of her baptism she is described as "Mary, the daughter of Samuel White and his wife." Her mother was the daughter of Samuel and Dorothy White, and her father and mother resided with them at the time of her birth, and her mother's brother stated that he believed the entry in the register to have been a mistake of the clergyman who baptised her; and that he was the person who discovered the mistake in the register previous to the pauper's marriage, it having been supposed that her baptism was omitted to be registered. Lord *Tenterden*, C. J. "The question whether this removal is right or not depends upon the validity of the marriage between Joseph Betts and the said Mary. If the marriage was invalid, the order of sessions was wrong, and we are of opinion it was invalid. This marriage was in 1817, and at that time the only act by which marriages were regulated, was the 26 Geo. II. c. 39, which was finally repealed, except as to all acts, matters, and things done under its provisions, by 4 Geo. IV. c. 76. Neither that act nor the repealed act, 3 Geo. IV. c. 75, contains any clause rendering former marriages by improper banns valid; and if s. 19 of the latter act could have been construed as having that effect, it could not have any operation after the repeal of that act. The act 26 Geo. II. provides, by s. 8, that all marriages that shall be solemnised without publication of banns, or license, shall be null and void to all intents and purposes whatsoever. In the directions in that statute for the publication of banns, nothing is said as to the names of the parties, but s. 2 excuses the minister from publishing them, unless the parties deliver in, in writing, their true Christian and surnames. And in a series of decisions upon this statute, both in the Ecclesiastical Courts and the Court of King's Bench, it has been held that the clear intention of the legislature was that the banns are to be published in the true names of the parties, otherwise it is no publication at all. By these decisions these rules are fully established: first, that if there be a total variation of a name or names, that is, if the banns are published in a name or names totally different from those which the parties, or one of them, ever used, or by which they were ever known, the marriage in pursuance of that publication is invalid; and it is immaterial in such cases, whether the misdescription has arisen from accident or design, or whether such design be fraudulent or not. But, secondly, if there be a partial variation of name only, as the alteration of a letter or letters, or the addition or suppression of one Christian name, or the names have been such as the parties have used and been known by at one time and not at another, in such cases the publication may or may not be void; the supposed misdescription may be explained, and it becomes a most important part of the inquiry, whether it was consistent with honesty of purpose, or arose from a fraudulent intention. It is in this class of cases only that it is material to inquire into the motives of the parties. The substance of these rules will be found in the judgments of Lord *Stowell*, in the cases of *Sullivan* v. *Sullivan* (2 *Hagg. Consist. Rep.* 254), *Frankland* v. *Nicholson* (3 *M. &*

In the publication of banns, in 1817, a woman, named Mary Hodgkinson, was called White, a surname entered by mistake in the register of her baptism, but which she had never gone by or been entitled to. The false name was given to the officiating clergyman without any intention to mislead, nor did any individual, having an interest in the marriage, appear to have been deceived: Held, that the marriage was void.

The Banns must be in the true names.

Sel. 261, 1 *Phill. Rep.* 147), *Powyett* v. *Tomkins* (3 *M. & Sel.* 263), and *Mather* v. *Ney* (3 *M. & Sel.* 265), and in the judgments in *Rex* v. *Billinghurst* in this court. The present case falls distinctly within the first rule. Whether the alleged husband was sufficiently designated by the name of Betts we need not inquire, as we are clearly of opinion that the woman was never known by and never used the surname of 'White,' so as to make that, in any latitude of construction, 'a true name' within the meaning of the statute. Her family name, and that by which she was always known, was Hodgkinson. The only occasion upon which the name of White was applied to her was in the register of her baptism; she was not *baptised* by that name, for the surname is never used in the baptismal ceremony; but the name was entered in the register necessarily without her privity, and it seems without that of her parents, and probably by a mere error of the officiating minister, who appears to have mistaken her parentage, and considered her as the child of her maternal grandfather and grandmother. It is impossible, whatever may be the disposition to favour parties who have meant to act correctly, and from the best motives, to say that a surname so entered can be the true name of the party to whom it is applied. It is, doubtless, a great hardship upon these innocent persons to pronounce that this marriage is void, but it would be a much greater inconvenience to the public to alter the settled rules upon this subject, for the sake of preventing a particular mischief." Order of sessions quashed.

V. Of Settlement by Hiring and Service.

5. Of Settlement by Hiring and Service.

4 & 5 Will. IV. c. 76.

By 4 & 5 Will. IV. c. 76, (passed 14th August, 1834) *no settlement can be acquired by hiring and service*, or under any contract of hiring and service *not completed* at the time of the passing of this act.

Questions will no doubt continually arise relative to settlements acquired by hiring and service, *antecedent* to this act, and it is necessary therefore to retain the law on the subject.

The statutes relating to settlements.

Before this recent statute, the 13 & 14 Car. II. c. 12, s. 1, after reciting the evils resulting from the vagrancy of the poor, enacted, "that it should and might be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of the peace, within forty days after any such person or persons coming to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the *quorum*, of the division where any person or persons, that are likely to be chargeable to the parish, shall come to inhabit, by their warrant to remove and convey such person or persons to such parish, where he or they were last legally settled, either as a native, householder, sojourner, apprentice, *or servant*, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish to be allowed by the said justices."

Persons removeable, unless security given for the discharge of the parish.

Certificates to prevent removal in certain cases.

Sect. 3. Provided also, "that (this act notwithstanding) it shall and may be lawful for any person or persons to go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, so that he or they carry with him or them a certificate from the minister of the parish and one of the churchwardens and one of the overseers for the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children, or some of them there (or otherwise as the condition of the persons shall require), and is declared an inhabitant or inhabitants there: and in such case, if the person or persons shall not return to the place aforesaid, when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases abovesaid, but that it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation as aforesaid, under the pains and penalties in this act prescribed: and if such person

or persons shall refuse to go, or shall not remain in such parish where they ought to be settled as aforesaid, but shall return of his own accord to the parish from whence he was removed, it shall and may be lawful for any justice of the peace of the city, county, or town corporate where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a public workhouse in this present act hereafter mentioned, there to be employed in work or labour; and if the churchwardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive such person or persons, and to provide work for them, as other inhabitants of the parish, any justice of peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf."

Settlement by forty days' residence from delivery of notice.

By 1 Jac. II. c. 17. s. 3, it is enacted, "that the forty days' continuance of such person in a parish, intended by the said act to make a settlement, shall be accounted from the time of his or her delivery of notice in writing (which they are hereby required to do), of the house of his or her abode, and the number of his or her family, if he or she have any, to one of the churchwardens or overseers of the poor of the said parish, to which they shall so remove."

Notice to be published.

The 3 W. & M. c. 11, s. 3, enacts, "that the forty days' continuance of such person in a parish or town, intended by the said acts to make a settlement, shall be accounted from the publication of a notice in writing, which he or she shall deliver, of the house of his or her abode, and the number of his or her family, if he or she have any, to the churchwarden or overseer of the poor, which said notice in writing the said churchwarden or overseer of the poor is or are hereby required to read, or cause to be read publicly, immediately after divine service in the church or chapel of the said parish or town, on the next Lord's day when there shall be divine service in the same: and the said churchwarden or overseer of the poor is or are hereby required to register, or cause to be registered, the said notice in writing in the book kept for the poor's accounts."

Notices abolished.

But the 35 Geo. III. c. 101, s. 3. enacts, "that no person coming into any parish, township, or place, shall, from and after the passing of this act, be enabled to gain any settlement therein by delivery and publication of any notice in writing."

Soldiers, &c. not to gain a settlement by notice till after dismission.

By 3 W. & M. c. 11, s. 4, "No soldier, seaman, shipwright, or other artificer or workman employed in their Majesties' service, shall have any settlement in any parish, port town, or other town, by delivery and publication of a notice in writing as aforesaid, unless the same be after the dismission of such person out of their Majesties' service."

Hiring and service for a year, of unmarried person, &c., a settlement.

Sect. 7 enacts, "that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein, though no such notice in writing be delivered and published as is hereinbefore required."

The hiring and service must be for one whole year.

The 8 & 9 Will. III. c. 30, s. 4. "And whereas some doubts have arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year, be it therefore enacted and declared by the authority aforesaid, that no such person so hired as aforesaid shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year."

No person bound apprentice, or being a hired servant, to one who came into a parish by certificate, shall gain a settlement there by reason of such

And the 12 Anne, c. 18, s. 2, reciting the provision in the 8 & 9 Will. III. c. 30, as to poor persons residing in other than their own parishes under certificates, and that many persons bringing such certificates frequently take apprentices and hire and keep servants, who thereby attain settlements and become a great burthen to such certificated parishes; enacts that, "If any person whatsoever, who, upon or after the 24th of June, 1713, shall be an apprentice, bound by indenture to, or shall, upon or after

5. *Of Settlement by Hiring and Service.*

hiring and service, &c.

the said 24th of June, 1713, be a hired servant to or with any person whatsoever, who did come into or shall reside in any parish, township, or place, in that part of Great Britain called England, by means or license of such certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture, or binding, and such servant by being hired by or serving as a servant as aforesaid to such person, shall not gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township, or place, as if he or they had not been bound apprentice or apprentices, or had not been an hired servant or servants to such person as aforesaid; any act or acts of parliament to the contrary notwithstanding."

The repealed friendly society act.

Provisions to prevent settlements being gained under particular circumstances.

By 33 Geo. III. c. 54, s. 24, "No person who shall be an apprentice, bound by indenture to, or shall be a hired servant to or with any person who did come into or shall reside in any parish, township, or place, under the authority of this act, and not afterwards having gained a legal settlement in such parish, township, or place, shall gain or be adjudged to have any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but all such apprentices and servants shall have their settlements in such parish, township, or place, as if they had not been bound, or had not been hired to such person as aforesaid; any act or acts of parliament to the contrary notwithstanding." But the recent act relating to friendly societies does not contain the like provision. See Vol. II. titie, "**Friendly Societies.**"

By 52 Geo. III. c. 72, s. 8, it is enacted, "That from and after the passing of this act, no person or persons shall by residence in any house, lodge, or other building, erected or to be erected within the said forest (of Alice Holt, in the county of Southampton), or by hiring and service either for the preservation of the said woods or plantations, or the game in the said forest, gain thereby any settlement in the parish of Binsted, in the said county, in which the said forest is situate."

By general turnpike act, 3 Geo. IV. c. 126, s. 51, and 4 Geo. IV. c. 95, s. 31, "no apprentice or *servant* of a collector or renter of tolls, or weighing machine, or residing in toll-house, shall thereby gain a settlement;" and see *Chitty's Col. Stat.* Vol. I. 492, *note* (*m*); and see 4 & 5 Will. IV. c. 76, s. 64, 1 *Adol. & El.* 244.

There are also other statutory provisions precluding persons coming into parishes under particular circumstances, from acquiring settlements in those parishes, whilst they continue within the operation of those provisions, as will be seen hereafter.

Requisites in general of a valid hiring to give a settlement.

The requisites of this description of settlement may be stated as follows:

1st. With respect to the *hiring*.—That the master or mistress, and servant whether male or female, must be *capable* of entering into such a contract with each other; and all persons (except husband and wife), however nearly related to each other, may make such a contract, even though one or both parties be under age.

2nd. The parties must not merely be competent to make a binding contract as *between themselves*, but they must be in that *unfettered condition* which the poor laws require in order to create a right of settlement by such contract duly performed. For instance, the master must not be a *certificate* man, nor must the servant be already under a subsisting contract as an apprentice, or soldier, or married, or a widower with children, &c.

3rd. The contract must be for *a year prospectively* from its date; but it is not essential that it should be actually so expressed, for if it can be collected from the other terms of the contract, as the wages, notice to leave, &c., that the parties *intended* that the hiring should be for a year, that will suffice.

4th. The master must have the control over the servant's *whole time* and

services; for if it is stipulated by the contract that the servant shall have the *right* to certain days or even hours to himself, independently of his master, although he in fact employ those hours in his master's service, being paid for them, the contract will not confer a settlement.

5. *Of Settlement by Hiring and Service.*

Requisites of the service to give a settlement.

5th. With respect to the *service.*—This likewise must be for a year; though intervals of absence by the master's authority will not prejudice: for the master may dispense with a portion of the service.

6th. It is not necessary that the *whole* year's service should be under the *yearly* hiring, though it must be *in the same service;* for if a person serve a few months without any yearly hiring, and then without quitting or suspending the service, contract to serve the same master for a year, and continue to serve under this contract a length of time sufficient (even though it be forty days only), when added to the time served before the hiring for a year, to make a whole year's service, the settlement will be complete.

7th. It is not essential that the service should be under the *same master;* for if the *same service* is *continued* under the lessee, assignee, executor, &c. of the master with whom the contract was made, and the service in part performed, it will be sufficient for the purposes of the settlement.

8th. It is not necessary that any part of the service should be in the parish or place where the contract of hiring is made; or that the whole year's service should be in one and the same parish or place; or that it should be in the parish or place where the master resides: for wherever the servant resides the last forty days for the *purposes of the service,* there he will acquire his settlement.

9th. The forty days' residence for the purposes of the service, are not required to be *consecutive;* though they must be within the compass of a year. Thus if a servant, during a hiring and service for a year, serve in *several* parishes, his settlement will be in that parish in which he has *last served,* if in the whole he has resided and served *there* forty days.

Such are the rules of law by which settlements by hiring and service were governed. The sessions ought to decide whether there was a contract of hiring, or only of apprenticeship, and not merely to find or state facts.

The decisions will be arranged under the following heads and subdivisions.

I. *Of the effect of* 4 & 5 *Will. IV. c.* 76.

II. *Of the Contract of Hiring;—and herein,*

1. *Of the Parties to the Contract.*
2. *What amounts to a Contract of Hiring and Service.*
3. *Where a Contract may be implied.*
4. *Where a Contract is indefinite.*
5. *What is a Hiring for a Year.*
6. *Weekly or Monthly Wages and Notice.*
7. *Hiring by the Job.*
8. *Retrospective Hiring.*
9. *Hirings made purposely to avoid a Settlement.*
10. *Conditional Hirings.*
11. *Exceptive Hirings.*
12. *Hiring with Limitation of Working Hours.*
13. *Imperfect Apprenticeship not a good Hiring.*

III. *The Service under the Contract;—and herein,*

1. *Of Connecting Services under distinct Hirings.*
2. *Of Lapse between Connected Services.*
3. *Of Dispensation.*
4. *Of Change of Master in the same Service.*
5. *Of Dissolution.*

IV. *The Place in which the Settlement is Acquired.*

Effect of 4 & 5 *Will. IV.* c. 76.

I. Of the Effect of 4 & 5 Will. IV. c. 76.

That statute (passed 14th August, 1834), enacts, by s. 64, "that from and after the passing of this act, *no settlement shall be acquired by hiring and service or by residence under the same, or by serving an office;*" and by s. 65, "that no person under any contract of hiring and service *not completed* at the time of the passing of this act, shall acquire, or be deemed or adjudged to have acquired, any settlement by reason of such hiring and service, or of any residence under the same."

A pauper was hired in June, 1833, at a monthly hiring, and served under till Michaelmas, and then was hired on a yearly hiring till Michaelmas, 1834, under which she served. Her contract of hiring not being completed at the time of the passing the 4 & 5 Will. IV. c. 76, she gains no settlement.

Rex v. *Rettenden*, 1 *N. & P.* 448; 6 *A. & E.* 296. S. Attridge and child, were removed from Rettenden to Ingatestone. Order quashed. Case:—On the 28th of June, 1833, the pauper, Sophia Attridge, went into the service of Elizabeth Baker, widow, as her servant, for a month, at wages of 1*s.* a week. The pauper continued in the service of E. Baker until the expiration of the month, and was then hired by E. Baker to be her servant till the following Michaelmas, at the like wages of 1*s.* a week, and the pauper served E. Baker up to the said Michaelmas. At that Michaelmas the pauper was hired by E. Baker to be her servant for the following year, at the wages of 50*s.* a year, and the pauper continued to serve E. Baker during the whole of such year. From the time of the first hiring in June, 1833, till Michaelmas, 1834, there was an unbroken continuance of service, and the pauper always resided in the house of E. Baker, which was in Rettenden. The question was, whether, referring to the 4 & 5 Will. IV., c. 76, s. 65, the pauper gained a settlement in Rettenden. Lord *Denman*. "It does not seem quite certain that the legislature contemplated this exact case, or what they would have done if they had, but the words of the act leave no doubt on the matter. The service is not complete, and within this act the settlement is not obtained. It is quite immaterial to the public and to the pauper, where she is settled, but it is very important that due effect should be given to all the words of this act, and also that it should come into operation as soon as possible." *Williams*, J. "I am entirely of the same opinion. It seems to me clear that this contract was not complete at the time of the passing of the act. The argument is, that by the old law, by coupling service, as it was called, when there was a service in fact for a year, and a hiring for a year, although the service was not for a twelvemonth under the yearly hiring, a settlement was gained before the passing of the act; but by the new law the contract for service, as well as the contract of hiring, must be completed before the passing of the act, and that contract has been cut in twain by the act of parliament." *Coleridge*, J. "Before this act of parliament passed, under the circumstance of this case, a settlement might have been acquired without even completing that contract of hiring and service, under which, however, the settlement would take place: the contract for hiring and service being one, and being entered into, if there had been sufficient service under that, coupled with service under a weekly or monthly contract, the settlement would have been acquired; but this act says no person shall be judged to have acquired a settlement by such hiring and service, unless the contract of hiring and service shall be complete at the time of this act being passed. How has that been done? The contract under which the settlement was to be acquired, had not been completed at the time this act passed, and therefore I do not see how it is possible to get over the words of this act." Order of sessions quashed.

Same point, and ought not to be re-argued.

Rex v. *St. John, Trallorey*, 6 *A. & E.* 300. The same point was determined. The court saying that the point ought not to be re-argued. The words of s. 65 are very extensive, and this appears to be one of the cases contemplated by them. The object of the enactment was to interfere with rights.

Pauper was hired as a yearly servant on the 30th November, 1828,

Reg. v. *St. Pancras*, 7 *Jurist*, 696. Jane Roberts was removed from St. Mary-le-bone to St. Pancras. Order confirmed. Case:—The pauper was hired on the 30th November, 1828, as a yearly servant, by Mrs. Hewitson,

Effect of 4 & 5 *Will. IV. c.* 76.

and served her mistress under that hiring in various places continuously until 1837. On the 30th November, 1833, and for forty days previous, she lived with her mistress at 28, Robert-street, in St. Pancras. In March, 1834, she went with her mistress to No. 18, South Bank, in St. Mary-le-bone, where she continued to reside until the conclusion of the service. It was contended by the appellants, that, on the 13th August, 1834, a year's service under a yearly hiring was complete, and that the last forty days' residence at South Bank previous to August 14th, 1834, fixed the settlement in respondent's parish: but the respondents contended, that the settlement of the pauper was gained by the last forty days' residence, ending on the 30th November, 1833, the end of the last even year, reckoning the year's service from the commencement, no subsequent even year's service being capable of completion by operation of the 4 & 5 Will. IV. c. 76. Lord *Denman.* "I have no doubt respecting the application of the statute; no settlement was gained by the last forty days' residence previous to August 14th, 1834." *Patteson, Williams,* and *Coleridge,* Js., concurred. Order confirmed.

and served her mistress continually until 1837. On the 30th November, 1833, and for forty days previous, she resided with her mistress in St. Pancras; for forty days previous to the day on which the 4 & 5 Will. IV. c. 76, passed, she resided with her mistress in St. Mary-le-bone:—Held, that no settlement was gained in St. Mary-le-bone under sect. 65.

II. Of the Contract of Hiring.

1. *Of the Parties to the Contract.*

1. *Parties to the Contract.*

The 3 W. & M., c. 11, s. 7, enacts "*that if any unmarried person not having child or children shall be lawfully hired into any parish or town for one year, such service shall,*" *&c.*, see *ante*, 473. Therefore the servant must be unmarried, without children, and *sui juris.*

The master may be a relation: he must not be a certificate man.

"Any *Unmarried Person.*"] *Anthony* v. *Cardigan*, 2 *Bott*, 257. *A widower* is within the meaning of the act, and may gain a settlement by hiring and service.

A widower may gain this settlement.

Rex v. *Banknewton*, 2 *Burr. S. C.* 259, the pauper, a married man, agreed on the 16th of February, with the son of H. W., to serve H. W. for a year from the 24th of that month, at five guineas wages, provided H. W. should approve the terms. On the 18th the pauper's wife died, and on the 24th he went into the service of H. W., who on that day agreed to the terms made by his son. By the Court: "It is clear that the hiring was on the 24th, for the father might have dissented from the conditional agreement made by the son on the 16th; a settlement was therefore gained by the hiring and service."

If a married man agree to a hiring subject to approbation, and his wife die before the agreement is complete, and then the hiring be completed, it is sufficient.

In *Rex* v. *Allendale*, 3 *T. R.* 382, the pauper *being unmarried*, was hired for a year to serve T. B. at Allendale, as a hind. It is the custom of the country to hire married men as hinds, because their wives are bound to perform certain services for the master in time of harvest; and when the wife of a hind dies, he must hire a female servant to perform such services. It was in the contemplation of both the master and servant, and perfectly understood by them at the time of hiring, that the pauper would marry before he entered upon his service. After such hiring, and before the commencement of his service, he married, and *entered upon his service a married man*, and served out the whole year a married man. Lord *Kenyon*, C. J. "The principle on which this question must be decided has been long since settled. In *Farringdon* v. *Witty*, and *Rex* v. *Banknewton*, the court seemed to think that the time to be attended to was *the time when the contract was made*, which has ever since been considered as the rule; he was unmarried when he entered into his contract; and whether he married the day before the service commenced or afterwards, it makes no difference." *Buller*, J., said, "that neither the custom of the country, nor the agreement between the parties, went to compel this pauper to marry before he entered upon this service; he was at liberty to do so or not, as he pleased. The custom of the country only amounts to this, that

If the man be single when the contract is made, marrying between the hiring and entering upon the service will not defeat the settlement in the absence of fraud.

2. *Of the Contract of Hiring.*

part of the service is to be performed by a female; it is therefore indifferent to the master whether the servant be married or not, because if he be single he must hire some female to perform those services. As to the case of a contract at an unreasonable distance of time before the service is to commence, that would be strong evidence of fraud. So if the pauper had been under an agreement to marry, and his master had told him that he should not marry for a month to evade the statute, that also might be considered fraudulent."

Same point. *Rex* v. *Stannington*, 3 *T. R.* 385.

A marriage *during* the service does not defeat the settlement.

Farringdon v. *Witty*, 2 *Salk.* 527. A servant came into a parish and hired for a year, served half a year, and then married; it was determined that the marriage did not defeat the settlement, for it did not hinder the service, and that the contract was not dissolved by the marriage.

A child emancipated is not within the meaning of the statute.

"*Not having child or children.*"] In *Anthony* v. *Cardigan* (*supra*), the pauper had a daughter who was married and lived settled elsewhere; and it was decided that he was a single person within the meaning of the act, though not expressly within the letter of it. The meaning of the statute is, that he might not bring any consequential damage to the parish; which he could not possibly do here. Same point in *Rex* v. *Cowhoneyborne*, (*ante*, 447.)

But a child whose emancipation is incomplete, is within the act.

Rex v. *New Forest*, 5 *T. R.* 478. On Martinmas-day, 1777, E. Coates hired himself and served a year in the township of New Forest; on 22d December, 1777, he married. The pauper, son of E. C., on the same Martinmas-day, (being under sixteen, and without having gained a settlement) hired himself for a year to R. N., of Ellerton, and served the year. Lord *Kenyon*, C. J. "The construction which the court has put upon the 3 W. & M., c. 11, s. 7, is, that though the person so hired have children, yet if they have gained settlements for themselves, distinct from the father's, the statute will not prevent his acquiring a settlement by serving a year under that hiring. But here the son was not separated from the father when the latter was hired; he had gained no settlement for himself; he had entered into a contract, 'which might or might not have been completed,' but which, when completed, would give him a settlement; but at the time when the father entered into the relation of a servant at New Forest, the son formed a part of his family. (See this case, *ante*).

The Servant must be sui juris.

Not during apprenticeship.

Rex v. *Dawlish*, 1 *B. & Ald.* 281. A hiring during a subsisting apprenticeship is insufficient. (See case *post*, and *Rex* v. *Bow*.)

A *deserter* can gain no settlement by hiring and service.

Rex v. *Norton*, 9 *East*, 206. Case:—The pauper was duly enlisted as a private in his Majesty's marine forces, from which he deserted, and then hired himself for a year, and served a year under the hiring. Afterwards he was taken up for desertion, tried, and convicted. It was urged that the pauper was as much *sui juris* as the militia-man. Lord *Ellenborough*. "That was the case of a lawful contract with a just exception. The public had a claim upon the militia-man's service for a certain time, and subject to that claim he might lawfully contract to serve his master. If this case had been *res integra* there might have been great doubt whether the word 'lawfully,' were not to be narrowed to a contract and the terms of it lawful; and if lawful in its form, whether the party serving under it could be disabled from gaining a settlement by reason of his having before contracted an engagement with another person, inconsistent with it. But a variety of cases have decided the question in the case of an apprentice: and this not on the ground of its being an excepted case, or as standing upon any occult efficacy in the indenture; but upon the broad principle that one, who has contracted a relation which disables him from serving any other without the consent of his first master, is not *sui juris*, and cannot lawfully bind himself to serve such master, so as to gain a settlement

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under such contract. In reason and principle it can make no difference whether he be originally bound by a contract of apprenticeship, or by any other contract equally obligatory on him, which disables him from binding himself to serve a second master. The objection is, that he cannot give the master a control over his service for the whole period which the master stipulates for, and has a right to require by the contract. The king's officers might at any time have reclaimed him and taken him out of the service in which he was engaged: he cannot, therefore, be said to have been lawfully hired into it. A soldier is at least as much bound to the service of the king, as an apprentice is to that of his master; and nothing is to be inferred from the measured language of the court in the case of an apprentice, in not laying down the principle broader than the matter in judgment required. Nothing was said intimating an opinion that the rule was confined to the case of an apprentice, and therefore we must look to the reason and principle of those decisions when we are called upon to apply the rule to similar cases. The other judges agreed that the principle was, that if the party cannot make such a contract for his service, of which the master may avail himself for the whole year, no settlement can be gained.

A private soldier, with the permission of his officer, entered into a contract of hiring and service, conditionally for a year, if so long allowed to be absent, and served the year: Held not to gain a settlement, as not being *sui juris*.

Rex v. *Beaulieu*, 3 *M. & Sel.* 229. Removal from Milton to Beaulieu, the pauper's maiden settlement. Order confirmed. Case:—The pauper is the wife of Hans Peters, a Swede. Some years ago he entered as a soldier into the sixtieth regiment of foot, and in 1806 was invalided, and sent to the depot at Lymington. It was suggested to Government by the commanding officer there, that it would be an economical plan to give the invalids leave of absence, upon their agreeing to relinquish their pay during such absence. The suggestion was approved, and carried into execution. In 1808, H. P. hired himself as a monthly servant to Mrs. B., and afterwards, on the 20th of July in that year, hired himself to Mrs. B. for a year, and served such year in Lymington. Previous to this second hiring, Mrs. B. applied to the commanding officer at the depot, to know if P. might hire himself for that period, and was told that he might. During his service with Mrs. B. he received no pay, nor was he called upon to, nor did he perform any military duty: but he used to go to the depot from time to time to get his furlough renewed, which took him half an hour. The commanding officer could send for him at any time, if the exigencies of the state required it. Furloughs were granted to him every half-year. Lord *Ellenborough*, C. J. "To confer a right to a settlement by hiring and service for a year, as there are no words in the statute which qualify the general sense of the word hiring, I must take it to mean an absolute, unqualified, indefeasible hiring, that is, a hiring by which the party who hires himself has the power of communicating to the master an absolute right to his service for the whole time. In order, therefore, to do this, the party must be *sui juris*, and have the faculty of disposing of his own service. I think this case falls strictly within the analogy of the case of the apprentice, who, in respect of his obligation to serve one master, is disabled from entering into a contract to serve another. However, the cases of the militia-men have been pressed upon our attention. I would wish to speak of those cases, as of the decisions of persons who have gone before us so highly venerable, with all the respect that is due to them, and I would therefore avoid trenching upon them as little as possible. But when I find them speaking of leaning in favour of settlements, and when I recollect that a pauper must be provided for somewhere, either as a settled inhabitant or as casual poor, and when I find too that one of those decisions goes the length of holding that eleven months may mean a year, I really am unable, with all the respect I bear to those persons who decided them, to go along with them so far. Perhaps, therefore, it may be the best thing to say of the militia-men's cases, that they are to be considered as exceptions. Here it appears that there has been a hiring for a year, but not a lawful hiring in the sense of an effectual hiring. An effectual hiring is, where the servant

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is enabled to give the master a *quid pro quo*. Had this person the power of so doing? He had not. There was a halt, and a pause to be made four times during the year, until he should renew his furlough. If the question were raised upon special verdict, whether this was an effectual hiring, understanding by that that the party must have a capacity of conferring what he stipulates for, could it be argued upon a statement of these circumstances, that the pauper's husband really passed to the master an interest in the whole of his service? His service in reality belonged to the crown, and he could only contract for so much of it as was remitted out of the right of the crown. It appears to me, therefore, that here has been no lawful hiring for a year, inasmuch as the servant had not the faculty of communicating the service he contracted for. It is said, here was no fraud, and that is true; but there is the vice of the argument, for this is not a question between the master who hires and the man who is hired, but whether a condition, which the legislature has imposed on this branch of settlements, has been complied with. The question is, whether this be such a hiring as the legislature intended. It seems to me that it is not, and that the reasoning in the case of the apprentice applies with full force to the present case." *Le Blanc*, J., (*a*) among other things, said, "If the pauper was a soldier, and subject to a control or command inconsistent with his entering into any other absolute engagement to serve another master, his leave of absence must have been renewed, and if not renewed, he would be obliged to return to his duty under the penalty of being treated as a deserter. This is not like a conditional contract, for here, at no time, could the party make a valid contract for a year." *Bayley*, J. thought, "that this hiring was sufficient to confer a settlement at Lymington. Suppose a master going abroad to say to his servant, 'I may be absent six months, or even six years, remember in any bargain you make, keep yourself at liberty to come to me on my return.' Supposing that servant to hire himself to another master for a year, provided his former master should not return, this would be a valid contract. It seems to me that here the party was *sui juris* to enter into the contract; that this was a contract which was only defeasible, and would confer a right of action to the master, if the servant absented himself on any other grounds except that of his being called upon by the act of government. For these reasons, and as I do not find anything in the statute but the word lawful, to limit the nature of the hiring, and inasmuch as there has been a defeasible hiring for a year, which has not been defeated, and the party who was hired committed no fraud, but communicated the circumstances to the person who hired him, it strikes me, that this was a sufficient hiring to confer a settlement." Order confirmed.

A pauper, being in the militia, cannot lawfully hire himself for a year, without disclosing that fact to his master.

Rex v. *Holsworthy*, 6 *B. & C.* 283; 9 *D. & R.* 322. Order of removal of F. H. Trim, &c. from Thornbury to Holsworthy, confirmed. Case:—In May, 1819, the pauper was enrolled as a substitute in the S. D. militia, as a private, to serve for five years. In June, 1822, whilst he was still a member of the corps, being at Plymouth, he was sworn in a recruit of the 5th regiment. When the serjeant paid him the enlistment money, the pauper told him he was in the militia, and the serjeant bid him say nothing about it. He did not, and was afterwards convicted and imprisoned for it. In 1823, he hired himself, and served for a year in Holsworthy. *Bayley*, J. "I think this case does not admit of any doubt. It is not necessary to say whether a militia-man may or may not gain a settlement by serving under a yearly hiring for a whole year, if at the time of making the contract he communicates to the party with whom he is contracting that he is in the militia, and therefore liable to be called out during the year. If the master chooses to engage the servant, subject to the risk of his being called out to perform the duties of a militia-man during the year, I do not see that there is anything illegal in such a bargain. It may

(*a*) These learned judges gave very elaborate judgments.

be considered a conditional hiring during the year, and if the militia are not called out, a settlement may perhaps be gained by serving under it. But what is the contract of hiring in this case? The contract is one by which the master stipulates to have, and the pauper stipulates to give his services for one whole year; there is no qualification or condition whatever in the contract, and if there were any it ought to have been stated, and cannot be inferred. I do not presume fraud, for the non-communication of the fact of the pauper's being in the militia may have arisen from his considering it wholly immaterial, from omission, or from any other circumstances. Without, therefore, breaking in upon any case in which it has been decided that a militia-man, who, in his contract of hiring, stipulates for the time that he may be called upon to perform his duty in the militia, may gain a settlement by serving for a whole year under such a hiring, I think that the pauper, not having communicated to the party whom he contracted to serve for a whole year that he was in the militia, cannot be said to have 'lawfully hired himself,' and therefore he gained no settlement in Holsworthy." *Holroyd*, J. "It is not to be presumed that, at the time of the hiring, the pauper communicated to his master that he was in the militia; and there is nothing in this case to show that a communication was made. The case seems to fall within the principle laid down by Lord *Ellenborough* in *Rex* v. *Norton*. It is said that this case differs from that, because the militia, not having been called out during the year, there was a year's service under a conditional hiring; but the objection is, that the pauper was not capable of making a contract, so as to give the master a control over his services during the whole year. Now no communication having been made to the master that the pauper was in the militia, I am of opinion that this is an absolute, and not a conditional hiring. It is quite clear that the pauper was not capable of making an unconditional contract to serve for a year." *Littledale*, J., concurred. Order of sessions quashed.

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A pauper, who had volunteered into the militia, cannot lawfully hire himself, unless he discloses this fact to his master.

Rex v. *Taunton St. James*, 4 *M. & R.* 695; 9 *B. & C.* 831. Order of removal from Taunton St. James to Milverton, quashed. Case:—The pauper, at Lady-day, 1811, hired himself as a servant in husbandry for a year to Mr. Handford, of Milverton; after serving him for three months, having, at the Christmas preceding, volunteered into the local militia of Somerset, he went out into actual service for three weeks, and then returned to Handford's service, remained till Lady-day, 1812, and received his wages, deducting for the three weeks of his absence. The pauper did not tell Handford, when he first bargained with him, that he was in the militia, but told him a week or two afterwards, and Handford said it did not signify, for the pauper could, at the end of the year, deduct for the time he was absent. *Bayley*, J. "This case depends on the construction of the 15th section of 48 Geo. III. c. 111. The 3 Will. III. c. 11, requires that in order to gain a settlement by hiring and service, the party shall be lawfully hired for a year. It has been established by several decisions, that a party, at the time of hiring, must be *sui juris*, so as to be competent to give that species of service which he contracts to give. Upon this principle, it has been held that neither a deserter from the king's service, nor an invalid soldier, having leave of absence, nor a militia-man, can lawfully hire themselves for a year, so as to gain a settlement. In *Rex* v. *Holsworthy* it was held that if a person who had been enrolled as a substitute in the militia, and hired himself for a year, did not, at the time of hiring, inform his master that he was a militia-man, no settlement was gained. Now that decision applies to the present case, unless it be distinguishable by reason of 48 Geo. III. c. 111, s. 15. That provides 'that no ballot, enrolment, and service under that act shall extend to make void or in any manner to affect any indenture of apprenticeship, or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract; and no service under that act of any apprentice or servant shall be deemed or construed, or taken to be an absence from service, or breach of any covenant or agreement as to any service, or absence from service, in any indenture of apprenticeship,

The effect of the volunteer acts on the service of an apprentice or servant.

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or contract of service.' These words will undoubtedly apply to all contracts of service existing at the time of the ballot or enrolment, as well as to those made afterwards. The question is, whether they include all contracts whatever, or those only which were in existence at the time of the ballot or enrolment. Now, in order to ascertain the sense in which they are used in this act, we may fairly look to other acts relating to the same subject-matter; and if we find the words used in a restrained sense in those acts, we ought to construe them in the same sense in this, for it is a fair rule of construction that the same words in a statute *in pari materiâ* respecting the same subject, should receive that same meaning. No such words are to be found in 42 Geo. III. c. 90, but they are to be found in 52 Geo. III. c. 68, s. 63. If, as used in that statute, they apply to contracts existing at the time of the ballot or enrolment, that is a legislative exposition of them, and they ought to receive the same construction in the 48 Geo. III. c. 111, s. 15. Now the words in 52 Geo. III. manifestly apply to contracts existing at the time of ballot or enrolment, and not to contracts subsequently made. The 60th section enacts 'that the enrolment of servants shall not vacate or rescind contracts between master and servant, unless the local militia shall be called out, or unless the person enrolled shall leave the militia for the purpose of being trained.' That section applies to contracts existing at the time of the enrolment, for such contracts could only be vacated or rescinded by the enrolment. Section 63 is a transcript of sect. 15 of 48 Geo. III. c. 111. It begins, 'Provided always,' and then proceeds in the same words. Now a proviso is something engrafted on a preceding enactment, and the proviso in the 63d sect. manifestly applies to the enactment in the 60th sect., that enrolments shall not rescind contracts made between masters and servants: the words of the proviso apply to the same species of contract. Then that being the fair meaning of the words used in 52 Geo. III. c. 68, they ought to receive the same construction in 48 Geo. III. c. 111, and giving them that construction, there is nothing in that statute enabling such person to make an absolute contract for a year, so as to gain a settlement. The clause ends with a proviso as to service: that may make the service good, but my opinion is not founded on the description of service, but upon the want of capacity to contract. I think that the pauper was under a disability, at the time of hiring, to contract to perform the service which he undertook to perform, and therefore that no settlement was gained in Milverton." *Littledale*, J. "It is a general principle of law, that if a man enters into a contract, he ought either to be in a situation to perform it, or to inform the person with whom he contracts of his disability. This is a duty founded on moral principle, and is due from one member of society to another. If the words of an act are capable of two meanings, and one construction will have the effect of enforcing this moral obligation, and the other will not, that construction should be adopted which will have the effect of enforcing it. Now it is contended that the words of the 48 Geo. III. c. 111, s. 15, 'no ballot, enrolment, and service under this act shall extend to make void, or in any manner to affect any indenture of apprenticeship, or contract of service between any master and servant,' extend not only to contracts existing at the time of their enrolment, but to contracts subsequently made. I think the words 'made void' *ex vi termini* apply to contracts *in esse*. But supposing that to be doubtful, then calling in aid the principle that a man is bound to disclose any thing which may disable him from performing his contract, I will, in order to give effect to that principle, give the words a limited construction, and hold that they extend only to contracts existing at the time of the ballot or enrolment. Putting that construction on the words, a party, in order to gain a settlement by a contract of hiring made after ballot or enrolment, must disclose his disability to the person with whom he contracts. This would be the construction I should have put upon the words, if the 48 Geo. III. c. 111, had stood by itself. But the local militia act, 52 Geo. III. c. 38, s. 63, contains an enactment in the same words; and by sect. 60 these words are confined to contracts existing at

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the time of enrolment or ballot. We violate no rule of construction, by giving to the same words in two acts, relating to the same subject, the same meaning. I think, therefore, if there be any ambiguity in the 48 Geo. III., it is removed by the legislative exposition put upon the words in 52 Geo. III.; and, therefore, there was no lawful hiring for a year." *Parke*, J. "The question is, whether at Lady-day, 1811, there was a lawful hiring for a year; assuming that the subsequent conversation between the master and servant amounted to a second hiring, it was not for a year. To constitute a lawful hiring, the party must have a power to contract to serve for the period during which he agrees to serve. *Rex* v. *Holsworthy* shows that if a party is under a disability, he may, by disclosing it, make a conditional contract. But if he does not disclose it, it is an absolute contract; into which he is not capable of entering, and therefore not a lawful hiring. Here there was no disclosure. Then the only question is, is there any enactment in the 48 Geo. III. c. 111, giving a local militia-man a power to make an absolute contract of hiring? It cannot be intended that the legislature meant to give such a power, for they might thereby enable a party by law to commit a fraud; the master would contract on the supposition that the party with whom he contracts had power to bind himself for a year, the latter knowing all the time that he had not. But, on the other hand, it might properly be provided that a contract made *bonâ fide* while the party was a free man, capable of contracting, should not be avoided by reason of his subsequently becoming a militia-man. The statute does not in terms enact that an enrolled person shall be *sui juris*. The 15th section applies to contracts actually entered into at the time of the ballot or enrolment. No such power, therefore, is given by express words or by necessary implication. Coupling the 15th with the 24th section it appears to me doubtful whether a volunteer and a balloted man are placed in the same situation. But assuming that they are, all the legislature says, is, that if a master contracts with a free man, the master must take his chance in case of a ballot, and shall not contract against the chance of a ballot, for such contract is made void. But there is no provision that a man shall have the same capacity to contract, as if he was not a local militia-man. No power is, therefore, given to enter into an absolute contract to hire for a year. Here the pauper entered into an absolute contract, which he had no power to do. There was no lawful hiring for a year, and no settlement was gained." Order of sessions confirmed.

If the servant informs his master of his liability to be called out in the militia, he will gain a settlement, although he serves in the militia for fourteen days.

Rex v. *Elmley Castle*, 3 *B. & Adol.* 826. G. Hall, &c. was removed from Kemerton to Elmley Castle. Order confirmed. Case:—G. Hall, the pauper, hired himself on the 10th October, 1811, to T. Bluck, of Elmley Castle, until Old Michaelmas-day in the following year, at 14*l.* 14*s.* wages. Having been called upon to serve in the Warwickshire local militia in the course of the preceding year, he informed Bluck of that fact at the time of hiring, and at the same time told him that he expected to be called out to serve again in the May following; and it formed part of the agreement between them, that the pauper should allow his master to deduct out of his wages 1*s.* a day for as many days as he should be absent on service with the militia. The pauper entered into the master's service, and resided and served the whole year in the appellant parish, except fourteen days, during which he was absent on service with the militia. At the end of the year he received his wages, with the exception of 14*s.*, which Mr. Bluck deducted for the fourteen days' absence. Lord *Tenterden*, C. J. "I think the pauper clearly gained a settlement in the parish of Elmley Castle; and my opinion is founded on the terms of contract of hiring and the 65th section of the 52 Geo. III. c. 38." His lordship then referred to the terms of the case, and added, "There is nothing of absolute exception in the terms of the contract. The exception or condition, if any such there was, arose from the operation of law on the individual. He was a militia man, and as such was bound by law to serve, if called upon so to do. Then the 48 Geo. III. c. 111. s. 15, and the 52 Geo. III. c. 38, s. 65, enact 'that no ballot, enrolment, and service under this act shall extend to make void

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or in any manner to affect any indenture of apprenticeship or contract of service between any master or servant, notwithstanding any covenant or agreement in any such indenture or contract; and no service under this act of any apprentice or servant shall be deemed an absence from service or a breach of any covenant or agreement as to any service or absence from service in any indenture of apprenticeship or contract of service.' The service of the pauper therefore in the militia is not in point of law an absence from his service with his master. It is true that in this case the parties by their contract have provided that while the pauper was serving in the militia, though in point of law he must be considered as serving his master, he was not to receive any wages. But that makes no difference; the general words of the act are sufficient to enable us to say that under such a contract as the present, and notice having been given at the time of hiring that the servant was liable to be called on to serve, he was in point of law serving his master while he was in the militia, so as to acquire a settlement by hiring and a service for a year." *Littledale*, J. "This case comes very near those of *Rex* v. *Westerleigh* and *Rex* v. *Winchcombe*, *post*, but whether those decisions were right or not, the effect of the clauses in the militia act is to place this party in the same situation as if he had served the master during the time he was in the militia." *Parke*, J. "This case is undoubtedly very like *Rex* v. *Westerleigh* and *Rex* v. *Winchcombe*. In *Rex* v. *Taunton St. James* the objection was that the pauper was not, when he hired himself, capable of making an absolute contract to serve for a year, and therefore having made such contract without reference to his liability as a militia-man, he was not lawfully hired for a year, and gained no settlement. But here the pauper did communicate the fact of his being a militia-man to the master. There is nothing in that case to show that under such circumstances a service in the militia may not be considered as service to the master." *Taunton*, J. "I am of the same opinion, and I think the sessions would have done better not to have sent up this case. *Rex* v. *Westerleigh* and *Rex* v. *Winchcombe* were decided by judges who were eminent sessions lawyers; and I think the principles upon which those decisions took place are correctly stated by Mr. *Nolan* in his *Treatise on the Poor Laws*. *Rex* v. *Holsworthy* was decided on the ground that the pauper did not at the time of hiring inform his master that he was a militia-man. Here the pauper did so. There was a good hiring for a year. The statute enacts that no service in the militia shall be deemed to be an absence from service with the master; but independently of that statute, my opinion, founded on the decisions of *Rex* v. *Westerleigh* and *Rex* v. *Winchcombe*, would have been the same." Order of sessions confirmed.

Same point.

Rex v. *St. Mary, Colchester*, 3 *N. & M.* 113; 5 *B. & Adol.* 1023. Thomas Lester was removed from Stratford St. Mary to St. Mary-at-the-Walls, Colchester. Order confirmed. Case:—The pauper's father had gained a settlement in the parish of St. Mary-at-the-Walls. In the year 1811 the pauper was a private in the 1st regiment of Essex local militia, commanded by Colonel Strutt. On the 24th of April, 1811, the regiment was assembled for training at Colchester, and continued there in training till the 15th of May following, up to which day the pauper was a drummer upon the permanent staff of the regiment. On the 16th of the same month, the pauper then being off the permanent staff, Colonel Strutt, who knew that the pauper was in the local militia, hired him for a year at the wages of 10*l.* The pauper served the Colonel under that hiring. He resided in St. George, Hanover Square, in London, until the 4th of May, 1812, upon which day the regiment was again assembled for training at Colchester. Colonel Strutt went there to take the command, and the pauper accompanied him, and was reported as belonging to the regiment. Each officer being by the rules of the service allowed a soldier from the ranks as a personal servant, the pauper was chosen by the colonel to be his servant. The regiment continued to do duty at Colchester till the 19th of May in that year, during which time the pauper was under military control, but he was only

paraded once, and served the colonel during the whole period as an in-door servant. The pauper received pay from the crown whilst the regiment was assembled; he also received his wages from his master for the same period. Upon the 16th of May, 1812, the colonel paid the pauper his wages of 10*l.*, and upon that day hired him for a year from that time, at the wages of 14*l.* the year. Under this second contract the pauper continued in the service of Colonel Strutt till November, 1812, when he was discharged, having remained from the 16th to the 19th of May, 1812, at Colchester, under military control, serving the colonel as before mentioned. *Denman*, C. J. "In *Rex* v. *Elmley Castle*, *Rex* v. *Taunton St. James* was clearly before the court; it was cited by the counsel, and referred to by one of the judges. Those cases were decided within the space of three years of each other, and my brother *Littledale* concurred in both judgments. The ground of distinction taken in *Rex* v. *Elmley Castle* is very satisfactory. This case falls within it, and the pauper therefore gained a settlement by his service with Colonel Strutt." The other judges concurred. Order of sessions quashed.

A member of a volunteer corps is not *sui juris*.

Rex v. *Witnesham*, 4 *Nev. & Man.* 447; 2 *A. & E.* 648. An order for the removal of Robert Copping, from Swilland to Witnesham, was confirmed. Case:—A few days after Michaelmas, 1807, the pauper let himself to Mr. Keen, a farmer of Clopton, for a year, to commence at the Michaelmas day following. The pauper went into the service accordingly, and stayed his time. He slept all the time at Clopton, and received his wages. A year and a half before the pauper entered into the service of Mr. Keen, he had been enrolled as a member of the Helmingham corps of volunteers, which corps was duly constituted according to the acts relating to corps of yeomanry and volunteers in Great Britain. During all that time, and throughout his year's service, the pauper duly attended muster, and was duly returned by the commanding officer as an effective member of the corps. He did not communicate the fact of his being a member of the corps to Mr. Keen until he had entered his service, nor did he ever give fourteen days' notice of an intention to quit the corps. He did not take the oath of allegiance according to 44 Geo. III. c. 54, s. 20. The sessions thought that he was not *sui juris* at the time of hiring, although he had not taken the oath of allegiance. *Cur. adv. vult.* Lord *Denman*, C. J. "The question in this case is whether a person who was at the time a member of a volunteer corps, could gain a settlement by hiring and service. We have been referred to the volunteer act (44 Geo. III, c. 54), to the act for the defence of the realm (43 Geo. III. c. 96), and to the militia acts of 42 Geo. III. c. 90, 55 Geo. III. c. 65, and 55 Geo. III. c. 168. It seems to us that the volunteer act puts a volunteer upon the same footing as a militia-man, and that, by becoming a volunteer, the pauper in this case had put it out of his power to contract to serve his master during the whole year. This case therefore comes within the authority of the militia-man's case, in which it was held that no settlement was gained." [Sir *John Campbell*, *amicus curiæ*. "Lord *Erskine* wrote a celebrated book upon the subject, in which he came to the same conclusion."] Lord *Denman*, C. J. "We are glad to hear our opinion confirmed by that of so learned a person. We thought it strange that the question should never before have been considered." Order of sessions confirmed.

Age of the servant.

The contract of an *infant* made for his own benefit is not void, but voidable only, and therefore an infant may enter into a contract of hiring and service, with the permission of his parent, and thereby gain a settlement. (*Rex* v. *Chillesford*, p. 486.)

Age of master.

If a boy be bound *apprentice* to a person under age, the binding is sufficient for the purposes of a settlement, as the indenture is not in such case void, but voidable only. (*Rex* v. *St. Petrox, Dartmouth*, 4 *T. R.* 196.) By the same rule therefore it may be considered that a contract of hiring and service with a master who is a minor, is a valid contract, and if duly performed, will entitle the servant to a settlement.

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Master must not be a certificated man.

The master must not be resident under a certificate, unless he has a lease of a tenement of the annual value of 10*l.* (*Rex* v. *Nacton*, 3 *B. & Ad.* 543, *post.*) A parish certificate extends to a wife married after it is granted, and no apprentice to such wife, after the husband's death, can gain a settlement in the certified parish (*Rex* v. *Hampton*, 5 *T. R.* 266), the principle of which decision is equally applicable to cases of hiring and service.

Where the master is also parent of the servant.

An infant, whether emancipated or not, may hire himself to his father. *Rex* v. *Chertsey*, 2 *T. R.* 37. The pauper, at the conclusion of a service by which she gained a settlement in Chertsey, went to her father's (a day labourer), who in consequence of his wife's death had previously applied to her to come and live with him, to do the offices of a servant for a year in the parish of Thorpe, for which she was to have her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour; and if that did not produce as much as she got in her former place, her father was to make up the difference. She lived with him more than a year in pursuance of this agreement, and made more than her former wages by her extra labour and profits, and at the end of the year her father gave her ten shillings as an additional recompence for having gone out reaping with him in the harvest month. The court held this a good hiring and service, and that a settlement was gained in the parish of Thorpe.

Same point.

Missenden v. *Chesham*, 2 *Bott*, 173; *Fol.* 142. The pauper had gained a settlement in Chesham, and afterwards came to live with her father in Missenden, who promised to give her 10*s.* a-year, and also what she might be able to gain by her extra service and labour. She served under these circumstances for more than a year. The court held that a settlement was gained.

An unemancipated son may acquire a settlement by a *bonâ fide* contract of hiring with his father, in a parish where the latter has no settlement.

Rex v. *Chillesford*, *Rex* v. *Winslow*, 4 *B. & C.* 94; 6 *D. & R.* 161. In *Rex* v. *Chillesford*, the pauper's father let himself as a shepherd to Mr. Taylor, of Blythburgh. The father hired every year one or two pages, over whom Taylor had no control, and about nine years ago, when, Jarvis, one of the pages, was to leave, the father, about a week before old Midsummer, agreed with his son, the pauper, at that time nineteen years of age, and unemancipated, to serve him for a year, from old Michaelmas to old Michaelmas, in Jarvis's place, at the same wages, 8*l.* a-year, which time the pauper served, sleeping in his father's house. In *Rex* v. *Winslow*, Elizabeth, the wife of Thomas Lane, was removed from Winslow to Beaulieu. Order quashed. Case:—T. Lane, the husband of the pauper, when about fourteen years old, being then unemancipated, was hired by his father, who was a sawyer, residing at Beaulieu, but not having a settlement there, to assist him in his work as a sawyer. A contract was, in point of fact, made between them, whereby the son agreed to serve the father for a year at the wages of 2*l.* 10*s.*, his board and lodging being also provided by the father. He served this year with his father in Beaulieu, and received his wages, and, at the expiration of this contract, served his father for two successive years, under new contracts, at increased wages. *Abbott*, C. J. "I am of opinion that in each of these cases the pauper gained a settlement by hiring and service. It is conceded that, if the pauper had been previously emancipated, he might have gained a settlement by hiring and service for a year with his own father afterwards. But emancipation does not confer any capacity to contract, and the objection here is, that the son has not any capacity to contract with his father. It must be admitted that he might have contracted with a stranger without, or, at all events, with his father's permission, to serve as a yearly servant. The contract of an infant, if it is made for his benefit, is not, according to the general principles of law, absolutely void. It may be voidable at the election of the infant himself, but of no other person. In this respect, this case is very distinguishable from a contract of hiring and service by a person who was a soldier at the time of hiring. There the consent of the officer was completely nuga-

tory, because the officer could not consent to the contract. The soldier was not then *sui juris*, but was under the dominion of the crown, and the crown had a right to avoid the contract at any time; and, therefore, in that case the court very properly held that the contract was not valid in law. But in this case, the contract is not void, but voidable only. If, therefore, an infant may, with the permission of his father, enter into a contract with a stranger, why may he not do so with his own father? I know of no such incapacity, if the son is capable of serving as a servant, and his father thinks his services worth remuneration. There being nothing, therefore, which declares such a contract with the father to be void, can we say that there is any thing which shall prevent the son from gaining a settlement by such a hiring and service? It is said that, if a settlement can be so gained, it may enable a father to confer a settlement on his son in a parish in which the son could not gain a derivative settlement from his father. But this is not the only case in which a person may derive a settlement from another who has himself no settlement in the parish. Then it is put strongly, and with so much force, as to induce me to pause in the conclusion to which my mind was originally prepared to come, that if we decide this to be a settlement, it may lead to much confusion, and to the raising of many questions of a similar nature for the determination of the quarter sessions. I cannot say that such may not be the case; but, however, when such questions shall be raised, it will be the duty of the quarter sessions to look narrowly into the facts of the case, and see whether there really was any contract of hiring and service. One mode of ascertaining that will be, to inquire whether the father had any occupation for a hired servant, and whether he had any thing for him to do in that capacity; and if the father had no employment for a hired servant, the sessions may reasonably conclude that there was no contract for hiring and service. In the first of the cases at bar, it appears that the son came into the place which had been filled by another person, who had been hired at yearly wages. That is abundant evidence that the father had really occasion for a servant of that description. In the other case the father was a sawyer, and he had almost always occasion for two persons to assist him in his business. Indeed the nature of the trade itself, which requires the concurrence of two persons at least to carry it on with skill, shows that the father had occasion for a servant; and it is stated as a fact, that for several successive years the pauper had served him at increased wages. For these reasons it appears to me that a settlement was gained by the paupers in both cases." *Bayley*, J. "It appears to me that an unemancipated son is competent to enter into a contract of this description with the father, and that all the legal consequences resulting from such a contract follow from the existence of that contract. It is clear that an infant may bind himself to a stranger. It may be in general supposed that such a contract is entered into with the consent and concurrence of the father, but there may be instances in which the father is not in any respect consenting, and even where a son, against the father's consent, enters into such an engagement, yet still he will gain a settlement, and he may insist upon having his wages paid him, and he may be liable to all the statutable stipulations and regulations respecting the relation of master and servant. If then an infant may bind himself to a third person by a contract of hiring and service, the question is, whether the relation of parent and child destroys the capacity to contract. It is clear that it does not do so in the case of emancipated natural or step-children (*Rex* v. *St. Peter's, Dorset*, *Burr. S. C.* 513); and yet if a step-child is capable of contracting with his step-father, the same mischiefs result as if his own father consented. The same observation applies to emancipated children. If the father has no occasion for a servant, and the employment of the son in that capacity is merely a pretence, the sessions will decide accordingly; but if there is a *bonâ fide* contract, why may not that contract produce a new relationship and create new rights and obligations between the parties? I see no

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Mode of ascertaining the existence of such a contract.

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reason why the father and the son should not be at liberty to enter into a contract of that description. It gives to the father a new right of control, and the child a right to wages which is beneficial to him." *Littledale*, J. "My brother *Holroyd*, who has left the court, desires me to say that he concurs in the opinion delivered by my Lord Chief Justice. By law a parent has a right to exact service from his son or daughter, and this is the foundation of the action for seduction, and no proof of actual service is necessary. If then there be a species of service due from the child to the parent, why may not the obligation to serve be made stronger, by allowing the parent to hire the child for a certain time at stipulated wages? It is admitted that an emancipated child may hire himself to his father; but it is said this may not be done where the child is unemancipated, because the child being already under the control of the parent, and owing him service by the law of nature, he cannot enter into such a contract. But there seems to me to be no reason why a child may not contract with his parent for the performance of other services than those which are due in consequence of the relation of parent and child. Such a contract is highly beneficial to the child, because it superadds the salutary restraint of the master to that of parent, and renders him amenable to the statute of regulations applicable to master and servant. If then, in point of law, such a contract be valid and binding, there seems to be no reason why a settlement should not be gained by a service under it. Some inconveniences may arise from the decision in this case, but that is no reason why a contrary decision should be pronounced, so as to deprive these paupers of a settlement, where there is nothing either at the common law or by the statute of William, which makes such a contract void.

It is not necessary that the master should have a settlement.

Where the father had no settlement the sessions conceived that he could confer none on his daughter by hiring and service. But the whole court agreed that a settlement may be gained by serving a man who has no settlement himself, because the servant does not derive the settlement from the master but from the service. (*Missenden* v. *Chesham*, 2 *Bott*, 173.)

Master's residence not material.

Rex v. *Eldersley*, 2 *Bott*, 274. A. hired himself to be a warrener in the parish of Eldersley, in a warren there, to joint occupiers of it, who lived in two parishes distant from the parish of Eldersley. He dieted and lodged for eight weeks with one of the occupiers, and for the rest and last part of the time on the warren. *Per Curiam*, "His settlement is in Eldersley."

The hiring may be by a public body, and by persons not rated to the poor.

In *Rex* v. *Sandhurst* (7 *B. & C.* 557; 1 *M. & R. Mag. Ca.* 65), it was urged that the hiring having been by an officer of a public establishment which was exempted from poor rates, and that as the pauper was to serve the officers of the establishment and the young gentlemen there, and was not hired by or to serve a private individual, this distinguished it from the common hiring; but *Bayley*, J., in giving the judgment, said, "It has been urged that the party is to be considered as holding an office and not as a servant. But a man who does all the menial offices of a servant and is at the command of the persons in the establishment is a *servant*, and not an officer. We think the legislature did not mean to make any distinction between one description of hiring and another by a particular description of persons."

The turnkey of a gaol is not a servant. (*Rex* v. *Sparsholt*, p. 491.)

If the contract be by deed, it is not absolutely necessary that it should be executed by the master as well as the servant.

Rex v. *Houghton-le-Spring*, 2 *B. & Ald.* 375. William Cowell being a single man at the time, duly executed, together with sixty-one other persons, a deed, which purported to be an indenture, whereby it was witnessed, that they whose names or marks were thereunder written and seals affixed, in consideration of a shilling a-piece then received, and of certain wages to be paid to them, had hired and bound themselves to T. Croudace and S. Watkin, and their heirs, to be their servants, &c., from 18th October, 1805, to 18th October, 1806. This deed was executed by W. Cowell, but was not signed by either of the masters, or any one on their behalf. Cowell duly served under the deed. *Bayley*, J. "The only question is, whether the execution of the indenture by the servant only is sufficient to constitute

a valid contract of hiring. Now, in order to do that, there must be an obligation both on the part of the servant and of the master: here it is admitted, that the execution by the servant bound him to serve for a year; and the objection is, that the master was not equally bound to keep him. But if the master, knowing the terms by which the servant is bound, accept the service, then I apprehend that the agreement must be considered binding on him, although he has not executed the deed. For it is laid down in *Co. Litt.* (230. b. note (1)), that a party who takes the benefit of a deed is bound by it, although he has not executed it. But the sessions have not found the fact that the master had this knowledge; and although it is probable that they would have found it, still, having stopped the case *in limine*, it must now go back to have the case determined. Their proper course would have been to have received the deed in evidence, and then to have permitted the party to have proved such facts, from which the knowledge of its contents by the master, and his acceptance of the service on those terms, might be inferred." *Holroyd*, J., concurred. (*Rex* v. *Arnesby*, 3 *Bar. & Ald.* 584, *post.*)

2. *Of the Contract of Hiring.*

1. *The Hiring must be the Contract of the Pauper himself.*

A pauper, hired out by parish officers, cannot by such hiring gain a settlement.

Rex v. *Rickinghall Inferior*, 7 *East*, 373. The pauper was a Greenwich pensioner, and came disabled to Redgrave. The parish officers, in 1801, agreed with R. Crowe, of Rickinghall Inferior, that the pauper should live with him, and do whatever he should set him about, and that they should pay 2*s.* 6*d.* a-week with the pauper. At Easter, 1802, the parish refused to continue the allowance, and thereupon Crowe sent the pauper to Redgrave, whence he returned to Crowe; and, without any express agreement, continued to live in the same manner as before until October, 1804. The court (Lord *Ellenborough*, C. J., absent) were clearly of opinion that no settlement was gained. The relation of master and servant never existed between the pauper and Crowe: and the parish officers had no authority to hire out the pauper to the other; and after the allowance was withdrawn, Crowe permitted the pauper to live with him out of charity, without any contract as between master and servant.

Compulsory hiring, and service under it, gains no settlement.

Rex v. *Stowmarket*, 9 *East*, 211. The pauper, of the age of fourteen, was in the house of industry of Stowmarket, the guardians whereof were empowered by their incorporating act to apprentice poor children for seven years. It did not appear that they had ever exercised this power, the practice being to send the children to their respective parishes; the pauper was sent to Mr. Reynolds, of Stowmarket, to whom he had been allotted by the officers of that parish: this person told the pauper he had procured him a service with one Fox, of Coddenham. The pauper did not object, conceiving he had no discretion on the subject, and he went to F., who received him, and told him he would give him clothes, and that he was to stay with him a year. The pauper did stay the year, receiving clothes, maintenance, and a little pocket-money. (*a*) Lord *Ellenborough*, C. J. "All the parties seem to have acted under the idea that the boy was a parish slave, who might be handed over from one to another, and disposed of as they pleased. But there was no agreement by him to the services: he submitted to them because he thought himself obliged to do whatever they bid him. If we were to hold this sufficient to give a settlement we should establish a new head of settlement *by allotment.* The law gave the directors a power to apprentice out children, and instead of executing that power in a proper manner, they assume to themselves a power to hand these children over to the officers of the respective parishes, who again hand them over to others; and so they are shifted from one to another. And now, because the boy has done the work they made him to do, and eat the meat and worn the clothing which were provided for him, it is argued that he has adopted so many contracts of hiring to which he was

(*a*) He was *allotted* a second time, and served in *the same way.*

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no party, which were made without any consideration of his will or consent. But the adoption of a contract must be the act of a free agent; and at what period of time is he found to have consented or contracted at all? On the contrary, it is stated by Reynolds that he had procured a service for him with Fox; the pauper made no objection, conceiving that he had no discretion on the subject. Again, it is stated that the pauper made no agreement with any one respecting wages, or the nature or duration of his service: nor was he consulted on the subject by either of the persons to whom he had been allotted; but considered himself obliged to accept those services, as being under the control of others. Then can a person who is considered as a slave, and conceives himself to be such, be considered as having *adopted* the acts of his master? It is against common sense so to construe his involuntary acquiescence. In those cases where the pauper's misapprehension of the contract has been held not to vary the legal effect, the pauper meant to exercise a contracting power, though he mistook the legal effect of it."

A poor boy *hired himself;* the overseers of his parish afterwards assist him with clothes. Held, that he acted *suo jure*, and gained a settlement.

Rex v. *Dunton*, 15 *East*, 352. The pauper, previously to Mich. 1809, went to one Eastwood, in East Horndon, and worked for him for some time for 6*d.* a-day, and was afterwards taken into Eastwood's house, where he lived two years in his employment. On leaving Eastwood's service (by which no settlement was gained, as the pauper was sent into it by the overseer of Dunton without any act of his own), and in his way to Dunton, he was met by a labourer, who said to him, "Do you want a service? you would suit Smith:" Smith being in the field at the time, the pauper applied to him, when Smith said to him, "Are you willing to go with me, and bind hay or thatch, or do whatever else you are bidden?" The pauper said he was willing, and Smith took him home to his house in Ingrave. This happened a little before Mich. 1809, and the pauper was then about sixteen years of age: nothing was said about wages, nor was any other agreement made between them. A day or two afterwards, Smith said, "I see you are in a bad state about clothes: if you cannot get clothes I cannot keep you." The pauper replied, "Mr. Maunder, the overseer of Dunton, will find me in clothes." On the next day the pauper and Smith went to Maunder, when Maunder undertook to provide clothes, and asked Smith, "What he would give him a-week?" Smith engaged to pay one shilling a-week to Maunder for the parish on account of clothes found. The overseer then gave an order for the clothes that the pauper wanted; Maunder, in the presence of Smith, asked the pauper if he went willingly into Smith's service; the pauper replied that he did. Smith, during the service, occasionally gave the pauper small sums. About four months after the pauper had been in the service of Smith, the latter, unaccompanied by the pauper, and without his knowledge, went to the overseer, and told him that he could not keep the pauper any longer, if he was to pay the one shilling a-week. The overseer released Smith from the payment, and the pauper stayed the year out in Smith's service. At Michaelmas, 1810, Smith said to Maunder that he would have the pauper no longer without fresh clothes, to which Maunder said that he must wait till the town meeting, which would take place in a fortnight. The overseer then asked the pauper if he was willing to live with Smith another year: he said that he was willing, as he used him very well. The overseer asked Smith to make him some allowance, Smith promised to give him a pair of shoes, and do the best he could for him. The pauper served the second year with Smith, who gave him a pair of shoes, and laid out 1*l.* 8*s.* 6*d.* in the purchase of clothes for him. (*a*) *Grose*, J. "The question is, whether the contract was made by the master with the boy, or with the overseer? Now, the boy offered and declared himself willing to serve the master, and the master agreed to take the boy, before any intervention of the parish officer: and though facts are afterwards stated, to show that reference was made to the

(*a*) What will amount to an adoption by the son of a contract made by the father, see *Rex* v. *Burbach*, 1 *M. & Sel.* 370, *post.*

officer, yet that was only to enable the boy to make the contract, by getting clothes from the overseer, without which the master refused to keep him." *Le Blanc*, J. "Here there was an original agreement for hiring and service between the boy and his master before the overseer knew anything of the matter: how then can it be said to be a contract made between the master and the overseer for the letting out of the boy, without the real assent of the latter? The law, indeed, says that an overseer cannot contract with another for the services of a pauper without his consent; but there is no law which says that an overseer may not furnish a pauper with clothes, to enable him to make a contract of hiring with another." *Bayley*, J. "The boy acted throughout *suo jure;* he chose his own master, and fixed his own terms, and, therefore, I see no objection to his gaining a settlement under the contract of hiring made by him."

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2. *What amounts to a Contract of Hiring and Service.*

"*Shall be lawfully hired into any parish or town for one year.*"] *Rex* v. *Sparsholt*, 6 *N. & M.* 8; 4 *A. & E.* 491. An order for the removal of Edith Rogers, &c., from Saint Maurice, Winchester, to Sparsholt, confirmed. Case:—By the rules for the government of the county bridewell at Winchester, made at the sessions, 1822, and confirmed by the judges, the right of appointment of all turnkeys or assistants, employed in the bridewell, is vested in the keeper of the bridewell in the first instance, but such appointment is subject always to the approbation and confirmation of the visiting justices: the keeper of the bridewell has power to suspend from the execution of the duties of his station any turnkey or assistant, and to appoint a temporary assistant in his room; but shall, within three days of such suspension, report to the visiting justices the cause for his having so acted, and shall not, until an inquiry has been instituted by the visiting justices, permanently appoint any other person in the room of the turnkey or assistant suspended from office. The turnkeys of the bridewell receive the payment of their salaries from the treasurer of the county, but in all other respects are under the immediate orders and control of the keeper of the bridewell, by whom they may, for disobedience of orders or improper behaviour, be suspended from their situations. The appointment and removal of the keeper of the bridewell is made in strict conformity with the acts of parliament for the regulation of the same. Any turnkey convicted of drunkenness shall be dismissed by the visiting justices. One rule commences thus: "That no keeper, turnkey, or any *other officer attached to the bridewell*" shall, &c. Another: "The keeper of the bridewell, and the *officers of the prison*, together with the keeper's family and servants, shall be required," &c. Another provides, "That the keeper of the bridewell shall not, without the permission of the visiting justices, lodge or board in his house any persons other than his own family and servants, and those of his *assistants*." In 1822, and after the allowance of the above rules, R. Rogers (since deceased) was appointed second turnkey in the bridewell, by the keeper, in accordance with the above rules, at the annual salary of 45*l.*, which was afterwards advanced to 50*l.*, on his promotion to the office of first turnkey. There was no agreement made, at the time of engaging Rogers, for any particular length of service, or for any notice previous to its determination. Rogers duly served in that situation from 1822 to 1826, when he married the pauper Edith; after which he continued in the same situation till 1833, when he was discharged for misconduct, at a few days' notice, in conformity with the above regulations. His salary was always paid by the county treasurer, and he resided, during the whole period of his employment as turnkey, in the bridewell, which is situate in the parish of Saint Bartholomew, Hyde, near Winchester. The question was, whether Rogers acquired a settlement by hiring and service, in St. Bartholomew, Hyde. Lord *Denman*. "In *Rex* v. *Sandhurst*, (*a*) the sessions doubted whether a person hired into the particular establishment there described could be considered a servant, for the purpose of settle-

The turnkey of a bridewell, at an annual salary, is not a *servant* either to the justices or the keeper.

(*a*) P. 488.

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ment. I can see no reason why he should not have been so considered. But here the facts are different. The turnkey is not hired by the keeper of the bridewell, for the approbation of the justices constitutes the hiring. The control is in the keeper of the bridewell; but he is not the hiring party. The turnkey is not his servant. Nor is he the servant of the magistrates, for it is not their orders that he has to obey. The case, therefore, is distinguishable from *Rex* v. *Sandhurst.* I should not feel bound by the particular words used in the case to come to this decision, if it were not supported, as I think it is, by the nature of the contract itself." *Littledale,* J. "I also think, in this case, that the turnkey was not a servant. There is nothing from which the court can know whose servant he was. He was so far under the control of the keeper of the bridewell as to obey his directions, but was not a servant to him. During part of the time, he was assistant turnkey; but that did not make him a servant. The orders must be confirmed." *Williams,* J., concurred. Orders confirmed.

Hiring may be in an extra-parochial place.

It is sufficient if the contract of hiring be made in an extra-parochial place. The words parish and township are only put for example. (*Rex* v. *St. Peter's in Oxford, Fol.* 193; 2 *Bott,* 268.)

The contract must be lawful, and obligatory on the master to employ, and on the servant to serve; if either is not bound the contract is imperfect.

A contract of hiring, made on a Sunday by a farmer, is lawful.

Rex v. *Whitnash,* 7 *B. & C.* 596; 1 *M. & R. Mag. Ca.* 177. The pauper was offered by his father to C., a farmer, on a Sunday, as waggoner's boy, and was hired on that day for a year, and served him for a year. *Bayley,* J., having observed on the policy of 29 Car. II. c. 7, s. 1, said, "This act does not prohibit business of every description, and I am of opinion that the hiring of a servant by a farmer on a Sunday is not work or business within the statute. I also think that it is not 'labour, business, or work of the ordinary calling' of the farmer. He, like every other person who requires servants, must hire them. The true construction of the words 'ordinary calling' seems to me to be, not that without which the trade or business cannot be carried on, but that which the ordinary duties of the calling bring into continued action. Those things which are repeated daily or weekly in the course of trade are parts of the *ordinary calling* of a man exercising such trade or business; but the hiring of a servant once in a year does not come within the meaning of those words." *Holroyd,* J., said, "If a farmer sowed his corn, or the servant ploughed his land on the Sunday, these would be parts of their ordinary calling. But I think the making of a contract with a person who is to assist another in his ordinary calling, does not come within the statute, so as to subject the parties to a penalty, or to avoid the contract." *Littledale,* J., gave judgment to the same effect.

There must be a contract.

Gregory Stoke v. *Pitminster,* 2 *Bott,* 269. The pauper, who was a young girl, was sent to by a relation, who told her that if she would live with her she should have her meat, drink, washing, and lodging. The pauper accepted the terms, and lived with her four years as a servant. It was insisted that this amounted to a general *retainer* (within the statute of labours, 24 Ed. 3, c. 1) for a year, and that the actual entry into the service, after being sent to, and terms offered, was such an assent as amounted to a *contract.* But the court held that *there must be an actual contract* where the servant is under no obligation to stay, *and* the contract must be *mutual* to bind the parties, and that this was no agreement, but an encouragement to the pauper that if she would live with the relation she would maintain her. See in *Rex* v. *Lyth* Lord *Kenyon's* remarks on this case.

A slave gains no settlement.

Rex v. *Thames Ditton,* 4 *Doug.* 300; 2 *Bott,* 272. The pauper was bought as a negro slave in America, and brought to England, and lived in Thames Ditton with her master till he died, and after that with his widow and executrix. Lord *Mansfield.* "The poor law is a system of many acts of parliament. It began in the time of Queen Elizabeth; perhaps before villenage was out of use. Villenage in gross may now be abolished; but none of those statutes apply to villenage. The legislature never thought of it. To give this pauper a settlement, she must come within the descrip-

tion of a positive law. Her being a black or a slave is no objection; but the statute requires a *hiring*. There is none here; and therefore the case is not within the statute."

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It must be a contract for *service*. A contract for service and cohabitation is insufficient.

Rex v. *Northwingfield*, 1 *B. & Adol.* 912. The pauper was *bonâ fide* hired as a housekeeper by H. H., in Northwingfield, in October, 1810, by an agreement in writing, for a year, at 40*l.* per annum wages. She entered into the service in pursuance of her agreement, and stayed in the same (in the appellant's parish) until February following, when Mrs. H. returned home, and she then left. Some time after she had been in Mr. H.'s service she began to sleep with him. No agreement was made on this subject before she came into the service. She performed all the duties of a housekeeper, and lived with the other servants, and sometimes paid for articles wanted in the house, and was repaid by Mr. H. Upon leaving Mr. H.'s she went to London; and shortly afterwards Mr. and Mrs. H. came to London, and he hired her a second time, by a written agreement, for a year, as a servant, at the same wages as under the first agreement. According to this contract, she entered again into Mr. H.'s service in the appellant parish, and served him there for many years, and until he died; living in and managing his house, and superintending his servants, precisely as under the first hiring. She received her wages, but at times, from necessity, expended a part of them in paying the expenses of Mr. H.'s house, and she provided herself with clothes. The former cohabitation between her and her master was continued. The second written agreement having been lost, and the loss of it proved, the pauper gave parol evidence of the terms of it to the effect before stated. The appellants then proceeded to cross-examine her, for the purpose of proving that the contract of hiring was founded in part upon the pauper's agreement to cohabit with her master, in which case the hiring would be *turpis contractus*, and could not confer a settlement. The respondents objected that no evidence ought to be received of a consideration that did not appear upon the written agreement; and the court concurred in the objection, and refused to receive the evidence. The question reserved was, whether the evidence ought to have been admitted or not. Lord *Tenterden*, C. J. "This contract may have been either a contract for service, or for cohabitation, or for both. In the first case a settlement would clearly be gained by a service under it, in the second it would be clearly void, and no settlement could be gained. If it were for both, then it is said that the contract is divisible, and good for so much as is legal; but void for the residue. As to that, it is unnecessary to say any thing at present. The evidence should have been received, to ascertain the nature of the contract; and the case must therefore be sent back to the sessions for that purpose." Case sent back to the sessions.

A boy living several years with his uncle, and working at his trade for his board, clothes, &c., but without any *contract*, does not thereby gain a settlement.

Rex v. *St. Mary, Guildford*, 2 *Bott*, 273; and *Rex* v. *Wrifield*, *Cald.* 521. T. Full, at the age of eleven or twelve, went to live with his uncle, who was a tailor, in South Mims, and worked for him and learned his business. At the expiration of two years his uncle proposed that he should become his apprentice, but they had some difference about it, and the pauper refused to be bound. However, he continued to live with him, working in and learning his business, till about the age of seventeen, and was provided with board, lodging, and necessaries. This case came on immediately after *Rex* v. *Thames Ditton*, (*ante*); and the counsel said, as the court had declared in that case that a hiring was necessary, it was impossible for him to support this settlement. The court said a hiring was certainly necessary, and that this was clearly no settlement.

If it appear that there was no contract, no hiring can be presumed; but where a contract appears, it will be presumed to have been regular, till the contrary is proved.

Rex v. *Weyhill*, *Burr. S. C.* 491; 2 *Bott*, 271. R. Pyke, Esq., took the pauper (being then about eight years of age) into his family *from charity*, and gave him meat, drink, lodging, and clothes while he continued with him, which was about six years, of which the last four years were in Weyhill. *Neither at nor before* the time of *Pyke's taking the pauper* into his family, nor at any time after, *was there any contract* between the parties, in relation to the pauper's service to Pyke, or his continuance with him, or to any wages or other gratuity to be paid to him; during his

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continuance with P. he was employed in running of errands, and doing whatsoever P., or his servants, thought fit to bid him: no wages were ever paid or given to him: in the pauper's apprehension he was, during all the time, at liberty to quit P., or P. to turn him off, as either party should think fit. The court said, it is clear here was no hiring at all; no contract; but he was taken *out of charity*, a child eight years of age, to run on errands, and do whatever he was bid, and left Mr. Pyke when he came of fourteen years of age, and was capable of doing more service. And it is expressly stated that there was no contract. Indeed *where there is a hiring stated, the court will presume it to have been a regular one, unless the contrary appears;* and that was the case of *Rex* v. *Wincaunton, Burr. S. C.*, a general hiring was there stated; but here was no hiring at all.

Charitable employment insufficient.

Rex v. *Rickinghall Inferior*. See this case, *ante*, 489, on another point. The facts as to the contract appeared to be that the pauper, after the parish officers of Redgrave had refused to continue the allowance, promised by them to the person with whom he was placed, was by that person sent home to Redgrave. He then returned, and lived with the same person without any new agreement; he frequently absented himself, sometimes with, sometimes without leave; he sometimes received 6*d.* for jobs done on Sundays, but on applying for relief to Redgrave they gave it to him. And the court said here was no settlement gained; for after the parish withdrew their allowance the pauper was permitted to live at Rickinghall out of charity, without any contract as between master and servant.

An assistant to a waiter at a inn, without agreement with the innkeeper, does not gain a settlement by such service.

Rex v. *St. Matthew's, Ipswich*, 3 *T. R.* 449. E. Stollery and wife were removed from St. Nicholas to St. Matthew. Order confirmed. Case:—About five years ago, the waiter belonging to S. Ribbands, who kept an inn in St. Matthew's, being ill, sent for the pauper to assist him at the inn, where he stayed *as helper to the waiter* about six months, and then went away. The waiter being again taken ill, sent to the pauper *to help him*, which he did; and he continued in the inn as boot-catcher for nineteen months, during which time he lodged and boarded there, and was to be satisfied by the gentlemen who came to the house. Ribbands knew of his being there the night after he came; but nothing passed between him and the pauper at the time. The waiter who sent for the pauper continued in the service of Ribbands till about July in the next year, when he went away, and the pauper continued there till Christmas following, when Ribbands and the pauper having some dispute, Ribbands told him to go away, upon which he asked for something for the time he had been there: Ribbands replied, he should not give him any thing, as he had made no agreement with him; but on being pressed again, Ribbands gave him two guineas, and the pauper left the house. The pauper considered himself not as a servant to Ribbands, but as assistant to the waiter, and thought himself at liberty to go away when he pleased; he saw Ribbands sometimes, who, if a guest wanted his boots, told the pauper to get them, and at other times sent him on errands. Lord *Kenyon*, C. J. "There never was a case like the present, in which a hiring was presumed by retrospect. To some of the positions which have been laid down at the bar I perfectly accede; as that there is no necessity for an hiring by the *master himself;* that if there be an hiring, it shall be presumed an hiring for a year, unless something appear to show that the contrary was intended; and that wages are not necessary to confer a settlement on the servant. But the foundation of the argument here is, that the pauper was the servant of Ribbands: now that is expressly negatived by the facts of the case. And here the question arises, upon the determination of which this case must turn—in what situation the pauper was at that time? The case states that he came there *as helper to the waiter;* and there is nothing in the case from whence we can infer that he was the servant of Ribbands. Therefore, down to the time when the waiter went away, it is impossible to say that there was any agreement between Ribbands and the pauper. It is true that we cannot refer the last six months of the pauper's service to any thing but a contract with Ribbands; but that is not sufficient to give a settlement. If,

indeed, the pauper had been before in Ribband's service, and had then lived under a yearly hiring, making in the whole a year's service, that would have gained him a settlement. But here was no contract with Ribbands, either express or implied, until the last six months. *Rex* v. *Weyhill* (*ante*, p. 493) is not unlike this: there, indeed, the pauper was taken out of charity; but in that, as in the present case, the pauper was taken in such a situation as excludes *an hiring* by the master. In cases where the nature of the service implies an hiring, the court will raise such implication; but the nature of the service here implies the reverse." Orders quashed.

If a person go to live with a relation, "as such, and not under any hiring," and afterwards go to live with him *as before*; this is not a hiring.

Rex v. *Stokesley*, 6 *T. R.* 757. J. Pickering was removed from Ovingham to Stokesley. Order confirmed. Case:—The pauper was born in Corbridge, a bastard, and was taken by his mother to Stamfordham, and was kept by her there till she died, at which time he was about six years old; he then went to live with her brother, a small farmer, at Sedgefield, as a *relation, and not under any hiring*, being then about seven years of age, who set him to drive his plough soon after he went, and he continued working at the farm about eight years, but received no wages or other reward except meat and clothes, and he and his uncle wrought all the work of the farm during the last three or four years of that period; the pauper having some difference with his uncle a little before May-day, went to Darlington hiring, and there hired himself to Mr. Lax, to be a servant in husbandry for one year, and served the same; shortly before the end of this service, he received a letter from his uncle, requesting his return to him, and saying that if he would come and live with him *as before*, he could surely make it as good or better for him than a common service. During the year he was with Mr. Lax, his uncle had no regular hired servant, but employed a day-labourer to do such work for him as he did not like to do himself, and which the pauper used regularly, year after year, as he grew in strength, to do for him. Agreeable to his uncle's request, he returned, and lived with him about three years, and then went with his uncle to Stokesley, and lived with him there about four years and a half, during all which time he performed the greatest part of the work of the farm, as his uncle at that time kept no other servant, and was an elderly infirm man. When the pauper returned to his uncle he made no agreement with him, either for what time or for what consideration he should serve him, but his uncle often promised him, if he would stay with him for his life, he would leave him his stock, crop, and farm, as his own; his uncle's son having got a good place, and being well provided for; his uncle of course found him meat and clothes, and used to give him a few shillings when he went from home, but nothing more. He left his uncle about Martinmas, and believed himself at liberty to leave him at any time: when they parted they had no reckoning, and did not part friends. Lord *Kenyon*, C. J. "The argument addressed to us, viz. that, as in *Rex* v. *Lyth* (*post*), if there be a service in fact, of such a nature as that usually performed by hired servants, it is presumptive evidence whereon to found a constructive hiring; that this was such a service; that the pauper was solicited to go; that he was independent when he went the second time; might have had a good effect if addressed to the quarter sessions, but it cannot have any weight here, because the facts stated in the special case negative any hiring: indeed that argument applies as well to the first as to the second service, and the justices have expressly said that there was no hiring during the first service: they also state that before the pauper returned to his uncle, the latter proposed to him *to come and live with him as before*, that is, in the same relation. This excludes the idea of any hiring for a year. I do not wish to break in upon those cases where it has been determined that a general hiring is a hiring for a year, or that a hiring under certain circumstances may be presumed; and if the justices in this case had found that there was a yearly hiring, it would have concluded the case; but here they have expressly found that the first ser-

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An entry in the private memorandum-book of a deceased master is not evidence to rebut a settlement by hiring and service.

vice was not under any hiring, and that the second was *as before*, and we cannot contradict these facts, and introduce our own conjectures on the subject in opposition to this finding." Order of sessions quashed.

Reg. v. *Worth*, 7 *Jurist*, 172. W. Worsell was removed from Worth to Horne. Order quashed. Case :—The appellants admitted a settlement in their parish, and relied upon a subsequent settlement in the respondent parish by hiring and service with one Thomas Stone, in or about the year 1824. The pauper and his father deposed to the contract of service having been for a year, though neither of them could recollect at what wages. To rebut this, and show that no contract of hiring for a year in fact took place, the respondents called Mrs. Creasy, daughter of Mr. Stone, who proved that her father died in 1827, that he carried on the business of a farmer at the farm in question for upwards of twenty years; that in the course of his business he was in the habit of hiring farm-servants, and that she believed his practice was, when he did so, to make an entry of the time and terms of such hiring in a memorandum-book kept by him for that purpose. The book, which had been in the custody of Mrs. Creasy from the time of her father's decease, was tendered in evidence. It contained amongst numerous minutes of the time and terms of hiring of farm-servants, (many such being for a year, and of payments made to them in respect of their service), the following entries with respect to the hiring and service of the pauper, proved to be in the handwriting of Mr. Stone, but the witness was not present when the entries were made :—"April 4, 1824, William Worsell came, and to have for the half-year 40*s*. September 29, paid this 2*l*. October 27, ditto came again, and to have 1*s*. per week, to March 25, 1825, in twenty weeks two days, 1*l*. 1*s*. 6*d*. 25, paid this." The sessions rejected the evidence. Lord *Denman*, C. J. "We have every disposition to admit evidence, but there must be some limit. The rule is as put by counsel: an entry by a deceased person, to be admitted in evidence, must either be against the interest of the person making it, or in the course of the discharge of some responsible duty. Now this is no entry against the interest of the person making it, it is only an entry of a liability to arise, it might be in favour of the person making it. Again, it is impossible to say that an entry by a person in a book for his private use of a contract to himself, is an act done in the discharge of some responsible duty; this entry cannot, therefore, be admitted in evidence." Order of sessions confirmed.

3. *Where a Contract may be implied.*

The ostler's case. Where a person had lived with another as ostler for two years, and had been seen in menial service there, a yearly hiring was presumed.

Rex v. *Holy Trinity, in Wareham, Cald.* 141; 2 *Bott*, 481. Order of removal from Poole to Wareham confirmed. Case :—The pauper's husband was abroad, and had been beyond sea for two years past, if alive. To her knowledge he lived in the capacity of an ostler with Mrs. Lee, in W., some years since deceased, for about two years, where she had seen him brew: but whether there was any agreement relating to such service was not proved, but she had heard her husband (*a*) say he was settled at Wareham. By Lord *Mansfield*, C. J. "The sessions have drawn their conclusion that he was hired; and I think they have done right." *Buller*, J. "Though the evidence is slight, there is nothing to contradict it." *Willes* and *Ashhurst*, Js., concurred.

Husbandman's case. If it be proved that a person was seen and known to be in the service of another, as servant in husbandry for a year, a yearly hiring will be presumed.

Rex v. *Lyth*, 5 *T. R.* 327. T. Carling was removed from Whitby to Lyth. Order confirmed. Case :—The respondents proved that the pauper was the legitimate son of W. and M. Carling, and born in Lyth. The appellants, in order to show a derivative settlement in the pauper from his father in a third parish, proved that W. Carling, before his marriage, was, a few days after Martinmas, 1731, seen and known to be in the service of

(*a*) Such declarations are not admissible. (*Rex* v. *Ferry Frystune*, 2 *East*, 54, *post*; and *Rex* v. *Nuncham*, 1 *East*, 373, *contra*.)

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one Campion, in Barnby, as a servant in husbandry; and was from time to time seen and known to act in that capacity with Campion for some time, upwards of a year. The appellants offered to prove that Campion, who was then long since dead, had declared in his lifetime that W. Carling had been hired with him for a year: but the sessions were of opinion that such evidence was not admissible. Evidence of declarations to the same effect by W. Carling, who is also dead, touching such hiring, was also refused. Whereupon the sessions, being of opinion that there was no evidence of a hiring, confirmed the order, subject to the opinion of the court upon the propriety of rejecting the evidence offered of the declarations of Campion and W. Carling; and also whether, after rejecting such declarations, they had done right in refusing to infer the hiring from the fact of service proved. Lord *Kenyon*, C. J., said, "The case was drawn up in too loose a manner for the court to give any solemn judgment upon it: for in some parts of it evidence was stated instead of facts; and the court were left to draw inferences which the magistrates below ought to have done. But that if the sessions wished to know whether, from the evidence stated relative to the hiring of W. Carling, they were at liberty to draw the conclusion of his having been hired for a year; in fact, the court had no hesitation in thinking that they might legally draw such an inference. He, therefore, thought this advice of the court might be given to the magistrates without the necessity of entering any regular judgment upon this case as it now stood, or putting the parties to the expense of stating the case again." *Rex* v. *Pitminster* was cited: but Lord *Kenyon*, C. J., said, "There it appeared that the pauper was taken out of charity; and, therefore, the presumption of a hiring was taken away. But this is the case of a servant in husbandry, whose service for a year affords very strong presumptive evidence of a hiring for a year. But, however strong that presumption be, as only the evidence of hiring is stated, and not the fact itself, we cannot decide upon the case: though the sessions must be directed to draw from this evidence the conclusion that W. Carling was hired for a year." Case sent back.

If a person go into a service upon liking, and at the end of the year is paid by the year, and continue in the service afterwards, a yearly hiring may be presumed.

Rex v. *Hales*, 5 *T. R.* 168. Martha Mitchell was removed from Hales to Wrentham. Order quashed. Case:—The pauper, a fortnight after old Michaelmas, 1792, heard from Miss Garnham that her father, a farmer, wanted a servant; and the pauper agreed with her to go to him a month upon liking; she went accordingly, and in the spring following Miss Garnham told the pauper that if she behaved well, and did her work properly, she should have 4*l.* for a year. The pauper continued in his service without any other agreement until the Christmas following, when she went away; but a fortnight after Michaelmas, 1793, she received 4*l.* for a year's wages then due; and for the remainder of the service from that time she received 1*s.* 6*d.* a-week, being the proportion of wages then due at the rate of 4*l. per annum.* Lord *Kenyon*, C. J. "At present the case is so imperfectly stated, that we cannot give any judgment upon it. A retrospective hiring certainly is not sufficient to confer a settlement; but as the pauper continued in the same service after the expiration of the first year, there was abundant ground for the justices to have presumed a hiring for a year from that time. However, as the fact is not stated one way or the other, the case must be sent back, when most probably the justices, after hearing the intimation of this court, will find the fact of a hiring for a year, which will put an end to the case." Case sent back.

A hiring for a year may be presumed from a service for four years.

Rex v. *Pendleton*, 15 *East*, 449. The pauper was in 1782 engaged as a servant to Messrs. Douglas & Co. of Pendleton, by "Articles of agreement made the 24th of June, 1782, between T. and W. Douglas, of Pendleton, on the one part, and J. Jebson, cotton-worker, on the other part, and J. Longden (the pauper), of the other part, witnesseth that J. Jebson hereby covenants and agrees duly and faithfully, and J. Longden hereby agrees duly and faithfully, to serve T. and W. Douglas in the capacity of cotton-worker, during the term of three years, night or day; and T. and W. Douglas agree to pay unto J. Jebson 5*s.* 6*d.* per week for the first year, and

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to J. Longden 6*s.* per week for the first year, 7*s.* per week for the second year, 9*s.* per week for the third year, in consideration of his faithful services; and whatever time J. Longden or J. Jebson shall be absent from their work, it shall be proportionably deducted from their wages. The present agreement to remain in full force for three years. And for the performance of this agreement, J. J. and J. L. bind themselves and their executors in the penalty of 100*l.*" (The instrument was signed and sealed by the respective parties, but was not *stamped.*) The pauper served Messrs. D. & Co. during the time stated, and continued on in their service for four years more without anything further being said as to wages, and without any express engagement as to the time or conditions of such service. The sessions were of opinion that a hiring might be *presumed.* Lord *Ellenborough*, C. J. "The fact of the service is always capable of distinct proof, for it is collateral and subsequent to the contract itself. The pauper served, that is a fact to be proved by parol evidence: he served T. and W. Douglas at Pendleton, that is also proved by the fact; he served them there during three years, which is a shorter way of expressing that which the sessions meant to find as to the time of the service, by referring to the time mentioned in the instrument; and he afterwards continued to serve them for four years longer; he served without anything being said as to wages. The stress of the argument seems rather to show, that there were no certain wages reserved, and that there was no hiring for a year, for if there were only a general hiring, the law presumes that it is for a year, and if the rate of wages were not specified, he would be entitled to reasonable wages. Then were not the sessions warranted from the fact of a service of four years at wages, though not specified, to presume that it was under a hiring for a year? The law says, that they may make such a presumption when there is nothing to repel it, and that makes an end of the case." *Le Blanc*, J. "For anything which appears to us, the sessions received the evidence of the written instrument without objection made to it at the time; for if they meant to state the question reserved by them, to be whether that evidence was properly received, they would have stated that objection was taken to it, and asked the advice of the court on its admissibility. But as far as we can see, the evidence was received without objection, and the facts stated in the instrument are joined on with the other evidence, which, without reference to the instrument, would probably have been stated more fully, and the pauper would then probably have proved that he had served, in fact, for four years after the expiration of the articles, having before served for three years under them, and received wages at the rate of so much a week during that time; and then the sessions would have sent to us to know whether they could, from that evidence, putting the written instrument quite out of the question, have presumed a hiring for a year. And how can we say that they could not so presume?" *Bayley*, J. "It has been argued here, that inasmuch as the pauper served for some part of the time, at least, under a written instrument unstamped, we cannot look at the instrument even to see for what time it enured, and that no parol evidence could be given of any contract with reference to the subject-matter of it. But though we cannot look at the unstamped instrument for the purpose of proving by it any agreement between the parties—for such is the general import of the stamp acts—yet the court may look at it to see whether it applies to other evidence of a contract between them; as if a contract in writing be made, not stamped, for the sale and delivery of certain goods, on certain terms, the court, in an action for the non-delivery of goods upon a contract proved by parol evidence only, may look at the instrument to see whether it applies to the goods then sought to be recovered for; and if those goods were not included in the contract, parol evidence may be received of the contract sought to be recovered upon. So here, the court might look at the instrument to see the duration of the first contract under it, in order to guide them in receiving parol evidence of the subsequent services to which it did not apply." Order confirmed.

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If a person, hired for less than a year, serve for three years, a contract for a year may be inferred.

Rex v. *Long Whatton*, 5 *T. R.* 447. The pauper (a lunatic at the time of removal) went in March to live at Diseworth with Mrs. Lowdham, to wait upon Mr. L., who was poorly. She continued there till the death of Mrs. L., which happened two or three years after. She was seen during that time constantly acting as the servant of Mrs. L. On her first going to Diseworth the pauper had told her brother-in-law that she was hired till the following Michaelmas, with liberty to part on a month's wages or a month's warning. At another time she said, on being asked, that she belonged to Diseworth, where she had been hired, and had received 2*s.* 6*d.* earnest, but never mentioned any second hiring. These declarations were objected to; but the sessions received them, and were of opinion, upon the whole evidence, as well those declarations as the rest, that she gained a settlement at D. Lord *Kenyon*, C. J. "Independently of the declarations of the pauper, there was sufficient evidence to warrant the justices in finding a hiring for a year in D. Though the pauper were at first hired only till the Michaelmas following, yet she continued in the same service for three years." The counsel not desiring to have the case sent back, the order was confirmed.

When a hiring may be implied from service. (*a*)

Rex v. *St. Martin's, Leicester*, 8 *B. & C.* 674. The pauper, being then about fourteen years old, went with his father to the house of one Neale, an innkeeper, in the parish of St. Martin, and informed N. that he heard he wanted a lad. N. answered "he had got one coming in a fortnight, but that the pauper might stay for that fortnight, till the other lad came." The pauper was to fill the situation of boots and tap-boy, and had his board and the vails. At the end of the fortnight the other boy came, but was not hired, and the pauper continued in the service (without anything following between him and N.) for three years and a quarter, when he went and engaged with another master without consulting N., and removed the following day; N. telling him "that if it was his mind to go he believed he must." The sessions found this to be an implied hiring. *Bayley*, J. "I think that the justices were warranted in coming to this conclusion. If N. had said no more than that the boy should have board, lodging, and the vails, the law would have implied a general hiring; but he assigns a reason why he could not engage him for more than a fortnight. At the end of that time the pauper continued in N.'s service. The question then for the justices was, whether the relation of master and servant was created between them, and for what time; that depended on the understanding existing in the mind of the parties at the time. Both parties understood that the relation of master and servant was created for a fortnight in the first instance. If the justices thought that the master refused to take the pauper for a year, only because he expected another boy, they might, as that boy was not finally hired, taking into consideration the conversation between the pauper and master, and the subsequent service, presume a contract for a year; they might, most properly, have so presumed, if nothing had been said in the first instance of another boy coming in a fortnight. If the conversation, omitting all mention of another person being expected, coupled with the subsequent service, would have been sufficient

(*a*) In *Bayley* v. *Remmill*, 1 *M. & W.* 506, an action was brought by an assistant-surgeon against his employer for salary. The plaintiff claimed at the rate of 100*l.* a year. There was no specific contract. After the plaintiff had been in the defendant's service he was taken ill, and went to an hospital for three months. He did not return, nor was he requested. The plaintiff had been paid different sums, but not at any fixed or definite periods. The court were of opinion that the plaintiff had no claim to be paid at the rate of an annual salary. B. *Parke* remarked, "admitting there was some evidence of a hiring and agreeing, or the proposition that a general hiring, if unexplained, is to be taken to be a hiring for a year, I think there is abundant evidence in this case to show there was no hiring for a year. It appears that payments were made; but they were not made according to the yearly amount, nor at any definite periods of the year. The parties separated in the middle of the year, and neither did the plaintiff return, nor did the defendant require him to return and complete the service."

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to raise a presumption of yearly hiring, the justices might think that as the expected person was not hired, both parties intended the relation of master and servant to continue for that period. *Rex* v. *Pendleton* is in point." *Littledale*, J. said, "he should have drawn a different conclusion from the facts; but he thought the decision of the justices ought not to be disturbed." *Parke*, J., concurred. Order of sessions confirmed.

The relation of the parties may rebut the presumption of hiring.

Rex v. *Sow*, 1 *B. & Ald.* 178. Order of removal from Coundon to Sow, confirmed, &c. Case:—The pauper was hired in November, 1812, by the wife of Mr. Deeming, of Sow, for a year, at 50*s.* wages, and what clothes Mrs. D. pleased. Previously to this hiring, the pauper, who is a natural daughter of Mr. D., lived with her mother at Kearsley, and the hiring was for the purpose of gaining a settlement in Sow. As soon as she was hired she went into the service of Mr. D., served him for a year, and continued to live with him until the month of July, 1816, when she went away; during the whole of which time she did the household work, as she did during the first year, but no conversation took place between the parties about hiring after she was hired in November, 1812, and there was no second hiring, unless from continuance in the service of Mr. D. a hiring ought to be implied, which in the opinion of the sessions it ought not. Some months after the expiration of the first twelve months, Mr. D. gave the pauper 5*l.*, 50*s.* thereof for the first year's wages, and desired her to keep the remaining 50*s.* and say nothing about it. The pauper never afterwards received any sum on account of wages, but received at different times clothes and pocket-money. Mr. D. at Lady-day, 1816, removed with his family to Coundon: the pauper removed with them, and continued to live with them there till the month of July. There was no fraud in this case. Lord *Ellenborough*. "I cannot set the sessions more right than they have set themselves. The pauper was hired for a year, and 50*s.* were paid her; that was paid with another sum, and there is no question that the one sum was paid as wages and the other as bounty; it is true the service continued the same, but there was not any hiring for the second or any subsequent year." (*a*) *Bayley*, J. "I think the sessions have done perfectly right; where the parties are not related, it may fairly be presumed from a continuance in the service, that the terms in which they continue are the same as during the preceding year. But where the relation of father and child subsists, the ground for that presumption fails, and here there are a variety of circumstances to show that there was not any new hiring. The parties lived during the second year upon different terms from what they lived during the first." *Abbott*, J. thought "the sessions right, inasmuch as after the first year the pauper was living as a child with her parent, and not as a servant with her master." Order confirmed. See *Rex* v. *Chillesford*, *ante*.

(*a*) *Rex* v. *Creditton*, post.

Presumption may be rebutted by the custom of the country.

A general hiring may be a hiring for a year, or it may be for less than a year. If there be a general known custom in a parish to hire servants for less than a year, the general hiring would be for the customary period, and not for a whole year. *Bayley*, J. (*Rex* v. *Bottesford*, *post.*)

4. *Where the contract is indefinite.*

4. *Where the Contract is indefinite.*

Where the relation of master and servant has existed in such a manner that a hiring for a year *may* have been entered into between them, the law will adopt such an inference unless it can be rebutted by opposing evidence. The stipulations, therefore, as to *time* or *wages* may justify the conclusion of a yearly hiring, although they do not *expressly* include that period.

A general hiring, and no time mentioned, implies a hiring for a year. Hiring to serve in husbandry. (*b*.)

Rex v. *Wincaunton*, *Burr. S. C.* 299; 2 *Bott*, 289. The pauper, of the age of seventeen, offered to serve S. Williams, of Charleton Horethorne; who hired him to serve him in husbandry, and agreed to give him meat, drink, washing, lodging, and clothes, when wanted; but *no particular time*

(*b*) In *Rex* v. *Tyrley*, 4 *B. & Ald.* 624, where the pauper hired himself for 8*l.*, and no time specified. He entered the service the day before New Year's

was agreed on, and the pauper apprehended his master might have been off, or he might have gone away from him, at their pleasure; nevertheless, there was no agreement for that purpose. The boy continued and served him in Charleton Horethorne two years and a half. By the Court: "He gained a settlement there by this service. A general hiring is a hiring for a year. And here are no circumstances in this case to show an intention to the contrary, or to vary it from the general rule. The mere apprehension of the pauper doth not do it." (*Rex* v. *Weyhill.*)

2. *Of the Contract of Hiring.*

Telling a person to go into the place of one who had been a yearly servant, is ground to imply a hiring for a year.

Rex v. *Berwick St. John, Burr. S. C.* 502; 2 *Bott*, 290. The pauper met Mr. Jones, head keeper of Rushmore Lodge, in Berwick St. John, who had then lately parted with one E. Hill, who had been for many years one of his servants, or under keepers, at the wages of 3*l.* a year, and a keeper's livery, besides meat, drink, and lodging. Jones said to the pauper, "Do you like the life of a keeper?" Which being answered in the affirmative, he said, "Then go into Ned Hill's place, and you shall want no encouragement." Accordingly he went, and continued in the service for three years, and received three years' wages. By Lord *Mansfield*, C. J. "This man served three years, and received wages accordingly. But it is objected that he was never hired at all. It is admitted that if he were hired at all, it would by law be a hiring for a year. And upon the state of this conversation, it is a clear hiring, for Hill was a hired servant."

Where no mention is made of time or of wages, and the *service* is for a year, a hiring is presumed.

Rex v. *Stockbridge, Burr. S. C.* 759; 2 *Bott*, 294. The pauper asked M. Nicholas if he wanted a boot-catcher and driver? And N. said, yes. The pauper replied, he was willing to serve him; and N. bid him "go into the yard and look after the horses;" nothing else passed, and no term was mentioned. He went into the service, and continued in it for one year; and was found by his master in meat, drink, and lodging, but received no wages. He was afterwards hired to J. Watts, of Basingstoke, "to be a chaise driver," but no term was mentioned. He served him for a year there, being found by him in meat, drink, and lodging, but received no wages. He thought himself at liberty to leave either of these masters whenever he pleased. It was proved that the customary manner of engaging chaise-drivers is as the pauper stated; and that the masters and drivers think themselves at liberty to part whenever they please. The sessions thought that the pauper gained no settlement, but the judges were of opinion that this was a sufficient hiring for a year. *A general indefinite hiring is a hiring for a year, unless something appears that may raise a presumption to the contrary.* And nothing is here stated which limits the hiring, or shows that it was meant to be for less than a year.

An indefinite hiring is to be considered as a hiring for a year, and the apprehension of the master and servant makes no difference.

Rex v. *Seaton and Beer*, 2 *Bott*, 297; *Cald.* 440. S. Ponsford, who kept a public house at Broadclift, agreed with the pauper that he, Ponsford, should give him, the pauper, one shilling a-week, as he had given the other man or men, and the vails of the stables. Nothing was said about time. At the end of the year his mistress said to him, "*You have been here a year, I will pay you.*" To which the pauper answered, "*It is no matter, I may stay with you another year.*" She said, "*Very well, Sampson.*" He did stay another year, and then received what was due to him, being 5*l.* 4*s.*; he worked in the stables as an ostler, and neither at the time of making the first agreement, nor at the end of the first year, was any mention made, either by the mistress or the pauper, of a hiring for a year, or of the term for which he was to serve; but the pauper apprehended that his master might have parted with him at any time, on giving reasonable notice. No evidence was given of the time for which any such man or men as above referred to had been at any time hired by Ponsford. The sessions thought no settlement was gained." *Willes*, J. "The first agreement was general, but the pauper was to receive wages like a former servant. I think the conversation at the end of the year was an agreement to serve another year, which makes it even stronger than the

Day, and left it two days after Christmas Day. The sessions found this to be a general hiring. *Abbot*, C. J., said, "the court were bound by this finding, but that he should have come to a different conclusion."

2. *Of the Contract of Hiring.*

case of a general hiring. *Rex* v. *Stockbridge* (p. 501), is decisive of the present question." *Ashurst*, J. "I am not for narrowing the determinations in favour of settlements; and this does not go so far as some other cases. *The general rule is*, that an indefinite hiring, without any circumstances to show that a less time was meant, shall be considered as a hiring for a year. In this case, the first conversation would amount to an indefinite hiring; the second seems to show that it was in the mind of both that it should be a hiring for a year. There are cases where it has been so held against the apprehension of both." *Buller*, J. "It is settled in a variety of cases, that the apprehension of the pauper makes no difference. The first agreement would be sufficient; but on the second there can be no doubt."

A hiring, without any stipulation as to time, but only as to meat, &c. and service for three years, a hiring for a year will be implied.

Rex v. *Bath Easton*, *Burr. S. C.* 823; 2 *Bott*, 296. The pauper was hired to John Giles, in Devizes, to serve him as a journeyman barber, who was to give him meat, drink, and lodging. In lieu of wages he was to have the Christmas-boxes. No time was mentioned. Upon these terms the pauper lived with Giles four years, but thought himself at liberty to leave his master when he thought proper. Afterwards, he was hired to J. Bedford, an innkeeper at Mangotsfield, "*to serve him in his stable*," who was to find him meat, drink, washing, and lodging, but no wages, other than what he should receive as perquisites of the stable; no time was mentioned, and he apprehended that his master might have turned him off, or he might have gone away from him, at their pleasure. (*a*) From the time that the pauper began to serve Bedford, to the time at which he left him, was sixteen years; during which time he left Bedford several times at his pleasure, but from the time of his first going into the service, he was with Bedford two years and upwards without leaving him at all; and at the end of the sixteen years, he was with him for three years together without interruption. And this was admitted without argument to be a settlement at Mangotsfield.

Where the pauper agreed to live with one as nurse, and was to receive clothes, &c. but no time was mentioned, and she remained two years and a half, going away in the middle of a year, a yearly hiring was presumed.

Rex v. *Worfield*, 5 *T. R.* 506. The pauper went to live with A. Smith, in Bridgenorth, and served him near a year, but was not hired to him as she knows of. While she lived with Smith, J. Jones met her, and taking her to his house, asked her if she were hired again to Smith? She answered, that she was not. Jones then asked her, "if she would come and live with him and take care of his child?" to which she consented, and soon after she went to him. A few days after she had been with Jones, he told her he would find her meat, drink, and clothes, and asked if she would be satisfied with that? she told him she should. He said he would have given her money, but that it was better for her to have clothes, as she was connected with bad friends, who would take her money. She went to Jones at Christmas, and lived with him about two years and a half, leaving him in May, when her mistress told her that her child was then old enough not to require any further attendance, and dismissed her. She said, in her own opinion, she was at liberty to have left Jones at any time. Lord *Kenyon*, C. J. "It has been so long settled that a general hiring is a hiring for a year, that it ought not now to be controverted. In my opinion the hiring in this case was a hiring for a year; the circumstance of the pauper's going away (*b*) in the middle of a year, does not show that this hiring was not of such a description; for it was competent to both parties to put an end to the contract whenever they pleased, and here they did dissolve it in the middle of the year. It is much to be wished that in cases of this kind the justices at the sessions would draw the conclusion, and state it as a fact whether or not there was a hiring for a year." *Ashhurst*, J. "The pauper was to be provided with clothes in lieu of wages; if the master had clothed her the day after she entered the service, could it have been the intention of the parties that she might have left the service immediately, if not the next day? what other line can be drawn? This shows that both parties meant that the service should be permanent, and that the pauper could

(b) *Rex* v. *Newton Toney*, p. 512.

(*a*) In many of the early cases the apprehension of the master and servant as to the *legal* effect of the contract, is stated; but it is now settled that can make no difference. See *Rex* v. *Seaton*, *ante*, 501.

not leave the service when she pleased." The other judges concurred.

2. *Of the Contract of Hiring.*

Hiring for eleven months, and then *on an end*, gives a settlement, as the latter is an indefinite hiring.

Rex v. *Macclesfield*, 3 *T. R.* 76. The pauper was hired by F. Berwick, of Macclesfield, button-maker, for eleven months, at ten guineas wages; at the end thereof, he and his master settled his wages for eleven months, and his master gave him a half-guinea over, saying, that he had been a good servant, and added, "*You may as well stay on an end in your place;* the place suits you, and you suit the place." The pauper's answer was, "Very well, sir, I have no objection." And he continued to follow his master's business near three years. The pauper being at Birmingham with his master's cart was taken ill, and stayed there some time, which occasioned him to lose his service. His master used to give him money occasionally during his service, but the pauper kept no account himself. A few days after his return from Birmingham his master settled with him; he did not know in what manner, but supposed the money was right, and thought his wages would come to about four shillings a-week. *Rex* v. *Clare*, (*post*), where the pauper was originally hired for a month, and continued in the same service five years, and yet gained no settlement by it, was cited against this order. By Lord *Kenyon*, C. J. "It is clear that there must be either an express or an implied contract for a year, in order to give the servant a settlement. A hiring for eleven months will not confer a settlement, unless the sessions find that it was fraudulent, and that a year's service was intended, though eleven months only were expressed, as in *Rex* v. *Milwich*, where there was a hiring for eleven months, with an agreement to give in another month's service. Now, in this case, the first hiring for eleven months was not sufficient to confer a settlement: but when that time was elapsed, the master told the pauper that he might *as well stay on an end*, which in that part of the country means an indefinite time. The second hiring, therefore, must be considered as a general hiring, which the law construes to be a hiring for a year. As to this expression referring to the time for which the pauper was originally hired, it is too refined; it only referred to the nature of the service in which he was before engaged. Then if we consider the wages for which the pauper served under the second agreement, it negatives the idea that the parties contracted for another eleven months for the same definite sum which the pauper received under the first agreement; for it is stated that he received about four shillings a-week, which does not amount to the same apportionment of wages." *Ashhurst* and *Grose*, Js., concurred.

Where there were three successive hirings from a few days after Old Michaelmas to the following Old Michaelmas: Held, that there was not such a general hiring as conferred a settlement.

Rex v. *Ardington*, 3 *Nev. & M.* 304; 1 *Ad. & El.* 260. An order for removing George Barrett and family from Ardington to Aldbourne, Wilts, was quashed. Case:—Three or four days after Old Michaelmas day, 1823, the pauper being then about sixteen years old, and settled in Aldbourne, was hired by his father to Mr. William Brown, a farmer, in the parish of Little Hinton, Wilts (the father being in Brown's service also), to serve as shepherd for his board and lodging in the house of Brown at Little Hinton, until the following Old Michaelmas, at 5*l.*, and 6*s.* a-week wages for the father. The pauper served accordingly as shepherd under that hiring, boarding and sleeping in Brown's house till Old Michaelmas day, 1824, on which day he, by his father's leave, went to Highworth fair for pleasure, and returned in the evening to his master's house. Mr. Brown settled with the pauper's father for the wages due to himself and his son up to Old Michaelmas, four or five days after Old Michaelmas, the father receiving the wages for his son. On the day the wages were paid, the master hired the pauper's father, the pauper, and his brother, to serve him until the Old Michaelmas following, at 6*s.* a-week for the father, and 5*l.* 10*s.* for each of the sons at Michaelmas. The pauper and his brother continued with their father to board and lodge at Little Hinton, the pauper being employed as before till Old Michaelmas day, 1825, when the pauper drove his master's sheep to Highworth fair, and returned in the evening to Little Hinton. A few days after Old Michaelmas, 1825, the master again settled with the pauper's father for the wages agreed upon for himself and his sons

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at the previous hiring, and asked the father "if he and his sons chose to go on with him?" to which the father said "yes." The wages were to be the same. The pauper remained at his master's house, boarding and lodging, and working on the farm as usual till about the 10th March, 1826, when he was sent by his master with sheep to a farm he was about to occupy at Lockhinge, in Berkshire. He remained there, receiving 5*s.* a-week board wages, till Lady-day, 1826, when he returned to Brown at Little Hinton, and continued there as before till the beginning of April, when Brown quitted Little Hinton, having paid the pauper's wages, due to him at Lady-day, 1826, to his father, without deducting anything on account of the pauper's absence at Lockhinge. The pauper then entered the service of the incoming tenant. The pauper boarded and lodged at Brown's house and was employed on his farm as shepherd continually from three or four days after Old Michaelmas, 1823, to a few days after Lady-day, 1826. No other person was ever hired or employed by Brown in place of the pauper during that time. The father received the pauper's wages from Brown, without accounting to the pauper, but found him in clothes and pocket-money during his service. The pauper might have left his master's service at Old Michaelmas, 1824. He did not know what wages he was to receive. On these facts the sessions held that a yearly hiring of the pauper by Brown, in Little Hinton, must be implied, and they quashed the order of removal. The case now coming on for argument, the court asked the counsel who supported the order of sessions, what ground there was for implying a yearly hiring? *Patteson*, J. "It would be difficult to say how the master in this case could have done better than he has to avoid a yearly hiring, and that seems to have been the intention of the parties. The words used by the master clearly do not support an indefinite hiring." Order of sessions quashed.

A shepherd was hired for eleven months, and then for a month, and then "to go on again on the same terms;" the latter is a hiring for a year.

Rex v. *South Newton*, 10 *Bar. & Cres.* 838. An order for removing Thomas Brown, wife, and children from Woodford to South Newton, was confirmed. Case:—The pauper in 1823, while single, was hired as shepherd by the tenantry farmers of the manor of Lower Woodford, for eleven months, at 14*s.* per week, and was to have a piece of land, called the Shepherd's Croft, which was to make up money as good as 16*s.* a week, to keep certain sheep belonging to them, called the tenantry flock. Payment of his monied wages was made quarterly by the tenantry farmers. The pauper, after serving eleven months, was hired again for one month. Before the end of the month the pauper was hired "to go on again upon the same terms." He served a year under this last hiring, and slept the last forty nights at South Newton, the appellant parish, having married in the course of that year. The tenantry farmers above mentioned are leaseholders and copyholders of the manor of Lower Woodford. *Bayley*, J. "I am of opinion that the pauper was settled in South Newton by virtue of the hiring and service for a year. It appears that he was hired for eleven months, and afterwards for a month, and then he was hired to go on again on the same terms; that was an indefinite hiring, and therefore a hiring for a year, and as he resided in South Newton the last forty days he was settled in that parish."

5. *What is a Hiring for a Year.*

5. *What is a Hiring for a Year.*

Whether there has been a hiring for a year or not is, upon most occasions, a question of *fact*, which the sessions are to determine; and the court of King's Bench will not interfere with their conclusion upon the subject, unless it is founded upon some mistake of the rules of evidence, or of the law applicable to the circumstances of the case. Sometimes the sessions content themselves with stating the evidence in a special case, without any express finding as to whether there was in *fact* a hiring for a year or not, a practice of which the court has repeatedly complained, and with reference to which the judges have frequently expressed a wish *that the justices at sessions would understand that it is their duty to determine*

questions of fact, and not to send them to the Court of King's Bench for decision. *Rex* v. *Bottesford.*

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Rex v. *Tyrley*, 4 *B. & Ald.* 624. Removal from Audlem to Tyrley. Order confirmed. Case:—Edward Peake, the pauper, hired himself generally at 8*l.* and his washing, without any time being specified; but which the sessions found to be a general hiring for a year. He entered into his service the day before New Year's Day, and quitted with the consent of his master two days after Christmas Day, the usual day that servants in that part of the country go into and leave their places. The pauper received the whole of his wages at the time of his quitting, and stated that when he left, he considered himself no longer under the control of his master. The sessions found this to be a hiring and a service for a year. *Abbott*, C. J. "As the sessions have expressly found the fact of a hiring and service for a year, I think we are bound by it. I cannot say that no reasonable person could come to such a conclusion upon the facts stated, although I certainly should not have come to it myself. I should have thought that in this case there was neither a dispensation with the service, nor a dissolution of the contract; but that the contract had arrived at its termination, and that before a year had expired. But still as the question was properly for the determination of the sessions, who have expressly found the fact otherwise, I think their order must be confirmed."

A pauper hired himself, without specifying any time, and entered into the service the day before New Year's Day, and quitted two days after Christmas, receiving his full wages: that being the usual time that servants go into and leave their places. The sessions having expressly found this to be a hiring and service for a year, the court considered themselves bound by that finding.

Rex v. *Newstead*, *Burr. S. C.* 669; 2 *Bott*, 343. F. Downey was hired to serve T. Hill for a year, from Whitsuntide to Whitsuntide, at certain wages. She entered upon the service at Whitsuntide, 1767, and continued till Whitsuntide, 1768, when she received a year's wages. It had been usual in the country to hire servants from Whitsuntide to Whitsuntide, and that a hiring and service from Whitsuntide to Whitsuntide had always by the contracting parties been deemed a year's service; and agreeably thereto the master had always paid a full year's wages for such service, without diminution or addition, and without making any distinction or difference, whether the space of time between the one Whitsuntide and the other consisted of more or less than 365 days. The space of time between Whitsuntide, 1767, and Whitsuntide, 1768, was less than a year by sixteen days. The court however said: "There is no case that proves the absolute necessity that the hiring should be for exactly 365 days. It is stated to be the usual way (*a*) of hiring servants in that country, and such service is always deemed to be a year's service. Parish officers are to be appointed in Easter week, or within one month after Easter (which is a moveable feast), yet they are considered as executing the office a whole year, though it may fall short of 365 days." The court were unanimous that this hiring and service were sufficient to gain a settlement.

Hiring from Whitsuntide to Whitsuntide gains a settlement, though there be less than 365 days in that period.

Rex v. *Ulverstone*, 7 *T. R.* 564. The pauper was hired by M. Hodgson, of Hawkshead, to serve him from Whitsuntide, 1796, to Whitsuntide, 1797. She entered into his service on Saturday, May 21, 1796, and continued to serve him in Hawkshead till the Thursday before the following Whitsunday, being June 1, 1797, when her master discharged her, she being pregnant of a bastard child, of which she was delivered on July 1, following. It was contended that, as in the above case of *Rex* v. *Newstead*, a hiring from Whitsuntide to Whitsuntide, although less than 365 days, was holden a sufficient hiring for a year; so that where it appears to have been the intent of the parties that the hiring should be according to such

So although the service be ended before the following Whitsunday, if it has continued more than 365 days.

(*a*) But the custom of the country cannot aid an imperfect contract. See *Rex* v. *Lowther* (p. 509), and *Rex* v. *Hanwood* (p. 510). The authority of the above case has in one instance been sustained, on the principle, that as the hiring was from one moveable feast to another moveable feast, its duration was uncertain. In *Rex* v. *Standon Massey*, p. 510, Lord *Ellenborough* said, that "a hiring by a schoolmaster from one Christmas breaking-up to another Christmas breaking-up, is not a hiring for a year, if less than a year is comprised in the period." *Rex* v. *Navestock*, p. 506.

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ecclesiastical division of the year, the parties ought to be holden to the same term of service in order to gain a settlement, although it happened in this case to be more than 365 days; but as the pauper was discharged for a legal cause before Whitsuntide happened again, she could not gain a settlement. Lord *Kenyon*, C. J. "The case is too plain for argument. The only question is, whether a service for more than 365 days is not a service for a year? The term ecclesiastical year is altogether new, and was never before applied to this subject." And it was held that a settlement was gained.

Hiring two days after Michaelmas till the following Michaelmas gains no settlement.

Coombe v. *Westwoodhay*, 1 *Str.* 147. Michaelmas-day was on Thursday, and a person was hired upon the Saturday following, to serve from the said Thursday till Michaelmas; and it was held to be insufficient to gain a settlement, being not a hiring for a year. It was further observed that there must first be a hiring and then a service; and not *vice versâ*, a service and then a hiring.

Hiring the day after Michaelmas day till the Michaelmas day following gains a settlement.

Rex v. *Navestock*, *Burr. S. C.* 719; 2 *Bott*, 345. The pauper, at the statute fair at Ongar, on the next day after Old Michaelmas-day, the 11th of October, 1733, hired himself to S. Pasford, of Navestock, to serve till the Old Michaelmas-day following. He entered upon the service, and continued in it till the Old Michaelmas-day following; on which day he received his wages, and quitted the service. This hiring was according to the custom of the country. *Mansfield*, C. J. "There must be a hiring for a year. If the hiring be for less than a year it will not do, be the deficiency ever so little. Two days or one day short of a year, are equally an objection to its being a hiring for a whole year. Hiring from a moveable feast to a moveable feast, according to the custom of the country, has been determined to be a hiring for a year; being according to the custom of the country, although there should not be 365 days. And here they have stated the custom and usage of the country to hire servants in the manner this pauper was hired, and the custom is very material to explain it. If this should be taken not to be a hiring for a year, there has been no settlement gained in this country by a servant; for all servants in this country are hired as the present pauper was hired. Therefore it seems no stretch to consider this as a hiring from Michaelmas to Michaelmas." *Aston*, J. "It appears that the pauper entered on the day after Michaelmas-day; 'till' is the word relied on, to prove it a hiring for less than a year. How has that word been understood? The pauper was in the service on the Michaelmas-day, and took his wages; the service explains the hiring; here is in effect a hiring for a year, and a service agreeable to it." *Willes*, J. "The custom of the country in such a doubtful case as this must be called in aid."

"Till" is inclusive, *Rex* v. *Skiplam*, p. 507.

A hiring on October 11th till Michaelmas following, being October 10th, is a hiring for a year.

Rex v. *Syderstone cum Bermer*, *Cald.* 19; 2 *Bott*, 346. The pauper applied on Old Michaelmas-day to J. E., of Milham, to be hired by him, but they could not then agree about wages; the pauper asking eight guineas a year, and the other offering only six pounds. The next day, viz., October 11th, between two and three o'clock in the afternoon, they were together at a public house at Milham, when J. E. asked the pauper if he would take the wages offered him the day before, which he refused; but after some conversation, the pauper hired himself to J. E., as a servant in husbandry, until Michaelmas following, at seven pounds wages; and entered his service on the evening of that same day, and staid till 10th October following, being Michaelmas-day, 1772. On that day his master, not having finished his harvest, asked the pauper to stay and help him with his harvest; and though the pauper thought himself at liberty to go away, yet he staid with his master until the 11th October at noon, when after dinner he asked his master for his wages, who paid him seven pounds; and the pauper quitted his service, but did not ask or receive any recompense for his additional service. The court were clearly of opinion that this gained a settlement. Lord *Mansfield*, C. J. "To be sure there must be a hiring for a year; and this is one. Though he was hired on the afternoon of the

11th, yet we shall say that he was hired at twelve o'clock at night on the 10th; for it is settled that the law will not allow the fraction of a day. He served till the 10th; that is a year. If a man be born on the 10th, he is of age on the 9th." *Aston* and *Willes*, Js., concurred.

A hiring from Martinmas day till the Martinmas day following, is a hiring for a year, *till*, being for this purpose inclusive.

Rex v. *Skiplam*, 1 *T. R.* 490. The husband of the pauper, at old Martinmas-day, 1777, hired himself for a year, and served that year in Skiplam: on the next day after old Martinmas-day (viz., on the 23rd of November, 1778), he hired himself to one Barker, of Nawton, to serve him from thenceforth *until* Old Martinmas-day *following*. He entered into the service of Barker a few days after such hiring, and continued to serve him until the Old Martinmas-day *following*, on which day, about twelve o'clock at noon, he received his full wages, and left his master's house in the evening. *Ashurst*, J. "It is much to be lamented that there is such confusion in settlement cases; therefore whatever the late determinations may be, they ought to be adhered to; now the last case (*Rex* v. *Syderstone*, *supra*,) seems to correspond with this in every point: before that a distinction had been made, as where the hiring and service had been expressly found to be for a year, according to the custom of the country; but in the last case no such distinction was taken; so here there is no custom stated; and '*until*' must be taken to be *inclusive*. Therefore there was a hiring and service for a year, for he entered into the service the first day of one year, and served till the first instant of the next." *Buller*, J. "The only question is, whether Martinmas-day is to be taken *inclusive* or *exclusive*. The pauper's husband was hired the day after Martinmas-day to serve *till the Martinmas-day following*. From the moment of the hiring he became the servant of the master, and continued in the service *till* Martinmas-day: then does the word '*till*' include the day? The former cases have decided that it does; and if it only includes a *part* of the day, as there is no fraction of a day, the service would be complete." Both orders quashed.

The hiring need not be by one entire contract; if by any number of contracts the master obtains dominion over the servant for a whole year to come, it is sufficient.

Reg. v. *Ravenstonedale*, 3 *P. & D.* 469; 12 *A. & E.* 73. J. Dinsdale was removed from Garsdale to Ravenstonedale. Order confirmed. Case:—The pauper, when about fifteen years old, was hired by W. Parkin, a farmer, in Ravenstonedale, to serve for half a year from Whitsuntide. At the Michaelmas following he hired again to serve another half-year, and so for eight successive half-years. A month or six weeks before the Whitsuntide at which the last of these eight hirings expired, he hired again for the summer half-year. Some days after, he hired for the next winter half-year. These last two hirings did not take place within a week of each other, and it might have been a month between them, but they were both before Whitsuntide. At the expiration of the summer half-year, the pauper and his master differed about the amount of wages and agreed to part. The pauper then left, having been in the service four years and a half continuously. Lord *Denman*. "I cannot entertain the least doubt that this is a good yearly hiring under the statute, which requires merely an obligation on the master's part to employ and on the servant's to serve for one whole year, whether under one contract or two: and the sessions might have satisfied themselves with the propriety of their decision without sending the case up." *Littledale*, J. "There is nothing in the statute to make it necessary to have one contract of hiring only." *Patteson*, J. "The test mentioned as to whether an action would not lie for wages before the end of the year is not a correct one, because, although the hiring might be a yearly one, the wages might be payable quarterly or weekly, and the wages might be sued for at the expiration of those periods. The argument has been founded entirely on the expression 'one entire contract,' which has been sometimes made use of, but which does not seem to have much sense in it with relation to this statute. The object contemplated by that act was, that the master should have the entire dominion over the servant for one whole year, and it will be found that in most of the cases cited the second contract for half a year was made after the expiration of the first half-year, though even if made before the expiration of the first half-year, as in *Rex* v. *Lowther* (p. 509), it is insufficient, because the master never

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has at one moment the entire dominion over his servant for a whole year. If he has that, whether it is by one or fifty contracts, is immaterial." *Williams*, J. "The proposition in *Nolan*, and other Poor Law Digests, as to the necessity of one entire contract for a year, is rather too broadly laid down, for, in the cases cited for it, the service under the first contract had either commenced or was over before the second contract was made. The present case is one of mere arithmetical computation, whether two successive hirings for half-years are equal to a hiring for a whole year." Order of sessions confirmed.

What is not a Hiring for a Year.

What is not a Hiring for a Year.

A pauper had been hired for three years at 20*l.* per annum as a looker. The duty of a looker is to superintend the flocks and fences of his employer. When he was hired, his master told him that he should not have full employment for him, but that he would employ him as much as he could. He was not to do any work for his master, other than that belonging to the office of looker, without extra wages. No hiring for a year.

Rex v. *Lydd*, 4 *D. & R.* 295; 2 *B. & C.* 754. Removal of G. Goldsmith, &c., from Lydd to Thurnham, quashed. Case:—In August, 1819, the pauper was hired to Mr. Fisher, in Midley, for three years, at 20*l.* per annum, as looker and to spud thistles. (The duty of a looker is to superintend the flocks and fences upon the lands of his employer, and he frequently has several masters, and works for any persons who may employ him, according as his time allows). The pauper went into the service of Fisher on the 26th of October, and was married on that day. He served Fisher for three years. He worked for no other person but Fisher for the first year and three quarters, but at the end of that time he hired himself as looker to a Mr. Russell. During his service with Fisher he did other work for him not belonging to his duty as looker, such as turning mould, lambing and shearing, for which he was also paid upon new and separate bargains on each occasion; and upon other occasions he did day work as a labourer for Fisher, for which he was also paid by the day. At the time of the pauper's contract with Fisher, nothing was said about his being at liberty to hire himself to or work for other masters during the three years, but Fisher said he did not think he should have full employment for the pauper; he would employ him as far as he could. Whilst he was working for other people, his wife hoisted a signal by putting a flag out of the window, upon which he considered himself bound to quit his work and attend to his duty as looker to Fisher, for which he was originally hired; and he invariably returned to Fisher when so summoned, and never worked on any lands from whence the flag could not be seen during the whole of the three years. He was not, however, to do any work for Fisher other than that for which he was originally hired as a looker, without receiving extra wages. His agreement with Russell was by the acre, and he bargained with him for a year at 14*l.* During the whole of the three years he lived on Fisher's land at Midley. *Abbott*, C. J. "I am of opinion that there was not in this case any contract of hiring and service for one whole year. Here the master had not the control over the servant for the entire year, but only for so much of the year as the duties of looker required his attention. At other times he was at liberty to employ himself in any manner he pleased, either in working for other persons or for his master, and when he worked for the latter he always received extra pay." *Bayley*, J. "In order to gain a settlement by hiring and service, there must be a contract for one whole year, and a service for the whole year. This is distinguishable from the cases cited, because here, from the very nature of the employment, it was not likely to fill up the whole time of the pauper. Scarcely ever more than a few hours each day would be required. This is very like the case of a person employed as an occasional servant for the purpose of brushing clothes. The master has no control over the servant as soon as he has performed the required service, and that takes up but a small portion of his time." *Littledale*, J. "*Rex* v. *Horwick* (*post*,) is the only case cited which bears any resemblance to or forms any authority for the present; and even that is distinguishable from it in one important particular; for there the pauper was provided with full and fair employment by one and the same master; whereas here, the work done cannot possibly be rated as the entire service of any husbandman,

and the pauper actually resorts to other employers to fill up the measure of his labour, and to augment the sum of his wages. Upon the grounds already detailed by the court, I am also of opinion that the order of sessions must be quashed."

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Rex v. *South Killingholme*, 10 *B. & C.* 802. An order for removing R. Robinson and family from South Killingholme to Elsham was quashed. Case:—The pauper being unmarried and without child, in 1823 hired himself for a year for 5*l.* wages and 5*s.* earnest, to his aunt, who resided in North Killingholme, and occupied six acres of land and kept two cows there; when his aunt had no work for him he was to work for anybody else for his own benefit. The pauper entered the service, resided, and worked with his aunt during the whole year, except that in harvest time he worked for a fortnight with another person at 2*s.* per day, which he received for his own benefit, sleeping every night at his aunt's, and doing all the work she had for him to do every morning before he went to work, and generally in the evening when he returned, unless it was too late. He received his wages at the expiration of the year. The next year he was hired to another master at 9*l.* wages. Lord *Tenterden*, C. J. "The decisions certainly are not very distinguishable from each other, but I think this case comes nearer to *Rex* v. *Edgmond*, *Rex* v. *Polesworth* (*post*), and *Rex* v. *Lydd* (p. 508), than to the more early ones. The parties to the contract must have contemplated some portion of the year when the aunt would not have employment for the pauper; if that be so, the contract did not include the whole year, but only such part of the year as she would have work for the pauper." *Bayley*, J. "The fair meaning of the contract was to limit the service of the party hired to that portion of the year during which the aunt might have occasion for it." *Littledale*, J., concurred. *Parke*, J. "If the meaning of the words be taken to be that the aunt, when she did not choose to employ the pauper the whole year, might decline doing so, the contract of hiring was not for a year. And construing the words of it according to their natural import, I think that was the fair meaning, and that this was an exceptive hiring. In *Rex* v. *Chertsey* the pauper was hired for a year, and was 'to have her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour.' The latter words were considered by *Ashhurst* and *Grose*, Js., to give her liberty to do such work as she could consistently with the service which she was in the first instance bound to perform for her master." Order of sessions quashed.

A hiring for two half years in succession, will not make a yearly hiring;

Dunsford v. *Ridgwick*, 2 *Salk.* 535; 2 *Bott*, 250. A person was hired for half a year, and after that was hired again for another half year with the same master, and served a year in one continued and entire service, but by several hirings. By the Court: "It ought to be one entire contract, and one entire service; the one is required by the statute as well as the other. If a service under several contracts shall gain a settlement, one that serves by the month, by the week, or by the day, if he continue a year, shall gain a settlement. One may hire by the day for charity; but there is danger of being chargeable in hiring such a person by the year. For such a term as a year it is not supposed a master would hire one, unless able of body, and so a person not likely to become chargeable."

Same point.

So *Horsham* v. *Shipley*, *Fol.* 134; 2 *Bott*, 340. A person was hired from May-day to Lady-day, then from Lady-day to May-day: and the court were of opinion it did not gain a settlement, for they said the hiring must be for a year.

though such hirings be according to local custom.

Rex v. *Lowther*, *Burr. S. C.* 674; 2 *Bott*, 238. Case:—The pauper was hired to W. Thompson from Whitsuntide to Martinmas; and again was hired to him for the succeeding half-year, from Martinmas to Whitsuntide; and in pursuance of those hirings she served for the complete year without leaving her service, and received two half-years' wages. The usual custom of hiring servants in Cumberland is from half-year to half-year. And it was agreed, without argument, that no settlement could be gained under such a hiring and service.

2. *Of the Contract of Hiring.*

Hiring at a statute fair, if for less than a year, gains no settlement, though such a hiring be *customary*.

Rex v. *Hanwood, Dougl.* 439 ; *Cald.* 100. At Otley there is a custom for servants to hire by the year at two different statute days, one on the Friday before Old Martinmas, and the other on the Friday next after Old Martinmas, at which latter statute day they always hire till old Martinmas-day following, which by the custom is considered as hiring for a year. Old Martinmas-day in 1775 was on a Tuesday. On the Friday following, being the second statute day, the pauper hired till Old Martinmas-day following, and served that time. *Willes*, J. "In *Rex* v. *Newstead* the duration was uncertain, and the hiring was supported by the custom of the country : the custom here (if it could be of any weight to control the statute) is stated to be the custom of Otley, and the contract was performed in another place." Mr. Justice *Buller* said, "There is no case where a hiring upon the face of it appears to be for less than a year, in which the court has held that a settlement was gained ; and it would be dangerous to make a new precedent of that sort."

Same point.

Rex v. *Standon Massey*, 10 *East*, 576. Ongar statute fair is held on the day after Old Michaelmas, except when Old Michaelmas-day falls upon a Saturday, and then on the following Monday. At Ongar fair, 1806, held on a Monday, which was two days after Old Michaelmas in that year, the pauper was hired to serve W. C. *from the fair-day till the Old Michaelmas-day* following, at yearly wages. Lord *Ellenborough* said, "No settlement could be gained under such a hiring, and that it was in no manner similar to a hiring from a moveable feast in one year to the same moveable feast in another." He added, "If we allow these constructive hirings to go on, it will soon be contended that a servant acquires a settlement who is hired by a schoolmaster from the breaking up at Christmas to the breaking up at Christmas, though less than a year should in fact be comprised in the period." And he added, that "The cases had gone far enough upon this subject."

Hiring for less than a year, to avoid a settlement, although a year's wages be paid, is not a yearly hiring.

Rex v. *Little Coggeshall*, 6 *M. & Sel.* 264. The pauper at Michaelmas, 1806, went as a servant in husbandry for a month, upon liking, and if he suited his place he was to continue during the year, and have three guineas wages. When he had served the month, his master said that he suited him, and if he liked he might continue with him ; but added, that he must leave his place a fortnight before the end of the year, in order that he might not be an incumbrance to the parish. The pauper made no answer. Fourteen days before the end of the year, his master told him that his time was up, and as he had behaved himself well he would pay him all his wages, which he did, and then desired him to go to his father, where he might hear of another place. The pauper made no objection ; took his wages, went away, and never returned. The sessions thought it a dispensation from service for the fourteen days. Lord *Ellenborough*. "The point on which the settlement fails is, that there was not any hiring for a year. I should be glad to know if the master could have maintained any action against the servant for not serving him the year. At the end of the month of probation, the master said he would continue him, but he must go away a fortnight before the end of the year, that he might not be an incumbrance to the parish. This therefore was a stipulation by way of condition that they should part within the year." *Bayley*, J. "With respect to what has been said of the original contract, I would ask whether at the end of the month the pauper had a right to insist upon his master's continuing him the year." Order quashed.

Hiring for fifty-two weeks, is not a hiring for a year.

Rex v. *Astley, M.* 1815, 4 *Burn*, 279, 23d. edit. Removal from Corley to Astley. Order confirmed. Case :—At Michaelmas, 1812, the pauper was hired by Mr. Lillyman, of Astley, for fifty-one weeks, at two guineas and a half wages, and went into his service and lived with him accordingly. About a fortnight before the expiration of the fifty-one weeks, the pauper was hired again by Mrs. L. for fifty-one weeks, to commence from the Michaelmas following ; and on the day on which the first fifty-one weeks expired, and before the expiration of the first fifty-one weeks, she agreed with her master to serve him for the ensuing week ending at

Michaelmas, for which a few days after Michaelmas she received 1*s.* wages. Three weeks before the end of the first fifty-one weeks it had been proposed by the mistress to the girl and her mother that the girl should stay in her service the odd week, after the end of the first fifty-one weeks, and before the commencement of the second fifty-one weeks. The girl was unwilling, and would not say whether she would or not, but the mother was willing she should stop; but a full agreement for the week was not made until it was made by the husband *on the day on which the first fifty-one weeks expired.* At the time the pauper agreed with her master to stay the odd week, the other servant was gone, and her mistress was ill and near her confinement. The pauper stayed in the service the odd week, and the second fifty-one weeks. It was contended that the continuance of the pauper a week in the service after the expiration of the fifty-one weeks, completed her year's service, and she thereby gained a settlement. Lord *Ellenborough*, C. J. "The question is not whether one week and fifty-one weeks make a year, but whether fifty-two weeks make a year. Fifty-two weeks do not make a year, and consequently such a service does not give a settlement." *Bayley*, J. "There are but 364 days in fifty-two weeks, and 365 days, 6 hours, and 49 minutes in a year. Unless, therefore, the whole of the latter time is included in the contract, no settlement can be obtained." Lord *Ellenborough*, C. J. "The question is purely arithmetical, and the sessions at Warwick will in future know the difference between a contract for fifty-two weeks, and a contract for a year." Order of sessions quashed.

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Rex v. *Ackley*, 3 *T. R.* 250. On Saturday, 13th October, 1787, being three days after Old Michaelmas-day, which was on a Wednesday, the pauper hired himself to J. Clarke, to serve him until the next Michaelmas. He accordingly went into such service, and continued therein till Saturday the 11th October, 1788, being the day after Old Michaelmas-day, which was on a Friday (it being leap-year), and was paid his wages and went away. As this was a service for 365 days, the sessions thought it gained a settlement in Ackley, and confirmed the order, by which he and his wife were removed from Bicester Market End to Ackley. But the court were clearly of opinion that here was no hiring for a year; this was a hiring for two days short of a year; and though the court has been extremely indulgent with respect to *services*, they have been always strict with regard to hirings. Order of sessions reversed.

Hiring three days after Michaelmas till the Michaelmas following, will not gain a settlement, although there be a service for 365 days (being leap year.)

Rex v. *Wormighall*, 6 *M. & Sel.* 350. Case:—The pauper was hired in 1807 at Thame fair, held on the Tuesday next after Old Michaelmas-day, which in this year happened on the 13th October, for eight guineas, five shillings, and three pence. He served till the 11th October, 1808, on which day he received his full wages, and quitted the service. 1808 was a leap-year. Lord *Ellenborough*. "In those years which consist of 366 days, a hiring and service for a year must be for that same number of days." *Bayley*, J. "One day was wanting to complete the year; for in leap-year the statute (24 Geo. II. c. 23) enacts that the year shall consist of 366 days." *Holroyd*, J. "The statute (21 Hen. III.) for regulating the bissextile year, ordains that in leap-year the intercalary day with the day preceding it shall be accounted as one day."

In leap-year the hiring must be for three hundred and sixty-*six* days.

Rex v. *Roxby*. (See case, *post*). The pauper served only 365 days in leap-year; and the court said he had contracted to serve a year of 366 days (it being leap-year), which he has not done.

Same point.

6. *Weekly or Monthly Wages and Notice.*

6. *Weekly or Monthly Wages and Notice.*

Where the duration of the hiring is not expressed in the contract, the question whether it is a yearly hiring or not, will frequently be determined *by the stipulation as to wages.* Thus where the parties agree for *yearly* wages, the presumption of a *yearly* hiring arises. "If the payment of weekly wages be the only circumstances from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring;

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but if there be anything to show that the hiring was intended for a year, the reservation of weekly wages will not control that hiring." *Per Buller*, J., *Rex* v. *Newton Toney*, *infra*.

A contract for wages at six shillings a week, summer and winter, is a *weekly* and not a yearly hiring.

Rex v. *Dedham*, *Burr. S. C.* 653; 2 *Bott*, 292. The pauper was hired in April, 1767, to J. Mason, to serve him in the business of a glazier, at the wages of 6*s. a week, board, lodging, and washing, summer and winter.* He served for eleven months, when his master, having taken an apprentice, informed him that he must lodge out of his house; upon which the pauper demanded 6*d.* a week more, alleging that he would otherwise quit the service, on account of his master's having withdrawn from the original agreement. He received the additional 6*d.* a week till the September following, and the pauper apprehended he was bound to stay with his master a year. The sessions thought a settlement was gained. Lord *Mansfield*, C. J. "All the cases require a hiring for a year, and there must be a *reciprocal obligation on both parties.* I see nothing here to make it a hiring for a year. It was a hiring at so much per week: when the master could not lodge the servant any longer, they came to a new agreement for an additional 6*d. a week.* The servant alleged that he would quit the service unless the master would comply with his demand. And to prevent his doing so, the master complied, and paid him 6*d.* a week more." *Yates*, J. "There must be a hiring for a year, either in law or *express words.* These words do *not* express it. The demand made by the servant destroys the presumption, so that neither of them seems at that time to have thought the contract originally made between them was binding for a year." *Aston*, J. "Though a general hiring is a hiring for a year, yet there must be an obligation upon the servant for a year. But nothing here infers such an obligation. 'Six shillings a week summer and winter' only imports that the wages should continue always the same, and not be varied according to the seasons. The master's complying with the demand, shows how the contract was understood by them both."

A hiring at so much a week is not a general hiring.

Rex v. *Newton Toney*, 2 *T. R.* 453. W. Slater removed from Harbridge to Newton Toney. Case:—Slater went to one Postans, a publican, at Newton Toney, who had before employed him three times to go into Shropshire with some hounds, and on his return from his last journey he agreed to live with Postans as ostler at 4*s.* 6*d.* per week, and continued with him as ostler for one year and a half. On demanding his wages, Postans alleged that as he had received vails, 4*s.* 6*d.* a week would be too much; whereupon he agreed to accept after the rate of 10*l.* a year, in lieu of 4*s.* 6*d.* per week. He then left his service and lived elsewhere for five or six months, when he returned to Newton Toney, and agreed with Postans to serve him again as his ostler, as he had done before, at 4*s.* per week, which was about 10*l.* a year, and which he received when he asked for it. Under the latter agreement he lived one year and a half, but thought himself as a weekly servant, and at liberty to leave his service at any time. *Ashhurst*, J. "The case of *Rex* v. *Dedham* (*supra*) is much stronger than this. It is impossible to distinguish the two cases upon principle; here the pauper 'hired himself as an ostler at 4*s.* 6*d.* per week,' but 'that cannot be considered as a general hiring;' and if either party had chosen to dissolve the contract before the end of the year, no action could have been maintained by the other." *Buller*, J. "This case is not so strong as *Rex* v. *Dedham*, for there the expression *summer* and *winter* showed that the party had it in contemplation to continue a year in the service. Here the hiring is merely at so much per week; now if there be anything in the contract to show that the hiring was intended to be for a year, there a reservation of weekly wages will not control that hiring; but if the payment of weekly wages be the only circumstance from which the duration of the contract is to be collected, it must be taken to be only a weekly hiring, and this hiring is of that kind." *Grose*, J. "It appears that the pauper actually left his service in the middle of the year, which satisfies me that it was not intended by the parties to be a hiring for a year." Order of sessions quashed.

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Rex v. *Odiham*, 2 *T. R.* 622, was also a case of weekly wages, similar to the preceding, and was given up by the counsel as having been determined in the above case.

A hiring for so much a week, as long as the master and servant could agree, is only a weekly hiring, and gives no settlement.

Rex v. *Mitcham*, 12 *East*, 351. Removal from Mitcham to Burghfield. Order quashed. Case:—J. Pendry was hired by Graves, the keeper of a toll-gate (*a*) in Egham, at 3*s.* *a week for as long time as his master and himself could agree*, to assist in collecting the tolls: he served for more than a year, assisting Graves in collecting the tolls, and occasionally took care of a horse and some hounds. The hounds were kept in premises belonging to the toll-house, and Pendry during all that time resided in the toll-house. Graves did *not* hire him as he had before hired a brother of Pendry, with whom he expressly contracted as for a yearly servant. Graves paid Pendry, as he wanted *money*, pounds at a time. *Rex* v. *St. Ebbs*, *Burr. S. C.* 289, was quoted, and Lord *Ellenborough* said, "That was an indefinite hiring at so much a year, determinable at the end of the first quarter. This case is nothing more than a hiring at so much a-week, which, where nothing else appears to the contrary, is a weekly hiring within the rule laid down in *Rex* v. *Newton Toney;* and it cannot alter the case by adding that which must necessarily have been understood, that the hiring was to continue as long as the master and servant agreed, that is, from week to week.

It is not a general hiring when the master and servant may separate at pleasure.

A pauper, ten years old, went to service "for meat and clothes, *as long as he had a mind to stop*, to do what he could, and what he was bid," and he remained two years. This is not a yearly hiring.

Rex v. *Christ's Parish, York*, 3 *B. & C.* 459; 5 *D. & R.* 314 The pauper, at ten years of age, went to F. P. for meat and clothes as long as he *had a mind to stop*. P. then lived at Craike, was a wood-carrier, and had two farms. The pauper was to do what he could, and what he was bid. He staid rather more than two years in P.'s service in Craike, and was supplied with meat and clothes. The pauper's father did not hire his son to P., and believed the bargain was only for meat and clothes. The sessions confirmed the order. *Abbott*, C. J. "It must be admitted that a general hiring is a hiring for a year, unless something appears to rebut that presumption. Here no such presumption can arise, because the pauper went 'for meat and clothes, as long as he had a mind to stop,' and consequently might have quitted the service any hour he chose; this completely negatives the idea of a hiring for a year." *Bayley*, J. "In *Rex* v. *Trowbridge*, which was decided in 1816, the court held that a hiring 'for as long time as the pauper pleased' was a hiring at will, and rebutted the presumption of a hiring for a year."

A hiring, which either master or servant may determine when he pleases, is not a general hiring for a year, and confers no settlement.

Rex v. *Great Bowden*, 7 *B. & C.* 249; 1 *M. & R. Mag. Ca.* 42. The pauper, J. Harding, came to Mr. Hamshaw, an inn-keeper, residing in Great Bowden, and asked for a place. Hamshaw had no objection, and put him on as ostler, but said that he did not mean him to have a settlement, as the parish was very particular. No earnest or wages were given, but the pauper was to have what he got as ostler. He had his lodging and his board in his master's house. The pauper could have left *at any time he* pleased, or the master might have turned him away at any time. The pauper lived with Hamshaw as ostler, under the above terms, about a year and a half. *Bayley*, J. "I am of opinion that it was *part of the contract* between the parties in this case that each should be at liberty to terminate the connection whenever he thought proper. The sessions have stated that fact to us, and have stated it, in my opinion, not as a finding of their own merely, but as the law existing in the case, which could only arise out of the contract. *I do not consider that under a general hiring the parties are at liberty to separate when they please; on the contrary, I think the one is bound to serve, and the other bound to employ, for a year;* and that if that is not the understanding, the hiring is not general, but is a hiring for a less period than a year. *A general hiring is, in contemplation of law*, a

(*a*) Since the 3 Geo. IV. c. 126, s. 51, and 4 Geo. IV. c. 95, s. 31, hiring by a toll-gate keeper, or service under a keeper of a weighing machine, cannot create a settlement, *ante*, 474; and see *Chitty's Col. Stat.* vol. i. 492.

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hiring for a year; but this is not a general hiring. This was a hiring 'for as long as the pauper pleased,' for the sessions inform us that it was part of the contract that the pauper might leave whenever he pleased, and that the master might discharge him whenever he pleased. That being the case, there was no hiring, either expressly or by implication, for a year, but there was a hiring for a less period than a year, and service under such a hiring confers no settlement. It seems to me, therefore, clearly, that the sessions have come to a wrong conclusion." *Holroyd* and *Littledale*, Js., concurred. Order of sessions quashed.

A servant in husbandry, hired at the weekly wages of four shillings, board, washing, and lodging, except in the harvest month, when his wages were to be increased to ten shillings and sixpence *per* week, does not gain a settlement, that being only a weekly hiring.

Rex v. *Dodderhill*, 3 *M. & Sel.* 243. J. Hill, the pauper, hired himself as a servant in husbandry to Broad, who occupied a farm in St. Peter's, to serve him for the weekly wages of four shillings, board, washing, and lodging, except in the harvest month, when his wages were to be increased to ten shillings and sixpence *per* week, and then again to be reduced to four shillings. Nothing was said as to the time the pauper was to continue. He served Broad eighteen months in St. Peter's, residing there, and receiving the four shillings per week, except during the harvest month, when his wages were raised to ten shillings and sixpence, and afterwards were again reduced to four shillings. Lord *Ellenborough*, C. J. said, "I take the rule of law to be, that if no particular time is expressed for the continuance of the service, or is reasonably to be implied, a hiring for a year is to be intended. But it has also been laid down, that a reservation of weekly wages imports a hiring by the week, unless the inference which arises from the reservation of weekly wages be repelled by other circumstances. Where there is a liberty to part at a month's notice, that imports that as there must be a month to determine the contract, the reservation of weekly wages is not to limit the duration of the contract, and therefore it becomes a hiring unlimited in duration, which the law terms a general hiring, or a hiring for a year. What is the case here? The hiring is at weekly wages, except in the harvest month, when the servant is to be paid according to a higher rate of weekly wages during that month; he is to be paid ten shillings and sixpence per week; the parties contemplating the possibility of the service continuing during the harvest month. If the exception had been 'for the harvest month,' instead of 'in the harvest month,' it might have afforded a more plausible argument that the contract was meant to endure at least for the period of a month; or if instead of ten shillings and sixpence a-week, it had been stipulated that the servant should receive two guineas for the month, that would have imported a consolidated month, (*a*) and might have repelled, on the same principle as the month's notice, the inference arising from the reservation of weekly wages; but that is not the language of this contract. All that is stated here is the payment of weekly wages, which, according to the cases, controls the duration of the contract." *Le Blanc*, J., concurred. *Bayley*, J. "There is nothing in this case to show that the master bound himself to keep the man, or the man to serve the master for a year. The parties were only providing, that in case the weekly contract should continue up to the harvest month, the weekly wages should be increased. There was no obligation either upon the master or the servant to continue it beyond the week.

(*a*) See next case.

Weekly wages, and two guineas *for* the harvest.

Rex v. *Lambeth*, 4 *M. & Sel.* 315. The pauper's husband had been hired by one W. at eight shillings *per* week, *and two guineas for the harvest*, to do anything the gardener should set him about; and under this hiring he served four years in Chadlesworth. The sessions thought he thereby gained a settlement in Chadlesworth, and now it was contended, in support of their order, that here was an agreement for a gross sum to be paid for the harvest, and not merely, as in *Rex* v. *Dodderhill*, for an increase in the weekly wages in the harvest month. And *for the harvest*, imports for a consolidated period, at least as long as a month, for which period these wages are reserved, which is inconsistent with the notion of a weekly hiring; and therefore this case falls within the principle of *Rex* v. *Hampreston*, p. 517. But *per* Lord *Ellenborough*, C. J. "It does not distinctly appear whether the two guineas were to be paid *de incre-*

mento, or were to cover the whole harvest. All that appears is, that the hiring being by the week, the parties contemplated that possibly it might last through the harvest." Order of sessions quashed.

2. *Of the Contract of Hiring.*

Where nothing is said as to term of service, but that the servant shall have weekly pay, it is only a weekly hiring.

Rex v. *Pucklechurch*, 5 *East*. 382. The pauper hired himself for eight weeks, at 5*s*. *per* week. At Midsummer he agreed for 4*s*. a-week till Michaelmas: at Michaelmas he agreed to live with his master for board and lodging, and 2*s*. 6*d*. *per* week. No time was mentioned then. In the *summer* the pauper asked for more wages, and they were increased, and again reduced in *winter*. When the wages were increased nothing was said as to leaving the service, or dissolving the contract. The alterations of wages took place in the beginning of a week. He entered and left the service the same day of the week. He served in the whole five years and a quarter. There was no complete settlement of wages till they parted. Lord *Ellenborough*, C. J. "If nothing be said as to the term of the service, but that the servant shall have weekly pay, it must *primâ facie* be understood that the parties intended a weekly hiring and service. But circumstances may show a different intent. Here, in the first instance, the hiring was for a specific term of eight weeks; the second hiring was also for a definite time short of a year. No time was mentioned at the third hiring, but it was a hiring at weekly wages. Then it falls within the cases of Dedham, Bradninch, and Newton Toney, where a hiring at weekly wages has been holden to be a weekly hiring, and if it wanted any additional circumstance, the conduct of the parties themselves shows that they so considered it, for the servant left his master at the end of a week in the middle of the year.(*a*) If an indefinite hiring be stated on a record, and nothing shown to control it, it will be deemed a hiring for a year: but that is in the absence of any circumstance from whence a different inference is to be collected." Afterwards Lord *Ellenborough* said, "I hope it will be understood, that where nothing is said in the contract about time, but a reservation of weekly wages, it is only a weekly hiring." *Grose*, J. "It appears that the wages varied at the different seasons of the year: that cannot furnish the inference of an implied hiring for a year, for then the wages must have continued as they were first settled." *Le Blanc*, J. "There is another circumstance confirmatory of the construction that it is a hiring for a year, for the servant in the middle of the year required an advance of wages, to which the master acceded, a circumstance scarcely probable if they had contracted for a year."

Where the servant asked *yearly* wages, and the master offered *weekly* wages, which were accepted, this was not a yearly hiring.

Rex v. *Warminster*, 6 *B. & C.* 77; 9 *D. & R.* 70. The pauper, being of age, was hired to Mr. Thring, a solicitor at Warminster, as gardener. At the time of the hiring, Mr. T. asked the pauper what he should give him a-week. The pauper asked 20*l*. *a-year* wages, which Mr. T. refused to give, but said he would give 6*s*. a-week for the winter, and 9*s*. a-week for the summer, which the pauper agreed to take. He was to be in Mr. T.'s house. Under this hiring the pauper served more than a year, living in the house. He and his master then came to a fresh agreement for weekly wages, without board; and about a week afterwards Mr. T., upon detecting some irregularities among his servants, discharged the pauper without notice. During the service under the first hiring, the pauper, on one occasion, gave his master a month's notice of his intention to quit; but the notice was not acted upon. The wages were accounted for weekly; but were paid occasionally, as they were wanted and applied for by the pauper. *Rex* v. *Dedham*, *Rex* v. *Pucklechurch*, *Rex* v. *Dodderhill*, and *Rex* v. *Lambeth*, were cited. *Abbott*, C. J. "The cases referred to are all directly in point; but independently of any authorities, it is perfectly clear, from the facts of this case, that the master never intended to hire the pauper for a year. He first asks the pauper what he shall give him *a-week*—the pauper asks 20*l*. *a-year*: the master refuses to give that, but offered a

(*a*) In *Rex* v. *Road*, 1 *B. & Ald.* 362, *Bayley*, J., observed, "From quitting in the middle of the year, without notice, it may fairly be inferred there was no yearly hiring." See *Rex* v. *Worfield*, *ante*, 502.

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certain weekly sum, which the pauper accepted. That clearly negatives the supposition that a yearly hiring was intended."

A pauper agreed with an innkeeper to serve him as ostler, at two shillings a week in the summer, and one shilling and sixpence a week in the winter: Held, that this was a weekly hiring only.

Rex v. *Rolvenden*, 1 *M. & R.* 689. In June, 1820, the pauper agreed with W. Masters, an innkeeper, at Rolvenden, to serve him as an ostler. The pauper and his master bargained by the week, at 2*s. per* week in the summer, and 1*s.* 6*d. per* week in the winter. The pauper entered into the service in June. He received 2*s. per* week till the following Michaelmas: and from Michaelmas to Lady-day, 1821, 1*s.* 6*d. per* week; and from Lady-day to Michaelmas, 2*s. per* week. On the evening of the 23d of February, 1823, the pauper left his master's service, in consequence of a disagreement that took place between his master and him on the morning of that day. *Bayley*, J. "This case cannot be distinguished from *Rex* v. *Warminster*, p. 515. The hiring here is for an indefinite period, at weekly wages, which is a weekly hiring. The mere arrangement that the wages shall be at one rate in the summer, and at another in the winter, does not show that the parties contemplated a service to endure through the summer and the winter, and, therefore, that they intended a hiring for a year; but shows only that they intended that *if* the servant, being hired at weekly wages, should remain till the summer, he should then have so much *per* week, and if he should remain till the winter, he should then have so much *per* week. The true meaning of such an arrangement is merely this: that the servant's wages, as a weekly servant, are to be regulated by the seasons. Looking at the terms of this contract altogether, they seem to me clearly to constitute only a weekly hiring, no service under which could confer a settlement." The other judges concurring, the order of sessions was quashed.

A hiring by the month, at a month's wages, or a month's warning, will not be a yearly hiring.

Rex v. *Clare*, *Burr. S. C.* 819; 2 *Bott*, 295. The pauper, a journeyman miller, at Michaelmas, 1768, let himself to E. S. by the month, at the wages of 8*s.* a-month, and was at liberty to depart at a month's wages, or a month's warning. At the time of hiring, it was agreed that if he continued in her service till harvest-time, he should be at liberty during the harvest month to let himself to any other person for the harvest month. He continued five years in the service of E. S., and during that time constantly let himself to some other person for the harvest, and received the common wages of 8*s.* from his mistress for the harvest month, and paid her one moiety of the wages earned at such harvest; but generally at the end of every month, and sometimes weekly, received his wages of 8*s.* a-month, or in that proportion. He considered himself as a monthly servant, and at liberty to leave his mistress at the end of any month, on payment of a month's wages, or giving a month's warning. This point was given up by the counsel as indefensible: the hiring being only a hiring by the month.

A hiring to work at three shillings and sixpence *per* week, and a week's notice, does not gain a settlement.

Rex v. *Hanbury*, 2 *East*, 423. The pauper agreed to work for one Saunders, as a blacksmith, at 3*s.* 6*d. per* week, with meat, drink, washing, and lodging at S.'s house: to part on a week's notice by either party. The pauper continued to serve for six years, without any alteration of terms, when S. died. The pauper received his wages every Saturday night or Sunday morning; went where he pleased on Sundays, as well as on other days; but was entitled to his board if he stayed at home. On other days, if he wanted a holiday, he asked for it and had it, his master deducting his wages. The sessions thought this a general hiring. It was argued that the service for six years warranted the inference of a general hiring. Lord *Ellenborough* said, "Here the particular terms of the agreement are stated, and therefore we cannot presume that the pauper served under a different contract." His lordship added, "that this case was decided by those of *Dedham*, *Bradninch*, and *Newton Toney*. In the first Lord *Mansfield* said, 'all the cases required a hiring for a year, but that was only at so much a-week.' In the second he observed that the pauper was under no obligation to serve a year, and unless that be so, there can be no settlement gained; and *Rex* v. *Hampreston* turned upon the circumstance of a month's notice to quit being required. But here the contract was determinable at a week's notice. Though the sessions have drawn a conclusion that this was a general hiring, yet it is clear that they meant only to state it as a

conclusion of law from the antecedent facts, the propriety of which they meant to refer to us. But there is no ground for presuming a general hiring, it appearing expressly what the agreement was, in fact, which negatives a hiring for a year."

Instances of implied yearly hiring.

The following are instances in which the terms of agreement were, in most respects, like those in the former cases, but something was added by which it appears that a *yearly hiring was intended.*

But a hiring at three shillings a week "the year round," each to be at liberty on a fortnight's notice, gains a settlement. (a)

Rex v. *Birdbroke*, 4 *T. R.* 245. M. Meers was removed from Stoke to Birdbroke. Order confirmed. Case :—The pauper was hired by J. Olley, farmer, at Stoke, at 3*s. per* week the year round ; each was to be at liberty on a fortnight's notice, but the pauper was not to go away at seed time, hay, or harvest. He stayed in that service a year, and received his wages at different times whenever he pleased. Lord *Kenyon*, C. J., said, "No doubt can be entertained on this case. It does not even rest on a general hiring, for this was an express contract to serve *the year round.* But it is said that this cannot be considered to be a hiring for a year, because there was a reservation of weekly wages, and because each party was to be at liberty to put an end to the agreement on giving a fortnight's notice ; but whether the wages be to be paid by the week or the year, cannot make any alteration in the duration of the service, if the contract were for a year. This, therefore, was a contract for a year, at so much a week, with liberty to quit at any time, except seed, hay, or harvest time, on giving a fortnight's notice : 'but the power of giving notice makes no difference ;' for it has been held that an agreement to leave the service on giving a month's warning, did not defeat the settlement." (*Rex* v. *New Windsor*, p. 528.) *Buller*, J., said, "A hiring for a week, requiring a fortnight's notice, was never heard of." (See next case.)

Hiring at so much *per* week, and liberty to part on a month's notice, is a general hiring.

Rex v. *Hampreston*, 5 *T. R.* 205. Order of removal from Gillingham to Hampreston confirmed. Case :—The pauper, W. Gray, went to S. Hannam, a miller, of Gillingham, and agreed to serve him for 3*s.* 9*d. per* week ; he considered himself obliged to serve his master on Sundays as well as other days, and accordingly served on Sundays. "They had a liberty of parting on a month's notice on either side." He received 1*s.* as earnest to bind the bargain. There was no mention of time. He continued under this contract about two years and a half, residing in Gillingham, in the house of his master. He then went to Tisbury to be inoculated, where he remained two months. Hannam then sent for him, and he was hired by him at the rate of 4*s. per* week. He continued to live with Hannam under the last contract for two years and a half, during which time he resided in his master's house in Gillingham. Lord *Kenyon*, C. J. "It is admitted that since *Rex* v. *New Windsor* the circumstance of the parties having it in their power to determine the service on giving notice, will not defeat the settlement where there is a contract for a year, and a year's service under it. (b) Neither could it be disputed that a general hiring is not a hiring for a year. In the cases cited (c) there was something to show that the parties did not intend that it should be a general hiring ; one was as long as the master wanted a servant, another as long as the parties liked, where, without any notice, the contract might have been immediately determined. But 'wherever the relation of master and servant is to continue for an indefinite time, and cannot be put an end to at the election of either party without notice, there the hiring must be understood to be a hiring for a year.' If this were not a general hiring, those who disputed that proposition should have pointed out for what time it was to continue ; and indeed it has been contended to be for a month, or a month added to a week, but there is no

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(a) A hiring to work at 2*s. per* day, there being a custom to give a fortnight's notice, is a general hiring. *Rex* v. *Keele*, Easter T. 1832.

(b) The power to determine the contract by notice, makes it a *conditional* contract. See the cases under that title.

(c) *Rex* v. *Newton Toney ; Rex* v. *Odiham ; Rex* v. *Dedham ; Rex* v. *Birdbroke.*

2. *Of the Contract of Hiring.*

foundation for either: for if that were so, the pauper might have left the service at the end of the first month, or of the five weeks, without giving any notice at all; but there is no pretence for that; for by the terms of the contract, he was to give a month's notice before he could determine it. And this is distinguishable from *Rex* v. *Bradninch*, (*a*) for there was a hiring for a stipulated time less than a year. In this case, independent of the first contract, the parties met again after an absence, and the pauper was a second time hired at 4*s. per* week, the pauper insisting upon an increase of wages. This also was a general hiring, which in law is a hiring for a year." *Ashhurst*, J. "On the second hiring an observation arises from the difference of expression, for there the pauper was hired *at the rate* of 4*s. per* week, words which clearly refer to the quantum of wages, and not to the duration of the contract." *Buller*, J. "What Lord *Kenyon* said in *Rex* v. *Birdbroke* has been misapplied. His lordship had disposed of the former part of the case; namely, that there was a hiring for a year; and then he added, the power of giving notice makes no difference."

Weekly wages and a month's notice is a general yearly hiring.

Rex v. *Great Yarmouth*, 5 *M. & Sel.* 114. Case:—The pauper let himself by the week to a journeyman baker, and was to have 5*s. per* week wages, food, and lodging, and either party to be at liberty to part, by giving a month's notice. The pauper stated that he let himself by the week, but nothing passed as to his being hired by the week, except that he was to have 5*s.* a week wages. He served three years and a quarter, and quitted upon receiving a month's notice. His wages were paid at the end of a week, fortnight, or month, as he wanted them. Lord *Ellenborough*. "I do not think any material argument arises from its being first found that the pauper let himself for a week, because it is explained by the statement that follows. The facts are to be taken together, without reference to the order in which they are found; and the sessions have concluded that the hiring was indefinite. The first fact is, that the pauper let himself by the week. But to discover if this was intended as the measure of time for which the service was to endure, we must look to the context and see how the contract was determinable. We find then that either party was at liberty to determine it by giving a month's notice. Can any one say that it is a weekly hiring, when the parties were not at liberty to part without a month's notice? I cannot say so. What then is the effect of a month's notice? It does not follow from thence that it was a monthly hiring, or for any definite number of days. Wherefore, as there is no limited duration to be assigned for the service, the law implies that it is for a year. This mode of considering the subject is strengthened by adverting to the fact, that the pauper stated that nothing passed as to his being hired by the week, except that he was to have weekly wages. It is, therefore, in common sense and intendment, a hiring of which no certain portion of time can be predicted for its duration, and is consequently a general hiring." *Bayley*, J. "The sessions could not mean to find that there was a distinct weekly hiring, and upon that, to submit that same question to

(*a*) *Rex* v. *Bradninch*, *Burr. S. C.* 662, cannot be reconciled with these cases, and must be considered as overruled. Case: The pauper came to S. Ruddall, in Crediton, and agreed to *live with him by the week*, at *two shillings and sixpence per week*, and to *part at a fortnight's or month's notice*. The pauper being asked "*how long he intended to live with Ruddall*," replied, he did not know, but *as long as they liked*." The pauper lived with Ruddall, for eight years under that agreement, the pauper and master being both at liberty to part from each other on a fortnight or month's notice. The pauper received his wages of two shillings and sixpence *per* week, sometimes at the end of the week, sometimes at the end of a fortnight, and sometimes longer, as he wanted money. It was argued that this could not be taken as a hiring by the *week* only; because they were not to part but at a fortnight's or a month's notice, which is inconsistent with the idea of hiring only by the week. But Lord *Mansfield*, C. J., observed, "that this pauper was under *no obligation to serve for a year:* whereas, in order to gain a settlement, there must be an *obligation* upon the pauper to serve for a year."

us." *Abbott*, J., concurred. *Holroyd*, J., said, "This is not a hiring for a month, for then it would be determinable only at the completion of each month's service, whereas this might have been determined at the expiration of a month's notice, without regard to whether it expired at the month's end or not." (*a*)

2. *Of the Contract of Hiring.*

Rex v. *St. Andrew, Pershore*, 8 *B. & C.* 679. The pauper was hired as a horsekeeper, at 1*l.* a week. The terms were a month's warning or a month's wages. No further mention of time. *Bayley*, J. "The sessions had no premises to warrant their conclusion. The stipulation for a month's wages or month's warning rebuts the presumption of a weekly hiring. It was thence manifest that it was intended that the service should continue for a longer period than a week. It then became a hiring unlimited in duration, and the law implies that that is a hiring for a year." Order of sessions quashed.

Month's notice rebuts presumption of a weekly hiring.

7. *Hiring by the Job.*

7. *Hiring by the job.*

If a pauper is hired to do a particular job, which may occupy him a year, it is not a hiring for a year; but there *may* be a hiring for a year, though the wages are regulated according to the quantity of work done.

Rex v. *King's Norton*, 2 *Stra.* 1139. M. Calcut was hired for a year to spin yarn at 1*s.* 6*d.* a stone, and was to provide herself with victuals and lodging. She spun the whole year, and boarded and lodged at her master's, allowing 2*s.* a week for the same. By the Court: "This case hath all the requisites of the statute, and is a good settlement. For in fact here is a hiring and a service for a year. And whether she was paid by the year, or by the quantity of her work, was immaterial."

Hiring for a year to spin yarn at so much *per* stone, will gain a settlement.

Rex v. *Birmingham, Doug.* 333 : *Cald.* 77 : 2 *Bott*, 217. Case:—T. Baker was hired in Birmingham by J. Jennings a wood-screw-maker for a year, "good earn, good hire," to work for him and no other master, to make screws at so much *per* gross: and this was all that passed. Persons are often hired at Birmingham under the terms "good earn, good hire," the meaning of which is, that their pay is to depend upon their work. Baker had no wages; he was to have what he got. His master had no business but that of a screw-maker. He was to work in his master's shop, and do no other work. He served a year under the hiring, and sometimes lodged with his master, sometimes in another house; when he lodged with his master he paid him for it. He sometimes absented himself to drink or play for a week or a fortnight, and never asked his master's leave for such absence. His master on his return was angry, and checked him, but always received him again. During such absence he never worked for his master, nor did he or could he for any other person. Baker had said to his master he could not compel him to work, and the master thought he had no right to compel him. It is generally understood at Birmingham, that persons hiring to work in shops, under the above terms, may occasionally absent themselves, but cannot work for another master. The court, after discussing all the cases, considered that this was a good hiring and service.

A hiring "for a year," to make screws at so much *per* gross, "good earn good hire," will gain a settlement.

Rex v. *Woodhurst*, 1 *B. & Ald.* 325. Removal from St. Ives to Woodhurst. Order confirmed. Case:—In 1809 the pauper was hired by W. Margetts of St. Ives, brickmaker, to work in St. Ives under a written agreement, which Margetts states to be lost, and to be as follows: "I G. H. have this day agreed to serve W. M. as a brickmaker, from Michaelmas to Michaelmas again. G. H. engages to make 70,000 bricks at so much for digging and turning, so much for moulding and making, and so much for running to the kiln." Nothing was said as to the time he was to begin to dig; he probably began in November, and then worked on the kilns under that contract, not having finished his 70,000 bricks till

Hiring to make a limited quantity of bricks gives no settlement.

(*a*) *Beeston* v. *Colyer*, 4 *Bing.* 309; 12 *Moore*, 552. The plaintiff became a clerk to defendant in March, 1793. In 1811, his salary was paid quarterly,—for the last six years, up to 1826, monthly. He was dismissed in December, and the court held that this was a general hiring.

2. *Of the Contract of Hiring.*

after Michaelmas following. As soon as the pauper had made the 70,000 bricks, according to his contract, his master had no control over him, and he might go where he pleased, even if it was a month before Michaelmas, and if he stopped and made more than 70,000 bricks he was to be paid for them, and the master could set him to no other work than brick-making. This was the custom of the kilns. After argument, Lord *Ellenborough*, C. J. "entertained no doubt there was not a contract which, properly speaking, had relation to time. The pauper engages to serve only until a particular job be done: if the bricks were made before the year expired, his service would terminate. So that unless he finished the last brick exactly at the year's end, which would be very improbable, he would not serve for a year. It is therefore only a contract for that individual job, and the introduction of time into the agreement is wholly irrelevant." Order of sessions confirmed.

An agreement to live with a step-father, to work with him and to be paid at a certain rate for his work, is not a hiring for a year.

Rex v. *St. Peter's, Dorchester*, 1 *Bla. Rep.* 443. The pauper, from six years old, was maintained and employed by his step-father, as a button maker, without wages or contract. At the age of sixteen he went away to seek more advantageous employment, but returned soon after, and agreed with his step-father to live with him in his house, and to be paid 1*s.* for every gross for what he should earn at button-making, deducting 5*s.* a-week for his board. Under this agreement he lived with him four or five years. By Lord *Mansfield*, C. J. "This is the case of a workman hired to work by the piece. It is not like any of the cases where there was a hiring for a year. Indeed, hiring in general and indefinitely gives a presumption of a hiring for a year, where the nature of the service and subsequent facts concur to render it probable that it was so meant. But the nature of the present service is quite otherwise. It is very clear in this case that there was no hiring for a year express or implied."

In *Rex* v. *Alton*, *Cald.* 424, the pauper agreed with his uncle for a year. During the year, the pauper being idle, he agreed to work by the piece, and find find himself board, &c. The court held the services would connect (see *post*), and it was also added, "that the second agreement being general, would be equivalent to a hiring for a year." *Sed quære.*

8. *Of retrospective Hiring.*

The *contract* for a year must not embrace any time *past.*

8. *Retrospective Hiring.*

Rex v. *Ham*, *Burr. S. C.* 304; 2 *Bott*, 356. R. Port, of Ham, hearing that the pauper was a likely boy to serve him as a postilion, sent to the pauper's father to have him upon liking. After the pauper had served Port eight weeks, Port hired him for a year, to commence from the beginning of the said eight weeks. He served Port a year (including the eight weeks) and ten days, and no longer. By *Lee*, C. J. "This case differs from all the former cases. In *Rex* v. *Lidney*, p. 528, the first hiring was conditional for a quarter of a year upon liking; and if they did like each other, then to continue for a year: yet it was holden a good settlement, as they did like each other; and the year's service was performed. In *Rex* v. *New Windsor*, it was uncertain till the end of the year, whether the hiring would be for a year; yet happening so in the event, it was held good. In the present case, the commencing of the hiring was eight weeks after the boy had been upon liking, with a retrospect to his first coming into the service. Now a man cannot serve from a day past." Mr. J. *Foster* "thought the cases of *Rex* v. *Lidney* and of *Rex* v. *New Windsor* had caried the matter as far as possible; and if they were new questions, he should doubt of those resolutions: but both those were hirings for a year, previous to the service, and the conditions were performed. He observed also that the safest way is to adhere strictly to the words of the act of parliament; for refinements upon these questions have produced infinity of questions and difficulties." And the court were of opinion that the pauper gained no settlement.

Retrospective hiring not sufficient.

Rex v. *Marton*, 4 *T. R.* 257. The pauper being at the time under age, went into the service of W. Fisher, in Marton, and stayed about a fortnight or three weeks without any hiring. The pauper's father then made an

agreement with Fisher for the pauper to serve him for a year, at 2*s.* 6*d.* per week. The time he had then served was to make a part of, and be reckoned in, the year. He stayed in Fisher's service upwards of fifteen months from his first coming, and he received his wages according to the above agreement. It was admitted that the settlement in Marton could not be supported, because according to *Rex* v. *Ilam*, and *Rex* v. *Hoddesdon, Cald.* 23, a retrospective hiring was not sufficient. (See also *Coomb* v. *Westwoodhay*, p. 506.)

2. *Of the Contract of Hiring.*

9. *Hirings made purposely to avoid a Settlement.*

9. *Of Hirings made to avoid a Settlement.*

A master may hire a servant for a less period than a year, for the express purpose of preventing the servant from gaining a settlement by such hiring and service. But this must be done *boná fide*, for if the contract was *really* for a year, though ostensibly or colourably for a shorter time, the settlement is not to be thus defeated. (See *Rex* v. *Little Coggeshall*, p. 510.)

A covenant not to hire, so as to gain settlement, is valid.

Congleton v. *Patteson*, 10 *East*, 130; *Collison* v. *Lettson*, 6 *Taunt.* 224. A covenant not to hire servants, so that they shall gain a settlement, is valid; but does not run with the land, so as to bind assignee.

Hiring three days after Michaelmas till the Michaelmas following gains no settlement, although such contract be made with a view to prevent a settlement.

Rex v. *Mursley*, 1 *T. R.* 694. W. Coleman, the pauper, *three days after* Michaelmas, 1782, was hired by J. Pollard, of Mursley, to serve him in husbandry *until the* Michaelmas *following:* he served that time, and received his wages. At the time of hiring, Pollard told him he should not belong to Mursley. The sessions stated it as their opinion that all such transactions on the part of masters are fraudulent, to prevent servants gaining settlements: and adjudged that the pauper gained a settlement. But by the Court: "It is very clear that this is not a hiring for a year so as to gain a settlement." And as to the question of fraud, *Buller*, J., said, "*That* only arises where in truth there is a hiring for a year, and a service for a year, and the parties endeavour to colour it, in order to prevent the settlement: in such a case the court may say it is fraudulent; but a master may, if he please, hire a servant for less than a year, for the express purpose of preventing his gaining a settlement." Both orders quashed.

So, hiring for eleven months, though so limited to prevent the gaining a settlement.

Rex v. *Houghton*, *Fol.* 137; 1 *Stra.* 83; 10 *Mod.* 392. J. Evans was hired with Trubshaw, of Haughton, from Ash Wednesday to Christmas, and served him that time. Then he went away from him, and stayed with his father in Ranton about a week. Then he returned to T. and was again hired with him for eleven months, and served him for eleven months. Then he departed from T., and took his clothes with him, and was absent one week. Then he returned to T., and was hired with him for eleven months, and accordingly served him; and then left that service, and went to his father in Ranton, and stayed about one week. Then Evans served one Sutton, of Haughton, for about three weeks, then returned to Ranton, and stayed for about a week: and then returned to Sutton, and hired with him for eleven months, and served with him within a fortnight or three weeks of the last eleven months, when, by agreement with Sutton, to avoid a settlement in Haughton, he left him, took his clothes, and went into Gnosall, and there continued about a week; then returned to Sutton, and continued with him so long as to make up his service for the last eleven months; and three weeks before Christmas, Evans hired himself again to Sutton for another eleven months, and served him from that time till within three weeks of Michaelmas following, and then came away, and married. The question was, whether these several hirings were sufficient to gain a settlement in Haughton. *Parker*, C. J., said, "This was an apparent fraud, and differed from all the other cases." *Pratt*, J., said, "I doubt we must take the law to be that there must be a hiring for a year, and a service for a year. Here the sessions have found specially, that there is neither hiring nor service for a year. And suppose a man that lives in a parish encumbered with poor, hires a servant for eleven months only, purposely, by way of caution, to prevent a charge upon the parish, the intent is lawful, and how can such hiring and service gain a settlement? And as to the matter of fraud, if there be any, the justices of the peace are

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judges of that." *Eyre*, J., was of the same opinion as *Pratt*, J., (*Powis*, J., being absent.) Afterwards, in Easter Term, after long consideration, the opinion of all the court was that these hirings and service in Haughton were not sufficient to gain a settlement: and though such hirings as in this case do defeat settlements, yet if that be a mischief, it is to be remedied by the legislature, and not by the court, which is to judge on the law as it stands.

But a hiring for eleven months, and to *give* one month *over*, gains a settlement.

Rex v. *Milwich*, 2 *Burr. S. C.* 433; 2 *Bott*, 306. T. Thacker was hired at Milwich for eleven months for four pounds ten shillings, and it was agreed between him and the master that he should give in a month's service beyond the eleven months. He served the eleven months, and also the given-in month, except the last three days, and he could not say whether he served them or not; but he received the whole four pounds ten shillings wages. It was moved to quash these orders, because this was not a hiring for a year, being only for eleven months; nor a service for a year, because three days were wanting at the end of it. But the court were very clear, that this agreement was a manifest contract to serve for a year, notwithstanding the form of expression (which by the way they considered as an attempt to prevent the man's gaining a settlement, by a very paltry evasion.) The real question was no more than whether eleven and one make twelve? There are no particular technical words necessary to make a hiring for a year. The substance of this agreement is to serve twelve months for four pounds ten shillings. And what signifies the variation of expression? Every contract to serve is a contract to serve for a year, unless there be something to explain it otherwise; and certainly there is nothing here to explain it otherwise. And no action could have lain for the wages till the end of the whole twelve months (*a*). And as to the servant's going away three days before the end of the year, the state of the fact doth not support the objection. He could not say whether he did or not. But he received the whole four pounds ten shillings wages, which at least seems to imply the master's consent or permission. (See *Rex* v. *Sulgrave*, 1 *T. R. post.*)

10. *Of conditional Hirings.*

10. *Of Conditional Hirings.*

Although the 8 & 9 Will. III. c. 30, s. 4, seems in express terms to require an *absolute* hiring for an entire year, viz. *for one entire consecutive period of* 365 *days*, yet in the construction of it, as well as in the statute relating to a settlement by a yearly tenancy, it suffices if there be a *conditional* hiring for a year, *determinable in a certain event* by either party, accompanied with an *actual service* for a year. The distinction between a *conditional* and an *exceptive* hiring is clearly explained by *Bayley*, J., in *Rex* v. *Byker*. "A conditional hiring is where the contract is for the entire year, but a provision is introduced that, on a given event, it shall be competent to either party to suspend or put an end to the service. If neither party avails himself of the condition, the contract becomes absolute. But in an exceptive hiring, the relation of master and servant cannot subsist through the year, unless they enter into some further arrangement." It is no objection to the contract, that there is an *implied* exception by the custom of the country, in a particular trade, or by the general law of the land. But any limitation as to the number of working hours is an exceptive hiring (*post*).

Under a conditional hiring the servant may acquire a settlement, but under an exceptive one, he cannot.

A pauper was by indenture hired for a year as a driver in a col.

Rex v. *Byker*, 2 *B. & C.* 114; 3 *D & R.* 330. Order of removal of W. Gray from Haughton-le-Spring to Byker was confirmed. Case:—By an indenture of the 23d of October, 1809, made between J. Potts of Byker

(*a*) This is not a proper test, because where the contract is for a year at weekly wages, an action would accrue for wages at the end of each week, and yet it is a yearly contract. See *Patteson*, J., *Rex* v. *Ravensworth*, *post*.

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of the one part, and the several persons whose names or marks were thereunto subscribed of the other part; J. Potts did hire the several other parties thereto, and they did bind themselves, as workmen or servants, to be employed in a certain colliery for a whole year, from the 21st day of January, 1810, and to serve J. P. in the colliery for certain wages mentioned; and J. P. did covenant to pay to every driver, for every good and sufficient day's work, not exceeding fourteen hours in single-shaft pits, (and 2*d.* per day when that time was exceeded,) 1*s.* 10*d.* And the several persons hired did covenant with J. P. diligently to perform and obey his orders as to working the colliery, and to work the colliery fairly and regularly, or in default thereof should forfeit (to be retained out of their wages) 10*s.* 6*d.* for every act of disobedience, and 2*s.* 6*d.* for lying idle upon each hewer, driver, &c.: and for every working day which any of them should absent themselves from their employment, or should neglect to fulfil the whole of the business of a usual day's work, unless prevented by sickness or some other unavoidable cause, the defaulters should forfeit 2*s.* 6*d.* for every such default or neglect, all which forfeitures should be deducted out of the wages of each offender at the first pay-day next after the offence. There was a proviso, that the indenture should not be construed to extend to exclude any justices from any cognizance which the law of this kingdom hath given to justices over masters and servants; but that the several parties should be at full liberty, upon any breach of any of the covenants, to require the aid of any justice to compel the performance, or punish any breach of such covenants, as far as by law they could if the indenture had not been made. And it was further agreed, that if J. P. should think it necessary, about Christmas, 1822, to do anything needful to be done in the colliery, or the working of the same, that then it should be lawful for him to stop the workings for any time not exceeding seven days, without paying any wages to those prevented from doing their daily work, except such of them as should be employed in any other work about the colliery, who should be paid reasonable wages for such other work. This indenture was executed by J. Potts and by the pauper, together with other workmen. Gray was a driver. When the indenture was executed, Gray was in the service of J. Potts at the colliery, and he continued in his service as a driver for a whole year, from the 21st of January, 1810, till the 21st of January, 1811, and resided during all that year in Byker. There was no evidence, either that the pauper had or had not incurred any penalty or forfeiture during his year's service under the indenture, or that any deduction had or had not been made from his wages. *Bayley*, J., delivered the judgment. "The question in this case was, whether the hiring was conditional or exceptive. Many cases of this description are to be found in the books, between which the distinction is rather subtle, and at first sight not easily discovered. Adverting to them all, the proper distinction appears to be this; if *the bargain be originally made for an entire year, and terms are introduced applicable to a continuance of the relation of master and servant during the whole year, but there is also a provision that in a given event it shall be competent to the parties to put an end to or suspend the service for a part of the year, still a settlement is gained if the service is actually performed for a whole year, and neither party avails himself of the condition.* A conditional hiring is, for this purpose, the same as an absolute hiring, unless the condition is acted upon. *An exceptive hiring is one by which the relation of master and servant will not subsist for the whole year unless some further arrangement is entered into;* and if by the bargain days or hours are excluded from the service, that is an exceptive hiring. It has been contended that here both days and hours are excluded; but we are of a different opinion. The pauper was hired by indenture, and it was agreed that the master should pay for every good day's work not exceeding fourteen hours, (and 2*d.* per day when that time was exceeded,) 1*s.* 10*d.* It was said that the pauper was entitled to absent himself at the expiration of fourteen hours, and that the master could not compel him to work any longer. We are of opinion that the time was only mentioned as the measure of the wages; that the contract does not impose any limit upon

liery, at the wages of one shilling and tenpence for a good day's work, not exceeding fourteen hours, and twopence a day more when that time was exceeded; and he was to forfeit ten shillings and sixpence for every act of disobedience, and two shillings and sixpence per day for lying idle (to be deducted out of his wages.) The master about Christmas to repair any engine, might stop the workings for seven days, without paying any wages. This is a conditional, and not an exceptive contract.

Distinction between conditional and exceptive hirings.

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what might reasonably be required by the master; and that the relation of master and servant continued during the whole twenty-four hours. Upon the forfeitures also, we think that the pauper might not, upon payment of them, be absent if he thought fit, but that they were inserted to enforce regular attendance; and this view of it is confirmed by the clause stipulating that nothing in the contract shall be construed to abridge the power of the magistrates. Another clause has been insisted upon for the appellants; that relating to the repair of the engine. If that was an exception, this was a contract for a year, *minus* seven days. But we think it a contract for a year, with power to the master to stop the work if he thought fit. Had he done so, the question would have been different; but that is not found. This, therefore, was a bargain for a year, with liberty to suspend the service, which constitutes a conditional and not an exceptive hiring. This distinction between *conditions* and *exceptions* is consistent with all the decisions. In the cases where a servant having liberty to be absent has been held not entitled to a settlement, it will be found, either that the servant availed himself of the liberty, or that the time was necessarily excepted out of the original contract. This being a conditional hiring and the condition not having been acted upon, the pauper gained a settlement in *Byker*. Order confirmed. (*a*)

A hiring for five years, to be paid 10*s.* a week for the first two years; 11*s.* for the third; 12*s.* for the fourth; and 13*s.* for the fifth: hours of working to be from six in the morning till seven in the evening; to be paid for all over-time, and a deduction to be made for all short is not an exceptive

Rex v. *Ossett cum Gawthorpe*, 4 *Bar. & Ad.* 216; 1 *N. & M.* 21. George Clarke and family were removed from Leeds to Ossett cum Gawthorpe. Order confirmed. Case:—The pauper was born in Ossett cum Gawthorpe, and a hiring under the following agreement and service for the time therein mentioned in the respondent township were admitted. "Memorandum of an agreement made this 25th day of the fourth month, 1826, between J. and T. Walker, of Leeds, cloth merchants, on the one part, and G. Clarke, with the consent of his father, on the other part; the said G. Clarke doth agree to become the hired servant of J. and T. Walker, for the term of five years, to do such work as belongeth to the finishing of cloth, and to take any part of work the said J. and T. Walker shall think proper, and do the same to the best of his knowledge justly and faithfully; this being done, the said J. and T. Walker promise to pay unto G. Clarke

(*a*) The following correct summary is from a note in *Rex* v. *Byker*, 2 *B. & C.* 117. In *Rex* v. *Bishops Hatfield*, 2 *Bott*, 211, the pauper was hired for a year, with liberty to let himself for the harvest month to any other person. In *Rex* v. *Empingham*, 2 *Bott*, 217, the hiring was for a year, with liberty to be absent eleven days during the sheep-shearing season. In *Rex* v. *Arlington*, 1 *M. & S.* 622, the hiring was for a year, with liberty to be absent during the sheep-shearing season. In *Rex* v. *Turvey*, 2 *B. & A.* 520, the hiring was for a year from Michaelmas, to go away a month at harvest, and make up the time after Michaelmas. In each of these cases the pauper did absent himself according to the liberty reserved in the original contract; and it was held that no settlement was gained by such hiring and service. There are two cases, *Rex* v. *Westerleigh*, *Burr. S. C.* 753, and *Rex* v. *Winchcomb*, 1 *Doug.* 391, which appear to be at variance with those decisions. In each of these two cases the pauper was hired for a year, with liberty to be absent on duty as a militia man for a month, and he accordingly was absent; yet it was held that the hiring and service conferred a settlement. In *Rex* v. *Over*, 1 *East*, 599, Lord *Kenyon* says, that the ground of those decisions was, that the leave of absence stipulated for, was no other than what the law would have compelled without stipulation. In several other cases, it has been held that implied exceptions will not prevent the gaining of a settlement, but that if they are expressed in the contract they will have that effect. *Rex* v. *Macclesfield*, *Burr. S. C.* 458. *Rex* v. *All Saints*, *Worcester*, 1 *B. & A.* 322. And there appears to be this distinction between them, that notwithstanding the implied exceptions, the relation of master and servant continues during the whole year; whereas that relation has been considered at an end during the excepted periods stipulated for in the contract. *Rex* v. *Wrington*, *Burr. S. C.* 280. But in the cases of the militia men, it seems that the relation of master and servant must at all events have been suspended for the time during which they were out on duty. It seems difficult, therefore, to understand on what principle those cases are sustainable; and see the observations made by the court in *Rex* v. *Beaulieu*, 3 *M. & S.* 229.

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hiring, but for five years *absolutely*. *Taunton*, J., dissen.

10*s*. per week for the first two years, and 11*s*. for the third, and 12*s*. for the fourth year, and 13*s*. for the fifth and last year; the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time, and a deduction to be made for all short either in sickness or in health." The question for the opinion of this court was whether G. Clarke gained a settlement in Leeds by such hiring and service. *Denman*, C. J. "It is impossible to decide this case without interfering with some former decisions; but upon the whole I think that this was not an exceptive hiring. The pauper agreed to become the hired servant of J. and T. Walker for five years, to do such work as belonged to the finishing of cloth. If the agreement had stopped here, there would clearly have been a contract to serve for five years, and the masters would have the right to command all the services of the pauper during that period. The question is, if there be any clause in the subsequent part of the agreement which clearly takes away that right. The masters promise to pay the pauper weekly wages, varying in amount yearly during the whole five years. Then comes a clause in these words, 'the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time, and a deduction to be made for all short, either in sickness or in health.' There is nothing here to show that it was in the option of the pauper to work or not for the master in over-hours, and if not, then the right given to the master in the early part of the agreement to all the services of the pauper is not taken away. I think this was a complete bargain for all his time, and that there was not any part of that time during which the pauper could lawfully refuse to work for his master." *Parke*, J. "I am of the same opinion. I think there was no period of the day when the master could not lawfully command the services of the pauper. The true way to ascertain whether this be an exceptive contract or not, is to consider what would have been the situation of the parties if there had been an extraordinary demand for work, and the master had called on the pauper to work during over-hours. Could he have refused? The words of the contract are, 'that G. Clarke agrees to be a hired servant for the term of five years to do work,' &c. That is the stipulation as to working, or to the service to be performed. Then the contract goes on to fix the weekly wages to be paid from year to year by the masters. Then come the words on which the difficulty arises: 'the hours of working to be from six o'clock in the morning until seven o'clock in the evening, and to be paid for all over-time.' Those words seem to me to be a qualification of the sentence which immediately precedes them, and which fixes the amount of weekly wages, if that be so, then the case is like *Rex* v. *Byker*, p. 522. It is distinguishable from *Rex* v. *Birmingham*, p. 538 because there the pauper might at his election have worked or not for his master at over-hours. In *Rex* v. *Frome Selwood*, p. 539, the limitation as to the working hours immediately followed the stipulation for service. Here, between that clause and the one specifying the number of hours the pauper was to work, the clause intervenes fixing the amount of weekly wages. It appears to me that the pauper could not lawfully refuse to work for his master during the over-hours (if required so to do); but that the latter was entitled to the whole services of the pauper during the five years, and consequently this was not an exceptive contract." *Taunton*, J. "The cases undoubtedly run very near to each other. Certainty in sessions law is very important, and I am sorry, therefore, I cannot come to the same conclusion as my lord chief justice and my brother *Parke*. This case appears to me not distinguishable from *Rex* v. *Birmingham* and *Rex* v. *Frome Selwood*, and they being the latest cases on this subject ought to govern this. It is said that in *Rex* v. *Birmingham*, the pauper was to do over-work only if he chose. Looking at the terms of the present contract, I think it was optional in the pauper here also to work over-hours or not. The hours of working are defined to be from six o'clock in the morning till seven in the evening. I cannot see why this limitation of the hours of working was introduced, unless it were as an exception in the contract. It is said that it refers only to the amount of

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wages, I think it refers to the time of working as well, and that the pauper might have refused to extend his time of service beyond those hours, and then it is not distinguishable from *Rex* v. *Birmingham:* nor can I distinguish it from *Rex* v. *Frome Selwood.* It does not signify much in what part of an instrument a particular stipulation occurs, unless it be so placed as necessarily to qualify only the words immediately preceding. Now I cannot consider this clause a mere regulation of wages, but I think it also limits the time of work. Without wishing to multiply distinctions in a branch of the law in which they are already too abundant, I must add, that the present is the case of a servant hired to perform manufacturing work, and it is well known that exceptive contracts are extremely frequent on such occasions. This may in some degree furnish a key to the meaning of the parties, and assist in explaining their intention, and in affirming the order of sessions I think we should not only fall in with the last two cases, but also with the general current of authorities." *Patteson*, J. "I am of opinion that a settlement was gained. *Rex* v. *Byker* and *Rex* v. *Frome Selwood* turn on very nice distinctions. The question in this case is, whether the pauper was bound to serve more than the number of hours mentioned in the agreement. I thought for a considerable time that the case fell within *Rex* v. *Frome Selwood*, but looking at the terms of the contract, and the place in which the stipulation as to the number of hours occurs, I think that it was introduced merely to regulate the wages, and that the pauper could not refuse to work for his master beyond those hours. I feel great difficulty in distinguishing one case from the other, but upon the whole it seems to me that the present falls within *Rex* v. *Byker*." Order of sessions quashed.

Exceptive contracts frequent in manufactories.

An agreement to work constantly in a colliery from 4th February, 1815, to 4th February, 1816, or to forfeit 1*s.* for every day's absence from work, or for working a reasonable day's work to the satisfaction of his master, is not exceptive.

Rex v. *St. Helen's, Auckland*, 4 *B. & Ad.* 718; 1 *N. & M.* 462. An order for removing George Riley from Coundon to St. Helen's Auckland, was confirmed. Case:—The pauper was bound as a pitman to Dixon and Co. the owners of the Eden Main Colliery, situate in West Auckland, by bond or memorandum of the 4th of February, 1815, between G. D., J. D., and E. D., as copartners in the said colliery, of the one part, and the several pitmen whose names were thereunder written, on the other part; whereby it was witnessed that the pitmen, in consideration of the wages to be paid as after mentioned, did thereby severally agree with the said copartners or masters to hew, pit, and work coals within the said colliery, from the day of the date thereof for and unto the 4th day of February, 1816, in the manner and at the prices following; that is to say, to hew coals at 2*s.* 6*d.* a score, of twenty-five corves to each score; the said pitmen also agreed to give to the said masters the usual fire coal corf for each day they were at work, over and above the said number of twenty-five corves to each score; and further, to drive their boards of such a breadth, and to prop and maintain their own work, and to work in a workmanlike manner, properly, fairly, and orderly, as directed by their said masters, or their agent for the time being, and to drive headways at 8*d.* a yard, and headways walls at 6*d.* a yard, when, where, and in such a manner as directed by the said masters or their said agent; and further, the pitmen agreed to send as many setters to bank as the seam would admit and afford, and also to put coals in their course at the prices then given, and to have the liberty to hew half-a-score of coals in the putting morning, which were to come to bank the same day. "*And the said pitmen do hereby further severally undertake, promise, and agree to work constantly at the said colliery until the said 4th day of February*, 1816, *or to forfeit and pay each man to the said masters, or their said agent, one shilling for each and every day that he shall absent himself from the said work, or not work a reasonable day's work, to the satisfaction of the said masters, or their said agent.* And, on the other hand, the said masters for themselves agree to pay to each said pitman one shilling a day for each and every day they shall wilfully or without just cause lay any of them off work." The pauper served under this bond for a whole year, and received his wages, and during that time there was no forfeit incurred either by him or his employers by reason of any interruption of the work in the colliery or otherwise. He remained in the service

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of the same employers as a pitman for eleven months after the expiration of the bond, and from the date of the bond to the time of his finally quitting the colliery, a period of nearly two years, he slept in the appellant parish. The question for the opinion of this court was whether this was a service under such a yearly hiring as would confer a settlement. *Denman*, C. J. "The decisions in *Rex* v. *Byker*, p. 522, and *Rex*. v. *Gateshead*, p. 533, run very near each other; but there is a distinction between them, and I think the former case an authority in favour of a settlement here. It is said, that in this contract there is an exception, because an option is given to the pauper either to work or to forfeit and pay 1*s*. upon each day that he absents himself, or does not work a reasonable day's work to the satisfaction of the master. In *Rex* v. *Byker* the pauper by indenture was hired for a year as a driver in a colliery, and the master covenanted to pay wages at the rate of 1*s*. 10*d*. for a good day's work, not exceeding fourteen hours, and 2*d*. a day more when that time was exceeded; and the pauper was to forfeit 2*s*. 6*d*. per day for lying idle, to be deducted out of his wages. It was contended that that was an exceptive contract, because the master could not compel the pauper to work more than fourteen hours a day, and also because the pauper on the payment of 2*s*. 6*d*. per day was at liberty to absent himself. But the court held that the fourteen hours was only mentioned in the master's covenant to regulate the amount of the wages, and that the relation of master and servant continued during the whole twenty-four hours of every day, and consequently during the whole year, and that the clause as to forfeitures was intended not to give the servants a liberty to absent themselves, but merely to enforce regular attendance. The same observation applies to the clause of forfeiture in this case. In *Rex* v. *Gateshead* it was stipulated that each man should on each working day do such a quantity of work as should be equal to a full day's work, and should not leave the pit until that quantity was completed, or in default thereof should forfeit 2*s*. 6*d*. There, as soon as each man completed his full day's work, he was at liberty to quit, and was no longer under the control of this master. According to the report of that case in 3 *D*. & *R*., it was part of the contract of hiring that the labourers were to work for the whole year, except ten days during the Christmas holidays, when they were not to work, nor to be liable to any penalties for not working. If that were a correct statement of the contract, there would be a clear exception of ten days. It appears, however, from the reasoning of the judges there given, that the hiring was held to be exceptive, not because the pauper was not bound to work for his master during the ten days, but because he was not bound to work during the whole of every day, but during such part of the day only as might be required to complete a full day's work. The contract, as stated in 2 *B*. & *C*. 117, was that the master should find work for the men during the whole year, and forfeit 2*s*. 6*d*. for every day that he should oblige them to be idle, except at the Christmas holidays, which were not to exceed ten days. According to that statement the stipulation as to ten days would appear not to be an exception in the contract of hiring intended to give a privilege to the servant, but to be a provision introduced for the benefit of the master, and considering the reasons on which the judgment of the court was founded, that must be taken as the correct report of the case. I think, therefore, this case falls within *Rex* v. *Byker*, and that a settlement was gained in St. Helen's, Auckland." *Littledale*, J. "If the cases referred to had never been decided, I should not have had the slightest doubt on this case. By the agreement of the 4th of February, 1815, the pauper agreed to hew, pit, and work coal till the 4th of February, 1816, and to work constantly at the colliery, or to forfeit 1*s*. for each and every day he should absent himself or not work a reasonable day's work. Now the latter stipulation bound the pauper to pay 1*s*. per day if he did not perform his part of the contract. There was a contract to work for a whole year, and every day in the year, and the master had a right to call on the pitmen so to work. The mere agreement to pay 1*s*. per day as a forfeiture does not make the contract exceptive, because neither party can be supposed to have contem-

Rex v. *Gateshead* explained.

Agreement for forfeiture does

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plated at the time when the contract was entered into that there should be an absence or neglect to work." *Parke*, J. "I felt some little difficulty at first in distinguishing this case from *Rex* v. *Gateshead*, but I think it falls within *Rex* v. *Byker*. In the first of those cases there was a stipulation that each man should on each working day do a full day's work, and that he should not leave the pit until that quantity of work was completed; and that on default thereof he should forfeit 2*s.* 6*d.* It was therefore stipulated by implication that the men were not to be under the control of the master on days which were not working days, nor on any day as soon as a full day's work was completed." Order of sessions confirmed.

not make a contract exceptive.

A hiring at wages, payable quarterly, with liberty to part on a month's notice at the end of any quarter, is a yearly hiring.

Rex v. *Atherton*, *Burr. S. C.* 203; *Bott*, 360. R. Harrison was hired for a year by T. Barlow of Barton, at 4*l.* wages, payable quarterly. And it was agreed that either should be at liberty to determine the contract at the end of any quarter, on a month's notice. No notice was ever given, and the servant continued in the service the whole year. The servant declared at the time of the hiring that the reason of the hiring being made determinable at the end of every quarter upon notice, was, that he would not be hired so as to lose his former settlement. But by the Court unanimously and clearly: "This is a good settlement."

A hiring at five pounds *per* year wages, with liberty to part at a month's wages or warning, is a yearly hiring.

Rex v. *New Windsor*, *Burr. S. C.* 19; 2 *Bott*, 359. D. Brookes was hired to Colonel Merrick at Thorpe, and was to go into her service a month upon liking, and was to have 5*l.* a-year wages; but was to go away from her service on a month's wages or a month's warning on either side. She continued near two years in this service, without any other hiring, and received her wages quarterly. This, by the unanimous opinion of the court, is a hiring for a year. (*a*)

Wandsworth v. *Putney*, 2 *Bott*, 288. The master told a boy coming into his service, that if he stayed a year and behaved well, he would give him a livery and wages the next year; this was held to be a clear yearly hiring.

Hiring conditional as to liking, a good hiring for a year, where the service continues so long.

Rex v. *Lidney*, *Burr. S. C.* 1; 2 *Bott*, 358. M. Brewer was hired to W. Wake for a quarter of a year; and if her master and she liked one another, she was to continue for a year, and to have 3*l.* for her year's wages. She entered into the service, and continued one whole year, and received the 3*l.* It was argued, that as it was in the election of either party, during the first quarter, whether she should continue or not, she could not be originally hired for a year. But the court held this conditional hiring to be a good hiring for a year, since the master and she did like one another, and a year's service was actually performed under it.

Same point. See *Rex* v. *Mitcham*, *ante*, 322.

Rex v. *St. Ebbs*, *Burr. S. C.* 289; 2 *Bott*, 361. C. Guy was removed from Holywell to St. Ebbs. Order confirmed. Case:—The pauper was hired to T. White of Holywell, to come for a quarter of a year, and to have after the rate of 20*s.* a-year; and if he and his master liked each other, he was to continue. He did continue a year and a half above the said quarter, without any other hiring, and received his wages as he had occasion for them. It was moved to quash these orders, for that the settlement was in Holywell by this hiring and service; for a conditional hiring is a hiring for a year, provided the condition be performed. And a rule was made to show cause, but no cause was shown. And the rule was made absolute. See *supra* the cases where the pauper might quit, or be turned away at pleasure.

Power to dismiss.

Rex v. *Sandhurst*, 1 *Man. & R.* 95, 7 *B. & C.* 557. A hiring for a year, by an officer of a military college, reserving the right of dismissing the pauper without notice, is a good hiring for a year. (See this case, *post.*)

The pauper having served one year, the master ex-

Rex v. *Northwold*, 2 *D. & R.* 790; 1 *D. & R. Mag. Ca.* 413. The pauper was hired and served for a year with his master at Northwold.

(*a*) *Beeston* v. *Colyer*, 4 *Bing.* 309; 12 *Moore*, 552. *Gaselee*, J. "In domestic service there is a common understanding that such a contract may be dissolved on reasonable notice, as a month's wages or a month's warning. There does not appear to be any such practice with respect to servants in husbandry." 2 *Starkie R.* 256, 7: and see *Car. & Pay.* 370, 510, 608.

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The other facts are stated in the judgment of *Abbott*, C. J. "I am of opinion that there was a second hiring for a year to serve in Brandon, and therefore the orders must be quashed. Just before the end of the first year, the master says to the pauper, 'Will you go with me into Brandon?' The pauper says he has no objection. If nothing more passed, it is clear that that would be a hiring for another year. The master then says, 'I am afraid you will not be strong enough for the work there, but try.' The meaning of that is, 'We shall contract for a year, but if upon a little trial I find you are not strong enough, then our contract is at an end.' That is a conditional hiring. The pauper tries, is found strong enough, and resides for forty days. This is a settlement." *Bayley*, J. "It is a defeasible contract for a year, and a settlement is gained." *Holroyd*, J. "This is a conditional hiring for a year, the condition being the pauper having strength enough to do the work. The contract is not in express terms for a year, but still that does not prevent a conditional hiring for a year operating." Order of sessions quashed. So, also, in *Rex* v. *Farleigh-Wallop*, (*post*), a hiring for a year with a condition that the pauper should go if the master had a sale, is sufficient.

pressed his fear that the pauper would not be strong enough for the work in a town to which they were going, but the pauper was to try: he tried and was strong enough. He gained a settlement.

A determinable hiring may confer a settlement.

11. *Exceptive Hirings.*

11. *What are Exceptive Hirings.*

As to the difference between *conditional* and *exceptive* hirings, see p. 522.

Rex v. *Empingham*, *Burr. S. C.* 791; 2 *Bott*, 313. J. Langton, before Harborough fair, hired himself to H. Hubbard from that fair to the next, being one year, at the wages of 3*l.* "*subject to a liberty of being absent eleven or twelve days in the sheep-shearing season*," and to have the benefit of what he got during that time. He entered upon the service, and served Hubbard for above three-quarters of the year. He went to shear sheep in the season, for about eleven days, and served Hubbard the remainder of the year. He received to his own use what was paid him for the sheep-shearing, besides his wages of 3*l.* One day in the season he asked his master's leave to go a sheep-shearing: his master said he was going out, and could not spare him that day; and in consequence thereof he did not go. The pauper, during the shearing season, returned frequently to his master's house, and did what work was to be done; and his master found him his board as often as he returned home. The court were of opinion that this was an exception out of the contract at the time of making it. They held it to be a part of the contract, and not to be considered upon the footing of leave of absence given by the master, who, being bound by the contract, could not refuse agreeing to it. Consequently no settlement was obtained under this hiring.

Hiring for a year, with liberty to be absent eleven or twelve days sheep shearing, is exceptive.

Rex v. *Bishop's Hatfield*, *Burr. S. C.* 439; 2 *Bott*, 307. A man was hired from Michaelmas to Michaelmas, for 5*l.* wages, *with liberty to let himself for the harvest month to any other person*." He served till the harvest month, and then hired for that month, and received wages for it. During that month he brewed for his master, and lodged in his master's house during the whole year; and served out the remainder of his time, and received his 5*l.* wages. By the court: "This is in effect only hiring for eleven months: and the harvest month is the principal month of the year. It is safest to keep to the statute. If we allow this, we shall not know where to stop."

A hiring for a year, with liberty to let himself during the harvest month, is exceptive.

Rex v. *Rushulme*, 10 *East*, 325. The pauper was hired for four years, "*with liberty to leave a week every year, to see his friends*." *Per* Lord *Ellenborough*, C. J. "Here is a hiring for a period of four years, with an exception of a week in every year, that is to be taken distributively, a week out of each year. Therefore the master had no dominion over the servant for any one entire year, but only for one year *minus* one week in that year, and so on." (*a*)

So hiring for four years with liberty to leave a week every year to see his friends.

(*a*) Where it was part of the *contract* that the pauper should go away a fortnight before the end of the year, this is an exceptive hiring. *Rex* v. *Willoughby*, *post*. But where the *contract* is completed before anything is said as to the holiday it is not exceptive. *Rex* v. *Sulgrave*, *post*; *Rex* v. *Market Boworth*, *post*.

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If the stipulation be that the servant shall have, "during the year two or three days to see her friends," it is exceptive.

Rex v. *Leamington Priors*, 8 *D. & R.* 329. Order of removal of Sarah Penn from Middleton Cheney to Leamington Priors confirmed. The pauper was hired to Mr. Cooper in Leamington Priors, at Whitsuntide, 1823, until Michaelmas in the same year. She entered into service immediately after being so hired, and continued therein until said Michaelmas, when she was again hired by Mr. Cooper until the Christmas-day following. On the day after Christmas-day, the mistress offered the pauper to hire her for a year, to which the pauper agreed, the pauper at the same time requiring, and the mistress agreeing, that she should have during the year two or three days to see her friends; and she accordingly had three days in February, 1824, having first asked her mistress if she might have them, to which the mistress replied, "Yes, you had better have them now, as the season will soon begin when you cannot have them." Under this latter hiring she stayed till Michaelmas, 1824, when she was discharged, in consequence of being pregnant. *Bayley*, J. "Looking at the facts of this case, there is no doubt that this was not a hiring for a year. There had been two hirings for broken periods, and at the expiration of those broken periods, the mistress proposes a hiring for a year. The pauper agrees, but with a proviso; and the proviso is, that she shall be at liberty for two or three days to see her friends. Now there are many cases which say, that if at the time of hiring there is a stipulation giving the pauper the option of being absent during any part of the year, that time is to be considered as excepted out of the contract, and treated as a hiring for a year, *minus* the time the servant is entitled to be absent." *Holroyd*, J., and *Littledale*, J., concurred. Orders quashed.

A stipulation for a holiday, though *no time* specified, is exceptive.

Rex. v. *Threkingham*, 7 *A. & E.* 866. T. Quincey was removed from Threckingham to Sutherton. Order quashed. Case:—The pauper gained a settlement in Sutherton by parentage. At May-day, 1828, he was hired till the following May-day, by W. Moore, of Pickworth, at the wages of 5*l.* He told his master that he should want a holiday to go to his feast, who agreed that he should have one for that purpose: this conversation took place before the bargain was completed, and before he received his earnests. No time was fixed for the duration of the holiday; but when the feast arrived, the pauper told his master on the Sunday, that he wanted to go, and his master replied, "Very well; you may go until Tuesday night." The pauper accordingly went to his feast on the Sunday, and returned on the Tuesday night following. The sessions were of opinion that the settlement at Pickworth was good, inasmuch as there was no distinct period named for which the pauper was to have his holiday, although it might be implied, from the conversation between the master and the pauper, that the latter would expect, according to his contract (a holiday having been stipulated for), two or three days to go to his feast, and they quashed the order. It was urged that the sessions had found a yearly hiring. Lord *Denman*. "The sessions here have given us the very words employed by the parties; and it appears that the servant told his master he should want some time to go to his feast, and the master agreed he should have a holiday for that purpose. We must consider that to be an exceptive hiring." *Littledale* concurred. *Williams*, J. "The cases show decisively, that where there is a stipulation for time during the year, the extent of it is not material." *Coleridge*, J. "It is an exceptive hiring if any part of the year is excepted. The sessions appear to have taken a wrong view of the stipulation as to a holiday." Order of sessions quashed.

Stipulation by pensioner to have two days in each half-year to go and receive his pay, defeats his settlement.

Rex v. *Over*, 1 *East*, 599. The pauper let himself for a year, but being an East India pensioner, he was to have two days in each half-year to himself, to go and receive his pension. Lord *Kenyon*. "There was no colour for contending that the pauper gained a settlement by this hiring and service. The case of the militia-man went altogether upon the ground that the leave of absence stipulated for was no other than what the law would have compelled without any such stipulation. It was part of the public service; no conclusion, therefore, can be drawn from thence in support of this settlement. Here was an express exception of four days

in the year, during which the pauper was not to be under the control of the master.

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Rex v. *Arlington*, 1 *M. & Sel.* 622. Removal from Arlington to Wilmington. Order quashed. Case:—The pauper was hired for a year from Michaelmas, 1809, to Michaelmas, 1810, as shepherd to J. King, of Wilmington, to receive thirteen shillings and sixpence *per* week wages, and an allowance for a hog, and to be at liberty to be absent during sheep-shearing season, but to find a fit man, at his own expense, to do his work during the time of his absence, but his own wages of thirteen shillings and sixpence a-week were to go on during the whole time. The pauper served the year, was absent during the sheep-shearing season, and employed and paid a person to tend the flock, but occasionally returned during that period, and assisted in the management of it, especially on Sundays, and from time to time gave directions to the person employed by him. It was argued that, though working for another person, he continued the servant of King. Lord *Ellenborough*. "It has never been determined that a contract for service by deputy is service by himself. The distinction taken in all the cases is, whether the liberty of absence forms a part of the original contract, so as to be an exception out of it, or whether it be by permission of the master during the continuance of the contract. If this hiring could be deemed to confer a settlement, the consequence would be, that a person might gain as many settlements as there are forty days in one year. He might hire himself to A. with liberty to be absent with B. and C. and so on, and if he could get forty days' service with each, he might accumulate eight or nine settlements in the course of a year. Such a consequence would be preposterous. What does this hiring really mean? A hiring for a year is where the servant is to be under the control and command of his master for the whole year; but here the pauper was not to be so, but was at liberty to find a substitute for the sheep-shearing season. The case will scarcely bear a serious argument." Order of sessions confirmed.

Hiring for a year at weekly wages, with liberty to be absent in the sheep-shearing season, but to find a man at his *own expense* to do his work during his absence, *but his own wages to go on during the whole time*, is exceptive.

Rex v. *Turvey*, 2 *B. & Ald.* 520. T. Smith was hired for a year from Old Michaelmas, to go away a month at harvest, and make the time after Michaelmas. He went away for a month at harvest, and continued in his master's service a month after Michaelmas. *Abbott*, C. J. "It has been decided in this court that where there has been a hiring for a year, and a service for a year, although that service has not been under one hiring, the servant gains a settlement. But I hope no rash genius will ever carry the matter any further. The only question here is, what is the meaning of the word 'year' in this statute. I apprehend the legislature clearly to have *meant one entire consecutive period of three hundred and sixty-five days*. Unless that were so, we might have to deduce a settlement of a pauper by taking different unconnected days and weeks from a long series of years, so as to make up in the whole a year's service. And so it would happen that a hiring for the month of August, for this and eleven successive years, would amount to a hiring for one year. I have often lamented, that in so many instances the court has departed from the plain and literal construction of the statutes relating to the settlement of the poor. As far as the authorities go, I have always held and shall always continue to hold myself bound; but where they are silent, I shall feel myself bound to construe these acts of parliament according to the plain and popular meaning of the words." *Bayley*, J., and *Holroyd*, J., concurred.

Hiring for a year, to go away a month at harvest, and to make up the time after Michaelmas, is not a hiring for a year. (*a*)

Meaning of the word "*year*."

Rex v. *Edgmond*, 3 *B. & Ald.* 107. The pauper agreed to serve Mr. Jones, a bricklayer, for three years, if he so long lived, at weekly wages, and in case he should neglect his master's business, or lose any time on his own account in any one week, during the first year, then that Jones should deduct from his weekly wages in proportion; and Jones agreed that he would pay wages in proportion to any *over-work* which the pauper might do in any one week in the first year. There were similar stipulations for

So an exception of certain hours or days is an exceptive hiring.

(*a*) But a hiring for *eleven* months, and the servant to give one month more, is a *yearly* hiring. *Rex* v. *Milwick*, p. 522.

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the second and third years of the term; and it was also agreed that in case they could not work through severity of weather in any one year in the winter time, then that Jones should pay no wages during that time, but should permit the pauper to employ himself in any other business whatever. During such severity of weather with respect to frost the pauper served one year and a half. *Abbott*, C. J. "The agreement contains in substance an engagement to work only during certain hours of the day, and I do not see what remedy the master could have had, supposing the pauper had refused to work after the usual hours. The agreement, taken altogether, seems to me to contain a promise only to serve for a part of the year." *Bayley*, J., (*inter alia*) observed, "That if by the usage of trade certain exceptions are implied or introduced, they will not prevent a settlement. There is clearly an exception here, the period of frost. The contract is not confined to the particular trade. The pauper might engage to serve other persons, and so might contract inconsistent relations at one and the same time. *Rex* v. *Martham* (1 *East*, 239), is distinguishable from the present, because there was no such express authority as this to contract a relation of service with another master; besides, that was not a general contract of service, but to serve in the particular trade of a bricklayer." *Holroyd*, J. thought "the contract was for service only during the *usual* hours. As to the other point, I had at first doubts whether it was sufficient to invalidate the settlement, but I am now satisfied that it is; the provision is that the pauper shall be at liberty to employ himself with any other master during the time of frost; that, therefore, would impliedly give to him a reasonable time, even after the frost was over, to finish the business he had so undertaken." *Best*, J. "As soon as the frost commenced all contract of the master with the servant would cease."

Exceptions implied by usage of trade will not prevent a settlement.

If the written contract is silent as to holidays, a custom to have holidays may be proved by parol.

Reg. v. *Stoke-upon-Trent*, 8 *Jurist*, 34. A pauper in June, 1815, entered into the following written contract:—"Plate and dish workers. It is agreed with Messrs. Bourne from 11th November next, till 11th November, 1817, at prices good out of oven, as per opposite side. We agree to lose no time on our own account, to do our work well, and behave ourselves as good servants." The writing was not signed by the masters. The pauper stated that he had his Sundays to himself, and that he was absent two or three days at Easter, and at the wakes in August. The Court of Queen's Bench held that parol evidence was admissible of a custom for all persons in this trade to have certain holidays and Sundays to themselves, and the case was sent back to the sessions to admit such evidence and re-hear the case.

A contract from Michaelmas to Michaelmas, the servant was to have a month in harvest to himself, and if he and his master could not agree for the harvest month, he was to harvest where he pleased. He afterwards agreed with his master to work for the month: exceptive.

Rex v. *Althorne*, 3 *D. & R.* 375; 2 *B. & C.* 112. John Wiggins was removed from Mayland to Althorne. Order confirmed. Case:—The pauper, at Michaelmas, 1821, agreed with Mr. Croil, a farmer of Mayland, to live with him as his servant in husbandry, from that Michaelmas till the following, at 10*s.* per week for the winter half-year, and 11*s.* per week for the summer half-year; the pauper to have a month in harvest to himself, and if he and his master could not agree for the harvest month, the pauper was to harvest where he pleased. If any one offered the pauper more money than his master for the harvest month, the pauper had a right to go. At the commencement of the harvest, the master offered the pauper 5*l.* for the harvest, which the pauper at first refused, and required 5*l.* 5*s.*, but afterwards agreed to take the 5*l.*, and accordingly continued in his master's service during the whole year, and received his wages weekly. *Bayley*, J. "I am of opinion that the sessions have rightly decided that this was not a conditional but an exceptive hiring. There may be nice distinctions between decided cases, but I think the distinction between a conditional and an exceptive hiring is broad and intelligible. I take a conditional hiring to be that where the parties stipulate for the continuance of the service for a whole year, but by fixing the terms upon which the service is to be continued, it is left to the option of either to put an end to the contract. If the bargain is made so that it shall be co-exten-

sive with the whole year, but with liberty to either to dissolve it, then it is a conditional hiring; but if the servant stipulates that during a period of the year he shall be absent from labour, or that with respect to a particular period of the year there shall be a new bargain when the period arrives, then it is an exceptive hiring, and no settlement can be gained. In this case there is an express stipulation that the pauper shall have a month to himself in the harvest time, and if he and the master could not then agree for the harvest month, he was to harvest where he pleased. The parties therefore do not bargain beforehand as to the wages to be paid during the harvest month, but that is to be subsequent matter of contract. This is no more therefore than a hiring for eleven months, the twelfth month being scooped out of the original contract, and subject to a new bargain." *Best*, J. "I think *Rex* v. *Bishop's Hatfield* is an authority in point, and though the pauper in that case hired himself to another master during the harvest, that makes no difference."

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Rex v. *Gateshead*, 2 *B. & C.* 117, *n.*; 3 *D. & R.* 333, *n.*; 2 *D. & R. Mag. Ca.* 17, *n.* Case:—The pauper was, together with other persons, hired by a written agreement to work in a colliery, from the 5th April, 1813, to the 5th April, 1814. It was stipulated that each man should on each working day do such a quantity of work as should be deemed equal to a full day's work, and should not leave the pit until that quantity was completed, and in default thereof should forfeit 2*s.* 6*d.* The master stipulated to find work for the men during the whole year, and to forfeit 2*s.* 6*d.* for every day that he should oblige them to be idle, except at the Christmas holidays, which were not to exceed ten days. There was a proviso that nothing in the agreement should oust the jurisdiction of the magistrates. The pauper worked for the whole year, including the holidays, except on certain Saturdays called *pay-Saturdays*, when the wages were paid, and the men did no work. The sessions held that this did not confer a settlement. *Abbott*, C. J. "It is an exceptive contract, which completely negatives the idea of a yearly hiring and service. The last clause of the agreement cannot control its previous stipulations, and indeed there is no connection between the last and the preceding clauses. The mode of punishment for any breach of contract is stipulated for between the parties themselves, and supersedes the control which the magistrates in other cases would have over hired servants. Under this agreement the magistrates could not punish the pauper for leaving the service, which event is contemplated by the parties, who agree that for any default the servant shall pay certain fines or penalties for neglecting his work. In *Rex* v. *Edgmond* the court held that similar stipulations were express exceptions in the contract, and that the pauper did not gain a settlement by serving for a year under it. That case is directly in point with the present. It is manifest that here the pauper is not to be under the control of the master for the whole of every day." *Bayley*, J. "The pauper in this case, for anything that appears, might have worked for any other master during the year; for if by extraordinary strength and skill he did a quantity of work which should be equal to a day's work, he was at liberty afterwards to do what he pleased." *Best*, J. "The stipulation in this case is to do a certain quantity of work during each day, and as soon as the work is performed, the control of the master ceases." (*a*)

The owner of a colliery hired his workmen for a year, and agreed to find work for them, except during ten days in the Christmas holidays. They were to receive two shillings and sixpence per day wages, and to forfeit a penalty for neglect; they were to do such quantity of work as was equal to a full day's work; there was a reservation of the jurisdiction of the justices in case of any disputes: This is an exceptive contract.

Rex v. *Cowpen*, 6 *N. & M.* 559; 5 *A. & E.* 333. W. Dodds, &c. were removed from St. Nicholas, Newcastle-upon-Tyne, to Cowpen. Order confirmed. Case:—The pauper, with others, was hired to the proprietors of Cowpen colliery by a written agreement, from the 5th April, 1816,

A hiring to work from 5th April, 1816, to 5th April, 1817, except when prevented by sickness

(*a*) In the report of this case in 3 *D. & R.* there are these words, "Except during ten days' notice, Christmas holidays when they were not to work, nor be liable to any penalties for not working." The case stated here is taken from *Barnwall and Cresswell*; and in *Rex* v. *St. Helen's Auckland*, (*post*) the court observed, "that the reasoning proceeded on the facts stated in *Barnwall and Cresswell*; that therefore must be taken as the more correct report. It seems to be an agreement for working only."

2. *Of the Contract of Hiring.*

or other unavoidable cause, and to perform a full day's work on every *working day, except a single shift on the pay-Saturdays*, and in default thereof, for every such default to pay 2*s.* 6*d.*, is an exceptive hiring and confers no settlement.

until the 5th April, 1817, to hew, work, fill, and drive coals, and to do such other work as should be necessary for carrying on the colliery, and as they should be required and directed to do by the owners at the respective prices, and on the following, amongst others, terms and conditions therein contained:—That the sums or forfeitures required to be paid by the parties thereby hired for such days as they should respectively lay themselves idle, should be respectively paid to them to the same amount by the proprietors of the colliery, for every day they should be laid idle by the proprietors, except on the pay-Saturdays, when the pit is going single shift; but, a pit going double shift, the men must work one shift on the pay-Saturdays, in order to make each shift work eleven days. That the parties hired shall, except when prevented by sickness or other sufficient or unavoidable cause, do and perform a full day's work *on each and every working day* (*except a single shift pit on the pay-Saturdays*,) or such quantity of work as should be deemed fairly equal to a day's work, and should not leave their work until such day's work or quantity of work is fully performed or finished to the extent of each man's ability; and in default thereof each of the parties hired and so making default should, for every such default, forfeit and pay the said proprietors 2*s.* 6*d.* The proprietors agreed that every workman should be paid his earnings or wages every fourteen days, subject to such deductions as therein mentioned; and it was agreed that disputes should be submitted to arbitration. And it was declared that nothing therein contained should affect the legal remedies and powers which by law belong to masters and servants in their relation to each other, or to magistrates having jurisdiction in case of dispute between them. The pit in which the pauper was employed sometimes worked single shift and sometimes double shift. The pauper worked from the 5th April, 1816, to the 5th April, 1817, under the agreement, sometimes single shift and sometimes double shift. He married in May, 1816, and resided the whole year in the appellants' township. Pay-Saturday is every alternate Saturday, being the next Saturday after the day on which the earnings are paid. The ordinary day's work of a pit is twelve hours, which is called a shift, and when all the men are employed at the same time, and the working of a pit does not continue longer than twelve hours in the day, a pit is then said to be a pit working or going single shift. It frequently happens that it is necessary that the working of a pit should be carried on all the twenty-four hours, in which case the complement of men and boys are divided into two sets or gangs, called "shifts." These shifts relieve each other every twelve hours. When this is the case, a pit is said to be working or going double shift. One of these shifts is called the fore shift, and the other the back shift. The fore shift begins work at two o'clock on the Monday morning, and works twelve hours on that morning and every morning during the fortnight, except on the Saturday morning in the second week of the fortnight, which is the pay-Saturday. The back shift begins work at two o'clock on the Monday afternoon, and works twelve hours on that afternoon and every afternoon during the fortnight, except the Saturday afternoons, when it does not work. In such a course of working the fore shift has worked eleven shifts or days' works, and the back shift ten shifts or days' works. In the second fortnight the shifts are changed, the fore shift of the fortnight preceding becomes the back shift of this, and the back shift of the fortnight preceding becomes this fortnight's fore shift. The fore shift of this fortnight begins work at two o'clock on Monday morning, and works twelve hours on that morning and every morning during the fortnight, except on the Saturday morning in the second week of the fortnight, which is the pay-Saturday. This shift works eleven shifts or days' work this fortnight, which, with ten shifts of the fortnight preceding, make twenty-one shifts or days' works. The back shift of this fortnight begins work at two o'clock on the Monday afternoon, and works twelve hours on that afternoon and every afternoon during the fortnight, except on Saturday afternoon. The back shift works ten shifts or days' works during this fortnight, which, with the eleven

shifts of the fortnight preceding, makes twenty-one shifts or days' works. The words "but a pit going double shift the men must work one shift on the pay-Saturday in order to make each shift work eleven days," are applicable only to the men forming the fore shift of the second week in each fortnight, who have worked twenty-one shifts in the two fortnights, and who, under this clause, begin work at two o'clock on the pay-Saturday morning, and work twelve hours, which make twenty-two shifts or days' works for two fortnights, or eleven shifts or days' works for one fortnight. It sometimes happens when a pit is working double shift that some job of necessity occurs, which requires a few individuals to remain down the pit after the shift of men to which they belong have finished their work and the next shift has commenced work. This is technically called "standing double shift." This only applies to individuals,—rarely, if ever, to the whole pit's crew. Lord *Denman.* "There is a little ambiguity in the way in which this case is settled. The case states that the workmen were hired from 5th April, 1816, to 5th April, 1817, to hew, work, fill, and drive coals, and to do such other work as should be necessary for the carrying on the said colliery, and as they should be required and directed to do by the owners, &c. at the respective prices, and on the following, amongst other terms and conditions therein contained—That, &c. That is not a satisfactory mode of setting out the contract. I think that, stated as it is, the proper construction of the contract is, that the pauper was to do such work as might be deemed necessary to the carrying on the colliery and that he might be required to do, having reference to the terms and conditions, or according to the description thereinafter contained. Then I see no reason to doubt that this is an exceptive hiring. There is an exception of Sunday and pay-Saturday, on both of which the workman was to be his own master." *Littledale*, J. "I am of the same opinion. There is, at least, one day in the fortnight clearly excepted. On that short ground I think the determination of the sessions wrong." *Patteson*, J. "I also am of the same opinion, on the short ground that this is a contract to work eleven days in a fortnight. *Williams*, J., concurred. Order of sessions quashed.

An agreement to serve for three years, at 1*s.* per day when the master had work to do, and when he had no work, servant was not to be paid, is not a hiring for a year.

Rex v. *Polesworth*, 2 *B. & C.* 715; 4 *D. & R.* 258. Removal of Hannah Brindley from Polesworth to Saint Peter, Derby, quashed. Case:—The pauper's father, William Brindley, in December, 1784, agreed with William Boolows, his uncle, then resident in Polesworth, to serve him for three years, at 1*s.* per day, when he had work for him to do; and when he had not work for him he was not to be paid: Boolows told him at the same time he should not have work for him all the year round, particularly in the winter, and that when he had not work for him he might get work from other people. After making the agreement, William went to work in the collieries until the spring of 1785, and then went to work with his uncle, according to agreement, and remained with him about nine months, when his uncle told him he had no employment for him, and he worked several weeks with a Mr. Barrett, as a labouring man, and after that, his uncle having again work, he returned to him and continued to work for him about nine months longer, when he quitted him without his leave, and went to Birmingham, from whence he never returned to his service. He never received any wages from his uncle when he did not work for him, and never accounted with him for any wages he received from other people when absent from his service. *Abbott*, C. J. "It is quite evident that there was no hiring for a year, nor any service under a yearly hiring. The master tells the pauper at the time when he is hired, that he shall not have work for him all the year round, particularly in the winter, and when he had not work for him, he might get work from other people. There is merely a hiring for so much of the year as the master has work for him. He has the control over the servant so long as there is work for him. As soon as there is no work, the servant ceases to be under the control of the master, and is at liberty to get work elsewhere. We are all of opinion that there was not any hiring for a year." Order of sessions quashed.

2. *Of the Contract of Hiring.*

But if a daughter go to her father for a year, "*to do the offices of a servant*," it is a good hiring, although it is agreed that she may earn what she can by her own labour besides.

Rex v. *Chertsey*, 2 *T. R.* 37. The pauper was hired for a year to Mr. Shirley for 4*l.*, and served out that year in Chertsey. About three weeks before that service expired, her father, a day-labourer, in consequence of his wife's death, came to the pauper and applied to her to come and live with him *to do the offices of a servant* for a year in Thorpe, and offered her board and lodging, and such profits as she could make by keeping fowls, and what she could earn by her own labour; and if that did not produce as much as she got at Mr. Shirley's, her father was to make up the difference. *She agreed* to those terms, and came accordingly and lived with her father at Thorpe for a year and upwards, during which time she got about one guinea and a half by keeping fowls, and two guineas and a half by going out charing, and taking in plain work; and at the end of the year her father gave her 10*s.* as an additional recompense for her having gone to reap with him in the harvest month. *Ashhurst*, J. "As to the hiring for a year, it is only necessary to read the words of the case to determine it; it states that the pauper's father applied to her to come and live with him to *do the offices of a servant for a year* on certain terms, which she agreed to, and that she came accordingly, and *lived with him in pursuance of that agreement for a year*. Then it was objected that the contract was not binding; but that is not so; she was hired to do all the offices of a servant for a year: the terms of the contract are not such as would enable the pauper absolutely to leave her father's service, but only to do particular work for her own benefit; she was first bound to perform all his work, and consistently with that she was at liberty to gain as much as she could earn by her own labour; this therefore was a good hiring for a year." *Grose*, J. "According to the terms of this contract she was not at liberty to desert her father's service; she was only permitted to do what other work she could consistently with her father's service, and her earning beside that will not prevent its being considered as a hiring for a year. And as to the service, it is expressly stated that the pauper lived with her father for a year *in pursuance of that agreement*." Both orders quashed.

What is evidence of a hiring.

Hiring for a year, with liberty to be absent a month in the militia, if requisite, gains a settlement, though he is absent for the month.

Rex v. *Westerleigh*, *Burr. S. C.* 753; 2 *Bott*, 312. W. Ayliff was hired for a year to A. Tyler, of Old Sodbury, to serve her for a year, but he told her that he was in the militia, and he might be absent about a month in the year to attend on that duty, but that he would pay a man to serve in his place, or else he would make her an allowance out of his wages for the time he should be absent. He served her till May following, and then attended the militia for thirty days, and afterwards returned to his service with A. Tyler, and continued there until the end of his year, and then made her an abatement of 8*s.* out of his wages for the time he was absent. Lord *Mansfield* was not in court. Mr. Justice *Aston* thought this case reconcileable to *Rex* v. *Beccles* and *Rex* v. *Goodnestone*, *Burr. S. C.* 251 (*post*), and distinguishable from that of *Bishop's Hatfield*, that absence for a particular time, with the master's leave, not agreed for at the time of hiring, doth not dissolve the contract. But in the case of *Bishop's Hatfield*, the *original hiring* was with liberty to let himself for the harvest month to any other person. This made a clear chasm in the original contract. It was plainly a hiring for less than a year. In the present case a man is hired for a year, to serve for a year, but mentions an event that might happen of his being called out to attend his militia duty, and told his mistress that if it should so happen, he would either pay a man to serve in his place, or make her an allowance out of his wages. This is not a chasm in the contract, but a dispensation with the present service." Mr. Justice *Willes* premised that settlements ought to be favoured, and that militia men ought not to have any additional hardship put upon them if it can be avoided. However, he could not help thinking that the case of *Bishop's Hatfield* was very like the present case, and that the absence was as much part of the contract in the one case as in the other. If the mistress did not expressly agree to it, she at least acquiesced. Indeed, in the present case the servant agreed either to find a substitute or to abate out of his wages. Now this was at the election of the mistress; and she dispensed with his absence

upon an abatement out of his wages. Upon this distinction, and this only, he would, for the advancement of settlements, distinguish this case from that of *Bishop's Hatfield.* Mr. Justice *Ashhurst* said "that in a case which might affect a vast number of militia men, he was for leaning in favour of their gaining settlements; and he thought this case to be distinguished from that of *Bishop's Hatfield.* That case was certainly no more than a hiring for eleven months. But here was an alternative; it might happen that the servant should not be called out. Therefore he concurred in supporting the settlement."

2. *Of the Contract of Hiring.*

So a hiring for a year, at so much per week, and to serve a month at the end of the year, as he should be absent in the militia for a month of the year, gives a settlement. (a)

Rex v. *Winchcomb, Dougl.* 391. The pauper hired himself in Chipping Norton five weeks before Michaelmas for a year; and at the time of the hiring it was agreed between him and his master, that his wages should be paid weekly, at 8*s.* a week, and that being a balloted man in the militia, he should be absent for a month, and in lieu of that month should serve another month at the end of the year. He was accordingly absent thirty days in the militia, and then returned to his service, but he only continued three weeks of the month, which was agreed to be served in lieu of his absence in the militia, leaving his master a fortnight before Michaelmas. He expressly swore that he did not serve his master a year by one week. Lord *Mansfield* and the rest of the court: "There is in this case a hiring for a year; and there is also a service for a year, if it were not for the month's absence in the militia. *A service must be for a continuation without interruption or adding together broken pieces to make up the year.* But here the agreement as to the absence for a month in the militia was only what would have been implied, and what the master must have consented to. The year was completed five weeks before Michaelmas, and the additional month agreed for was only in the nature of a compensation for the want of the pauper's service while absent in the militia, and equivalent to a deduction of so much wages. This case, if not the same, is very like *Rex* v. *Westerleigh,* (p. 536). The court ought to lean in favour of settlements; and the bad consequences would be very extensive if we were to determine that a man shall lose his settlement by serving his country in the militia. We are all of opinion that this is a good settlement at Chipping Norton."

Note.—These cases are inserted here as Lord *Mansfield* gives as a reason for his judgment that the agreement for absence would have been implied if not expressed. (See *Rex* v. *Holsworthy,* 6 *B.* & *C.* 283.)

12. *Hiring with Limitation of Working Hours.*

12. *Of Hiring with limitation of hours.*

There is also a class of hirings in which it is not the intention of the parties to except any portion of the year out of the agreement, but in which a stipulation is introduced as to the number of *working hours.* The effect of such stipulations upon the question of settlements will be seen in the following cases.

Hiring to work for three years, eleven hours a day, the rest of his time and Sundays to be his own, is not a yearly hiring.

Rex v. *Macclesfield, Burr. S. C.* 458; 2 *Bott,* 300. The pauper was hired with the consent of his mother, to work in Macclesfield at a silk mill for the term of three years, at 0*d.* a-week for the first year, 9*d.* a-week for the second year, and 13*d.* a-week for the third. The master was not to find diet or lodging; and *the service was to be only eleven hours in the six working days;* and all the rest of the time, as well as on Sundays, he was to be at his own liberty and his own master. He continued three years in the service: but within that time frequently absented himself from his work, sometimes for a day or longer, at other times for several hours in the day; for all which deductions were made out of his wages. He lodged the three years with his mother at Macclesfield, who received his wages:

(a) In *Rex* v. *Elmley Castle,* (p. 483,) *Taunton,* J. observed, "that these two cases were decided by men eminent for their knowledge of the law of settlement; that he had been eighteen years at sessions, and never heard them questioned."

2. *Of the Contract of Hiring.*

the overseers of Sutton contributed 6*d.* a-week towards his maintenance. The question was, whether he gained a settlement at Macclesfield? Lord *Mansfield.* "Here is no foundation to imagine that this can be a settlement on the ground of an apprenticeship. The only question is, whether it be a settlement as a hiring for a year and service for a year? The pauper was an infant of only eight years of age, at the time of the hiring, therefore he was not bound by the agreement. Indeed he might have affirmed it; (for the contract of an infant is not absolutely void, but only voidable at his own election). But the master could not oblige him to stand to it. Then as to the contract itself, it was only to serve eleven hours in the day of the six working days, but during all the rest of those days and the whole Sunday the servant was at his own disposal. It is in the nature of a contract from week to week; and it cannot in this case be construed to gain a settlement; and it is plain Sutton did not understand it in this light, having contributed to the child's maintenance during the whole three years."

A hiring for seven years, to work only thirteen hours a day (and Sundays excepted), is not a hiring for the year.

Rex v. *Kingswinford*, 4 *T. R.* 219. Case:—The pauper J. Lockwood agreed with W. Bullock to serve him as an artificer in the art of a glass-grinder, or in any other art he should think proper to employ him in for seven years; and he was not during that time to work for or to serve any other person, nor depart from his work without the leave of his master, *but would continue and be in such service as aforesaid from six o'clock in the morning till seven in the evening of each day during the term, including half an hour at breakfast and one hour at dinner times (except on Sundays), if in proper health.* His master was to find him shop-room, and to pay him three shillings and sixpence *per* week during the term, and to provide him meat, &c. He served Bullock two years under this agreement. He occasionally worked in the night time, and often went on errands for his master on Sundays, and never worked with anybody else during that time, nor thought himself at liberty so to do. Lord *Kenyon* said, "there was no real distinction between this case and *Rex* v. *Macclesfield*, for that the fair construction of this agreement was, that the pauper was to be his own master on Sundays, and on other days after he had served the thirteen hours, because he had only covenanted to serve those hours, and that the expression of one was the exclusion of the other. *It was essential in these cases that the servant should be under the power and coercion of the master, during the whole time.*"(*a*)

Same point.

Rex v. *North Nibley*, 5 *T. R.* 21, is a case similar in its material circumstances, and the court held that *Rex* v. *Kingswinford* had decided the question, and that such hiring and service did not gain a settlement.

A hiring to serve five years as a shearman, and to work shearman's hours only, is not for the year.

Rex v. *Buckland Denham, Burr. S. C.* 694: 2 *Bott*, 311. The pauper, about seventeen years of age, was hired by his father to a clothier of Buckland Denham, to serve him as a shearman for five years, and was *to work shearman's hours only* (which are uncertain): it was understood that he should be at his own liberty at all other times. He served his master as a shearman, according to the agreement, working the same hours as his master's other shearmen did. By the court: "*This is not a good hiring for a year; because there is an exception in it, that the pauper was to work shearman's hours only, and to be at his own liberty at all other times.* But if the contract be an absolute contract for a year, the not working on Sundays and holidays, if it be the custom of the country not to work on those days, ought not to hinder the gaining of a settlement."

A hiring at four shillings *per* week, to work from six A.M. to seven P.M., with liberty to do as much over-work as he pleased, is not for a year.

Rex v. *Birmingham*, 9 *B. & C.* 925; 4 *Man. & R.* 691. Order of removal of W. Steam, &c. from Birmingham to Atherstone, confirmed. Case:—The pauper went to live with J. Owen, a button-caster of Birmingham. After he had been with him for some time Owen hired him for a year at 4*s.* 6*d.* *per* week. Nothing was said about Sundays. It was part of the terms of the hiring that the pauper was to work from six in the

(*a*) In *Rex* v. *Wrenton, Burr. S. C.* 458, *Foster*, J., said, "a hired servant is always under the control of the master, even on Sundays."

morning to seven in the evening, and might make as much over-work as he chose. He received earnest when he was hired. He served his master under this contract for a year, during which he lived in his masters' house and boarded himself; he lived there on Sundays as well as week-days, and on Sunday morning he used to ask if anything was to be done, and if there was, he did it. He made a good deal of money by over-work, but never did any for any one but the master, and was never paid for it but by him; he was allowed 2*d.* an hour for over-work. At the expiration of the first year, he was hired by Owen for a second year on the same terms, except that he was to have 5*s.* 6*d.* *per* week wages and 4*d.* an hour over-work. He served the whole of the second year. He was hired for and served a third year on similar terms. *Bayley*, J. "This case is very different from *Rex* v. *Byker*, (p. 523.) There the court thought the term was only mentioned as the measure of the wages, and that the contract did not impose any limit upon what was reasonably required by the master; and that the relation of master and servant continued during the twenty-four hours. But in this case there was a stipulation that the pauper was to work from six in the morning till seven in the evening, and might make as much over-work as he chose. It was optional in him to do over-work or not. He had a right to say to his master, I have worked thirteen hours and will work no more. This is clearly an exception in the contract, limiting the control of the master to the specific period of time therein mentioned." *Littledale* and *Parke*, Js. concurred. Order confirmed.

2. *Of the Contract of Hiring.*

Same point, but nothing said as to over-work, and the pauper could not work for any other master.

Rex v. *Frome Selwood*, 1 *Bar. & Adol.* 207. J. Bagnall and family were removed from Birmingham to Frome Selwood. Order confirmed. Case:— The pauper was hired by an agreement made the 16th day of August, 1820, by himself and John Bright of Birmingham, bedstead-maker. First, J. Bagnall agreed with J. Wright, that he J. Bagnall, in consideration of the wages agreed to be paid to him by J. Wright, for and during the term of three years thence next ensuing, to work for and serve J. Wright in the business of a bedstead-maker, and in such particular branches thereof as Wright thought proper to employ him: and J. Bagnall agreed, to the best of his power, to make, manufacture and complete such goods as should be delivered to him, or which he should be requested to make: and it was agreed that *J. Bagnall shall work from six o'clock in the morning to seven in the evening in summer, and from seven in the winter to eight o'clock, in every working day* during the term, and not work for or serve any other person. And Wright, in consideration of such work agreed to find him full employment and to pay him on Saturday night in every week for the first year 7*s.*, the second year 8*s.*, and the third 9*s.* The pauper staid in Wright's service in Birmingham for a year under the above agreement. The question is, whether he thereby gained a settlement in Birmingham. *Bayley*, J. "The rule is that if a party contract generally to serve in a particular trade, though he may be bound to work only during the usual hours of work in that trade, yet by so working he will gain a settlement. But if it be made part of the bargain that the person hired shall serve for specific hours only, then the relation of master and servant does not subsist out of those hours, according to the maxim *expressio unius est exclusio alterius*, and that is an exceptive hiring. In *Rex* v. *Buckland Denham*, (p. 538), there was an express exception in the contract, the pauper was hired as a shearman to serve for five years to work shearman's hours only. The same observation applies to *Rex* v. *Kingswinford*, (p. 538). The hiring there was for seven years to work for thirteen hours in the day (Sundays excepted). *Rex* v. *Birmingham*, (p. 538), goes further than either of those cases. The pauper there was hired for a year to work from seven in the morning to seven in the evening, with liberty to make as much over-work as he pleased; and as it was optional in him to do over-work or not, and as he might refuse to work more than thirteen hours, the court held that there was an exception in the contract limiting the control of the master to the specific period of time therein mentioned. In *Rex* v. *North Nibley*, (p. 538), the terms of the hiring were the same as in the present case. They

A bargain for specific hours excludes all other hours.

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do not admit of the distinction contended for with regard to the difference between serving and working. There the pauper was hired as a colt shearman to work twelve hours each day, and that was held to be an exceptive hiring, upon the ground that the servant to gain a settlement must be under the control and coercion of the master the whole time of service. Now in this case, although the servant could not have worked for any other master out of the stipulated hours, he might have worked for himself, or at all events might have refused to execute during those hours any commands of his master in his business. This therefore was an exceptive hiring, and no settlement was gained by the service under it." *Littledale*, J. "I thought in *Rex* v. *St. John, Devizes*, (p. 542,) and I think now, that if the case were *res integra*, an engagement to work thirteen hours in the day ought to gain a settlement, being all the work that could be reasonably exacted. But it appears to me that the authorities are conclusive in favour of the finding of the sessions." *Parke*, J. "I think this case is governed by the principle to be collected from *Rex* v. *Birmingham*. And it is to be observed, that the agreement is not simply for service but for service in a particular trade, so that the exception in the hours of working was an exception of the very thing which was the subject-matter of the contract of hiring." Order confirmed.

Same point.

Rex v. *Norton Bavant*, 4 *Nev. & Man.* 687; 3 *Ad. & E.* 161. John White and family were removed from Norton Bavant to Frome Selwood. Order quashed. Case:—The pauper's birth settlement was in Frome Selwood. About eight years ago the pauper went to one Gutch in the parish of Corsley, to hire himself as a colt shearman; Gutch asked the pauper if he liked to work for him for a twelvemonth, and offered 6*s.* a week to work ten hours a day, from five o'clock in the morning till six in the evening, and to leave off in the middle of the day on Saturday, so as to make up the ten hours a day. The pauper served the year and slept in the same parish, sometimes at his master's and sometimes at home. About a month after entering into the service, it was agreed between the master and the pauper that the latter should receive one penny *per* hour for over-hours; and he continued to receive the same to the end of the year. Sometimes he looked after his master's horse, and sometimes worked in the garden. At the end of the year the pauper agreed with the master to stay on upon the same terms, with the addition of 6*d.* a week more wages. The pauper served a second year, doing nearly the same work as before. The pauper during both years worked over-hours at his master's request, and never refused when he was wanted. He was sometimes employed on Sundays, and was paid for so doing. The pauper kept an account of his over-time by the direction of his master, and was asked by his master if he would sooner do the over-work in his own time or in his master's. The pauper chose to work his over-hours in the evening. The question for the court is, whether the pauper gained a settlement by hiring and service in Corsley. Lord *Denman*. "I think it impossible for us to say that we are bound by the decision of the sessions. The sessions have found that there was a birth settlement in the appellant parish, and a subsequent settlement by hiring and service in the respondent parish: *provided* this court is of opinion that the hiring which they have stated amounts to a hiring for a year. The court is therefore bound to inquire whether it is such a hiring or not. We should find it very difficult to reconcile all the cases which have been decided as to *exceptive hirings*. This case is however precisely governed by *Rex* v. *Birmingham*, (p. 538,) for the facts are quite the same." *Bayley*, J. in that case distinguishes it from *Rex* v. *Byker*, (p. 523). Here the master asked the pauper if he liked to work for a twelvemonth, and offered 4*s.* a week to work ten hours a day, from five o'clock in the morning till six in the evening, and to leave off in the middle of Saturday so as to make up the ten hours a day. There was a part of the week which the pauper was not bound to work for his master. That which took place after the original agreement forms no part of the contract. We are pressed with the

authority of *Rex* v. *Ossett-cum-Gawthorpe*. In that case we did not intend to overrule *Rex* v. *Birmingham;* on the contrary, it is expressly mentioned and distinguished in the judgments. The distinction between the two cases is I admit a refined one, and one of our learned brothers (*Taunton*, J.) thought that we were wrong. There however the contract certainly was different from that upon which the question *here* turns. In that case there was a *general hiring* for five years stated, and then followed *certain arrangements* as to the amount of the wages. Here the actual contract of hiring itself is to work for ten hours a day only. Therefore, without interfering with any of the decisions referred to, we may hold that this is an exceptive hiring." *Littledale*, J. "I am of the same opinion." *Patteson*, J. "I also am of the same opinion. I do not think that the sessions can be said to have found that this was a hiring for a whole year: for they have asked us to decide whether it is so or not. We distinguish between *Rex* v. *Birmingham* and *Rex* v. *Ossett-cum-Gawthorpe*, (p. 524). In the latter case I was not much pressed by *Rex* v. *Birmingham*, but was more so by *Rex* v. *Frome Selwood*, (p. 539). The question whether a contract of hiring is exceptive or not, depends upon whether over-work is *optional* or not on the part of the servant. In *Rex* v. *Ossett-cum-Gawthorpe* it was *not optional*." We all agreed there as to the principle though we differed as to the facts. Here the over-work is optional." *Coleridge*, J. "It is quite trifling to say that there has been any finding by the sessions which can prevent our going into the inquiry whether this is an exceptive hiring or not. They leave the question entirely open to us. There is no doubt a difficulty in reconciling all the cases upon this subject; but at the same time there is no class of cases in settlement law on which the *principle* is better settled. The difficulty is this, that assuming the principle the court appears to have come to contradictory opinions as to the application. It would have been better if the sessions had found upon the settled principle, that the hiring was incomplete or complete for a year. The principle being settled it is possible for any one who reads this case, without referring to other decisions upon the subject, to doubt that this is an exceptive hiring. During all the time beyond the stipulated hours the pauper was his own master. He might have gone away and worked wherever he would. This was clearly an exceptive hiring. That which came after the original contract in this case, shows what was the understanding of the parties. A distinction was then acknowledged by them between master's time and servant's time." Order of sessions quashed.

Agreement to work for four years as hired servant in turning ironwork, or any other employment as an artisan, and to devote his whole time and attention to such business during the usual working hours, which were from 6 a.m. till 6 p.m. &c., is exceptive, and cannot be qualified by evidence of the services actually given.

Reg. v. *Holbeck*, 7 *Jurist*, 647. T. Brayshaw, &c. were removed from Holbeck to South Cropland. Order quashed. Case:—The ground of appeal was, that the examination of the pauper stating that he never did any act to gain a settlement in his own right, is untrue; for he gained a settlement in his own right in Holbeck by hiring and service, in manner following: By an agreement in writing, bearing date on or about the 31st May, 1824, and made between J. Fenton and M. Murray, of Holbeck, steam-engine makers, and the pauper, the pauper agreed to work for and serve diligently and faithfully J. F. and M. M. from the day of the date thereof, for the term of four years thence next ensuing, as their hired servant, in turning iron work, or any other employment as an artisan they might set him to, and to devote his whole time and attention to such business during the usual working hours, which were from 6 a.m. till 6 p.m. when in the shop, and from 6 to 6 when working out; and that he would direct and assist such men as he might work with or were under his care; and that he would give a just account of all his doings in such business whenever they required him, [other stipulations followed]; in consideration of weekly wages to be paid to him by J. F. and M. M.; and they agreed to pay the pauper at and after the rate of 8*s*. weekly during the first year, 9*s*. weekly during the second year, 10*s*. weekly during the third year, and 11*s*. weekly during the fourth and last year of the said term of four years, in case the pauper should, during the term, faithfully serve them, but not otherwise. The ground of appeal stated service of the pauper under this agreement for a

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year, and that he was paid for all hours he worked over and above the time stipulated. At the trial, the respondents objected that the hiring set forth was exceptive. The court overruled the objection; the agreement was then put in; and it appeared that the workmen sometimes worked under hours, when a deduction was made from their wages. They sometimes worked over-hours at the request of their masters, and were then paid for such overtime at the usual rate of their wages, without any express contract being made. Some of the workmen after their day's work at Messrs. F. & M.'s foundry, did, during extra hours, work in the same trade for other masters. B. himself sometimes worked over-hours, when requested on behalf of his masters so to do, and was in such case paid additional wages; he never refused to work over-hours when requested; he had been in the service of Messrs. F. & M. for two years. Lord *Denman:* "The ingenuity of the argument makes me suspect the construction contended for on behalf of the appellants. The services actually given cannot qualify the contract. The question in every case is, whether the contract contains an exception from the hiring for a year; and in this case the contract is in itself limited in duration, inasmuch as the master would have no right to call for the services of the pauper beyond certain hours specified therein." *Patteson*, J. "The words of the agreement, to serve 'for four years,' are followed closely by the words 'during the usual working-hours, which are from six in the morning to six in the evening' in each day. I think, therefore, that they were not introduced merely to regulate the wages, but the pauper might refuse to work for his master beyond those hours." *Williams*, J. "In every case the question is, whether there is a contract for the entire services of the pauper. In this case, on reading the contract, we do not come to the agreement on the part of the master until after the agreement respecting the services to be given by the servant. We cannot strip that from the other part; and therefore I think it is an exceptive hiring." Order of sessions quashed.

An agreement for more than a year at weekly wages to work under certain rules: viz., each person employed to give one month's notice previous to leaving, but the masters to discharge without notice; also the hours of attendance to be from six o'clock a.m. until half-past seven p.m., excepting Saturday is exceptive.

Reg. v. *Preston*, 7 *Jurist*, 648. Alice Waring was removed from Preston to Inskip-with-Sowerby. Order quashed. Case:—The appellants relied on a settlement gained by the pauper in the respondent township by hiring and service with Messrs. Ainsworth & Sons. The pauper was hired by Messrs. Ainsworth in 1828, and worked under such hiring for more than one year, at weekly wages, residing in the township; there was no express contract of hiring; but she, with the other people engaged in the said mill worked under and were subject to certain rules, two of which were: "That each person employed in this factory engages to serve Messrs. Ainsworth, and to give one month's notice previous to leaving, such notice to be given in on a Saturday; but the masters have full power to discharge any persons employed without any previous notice. That the hours of attendance are from six o'clock in the morning until half-past seven at night, excepting Saturday, when work shall cease at half-past four. Half an hour allowed for breakfast, and one hour for dinner: and any person not coming to work at the stated period, shall for every offence forfeit 6*d.*, and be deducted for the time they are absent. Lord *Denman.* "There are cases in which the power to dismiss arbitrarily, would interfere with the service for a year. If the effect of the acts of parliament regulating the hours for working in factories is to induce parties to hire themselves for particular periods only of the year, it is impossible to say that there is a hiring for a year." *Patteson*, J. "The case does not state that there was no express contract, but that the pauper engaged to work in the factory according to certain rules." *Williams*, J. "There is no stipulation between the parties, but they refer to the rules in writing; and they form part of the contract itself. The contract is only for a particular portion of the year, not for the whole year." Order of sessions quashed.

A hiring for four years, to work according to the

Rex v. *St. John, Devizes*, 9 *B. & C.* 896; 4 *Man. & R.* 681. Order of removal of Prudence Abrahams from Chippenham to Devizes confirmed.

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Case :—The pauper hired herself by a written agreement, made with Mr. S.'s foreman, to work in Mr. S.'s factory as a silk-winder for four years. S. agreed to pay her 2*s.* a-week for the first year, and a progressive increase in each successive year, subject to a reduction for absence through sickness or otherwise from her work. She agreed in all things *to observe and obey all the rules and regulations of Mr. S.*, as well with regard to the *hours of attendance and of work* as then made, and other particulars of working. She was to pay for unnecessary waste. At the expiration of the time, for good conduct, she was to receive a gratuity of 3*l.* When the pauper executed this agreement, the foreman told her that she must observe the working hours, and if certain work was not done, she must work twelve hours a day. The pauper entered on her service the day of the agreement. Rules for the factory had not at that time been reduced to writing. The foreman said they existed only in the breast of the master, but were known to and acted on by the work people. They were, during the service of the pauper, occasionally altered by the master, but the rules as to the hours were never changed. Time was at first allowed for tea, but afterwards revoked by the master's sole authority. The question was, whether this was an exceptive hiring, and whether parol evidence had been properly received. *Bayley*, J. "Where there is in a contract of hiring an express exception of any particular time, so that during that time the master cannot exercise any control over his servant, that is not a hiring for a year. By this agreement the servant stipulates to obey all the rules of the factory with regard to the hours of attendance. In every hiring the law will imply that the party hired shall work at all reasonable hours when required. The ordinary working hours in a manufactory are twelve hours a day ; but it does not therefore follow that the master may not, on extraordinary occasions, require his servant to work at other hours. Whether he does so or not, the relation of master and servant continues during the whole day. It does not appear what were the specific rules in this case ; but assuming that one of them were to work twelve hours a day, yet, inasmuch as the regulations might be, and were, from time to time, altered by the master, the stipulation that the servant should obey the rules of the factory with regard to hours of work, did not give the servant any right to say that the master should not require her service at all reasonable hours. Such a stipulation does not necessarily imply that she is not to work beyond certain hours. The true meaning of this agreement is, that the relation of master and servant was to continue the whole day. There is no exception in the contract, and no remission of service, but such as the law will imply in every contract of hiring." *Littledale*, J. "To constitute a yearly hiring, the relation of master and servant must subsist during the whole year, and during the whole of every day. It has been held in several cases, that a hiring in terms for a year, the servant to work for so many hours a day, is an exceptive hiring. These cases have gone to a great extent. It seems to me, that unless by the terms of such a contract there is an express exception showing that the relation of master and servant is not to subsist during the whole year, or during the whole of every day in the year, it is a yearly hiring. By this contract the servant is to conform to the rules of the factory. That is a stipulation which the law would imply in every contract of hiring; and we cannot from that infer that there was an exception of any period of time during which the relation of master and servant was not to exist." *Parke*, J. "I have no doubt that anything which passed by parol between the foreman and the pauper was not admissible evidence to explain the agreement. It is said there is an exception to the agreement by reason of that stipulation, whereby the pauper agrees to obey the rules of the factory. But that imports no more than a contract to obey the orders of her master, which is a term implied in every contract of hiring." Order of sessions quashed.

rules of the factory, which were at the master's discretion. The pauper was told she was to work twelve hours a day : Held, not an exceptive hiring.

Rex v. *Ozelworth*, *Burr. S. C.* 302 ; 2 *Bott*, 432. W. Hewett agreed with T. Palsor, clothworker, to serve him in his business for three years, at so much a week. He was to work twelve hours a day, and a penny for

So, also, if hiring is to serve three years, though only to work twelve

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each hour over. Sixpence a week was to be retained as a deposit; which was to be repaid to Hewett if he performed the agreement, or if Palsor should discharge him before the end of the term. It was understood between them that Palsor might turn Hewett out of his service at any time during the term, paying him the sixpences detained. Hewett worked under the agreement for about six months; and then, being ill, absented himself about three months, and then returned, and was received by Palsor, and continued to work for him under the agreement till removed by the order, being about three-quarters of a year after his return. By the court: "Here is an actual hiring for three years, and a service under it for one year and a quarter. Besides, the two justices removed him whilst he was actually in his master's service."

hours a day, and if more to have a certain sum per hour, this gains a settlement.

So, also, where the exceptions are only *implied*.

Rex v. *St. Agnes, Burr. S. C.* 671; 2 *Bott*, 310. The father of the pauper contracted with Mr. Nankivell (the pauper being then fifteen years of age) for the pauper to work at Nankivell's stamps, situate in St. Agnes, (which stamps are mills, wherein several are employed in cleansing and manufacturing tin), for one year, at the yearly wages of 5*l*. The pauper served Nankivell at the stamps for the year, by working therein daily, except holidays and Sundays, according to the custom of tinners, and his father received his wages as he had occasion for it. During the year the pauper ate, drank, and lodged with his father in St. Agnes, serving Nankivell at his stamps, and in no other capacity, nor ever became a part of his master's family. By the court: "This was an entire contract for a year, without any exception contained in it; and the service was according to the custom of the country. *The difference is where the exception is part of the contract, and where the contract is absolute: the question turns upon this distinction.* In *Rex* v. *Macclesfield* (*ante*), it was part of the original contract: here it is not so." And they were unanimous that the pauper gained a settlement.

Hiring to work as a bleacher and crofter.

Rex v. *Horwick*, 10 *East*, 489. The pauper was hired as a bleacher and crofter for a year at 12*s*. a-week; nothing else passed at the time of hiring, and he served the year. The custom is for each bleacher to be directed by his master to get up a certain number of pieces a-week, calculating at so many pieces a-day for six days; there is no stint as to hours, and if the bleacher finish his work in less than the time appointed, the rest of the time is his own to do as he pleases. The pauper on Sundays went where he pleased, without asking his master's leave. The pauper occasionally made up for lost time by working on Sundays, but this was his own act. The master had nothing to do with the bleachers on Sundays. Lord *Ellenborough*. "The law of the land breaks in upon such contracts as these on the Sundays, and the master in this case had as much right to the service of the pauper for the whole year as the law will allow. Here is a clear distinction between this case and *Rex* v. *Macclesfield*, *Rex* v. *Kingswinford*, and *Rex* v. *N. Nibley*. Here is an express hiring for a year, and no express exception of any part of the year. But this is an attempt to introduce an implied exception from the practice of a particular house of manufacture; though *implied exceptions in the times of service, by the custom of the country, have been held not to break in upon general contracts of hiring for the year.*"

Implied exceptions by the custom of the country will not defeat the settlement.

A clerk in a merchant's house, hired by the year, but serving only during the usual hours of mercantile business, thereby gained a settlement, although these hours never occupied the whole day.

Rex v. *All Saints, Worcester*, 1 *B. & Ald.* 322. A clerk in a mercantile house was hired by the year, but he served only during the usual hours of business, which did not, by the custom of the trade, ever occupy the whole day, and he went where he pleased, without asking his master's leave, when those hours were over. He did what he pleased on Sundays. Lord *Ellenborough*. "There is in every contract of hiring some implied exception of hours for relaxation, food, and rest; I cannot at least suggest to myself any contract in which such exceptions do not exist. The master here has a right to the service of the pauper at all times, but he does not require his services at any other hours than those mentioned: there is not any exception in the contract. The hiring then being general, and there being no exceptions but such as are necessarily implied in every contract, I

think that the pauper, by serving under it for a year, gained a settlement." *Bayley*, J. said, "The distinction between the two classes relative to this subject is, that in the one the exception to the service is expressed in the contract, and in the other it is left by the custom of the particular trade to be raised by implication. This case seems to me to range itself under the latter class; and therefore I think the pauper gained a settlement by this hiring and service." *Abbott* and *Holroyd*, Js., concurred. Order of sessions quashed.

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13. *Imperfect Apprenticeship not a good Hiring.*

It must be a contract for *service*, and not an imperfect contract of *apprenticeship*. Those cases only are inserted here where the contract has been held to be a hiring. Those relating to imperfect apprenticeships are collected under that title.

If there be an agreement in writing to teach a trade, and the person is not spoken of as an *apprentice*, it is a *hiring*. (*a*)

Rex v. *Little Bolton*, 2 *Bott*, 316; *Cald.* 367. The pauper went to W. Stott, at Great Bolton, and asked him if he would teach him to weave counterpanes; Stott answered, he would teach him, if he would work with him two years and a half or three years, and the pauper's earnings were to be divided between them; the pauper was to find himself with meat, washing, and clothes; he was engaged on these terms, and an agreement in writing was entered into accordingly. The pauper worked with Stott under this agreement, in Great Bolton, about a year and a half, and then the pauper gave the master 20*s.* to be free, having then married. The master (whilst he was working under the agreement) found him looms, room, and materials; he never employed the pauper in any work but weaving; the condition upon which he taught the pauper to weave was one-half of his earnings. Stott received the money, and paid the pauper one-half, and looked on it that he had a right to receive it; but sometimes he let the pauper receive it. Lord *Mansfield*, C. J., delivered the judgment of the court. "We have looked into the authorities, and we find that all those cases of apprenticeships which have been holden to be defective, and not convertible into hirings and services, *speak of the pauper as an apprentice*, and that he was to serve as such. There is no such statement here; and we are therefore of opinion that it is a good hiring and service." Orders quashed.

A binding by verbal agreement to serve another, on condition of being taught a trade, is a hiring for service.

Rex v. *Eccleston*, 2 *East*, 298. Removal from Little Bolton to Eccleston confirmed. Case:—The pauper, when about fifteen years of age, went to Tonge with Haulgh, and made a verbal agreement with S. Clough, a weaver of counterpanes, to serve him a year and a half. Clough was to teach him to weave counterpanes, and the pauper was to have one-half of what he earned, and to find himself in everything. Nothing else passed between them on making the agreement. The pauper worked with Clough for a year and a half, except for a fortnight, during which he remained absent; but Clough, however, brought him back into his service, and obliged him to stay a fortnight over the year and a half, in order to make up the time he had been absent from his service. During the time of his service he constantly slept at the house of his mother. Lord *Ellenborough*, C. J. "I gave a reluctant assent to *Rex* v. *Little Botton* (*supra*); but as the case now before us is in terms the same as is there decided, I think it is better to abide by that determination, than to introduce uncertainty into this branch of the law; it being often of more importance to have the rule settled than to determine what it shall be. I am not, however, convinced by the reasoning of that case, and if the point were new, I should think otherwise. I should consider, as Lord *Kenyon* said, in *Rex* v. *Laindon*, that if the relation of master and apprentice be created by the contract of the parties, though they do not use the very words master and apprentice, yet, if they use words tantamount, it is sufficient. The word, 'apprentice,'

(*a*) This has been overruled in several cases. See *Rex* v. *Laindon*, as cited by Lord *Ellenborough* in the next case.

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he observed, was taken from *apprendre*, to learn; and what was that but an apprenticeship, where the purpose of the contract was for one man to *teach* and the other to *learn* a trade? Then what was this intended to be? I should have said, upon general reasoning, that where the contract was that the master should teach the other a trade, and the latter was to do nothing *ulterior* the employment in that trade, it was a contract *apprendre* in the true sense of the word; and being defective in this case, for want of proper legal formalities, it could not enure as a contract of hiring in a servant. However, as Lord *Kenyon* did not think proper to overrule *Rex* v. *Little Bolton* in terms, though he disapproved of what was there said; and as it was not overturned in *Rex* v. *Highnam*, or *Rex* v. *Rainham*, for the reason I at first gave, I think it better to concur in that decision, however unwilling I should have been to have done so in the first instance." *Lawrence*, J. "The case referred to is directly in point, and not having been overruled, it ought to govern the present. *Rex* v. *Laindon* and *Rex* v. *Rainham* are both very distinguishable from the present."

If one be *clubbed* for three years, to be taught a trade, and contract to do any work he may be set about, it is a hiring. (*a*)

Rex v. *Coltishall*, 5 *T. R.* 193. At Lady-day, 1785, the pauper being about eighteen years of age, and a bricklayer's labourer, was clubbed with J. Rolfe, of Coltishall, for three years, at 6*s.* per week the first year, 7*s.* the second year, and 8*s.* the third year; to board, lodge, and wash for himself; he was to be taught the trade of a bricklayer. An agreement in writing was to be prepared for three years, but this was never done. The pauper served two years and upwards, and then, upon some difference, his master and he consented to part. No premium was paid. The pauper *was to do any work Rolfe set him about*, and was not to be absent from his business during any part of the time. Lord *Kenyon* said, "that it was impossible to raise a doubt upon the case; for that the concluding part of it, which stated that 'the pauper was *to do any work* his master set him about (*b*) *was decisive* to show that he must be considered as a hired servant:' and that, although *one* of his objects *was* to learn a trade, that was deemed equivalent to part of his wages."

Same point.

Rex v. *Martham*, 1 *East*, 239. By an agreement made by the pauper's uncle, he was clubbed with B. a bricklayer, for three years, at certain weekly wages, to learn the trade of a bricklayer, *and to do any other work* his master might set him about, with a proviso, that if he were prevented from working by bad weather, illness, or want of employment, there should be a proportionable deduction of wages. It was holden that the pauper gained a settlement, though occasional deductions on those accounts were made. The case was decided upon *Rex* v. *Coltishall.*

The pauper entered into a written contract (unstamped and without seals,) to serve for three years, to learn to make bricks: Held to be a hiring in the relation of master and servant.

Rex v. *Shinfield*, 14 *East*, 541. M. Lanesbury was removed from Reading to Shinfield. Order confirmed. Case:—The pauper's husband, R. Lanesbury, in June, 1806, hired himself for a year to J. Palmer, brickmaker, and continued from that time upwards of a year in Palmer's service. On 29th September, 1806, the pauper's husband (being still a minor) and Palmer, signed an agreement on unstamped paper, and not under seals, under which the pauper's husband served the whole three years. The agreement was: "I, R. L., do hereby covenant and agree to serve J. P. for three years to learn to make bricks, and the art of burning, on condition of the said J. P.'s finding me sufficient victuals, lodging, and clothes, and to be clothed in the habit of a working man at the expiration of the three years, on condition of my helping to attend the kiln on nights: 29th September, 1806.—(Signed) R. L." and attested. In the margin of the paper, near the attestation, was written, "I, J. P., consenting to the above agreement." The appellants produced R. Lanesbury's mother, who swore that Palmer came to her and asked her if she had any objection to her son being apprenticed to him, and she said, "No." Lord *Ellenborough*. "This

(*a*) This case also stated, that "clubbing signifies a person contracting to serve for the purpose of learning a trade, and to have less wages on account of learning the trade."

(*b*) This is not *decisive*. *Rex* v. *Coombe*; *Rex* v. *Tipton*.

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was the case of a person who, though a minor, had power to contract for a hiring and service to another, or as an apprentice (*Drury* v. *Drury*, cited in 3 *Term Rep.* 161). *Quâcunque viâ dâtâ*, the pauper gained a settlement in Shinfield; for if the instrument were invalid as being a fraud upon the law, it is clear that there was no good apprenticeship created, because it was not created in the manner prescribed by the law; and if invalid and not receivable in evidence, what is there to do away the former contract of hiring for a year? But supposing it to be valid and not operating as an apprenticeship, but as a hiring in the relation of master and servant, what is this but the case of a continuing service operating under a new contract of hiring, merely superadding other terms whereby the servant was to have food and clothing provided for him in the manner stated, and an opportunity of learning the trade of his master, instead of seeking for a compensation for his service upon a *quantum meruit*. It is therefore unnecessary to determine whether or not this was a good contract of hiring and service, as created by the written instrument. And all the cases cited by the appellant's counsel differ from the present, because in none of them was there a good contract of hiring and service, independent of the imperfect contract of apprenticeship in dispute. But here there was an original perfect contract of hiring and service, which was not defeated by an invalid instrument. With respect, however, to *Rex* v. *Little Bolton* (p. 545), the court, in *Rex* v. *Eccleston* (p. 545), considered it as a subsisting authority, whatever question there might have been upon the subject at first, and I think the convenience of the thing is in support of it, but it is not necessary now to discuss that point." *Grose*, J. "Here there was originally a good contract of hiring and service, and that was not done away with by the subsequent instrument, whereby the parties merely prolonged the duration of the contract, and fixed the compensation to be made by the master for the service." *Le Blanc*, J. "This case is distinguishable from all the former cases in which the question has been, whether the contract was to serve as an apprentice, or as a hired servant; where if the court considered that the contract was to serve as an apprentice it could not enure to give a settlement, as in the case of an hired servant, for in none of those cases was there any valid contract of hiring and service existing before, independent of the instrument in question. But here the husband of the pauper had first entered into a good contract by parol, as a hired servant for a year, and pending that contract he and his master entered into a written agreement, by which it is contended that the parties meant to contract for an apprenticeship, and that this, though invalid for the purpose of creating an apprenticeship, yet changed the nature of the service under the former hiring into a service as an apprentice, and therefore prevented the gaining of a settlement as a hired servant. But I do not accede to that argument; because, if there were at one time a subsisting valid contract of hiring and service for a year, and pending that the parties enter into an invalid agreement, I do not see how that can do away the former valid contract. But even upon the construction of the written instrument itself, I do not think that it is to be taken as a contract of apprenticeship. In all the former cases where the instrument in question has been so construed, it has been stated that the parties intended to contract in the relation of master and apprentice, only they had contracted informally in order to avoid the stamp duties. But here the contract is for Lanesbury to serve Palmer for three years, to learn the art of a brickmaker, on condition of Palmer's finding him in board, lodging, and clothes; there is no contract by the master to teach him, but only for the boy to have the opportunity of learning the business. It is said that no wages are reserved, but that is no more than what often happens with boys at service; they get less at first, because they must first learn their business before they can be of use to their masters in it. Then though it is stated here that the boy was to serve his master to learn his business, that would not prevent it from operating as a contract of hiring and service. I do not think, therefore, that this was, in the terms of it, an agreement for an apprenticeship, so as to supersede the

An invalid contract of apprenticeship will not vitiate a subsisting contract of hiring.

Absence of "*wages*" does not negative a hiring.

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former contract of hiring and service. But even if it were intended as an apprenticeship, yet the instrument being invalid, would not supersede the former valid contract." *Bayley*, J. "I consider the instrument as a contract of service, and not as an apprenticeship. There was an original good contract for a year between the parties as master and servant generally, and after three months' service generally under it, they entered into a new agreement, by which the boy was to serve his master for three years, not generally, but to learn to make bricks and the art of burning, upon condition of being found in board, lodging, and clothes. The meaning of the parties, therefore, was, that the general service before contracted for should be restrained to such service as would enable the boy to learn his master's business. If an apprenticeship had been intended, there would have been words introduced into the agreement binding the master to teach the boy, and there being no such words of obligation on the master, and the written contract not having the ordinary words of binding to serve as an apprentice, and the intent of the parties, as collected from the terms of it, being at least equivocal, we are warranted by the cases in saying that the object of it was merely to confine the general service, before contracted for, to such parts of the master's employ as would enable the boy to learn his business. If this, therefore, was to give an extraordinary benefit to the servant, the master might well stipulate for receiving such service without the payment of wages." Orders confirmed.

Contract of hiring inferred, where there is no agreement to *teach*.

Rex v. *Burbach*, 1 *M. & Sel.* 370. Removal of Mary, the wife of W. Timson, from Burbach to St. Mary, Birmingham. Order quashed. Case:—The father of the pauper's husband made a verbal agreement with R. Palmer, of Burbach, frame-work-knitter, that his son should be with Palmer, and work with him for two years, and have what he got, and that he should allow two shillings per week out of his gains to Palmer: viz. one shilling for teaching him the business of a frame-work-knitter, ninepence for the rent of a frame, and threepence for the standing of the frame. Nothing was said about his being an apprentice. The pauper's husband served Palmer for two years at Burbach, and had what he earned after the two shillings per week were deducted, who found a frame and all materials, but the pauper's husband paid for the needles himself; and in regular work he earned about ten shillings per week. The pauper's husband had no right to work for any body else in Palmer's frame, nor did he do so to Palmer's knowledge; he received no wages, and boarded and slept all the time at his father's house, where his washing was done; he did no act as a servant for Palmer by his order; and on Sundays he was at his father's house. Lord *Ellenborough*, C. J. "The case was fully argued on both sides. The ground of argument taken is, that the father was the contracting party, and could not bind the son. It certainly cannot be contended that the son would at all events be bound by the contract of the father; but in every case, if a contract be made by a person standing in a peculiar relation to another, on his behalf and for his benefit, and that other performs his part of the contract, there is no authority which should restrain me from leaving to the jury whether he did not adopt the contract. It seems absurd to say that if a party contract on my behalf that I should do work, and I do it, that the rule of *omnis ratihabitio* does not apply. Every jury upon such a question would find a previous *mandatum* evidenced by the service afterwards. Here the son is acting as servant; but if it were doubtful, the sessions have drawn the conclusion, and have not submitted to us any question whether he was bound by the contract. The question then is, whether this is a contract of hiring and service, or of apprenticeship. It certainly cannot be called an apprenticeship, nor does it bear any of its forms; for although there is mention of an allowance to be made by the son on account of the master's teaching him the business, yet that is not peculiar to the contract of apprenticeship: it

A verbal agreement by the father that his son should work with another for two years, to have what he earned, and to allow the master two shillings per week for instruction, and the use of a frame and standing, is a contract of hiring and service, and not of apprenticeship. (*a*)

(*a*) In *Rex* v. *Newton* (*post*), *Patteson*, J., said, "I consider this case to be overruled by *Rex* v. *Crediton*" (*post*). This observation relates only to the question of apprenticeship, and not to the validity of the contract by the son.

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enters into the contemplation of almost every contract of hiring and service, how far the servant has learnt his art, or stands in need of farther instruction; and according to his proficiency a consideration is made in the rate of wages. It is the measure to which each party resorts in apportioning the compensation; and if the circumstance of the servant's having to learn his art is to make a difference, it would change the nature of most contracts of hiring and service, even in the meanest situations, into that of an apprenticeship. As to *Rex* v. *Little Bolton* (p. 545), without saying whether one quite approves the principle of that case, it is enough to say that the court has been so much in the habit of acting upon that decision, that it would now be dangerous to set it aside. I do not say that if that case were erroneous, and only destitute of legal foundation, it would not be right to set it aside; but if it stands on plausible grounds, it ought not to be canvassed too nicely. This case is stronger than *Rex* v. *Little Bolton;* there the master agreed to teach the pauper if he would work with him two years and a half or three years; so that the teaching was of the very essence of the contract. Here there is no express contract by the master to teach, (*a*) only an allowance by the servant out of the earnings for teaching, which perhaps may amount to an implied one. I will not say that an action might not be maintained upon this contract for not teaching, although upon a demurrer to a declaration framed upon it, there might be difficulty. Admitting, however, that such a contract may be inferred, it is by no means so clear as assumed in argument: and even if it were, it would not be so strong as *Rex* v. *Little Bolton,* which was an express contract. There Lord *Mansfield* observed upon the agreement not speaking of the pauper as an apprentice; and here there is no mention of apprenticeship, except as far as learning and teaching are ingredients in the contract of apprenticeship, which they are also in almost every contract of hiring and service regularly entered into. Therefore, without saying that *Rex* v. *Little Bolton* is not law, we cannot hold that this is not a good hiring and service." *Le Blanc,* J. "With the exception of name, this case and *Rex* v. *Little Bolton* are the same." The other judges concurred. Order of sessions confirmed.

A boy became an apprentice to a wheelwright for five years. After less than two years the indenture was cancelled, and he agreed to serve another wheelwright for more than two years. This latter is a contract of hiring.

Rex v. *Billinghay,* 5 *A.* & *E.* 676; 1 *N.* & *P.* 149. R. Lynn was removed from Asterby to Billinghay. Order confirmed. Case:—The pauper having first gone upon liking, let himself under a written agreement to R. Medley, of Ranceby, a wheelwright. The agreement was signed by the pauper and the father. It was, "Mem.: The undersigned, R. Lynn, agrees on behalf of his son, R. Lynn, that he shall serve R. Medley in his business as a wheelwright, from this time to 29th March, 1830, R. Medley paying, at the expiration of the said term, 5*l.* to R. L. the son; R. Lynn to find his son clothes, washing, and all other necessaries; and R. Medley meat, drink, and lodging, 3 Dec., 1827." The pauper stated he served as an apprentice. The pauper previously had been bound an apprentice by indenture to Lund, of Billinghay, a wheelwright, and served him one year and eight months. The indentures were then cancelled, his father having bought up the remainder of his time. Lord *Denman.* "I think this instrument creates a contract of hiring; it contains no provision for learning or teaching." *Patteson,* J. "I am clearly of opinion, that the contract was one of hiring and service, and that the sessions were wrong in their construction of it." *Williams,* J. "I agree that this is a contract for hiring and service." *Coleridge,* J. "The instrument, when rightly interpreted, appears to be a contract of hiring." Order of sessions quashed. (*b*)

(*a*) If there is a contract to *learn,* one to *teach* will be implied. *Rex* v. *Crediton* (*post*).

(*b*) In this case, the sessions allowed the pauper to state that he served as an apprentice under the latter contract, but they rejected evidence of a conversation between the parties before and at the time of signing the instrument; and they also rejected an indorsement on the paper, as there was no proof that it was written at the time the agreement was signed. The

III. *The Service under the Contract.*

III. The Service under the Contract; and herein.

1. *Of Connecting Services under distinct Hirings.*
2. *Of Lapse between Connected Services.*
3. *Of Dispensation.*
4. *Of Change of Master in the same Service.*
5. *Of Dissolution.*

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1. *Of connecting Services, &c.*

1. *Of Connecting Services under distinct Hirings.*

) W. & M.), s. 4, enacts, "That no person hired shall be adjudged or deemed to have a good settlement in any such parish or township, *unless such person shall continue and abide in the same service during the space of one whole year.*"

In order to perfect a settlement by hiring and service, it is therefore necessary that the person *continue and abide in the same service during the space of one whole year.*

A person may abide in the *same service* under different successive hirings, and the law does not require that the hiring and the service shall be for one and the same year, to entitle the party to a settlement.

It is said that in *Dunsford* v. *Redgwich*, *Fol.* 133; 2 *Bott*, 364, the court declared that there ought to be one entire contract, and one entire service for a year, pursuant to that contract. But it is proper to remark, that the point in question in that case was, whether a hiring for two half years should be deemed a sufficient hiring, and not what should be a sufficient *service* under such hiring.

A service for a year, though under different hirings, is good, if one of the hirings be for a year.

Rex v. *Overton*, *Burr. S. C.* 549; 2 *Bott*, 363. The pauper Bailey was settled in Overton, and on the 25th day of March contracted with Orpwood, of the parish of Steventon, for the wages of 20*s.*, to serve him from the said 25th day of March, 1697, until Michaelmas then next following, and which time she served accordingly. At Michaelmas, Orpwood contracted with her from the said Michaelmas for one year ensuing, for the wages of 30*s.*, and she remained with him until some time in the month of April, 1698, in which month, by mutual consent, she left her service, and he paid her the proportion of her wages that were then due. The sessions conceived that the pauper, by continuing more than one whole year under this hiring, gained a settlement in the parish of Steventon; and the Court of King's Bench were of the same opinion, for the service under the hiring for half a year, and the half year's service under the hiring for the year, answers the end of the statute 8 & 9 Will. III. c. 30, and is a good service for the year.

The same point precisely was determined in *Rex* v. *South Molton*, *Raymond*, 426; a case the records of which cannot be found, but which, Sir *James Burrows* says, may possibly be the same case as *Rex* v. *Overton*. (See *Burr. S. C.* 550.)

Service under a hiring for part of a year, with service for eleven months, and under a hiring for a year, is a good year's service.

Brightwell v. *Westhallam*, 1 *Sess. Ca.* 87; *Fol.* 143; 2 *Bott*, 366. There was a hiring and service from three weeks after Michaelmas to Michaelmas, and then a hiring for a year, and service for eleven months. The Chief Justice said, "If there were a service for a year, under a hiring from week to week, and then a hiring for a year, *and serving for forty days*, (*a*) he should adjudge that a settlement. The reason is, because by the 3 W. & M. c. 11, a hiring for a year, and forty days' service under it, made a settlement, in regard that the hiring for a year showed that the person was not likely to become chargeable, for that he was able to work; but by 8 & 9 Will. III. c. 30, the service must be during the space of one whole

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court thought they could not say the sessions had done wrong, as the evidence might or might not be admissible according to circumstances which were not specified.

(*a*) But in *Rex* v. *Adson* (p. 551), it was held that forty days' service under such yearly hiring was not necessary to gain a settlement.

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year. So forty days is a good settlement to an apprentice, in respect to his skill and art, by which he is supposed unlikely to become chargeable. So a person that has paid parish dues, or served offices in a parish, gains a settlement by forty days, because he is supposed a person of substance, unlikely to become chargeable. But the late act requiring service for a year, as well as an hiring, we think it sufficient if the words be answered, considering this with the design of the former statutes."

A hiring and service from Christmas to Michaelmas, and then a hiring for a year, and a service till Midsummer under the second hiring, will suffice.

Rex v. *Aynhoe*, 2 *Sess. Ca.* 119; *Fol.* 144; 2 *Bott*, 368. The pauper was hired from Christmas to Michaelmas, and served till Michaelmas; then was hired for a year, and served till Midsummer. And this was adjudged a settlement. Lord *Raymond* said, "The case of *Westhallam* was express to the point, and he would not break into it; but if it had been *res integra*, or a case not adjudged before, he should have thought it ill. Here the service was antecedent to the hiring for a year." The greater part of the judges thought this case to be against the statute, but that they were more strongly bound by the precedent, and were unwilling to set aside a resolution solemnly adjudged, though not according to their own opinion."

So will a hiring and service from Christmas to Whitsuntide, and then a hiring for a year, and service till the beginning of the March after the Christmas.

Rex v. *Underbarrow*, *Burr. S. C.* 545; 2 *Bott*, 373. A. Kellet hired herself at Christmas to J. Thompson, till Whitsuntide, which time she served. At Whitsuntide she hired herself to Thompson for one year, and continued in the service till the beginning of March, when she and her master parted by consent. It was urged that *Rex* v. *South Bolton* and *Rex* v. *Overton* were determined upon facts prior to the explanatory statute of the 8 & 9 Will. III., before which statute a hiring for a year, and a service for forty days, gained a settlement. And it was observed that in *Rex* v. *Aynhoe*, Lord *Raymond* and Mr. J. *Page* declared that if it had been then *res integra*, they should have judged it to be no settlement: and now it appears to be so; as the two supposed precedents were no precedents at all, being prior to 8 & 9 Will. III. By the Court: "The authority of these cases will be just the same, whether the facts were prior to the statute or not; because the court determined them as upon facts subsequent to the statute. And there having been many determinations the other way, the court were unanimously of opinion that, for the sake of certainty, it was best to adhere to settled determinations. Though there might be room for great doubt upon this point, if the matter were again open, yet the rule *stare decisis* is always proper, and especially in these cases of settlements." (*a*)

So a hiring and service for less than a year, and then a hiring for a year, but only ten days' service under the yearly hiring, will gain a settlement.

Rex v. *Adson*, 5 *T. R.* 98. The pauper was hired eight days after Old Michaelmas, 1786, to Old Michaelmas following, and continued in his master's service till the day after Old Michaelmas-day, 1787, when he was hired by his master till the Michaelmas following, and under that hiring he served only ten days. The sessions thought that the second hiring was a hiring for a year, but that the pauper had gained no settlement under it, as he had not served forty days subsequent to that hiring. Lord *Kenyon* was of opinion that a settlement was gained; but *Grose*, J., at first was of a different opinion. Afterwards Lord *Kenyon* said, "That they were both of opinion that the pauper gained a settlement."

Service under a hiring for a year, at certain wages, and then under a hiring for another year at higher wages, is a continuance of the same service.

Rex v. *Underbarrow*, *Doug.* 309. Hallhead was hired for a year, from Whitsuntide, 1770, to Whitsuntide, 1771, to Burrow, for the yearly wages of 18*s*. She lived with him till the 12th of May, being Old May-day, 1771; her master then removing to a new farm in Strickland Roger, carried her with him, where she served seven days, which completed her year, and received her wages. Then she hired herself to the same master for another year, from Whitsuntide, 1771, to Whitsuntide, 1772, for the wages of 25*s*.; and she continued with him in Strickland Roger from Whitsuntide, 1771, till Candlemas, when by mutual consent she quitted her service,

(*a*) Upon searching the records, it has appeared that *Rex* v. *Overton* was *after* the 8 & 9 Will. III., and the mistake arose from the errors of the reporters as to the times of the hiring and service.

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and received her wages up to that time. Lord *Mansfield*, C. J. "We are all very clear that this was a continuance of the same service with an increase of wages."

Dissimilar services may be connected.

Rex v. *Sutton*, 1 *East*, 656. The pauper hired himself by the week to Mr. Hatch, of Sutton. Nothing was said about Sunday in the contract; but the pauper worked on that day occasionally when asked by his master, without receiving any additional wages, though he sometimes received some victuals. He received his wages every Saturday night or Sunday morning: he did not reside in his master's house, but boarded himself. At the end of nine months, on his master's family servant going away, the pauper was hired in his place for a year, at 12*l. per annum*, and served eleven months under that hiring. Lord *Kenyon*. "It has now been too long settled to be recalled, that if there be a hiring for a year, and a service for a year, though but a small part of the service were performed under the yearly hiring, a settlement will be gained. But an attempt has been made to introduce a new head of settlement law, of which I have no knowledge, under a notion that only services *ejusdem generis*, as it has been said, can be joined. The term got into fashion some time ago. At that period Mr. J. *Foster* thought that settlements were too easily acquired by the construction which the court was inclined to put on the statute: but since then the leaning has been in favour of them; and it has been supposed that a person ought to gain a settlement in that parish where he has laboured for a certain time, as a reward for his labour: a strange idea, if examined; because somewhere or other he must at any rate be maintained, if he be in want of it. I know not how to state this as a question upon which any doubt can be made. The pauper was hired by the week; nothing was said about Sunday; it is very seldom that there is: why then is that day to be excluded? If a servant be hired for a year, nobody doubts but that Sundays are included; then why not included in a weekly hiring, if no exception be made? The sessions have found that there was a hiring by the week, which must mean the whole week. There is nothing stated to show it was otherwise intended. The pauper was paid sometimes on the Saturday, sometimes on the Sunday; and whenever the master ordered him to do any work on the Sunday, he did it: what is to be concluded from thence, but that it was his duty to do so? How do these facts show that he was not under the master's control on the Sundays as well as other days of the week? In *Rex* v. *Wrington*, (p. 553) it appeared from the circumstances that Sundays were excluded. But it is said, that the services cannot be joined, because they were not *ejusdem generis*. I really know not what that means, nor where the line is to be drawn. Suppose a postilion were made coachman, would those be deemed services *ejusdem generis?* It is said, that he at first was an outdoor servant, and then a family-servant; but I do not know what difference that made in his services. Upon the whole, I cannot do better than what the justices below have done; they have determined that there was a continuing service for a year, and a hiring for a year, and that he gained a settlement; and I think they are warranted by the authorities in that conclusion." *Le Blanc*, J. "I cannot see that the services were not the same."

Hiring by the *week* includes Sundays.

Service for a year, partly under a weekly and partly under a yearly hiring, gives a settlement.

Rex v. *Bagworth*, *Cald.* 179; *Bott*, 378. S. Ward was removed from Bagworth to Ratby. Order quashed. Case:—Nine weeks before Old Michaelmas, 1780, the pauper was hired by W. Hunt, of Ratby, by the week, and served him till Old Michaelmas, when she was hired for a year from that time, and served till about a fortnight before the following Old Michaelmas, when being with child, she and her master parted by consent, and she received her wages up to that time. She was employed in the same manner during the time she served by the week, as under the hiring after Michaelmas. *Willes*, J. "The question raised upon the merits is perfectly clear; the pauper did not live in this family occasionally, or work merely as a day-labourer or char-woman, but constantly as a menial servant, and employed throughout in the same services; and a hiring for a

year, with a year's service in the whole, and that of a similar nature throughout, though it is made up of several hirings, (provided there be no discontinuance,) gives a settlement." *Buller*, J. "Here is a continuance in the service for a year: and it has been long settled, that where the service extends throughout the year, you may couple any number of preceding hirings and services with a hiring for a year; the extent and duration of the several preceding services, 'where such services have been similar,' have never been adjudged to vary the law, but there must be one entire hiring for a year."

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Exception to the rule in the above cases. (*a*)

Rex v. *Wrington*, *Burr. S. C.* 280; 2 *Bott*, 270. Ann Stokes, the pauper, when thirteen years of age, went to Chew Magna, to her aunt, and soon afterwards went to Winford, and worked with N. Walker, clothworker, in the business of burling clothes, by a weekly hiring. She continued to work with Walker for a year and a half. On the last Saturday of the service the pauper covenanted to serve Walker for a year, at 1*l.* 10*s.* wages; entered immediately into the service, and continued therein eleven months. By the Court: "The pauper did not acquire a settlement by this service. For though a subsequent service for less than a year, performed under a hiring for a year, may be coupled to a prior service, which was not performed under a hiring for a year, provided it be a continuance of the same service, yet the subsequent service cannot, in the present case, be coupled with the former, because the former hiring was not of the same kind with the latter: the former was as a day labourer, or weekly labourer at the most; not as a hired servant, who is part of the master's family.

Service under a hiring void at first, the pauper being then an apprentice, may be connected with service under a second hiring, there being a whole year's service after the indenture had expired.

Rex v. *Dawlish*, 1 *B. & Ald.* 280. Order of removal from Clyst Honiton to Dawlish confirmed. Case:—The pauper, by indenture dated September 3, 1804, was bound apprentice by the parish of Broadhembury to R. Pearcy of that place, till she should attain the age of twenty-one: whilst under this indenture she served J. Blackmore, with Pearcy's consent, for two years in Dawlish; after which, in May, 1812, she hired herself as a yearly servant to Mrs. Bryant of Clyst Honiton, for 4*l.* a year. In the September following the indentures expired. At the end of her year the pauper again hired for another year to Mrs. Bryant, and served ten months under this last hiring. There was no interruption between the two services. The first year's service with Mrs. Bryant was without the knowledge of Pearcy. Lord *Ellenborough* said, "If this were *res integra* there might be some difficulty in admitting the principle, that a service *without a contract* might be coupled with service under one, so as to gain a settlement; but that having been decided, this case ranges itself under the same class." *Abbott*, J., said, "The first contract was either valid or void; if valid, then there is a good hiring and a good service; if void, then the first year's service will be a service under no contract at all, which, according to the argument, it is admitted may be coupled with the service under the second hiring. In either case a settlement is gained."

Service on a day intervening between the end of the first service and the commencement of the last, may be included.

Rex v. *Harbury*, 1 *Bar. & Adol.* 36. Gardner was removed from Harbury to Snitterfield. Order quashed. Case:—The pauper was hired on the 20th of September, 1823, to serve Mr. Richard Smith, of Snitterfield, for fifty-one weeks. The pauper went into Mr. Smith's service on the 18th of October, 1823, and served Mr. Smith for fifty-one weeks. On the 8th of September, 1824, Mr. Smith again hired the pauper for a year, to commence from the Old Michaelmas ensuing. The pauper remained in Mr. Smith's house, and worked for him regularly from the 18th of October, 1823, until about three weeks before Old Michaelmas, 1825. He served under the said yearly hiring till about three weeks before the Old

(*a*) The distinction between this and the two preceding cases seems to be, that in this the service was as an artisan, and the Sundays were excluded; see Lord *Kenyon's* judgment in *Rex* v. *Sutton*, (p. 552); whereas in two former cases the paupers were menial or domestic servants, and there was no exemption from service on Sundays.

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Michaelmas, when the contract was dissolved. The case merely stated these facts, no point was submitted for the opinion of the court. *Bayley*, J. "There was no express hiring for the 10th of October, (*a*) but there was a continuation of the service, not as it appears objected to by the master; *Rex* v. *Dawlish* (p. 553) applies." *Littledale*, J. "The words of the case are sufficiently strong. We cannot understand from them that the pauper worked as a servant on all the other days, but not on the 10th." *Parke*, J. "The sessions have in substance found a continued service from October 18, 1823, till the dissolution in 1825. I think their conclusion upon the facts as found by them is wrong." Order of sessions quashed.

But the whole year's service must be under contracts creating the relation of master and servant.

Rex v. *St. Mary Kedwelly*, 2 *B. & C.* 750; 4 *D. & R.* 309. This case is stated at length, *Post, Imperfect Apprenticeships*. The court were of opinion that the first contract created the relation of master and scholar, and it was contended that service under that contract would connect with service under a hiring as a servant. *Rex* v. *Dawlish* was quoted, and *Bayley*, J., said, "There a year's service was performed after the expiration of the indenture;" and in giving judgment, he said, "to gain a settlement by hiring and service, the service must be under a contract creating the relation of master and servant. Here the first contract created the relation of teacher and scholar, and the service under it not being under a contract of hiring, cannot be coupled with the subsequent service. *Littledale*, J. "The service must be for a year under a contract or contracts, creating the relation of master and servant.

A hiring for a year, and a service continued beyond the year for six months, without a new agreement, gains a settlement in the place where the service was performed for the last forty days.

Rex v. *Croscombe*, 2 *Stra.* 1240; *Burr. S. C.* 256. Joseph Garnsey was removed from Croscombe to St. Cuthbert's. Order quashed. Case:—The pauper hired himself for a year to Dr. Lucy, and lived a year with him in St. Andrew's, and had his wages and livery; and, without coming to any new agreement, continued with him a quarter of a year longer. Then he removed with his master to St. Cuthbert's, where he continued to live with him about six months, still under the same contract. It was urged, that this was not the same service, for that the first contract was completed and determined. By the whole Court: "As there was a hiring for a year, and a continuance under the same service, it is sufficient to gain a settlement; and such settlement must be in the parish where the service was performed the last forty days." See next case.

A settlement can be gained by hiring and service only in that parish where the party has the character of a servant hired for a year.

Rex v. *Apethorpe*, 2 *B. & C.* 892; 4 *D. & R.* 487. The pauper was hired, about six years ago, to Mr. Gilby, of Brigstock, for a year, to commence at Old Michaelmas, the whole of which service he performed at Brigstock, sleeping in that parish. Before the end of the year Gilby hired the pauper from the following Old Michaelmas to the New Michaelmas. There was no interruption of the service; and under the second hiring the pauper served his master about half a year in Brigstock, and then removed with him to Sudborough, where he finished his service under such hiring. *Per Bayley*, J. "If the pauper gained any settlement in Sudborough, it would follow, that wherever there was once a hiring for a year, and the pauper afterwards continued with the master as a weekly servant for twenty years, and resided in twenty different parishes, he would be settled in the parish where he resided for the last forty days, although at that time he were not hired for a year. It appears to me that *Rex* v. *Croscombe* (*supra*) does not bear upon the present case. There the pauper hired himself to live with Dr. Lucy as his servant for a year, for 4*l.* and a livery; he did accordingly live with his master during that year, and without coming to any new agreement, continued with his master in the same parish about a quarter of a year longer. The master then removed to another parish, and the pauper continued to live with him about six months in the

(*a*) The first hiring was for fifty-one weeks, from the 18th October; as 1824 was leap year, this contract expired on the 9th October. The new contract did not commence till the 11th October, 1824, that being the day after Old Michaelmas Day.

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latter parish upon the terms of the first contract, and was paid wages at the same rate. Now in that case, at the expiration of the first year, a new hiring for a year was fairly to be presumed, from the circumstance of the pauper continuing in the same service without any alteration of the terms; and if the service in the last year was to be considered as a service under a renewed yearly hiring, that case does not at all bear upon the present. That such was the ground upon which the court proceeded in that case, appears from what was said by *Willes*, J., in delivering the judgment in *Rex* v. *St. Giles, Reading* (p. 559), '*Rex* v. *Croscombe* does not apply, because the court presumed the continuance of the old contract.' There being no authority therefore bearing upon the subject, we must look to 3 & 4 W. & M. c. 11, s. 7: 'if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement *therein*.' The word *therein* refers to the parish or town into which the party has been hired for one year. The settlement, therefore, attaches to him in that parish where he has the character of a servant hired for a year. The 8 & 9 Will. III. c. 30, recites, 'that doubts had arisen touching the settlement of unmarried persons, not having child or children, lawfully hired into any parish or town for one year;' and enacts, 'that no such person *hired as aforesaid*, (*i. e.* lawfully hired into the parish for one year), shall be adjudged or deemed to have a good settlement in any such parish or township, unless such person shall continue and abide in the same service during the space of one whole year.' The latter statute, therefore, requires that in order to gain a settlement by the hiring and service mentioned in the former statute, (which was a hiring into a parish for a year,) the party should continue in the same service for the space of one whole year. The former statute requires that the contract should be for a year, and that the service should be under the contract of hiring there mentioned. The latter statute requires besides, that in order to gain a settlement the service should continue for a year. I am therefore of opinion, that a settlement can be gained by hiring and service in that parish only where the party has the character of a servant hired for a year; and that being so, the pauper did not gain a settlement in Sudborough." *Holroyd*, J. "In *Rex* v. *Croscombe*, *Lee*, C. J., certainly gave an extra-judicial opinion, that the service in the second year need not be under any contract of hiring, provided it was a continuance of the same service; but when the state of the law, as it existed between the 3 & 4 W. & M. c. 11, and 8 & 9 Will. III. c. 30, comes to be considered, I think it perfectly clear that that opinion cannot be supported. By 13 & 14 Car. II. c. 12, overseers were authorised to remove a pauper to a parish which was his last place of settlement for forty days, either as householder, &c., or as a servant. At that time, therefore, a service for forty days conferred a settlement. The 3 & 4 W. & M. c. 11, s. 3, enacts, that the forty days' continuance of any person in a parish or town, which then conferred a settlement, should be accounted from the publication of a notice in writing which he should deliver to the churchwarden or overseer of the poor, and the latter was to cause it to be read publicly in church. Section 6 provided that any person exercising an annual office in the parish during the year should gain a settlement, without having delivered such notice in writing; and section 7 enacted, that if any unmarried person, not having any child or children, should be lawfully hired into any parish or town for one year, such service should be adjudged and deemed a good settlement therein, although no notice in writing were delivered and published. Now the words *such service* must refer to a service under the contract of hiring mentioned in a former part of the clause; and if that be so, this statute clearly required that the service should be under a contract of yearly hiring. The legislature in this statute seems to have considered the exercising of an annual office in the parish during the year, and the being hired into the parish for a year, as equivalent to the notice to the parish which was required by the former section. Inasmuch, however, as the exercising of the parochial office was not sufficient to give a settlement, unless it were

Under 13 & 14 Car. II. c. 12, service for forty days conferred a settlement.

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exercised during the year, doubts were entertained whether the service under the contract of hiring should not also continue during a year. If the service for the year were not required by that statute, the contract of hiring for the year is the only circumstance from which the parish could be deemed to have had notice; and if so, it was essential that the contract should be made in the parish. But doubts being entertained whether service for a year was required, 8 & 9 Will. III. c. 30, was passed. Section 4 recites, that doubts had arisen touching the settlement of persons unmarried, not having any child or children, lawfully *hired* into a parish or town for one year; and then enacts, that no such person *so hired as aforesaid* shall be deemed to have a good settlement in such parish or township, unless such person shall continue in the service during the space of one whole year. The latter statute did not intend to dispense with any thing required by the former, but to add another qualification to those already required to confer a settlement. The service spoken of in the latter statute is the same service that was contemplated by statutes 3 & 4 W. & M. c. 11, viz. a service under a contract of hiring for a year. I think, therefore, that in order to give a settlement in any parish, some part of the service must be under a contract of yearly hiring.

If a part of the year's service is abroad, still if the pauper serves forty days in a parish in this country he will gain a settlement.

Rex v. *Buckingham*, 3 *Nev. & M.* 72; 5 *Bar. & Adol.* 953. T. Burnell and family were removed from Maidsmorton to Buckingham. Order confirmed. Case:—The birth settlement of the pauper was in Buckingham. On the 28th of February, 1828, he was hired by H. Smithson, of Maidsmorton, for a year, as a footman and groom, at the wages of 7*l.* and a suit of livery. On the following day he went into the service and continued until the 9th of May following. Mr. Smithson being a West India planter, was about to visit his property in Berbice, and on the 9th of May came to an agreement with the pauper, whereby the latter engaged to bind himself to serve Mr. S. in Berbice as overseer and clerk on his plantations, for the term of three years from the first day of his arrival in Berbice, at the salary for the first year of 15*l.*; for the second, 20*l.*; for the third, 30*l.*; and Mr. S. promised to pay the above money as it became due (the first-named doing his duty), and to find him his board and lodging and doctor's charges, as is usual for overseers in Berbice. On the preceding day (May 8th) Mr. Smithson paid the pauper 1*l.* 16*s.* 9*d.*, the amount of three months' wages. The pauper continued with Mr. Smithson at Maidsmorton till the 12th of May, and the same day went with him to London, where they continued until the 20th, when they embarked for Berbice. The pauper acted in the capacity of servant to Mr. Smithson during his stay in England after he quitted Maidsmorton, and during the voyage. They arrived at Berbice on the 10th of August following. A few weeks after landing they remained at a friend's house, and the pauper lived with Mr. S. as servant, and they then proceeded to Mr. Smithson's plantation at Berbice. The pauper then entered into the office of overseer and clerk, and acted also as servant about the person of his master, and lived in his master's house. This continued until February following (1829), when Mr. Smithson having declared his intention of returning to England, the pauper expressed his desire to return also. Mr. Smithson at first objected, but ultimately consented, and the pauper did accordingly accompany his master to England, acting in the capacity of his servant, as on the outward voyage. They landed in London on the 10th of May, 1829, and the pauper continued there until the 14th, when they returned to Mr. Smithson's residence at Maidsmorton, and the pauper continued to act as his servant in the house until the 1st of June, without any thing passing as to hiring or terms of service. Three or four days before the 1st of June Mr. Smithson told the pauper he meant to give him 20*l.* as his salary up to that time, of which he then gave him 10*l.*, and promised him the remainder whenever he should want it. On the first of June the pauper was married, and the same day, previous to the marriage taking place, Mr. Smithson and the pauper came to an agreement for the pauper's service as weekly servant at 4*s.* a week, to live and board in the house as before. Pauper continued in such service until the September following,

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and then left and received the remaining 10*l.*, his weekly wages having been regularly paid. The pauper was never absent from Mr. Smithson's service a day, from its commencement in February, 1828, to its determination in September, 1829. The whole amount of wages received by the pauper for his service to Smithson was the sums of 1*l.* 16*s.* 9*d.*, 20*l.*, and the weekly wages. *Denman*, C. J. "The argument is that the legal effect of the second agreement was to put an end to the first; I think not; and if not, then there were forty days' residence in Maidsmorton under the yearly hiring, and the pauper gained a settlement. The pauper's agreement of the 9th of May amounts only to an undertaking by him that when he should go out to Berbice he would bind himself to serve as clerk and overseer for three years from the day of his arrival there. It does not appear that he ever did so bind himself; and though it is stated that soon after his arrival at Berbice he entered upon the office of overseer and clerk, yet he continued to act as servant about the person of his master, and lived in his master's house. The contract contemplated by the second agreement never came into operation." *Littledale*, J., concurred. *Taunton*, J. "It is said that the first contract was vacated by the second, and *Rex* v. *Great Chilton*, (5 *T. R.* 672,) has been relied upon. Much as I respect the authority of Lord *Kenyon*, I should have concurred with the opinion of the majority of the judges in that case. There the pauper having been hired for a year from Martinmas, agreed with his master to serve him for a year from the ensuing May-day at weekly wages, the court held properly that the two contracts were inconsistent, and that the latter put an end to the first. The latter contract there was not executory but absolute, from a given day. But here the two contracts are not inconsistent; the pauper engages to bind himself to serve, he does not enter into an actual contract to serve, and it does not appear that any further contract was ever made between the parties: it is not immaterial that during the whole period of service he continued to act in his original character of servant. There is no decision to show that where the service is clearly referable to a yearly hiring, that the master's going abroad, and the service afterwards being in a foreign country, destroys the settlement of the servant." *Patteson*, J. "The sessions have found that the pauper continued to act as servant about the person of his master, and that he continued to do so till he came home. That could not be under the second contract, but must have been under the first." Order of sessions quashed.

Service under a hiring from Michaelmas to Michaelmas if the master had no sale, and if he should have a sale the pauper to go: in a few months the master had a sale and the pauper left: Is a good contract for a year, and the service sufficient.

Rex v. *Farleigh Wallop*, 1 *Bar. & Adol.* 336. J. Bullpett and wife were removed from Basingstoke to Farleigh Wallop. Order confirmed. Case:—In the first week of January, 1824, the pauper was hired by Mr. Faithful, in the parish of Farleigh Wallop, to serve as under carter from that time till the following Michaelmas at 3*s.* 6*d.* per week and 1*l.* at Michaelmas for wages. The pauper served till Michaelmas, 1824, when Faithful again hired him till the following Michaelmas, if he had no sale, at 3*s.* 6*d.* per week and 3*l.* at Michaelmas for wages; if he should have a sale the pauper was to go. The pauper served till February, 1825, when Faithful had a sale, and the pauper went away from his service, having received 1*l.* 10*s.* from Faithful for wages. It was contended that the latter was not a hiring for a year, as it was liable to be defeated by a contingency, which contingency happened. *Bayley*, J. "I am of opinion that there was in this case a sufficient hiring and service to confer a settlement. The statute 3 W. & M. c. 11, s. 7, enacts, 'that if any unmarried person not having child or children shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement.' The subsequent statute, 8 & 9 Will. III. c. 30, s. 4, requires that the person so hired shall continue and abide in the same service for the space of one whole year. The question in this case is whether the pauper was lawfully hired for a year within the meaning of the former statute? In order to form a judgment whether there was a hiring for a year, we must look to what took place at the time of the hiring. The

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sessions find that at Michaelmas, 1824, Faithful hired the pauper till the following Michaelmas if he should have no sale, at 3*s.* 6*d.* per week and 3*l.* at Michaelmas for wages; if he should have a sale the pauper was to go. There was liberty, therefore, reserved to the master to put an end to the contract of hiring within the year; but until he exercised that liberty the hiring was for a year. The pauper was under an obligation to serve for a year, provided the master required his service for that period, and did not do anything to determine the contract. A hiring may be for a year, absolutely or conditionally; in either case it is a hiring for a year. Here the pauper served more than eight months before Michaelmas, 1824; then that which I consider a hiring for one year, within the 3 W. & M. c. 11, s. 7, took place, and there was a service for four months under the yearly hiring. It is quite clear that service for the whole year under the yearly hiring is not necessary to confer a settlement. Here the pauper served more than a year under two hirings, and one of them was for a year. If he had left the service of his master after he had served under the two hirings for a year, but before any sale had been determined on, he would have been settled in the parish where he resided the last forty days before he quitted the service. In that case it would have been wholly immaterial whether there had been any sale or not: a settlement once gained cannot be defeated by a subsequent event. There having been a service for a year, and the service in part having been under a yearly hiring, I am of opinion that a settlement was gained." *Parke*, J. "I am of the same opinion. The case depends on the 4 W. & M. c. 11, s. 7, and the 8 & 9 W. & M. c. 30, s. 4. The first of these statutes requires a hiring for a year, and the second a service for a year, but the whole service need not be under the yearly hiring. The sessions have found that there was a hiring from Michaelmas, 1824, to Michaelmas, 1825, determinable in a given event, viz., in case the master should have a sale. That was a hiring for a year, defeasible within the year by matter subsequent, and such a contract is a good hiring for a year within the meaning of the statute. There was altogether more than a year's service, and part of that service was under the yearly hiring. No case has been cited to show that a settlement once obtained can be defeated *ab initio* by matter subsequent, and there is no reason for our so holding, looking either at the words of the act of parliament or decided cases, for the pauper has been lawfully hired into the parish within the words of the 3 W. & M. c. 11, s. 7; and having been so hired, has continued and abided in the same service so as to satisfy the words of the 8 & 9 Will. III. c. 30, s. 4. I cannot distinguish this from a case where the contract being originally for a year has been dissolved within the year by mutual consent. In that case a settlement would be gained, provided there has been in the whole a year's service." Order of sessions confirmed.

See p. 523.

A service under a hiring for fifty-one weeks may be coupled with a service under a previous hiring for a year, so as to confer a settlement.

Rex v. *Fillongley*, 1 *B. & Ald.* 319. W. Downes was removed from Coleshill to Fillongley. Order confirmed. Case:—The pauper, previous to Old Michaelmas, 1812, was hired by W. Hollick, of Ansley, from the then next Old Michaelmas, for a year, at 7*l.* 10*s.* wages. At the same time Hollick said to the pauper that he did not know the custom of the parish as to hiring for a year or fifty-one weeks; that he would inquire, but he believed it must be for a year, and hired him for a year. The pauper entered into the service in pursuance of this contract; three or four days after which Hollick (having previously to the pauper coming into his service ascertained that the practice of the parish was to hire for fifty-one weeks), asked the pauper whether he would consent to the hiring being for fifty-one weeks, to which the pauper consented. He continued in Hollick's service until a week before Old Michaelmas in the next year, when Hollick paid him the 7*l.* 10*s.* for his wages, and asked him to stay on till Old Michaelmas, which he agreed to do on being paid for it; he staid till Old Michaelmas, and received 1*s.* 6*d.* for that time. Lord *Ellenborough*. "If the statutes are to be strained in any respect, it seems

to me that the mind revolts much more from coupling a previous service with a subsequent hiring for a year, than from the conclusion to be drawn in the present case. I think this case, therefore, within the limits of the former decisions. If it were now for the first time under our consideration, I should be disposed to pronounce a different judgment: but the decisions are so numerous upon the subject, and we should overturn so many settlements if we were to overrule them, that I feel myself bound by their authority to hold this to be a good hiring and service." *Bayley*, J. "I am of the same opinion, upon the ground of the authorities alone. There is in this case a hiring for a year, and a service for a year, and that according to the decisions will be sufficient to confer a settlement." *Abbott* and *Holroyd*, Js., concurred. Order of sessions quashed.

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Service under a hiring for a year will connect with services under an agreement in the middle of the year to work by the piece.

Rex v. *Alton*, 2 *Bott*, 317. The pauper, R. Johnston, *hired* himself to his uncle, D. Johnston, a turner, *for a year*. The pauper was to be found in board, pocket-money, and clothes, by his uncle, for whom he was to work in his trade of a turner; after he had served six months, his master finding him idle, they came to a new agreement, by which the pauper was to work in the trade by the piece, and to be paid by the piece for what he should earn, and he to find himself in board and clothes; on which last terms he served to the end of the year, sometimes working by the piece when he boarded out, and at other times he served his master in the house, and then he was boarded by his master. The sessions held that this new agreement determined the contract, and that the pauper gained no settlement. The Court: "It is not necessary that all the service should be under a hiring for a year; a service under a hiring for less than a year may be coupled with service under a hiring for a year, and give a settlement; there are many cases to that purpose: there can be no doubt but the original agreement still continued, and besides, the second hiring being general, would be equivalent to a hiring for a year." Order quashed.

Services in successive years will not connect when the servant at the commencement of the second year was married.

Rex v. *St. Giles's, Reading, Cald.* 54; 2 *Bott*, 376. D. Davies, the pauper, went into the service of Mr. Wilder, who kept an inn in Reading, on 19th December, 1763, under a general hiring as post-boy, and continued in that service for seven months, when he married. After his marriage he continued in his service four months, when he took lodgings in St. Giles's, and removed thither with his wife, where he slept for seven months, continuing to serve his master the whole time without coming to any new hiring, making eighteen months in the whole, and then left his service. *Willes*, J. delivered the judgment. "This case depends upon the construction of the 7th sect. of 3 Will. III. c. 11. The act was intended for the benefit of unmarried persons, and the principle of it is, that the parish that reaped the benefit of the labour of a man unincumbered with a family, ought to make a provision for that man when not able to provide for himself; but not for others from whom they derived no benefit: the 8 & 9 Will. III. c. 3, s. 30, used the very same words as the former statute, 'unmarried person not having child or children.' The meaning of these acts is obvious, that the labour of one man shall not be sufficient to incumber a parish with the maintenance of a numerous family. It has been determined (*Rex* v. *Hedsor* and *Rex* v. *Hanbury*), that a marriage does not dissolve the contract, if it happen during the year in which a man has been hired as a single man; to such only the benefit of the act was meant to be extended, and for this reason married persons ought to continue in the settlement acquired before marriage. If there had been a residence of forty days in St. Giles's, at the end of the first year the pauper would have been well settled there; it would have been within *Rex* v. *Hedsor*; but that is not the present case. *Rex* v. *Croscombe* (*ante*) does not apply: 1. Because that was the case of a servant unmarried during the whole of the year. 2. Because the court did there presume the continuance of the old contract. Here the pauper was incapable of making a new contract at the commencement of the second year; presumption can go no further; at that time he was a married man. In this case, suppose at the end of the first year a new agreement had been made, a service

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under that could not have given the pauper a settlement. Shall he then by an implied contract do that which in express and direct terms he could not do? If the original hiring were constructively to be continued throughout the second year, it might last for twenty years; and parishes might be burdened with families, from whose labour they had received no benefit.

2. *Of Lapse between Services.*

Absence for a fortnight disconnects service.

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Rex v. *Caverswall*, *Burr. S. C.* 461; 2 *Bott*, 372. S. Brassington, the pauper, was hired for a year to E. Brassington, at Trentham, and served him till within three weeks of the end of the year; when, on some disputes arising betwixt him and his master, he was with his own consent discharged from his service, and received all his wages, except what was deducted for the three weeks. As soon as he left his service he went to London, and was absent about a fortnight. Upon his return, at Mrs. B.'s request (his master being then from home), he went again into the service; and within a week after the expiration of the first year his master hired him again for another year, and he served him in Trentham for about six months of that second year, and then left him. By the Court: "Here was a discontinuance. The first contract was absolutely dissolved, and so continued for a fortnight or three weeks. Therefore this last service cannot be connected with the former part of the year, and consequently no settlement was gained at Trentham."

The day after the contract expired, the contract was renewed. The service on the intervening day connects the services.

Rex v. *Sulgrave*, 1 *T. R.* 778. The pauper was hired to J. Welch of Wormleighton, November, 1785, till Michaelmas next, at 6*l.* 10*s.* wages. Two or three days before Michaelmas-day, his master offered him the like sum for the year ensuing, which he did not think sufficient. On Michaelmas-day his master offered him seven guineas, and they agreed to all but the expense of washing. The pauper had no intention of leaving his master, and he believed his master had no intention of parting with him; he continued in his master's house, and did his work as usual, but without any obligation; he lodged at his master's house, and did not remove any of his clothes, or offer himself to any other master, nor did his master seek after another servant. He thought himself at liberty to have left his master if any better hiring had offered. He did not agree with his master on that day, but the next day but one, being the second day after Michaelmas, he agreed to accept seven guineas as before offered him for the year ensuing. He did not expect that his wages were to be due on the Michaelmas following, but at the expiration of the year, from the day on which he agreed to accept the seven guineas. He continued in the service till Whitsuntide. *Ashhurst*, J. "I think this was a good service in Wormleighton, according to the authority of all the cases cited. All that the statutes require is, that there should be a hiring for a year, and a *continuance in the same service for a year*. Now it is stated, that the pauper had no intention of leaving his master, and that he did all his master's work as usual; and though he thought himself at liberty to leave his master's service on the Michaelmas-day, and when he agreed with his master the second day after Michaelmas, he considered that the year was to be computed from that day, yet there was a good hiring and service for a year. If so, the only question is, whether there were any discontinuance? It appears from the case there was not; for the servant continued in the same capacity, he did his work as usual, and if he had continued to serve for half a year, without entering into any new contract, he would have been entitled to a compensation for such service; the law would have implied that he continued under the former agreement, and would have measured his damages by his former wages. Then he must be taken to have been in the capacity of a hired servant during that time. This is like *Rex* v. *Croscombe*, (p. 554); in which case the servant was as much at liberty to quit his master's service after the first year, as the pauper in this case was on the Michaelmas-day, and it might as well have been said that in that case there was not a continuance of the same service, but there

the pauper gained a settlement in St. Cuthbert's. *Rex* v. *Fifehead* (*infra*), and *Wichford* v. *Bretford* (*a*), do not apply; for one was determined on the ground of there being no fraction of a day; and in the other there was a total discontinuance of the service; and though the service was only discontinued for a day, it could not be coupled with the subsequent one, so as to give the pauper a settlement."

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An hour's interval between the termination of the first service and the beginning of the second, does not amount to a discontinuance, although the servant leave the place for that hour.

Rex v. *Fifehead Magdalen*, *Burr. S. C.* 116; 2 *Bott*, 371. W. Trim hired himself to a master at West Stower, from Midsummer to Lady-day, for 40*s*. At Lady-day he received his wages of 40*s*. and left his master's service, and then went to his father's house in West Stower; and in about an hour returned to his master, and agreed with him for a year, at 3*l*. 10*s*. a-year, and lived with his master half-a-year. When he went from his master's house, he had no clothes but what he wore, except a shirt, which he left at his master's house. *Lee*, C. J., said, "He remembered the resolution was first come into in *Parker's*, C. J., time, that a hiring for a year, and a service for a year, were sufficient to gain a settlement, though all the service should not be under the same contract; and that Sir *Thomas Powys* (who was just come into the court) very much boggled at it: but now," he added, "the rule is established, that if there be a hiring for a year, and a service for a year, it will gain a settlement, though the whole service is not under the first hiring. And in this case, the absence for an hour, which was only to consult his father about a new contract, ought not to be looked upon as a discontinuance. Upon every new contract there is a sort of discontinuance. The last day of the former contract was the first day of the second service. And this was only an hour's absence within the space of that same day. Therefore he remained a servant during the whole time of the completion of his year."

So whatever the interval provided it be *part* only of a day.

Rex v. *Ellisfield*, *Cald.* 4; 2 *Bott*, 375. The pauper, Samuel Bulpit, was hired on the 6th December, 1773, to J. Dalman, of Ellisfield, to serve till Michaelmas, 1774; he went into the service the next day, and continued therein till nine o'clock on Michaelmas-day, when he received his wages, and took his clothes, and left his master's house and service: about an hour afterwards, his master came to him and desired him to stay, but the pauper asked more wages than the master was willing to give, but said he would see him presently at Basingstoke fair, held that day for the hiring of servants. At the fair at one o'clock he made an agreement with his master to serve him till Michaelmas following, and went into his service that evening, and continued therein for three months: the pauper thought himself at liberty to hire himself to any other person as soon as he left his master's house, and should have hired himself to any person who would have given him the wages he asked his master. Lord *Mansfield*. "There is not the difference of an *iota* between this case and that of *Fifehead*, *supra*, and every argument used there would apply in the present. It is said there, as here, that the pauper left his master's service, received his wages, and was absent some time; he might have hired himself with any other master during his absence: upon his return he does not agree to continue the *old* service, but makes a *new contract* for more wages: there was, therefore, a complete abandonment and discontinuance. The ground on which the court went in that case, and which holds equally in the present, was, that the law will not make a fraction of a day; and the reason and justice of the case is with the settlement. As to the interruption and discontinuance, *Chapple*, J., observed very properly in the *Fifehead case*, that upon every new contract there is a *sort* of discontinuance, and if this were otherwise the law of connecting two hirings within the year, which was now settled, could not be supported, where the first period was suffered to elapse before the second contract was made.

Same point.

Rex v. *Grendon Underwood*, 2 *Bott*, 380; *Cald.* 359. On Friday before Michaelmas, the pauper hired himself for a year from that Michaelmas, to

(*a*) *Burr.* 365, determined by *Powis*, Judge of Assize. There the pauper departed from the service, but returned the next day, and the Judge determined that he gained no settlement.

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J. H. to be his carter; he had 11*s.* earnest, was to have 6*l.* wages, and to go into his master's service the Wednesday after Michaelmas day. On that day he came to his master's, who told him he had hired another servant in the place he had hired him to do; but that he wanted a man to milk and go to plough, and if he liked that work he might stay; the pauper refused; his master told him he might keep his earnest and go about his business; the pauper said, "Am I at liberty to hire myself to any other person?" his master answered in the affirmative. The pauper then went away. In the same afternoon the master met him again, and hired him to serve the place of milkman and go to plough; gave him 2*s.* 6*d.* earnest, and agreed to give him 6*l.* 6*s.* wages, to serve him from that time till Michaelmas. The pauper immediately entered into the service, and continued till February; his master then hired him to serve the place of carter from that time to Michaelmas, gave him earnest, and agreed to give him 10*s.* 6*d.* additional wages; and the pauper continued till Michaelmas. Lord *Mansfield*, "In this case it is expressly stated, that on the Friday before Michaelmas-day the pauper was hired for a year from Michaelmas. It is then expressly stated, that they stood in the relation of master and servant from Michelmas to Michaelmas. If so, it would be repugnant to say that this was not a hiring for a year. The case itself contradicts the idea that it was a hiring from the Wednesday after Michaelmas. Then the absence was matter of indulgence on the part of the master; and whether revocable or not, is so common in these transactions, and so reasonable upon the commencement of a service, that it never has been considered as impeaching or affecting the validity of a contract: but under all these circumstances I consider it as an indulgence which the master might revoke; and that it was a hiring and service for a year without any interruption on account of the short disagreement." *Buller*, J., said, "That in this as in all other contracts, all the words must have effect given them if possible. The case expressly stated a hiring for a year, and if the conduct of the servant in not coming into his service till the Wednesday were considered as an act of right, founded upon an exception in the original contract, the contract would be overturned: whereas by construing it as a license or dispensation, effect is given to the whole. If then after the hiring for a year, which is expressly stated in the case, the leave of absence was given, absence by leave is the same thing as service."

There may be a hiring for a year without any *actual* service under it.

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The servant must abide in the same service, if not actually, at least constructively. A constructive service takes place where *the relation of master and servant continues*, but the master *foregoes* the benefit of actual service. This is called a *dispensation*. If, however, the relation ceases, the contract is dissolved, and the service incomplete. It is difficult, if not impossible, to reconcile all the cases on these two subjects. It may be well, therefore, to remember that in *Rex* v. *King's Pyon* (*post*), Lord *Ellenborough* said, "I should not wish to carry the idea of dispensation further than it has been already carried; which in many of the cases seems to me to be stretched as far as ingenuity could go, upon the false idea that a servant has a right to acquire in gaining a settlement;" and in *Rex* v. *Sudbrooke* (*post*), *Le Blanc*, J., lamented that the words of the statute had been departed from.

The doctrine of *dispensation* not to be extended.

Rex v. *Islip*, 1 *Str.* 423. H. W. was hired for a year by S. J., of Islip; during the year he was sick for six days, and incapable of doing any service; afterwards he went without leave of his master to see his mother, and stayed away four days; three days before his year was up, he asked leave of his master to go to a statute fair to be hired, which the master refused, but the servant persisting he must go, the master replied, I am resolved you shall gain no settlement in this parish, and therefore if you go it shall be for good. No, says the other, I will serve out the year, and thereupon he went and never returned during the last three days; and when he came to be paid, his master deducted for the time he was sick, and when he went to see his mother, which deductions the servant agreed to; and the master at

Incapacity to serve, arising from sickness, does not interrupt the service.

Nor absence without leave, the master receiving the servant again, though the wages are deducted for the absence.

Nor absence without leave to procure a situation.

the same time abated 6*d.* for the last three days, which the servant refused to allow, but the master refusing to pay it, the servant took the rest of the wages, and the question was, whether these interruptions defeated the settlement. The sessions adjudged it a settlement. *Pratt*, C. J. "There is no doubt that there was a complete hiring for a year. The only question is, whether there has been a service in pursuance of it. Three objections have been made to it—1. That the servant being sick for six days, and incapable of serving, can never gain a settlement, which is to be acquired only by a service for a year; but here, say they, he did not serve for six days. This was lightly touched on at the bar, and surely there is little in it. A servant that lies thus under the visitation of God, which befalls him not through *his own default*, is and must be taken to be all the while in the service of his master; and if this exception were to be allowed, it might prevent all the settlements in the kingdom. It is not to be presumed that the servant is less able to provide for himself at the year's end, because he has a slight indisposition during the year; and that presumption of an ability is the foundation of a settlement. 2. It was objected, that going to see his mother without leave, was a desertion of the service, and the time he staid away takes so much away from the complete service of the year. As to that we are all of opinion, that it will not prevent the settlement; it never was the intent of the statute, that if a servant happened to stay out a night or two it should avoid the settlement; but here the master taking him again, has dispensed with his non-attendance: so there is nothing in that objection. 3. The third, and, indeed, the most considerable objection, was, that the going away three days before the year was up, and never returning again during the year, is a forfeiture of the settlement. Now, though that would *primâ facie* be a good objection, yet, as this case is circumstanced, we are of opinion that it cannot prevail. Consider how the case stands, as regards the servant. He knew his master designed to part with him at the year's end, and therefore it was high time for him to look out for another place. To this end he applies in a very proper manner for leave to go to the statute fair, which is a place where in all likelihood he might provide himself, and not be obliged to lie idle all the year, it being usual for the people in the county to go thither to hire their servants; the master, like an unreasonable man, refuses so reasonable a request, coupling it with a declaration that a servant should gain no settlement, which is a badge of *fraud* on the side of the master, which ought not to prevail. As, therefore, the request was reasonable, and upon a just ground on the side of the servant, and the refusal was unreasonable on the side of the master, we think the servant's going after without leave is no forfeiture of the service, especially if we take in the declaration of the servant, that he would serve out the year, and his refusal to allow 6d. for the three days, show that the contract was not dissolved before the end of the year, as was strongly insisted on at the bar. The order of sessions must be confirmed."

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A pauper asked leave to go to the statute fair. This was refused. The pauper went and returned, and offered to continue in the service, but the master refused; full wages were paid on a summons; he made no contract for the time remaining: Held, a dispensation.

Rex v. *Polesworth*, 2 *Bar. & Adol.* 483. Two justices removed J. Barwell from Kingsbury to Polesworth. Order confirmed. Case:—The pauper was hired by Mr. Hay, of Polesworth, at Polesworth statutes, a fortnight before Michaelmas, 1799, as waggoner's lad, at 3*l.* 10*s.* wages for a year, commencing from the day after Fazely fair, the Tuesday after Michaelmas-day. The pauper remained in the service till a fortnight before Michaelmas in the following year, when he went to Middleton statutes, having previously asked his master's leave and been refused. The following day the pauper asked his master what work he was to do; the master told him he might go where he had been the day before, and that he would not employ him any more. The pauper asked the master to pay his wages, and said if he did he would go. The master refused, and said he would obtain a summons, which he did; but neither of them attended the magistrate on that summons. The pauper left his master's house on the day the summons was served; two days afterwards, the pauper called at his master's house; and the same day they both went to Polesworth statutes, when the pauper hired himself to a new master from the day after the next Fazely

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fair. On the day after Polesworth statutes, the pauper summoned his master before the magistrate. When before the magistrate, the pauper, in answer to a question put to him by the magistrate, said he was willing to serve his time out; but the master said he would not take him again. The magistrate then directed the master to pay the pauper his whole wages: which the pauper took and was satisfied. The day after Fazely fair he entered upon his new master's service. *Abbott*, C. J. "It seems to me, that the sessions were quite right in refusing to consider this as a case in which the contract between the parties was dissolved. There can be no dissolution without a mutual consent of the parties, or some justifiable cause of complaint on the part of the master; but here he quarrelled with the pauper without sufficient reason, for the pauper had done no more than, according to *Rex* v. *Islip*, p. 562, he had a right to do. There was, therefore, no justifiable ground for dismissal. Then is there any mutual consent? It appears that the parties went before a magistrate, and the pauper then stated that he was willing to continue in the service: the master, however, peremptorily refused, upon which the pauper, after receiving his full wages, said that he was satisfied; but he neither contracted nor offered to contract any other service. I think there is nothing in this case to show that if on the following day the master had ordered the pauper to return into his service, he would not have been bound so to do." *Bayley*, J., said, "The circumstance of the servant not having offered to contract with another master, naturally distinguished this case from *Rex* v. *Pyon* and *Rex* v. *Leigh*. As to the servant saying he was satisfied, that is easily explained; for his whole wages being paid, he was satisfied that the remainder of his service should be dispensed with." *Holroyd*, J., relied on the absence of any contract inconsistent with his return to the master. Order of sessions confirmed.

If a servant does not come into the service till three days after his contract, and is absent at different times without consent, but his master receives him again, it is a dispensation.

Rex v. *Hanbury*, *Burr. S. C.* 322; 2 *Bott*, 419. The pauper was hired for a year at Michaelmas, but did not come to his service till three days after Michaelmas, and served till the day after Michaelmas in the next year. He was absent about two or three days at a time, in the whole a fortnight, without consent, but was always received again. At going away, he agreed to make a deduction of 6*s*. 6*d*. of his wages for the time he was absent. The court said he gained a settlement by this service. This court has not been so strict in determining upon the service, as upon the hiring. It has often been held, that though a servant has been absent for a time, yet his master taking him again, purges his absence. And there is no difference between an absence in *the beginning* and in the middle of the service; for he is a servant from the time of hiring. (*Rex* v. *Grendon Underwood*, p. 562.)

If a servant run away from his master and continue absent working with another person thirteen weeks, and then his master apprehend him, and give him leave to come back, deducting a sum for the time of absence, it is a dispensation.

Rex v. *East Shefford*, 4 *T. R.* 804. The pauper was hired by Birch for a year, at four guineas wages; he went accordingly to his service, and continued there eight weeks, when he ran away and was absent thirteen weeks, during which time he worked with and received wages from another person. Birch then apprehended him by a warrant; but in his way to a justice asked him whether he would come back to his place or go to prison? and if he would come back, and go on in his place as he ought to do, he might. The pauper said he would come back; and his master asked him then what he should be willing to abate for the time he had been absent? The pauper said he thought 1*s*. a week would not hurt him, which was agreed to; and the pauper returned into his service and continued till the end of his year, when he received all his wages, except the 13*s*. which had been agreed to be deducted. Lord *Kenyon*. "If the old contract were dissolved when the servant absented himself, and a new one entered into on his return, I agree that the pauper could not gain a settlement by serving under it. And therefore the question is, whether the service after the pauper's return were performed under the old or a new contract? This is one of the many cases in which we have to regret that the words of the statute have been departed from: but as there is a series of adjudged cases, the principle of which applies to the present, it is too much for us to overturn them; though, if the question were now to arise for the first time, perhaps we should make a different determination. It has been decided that absence at the beginning, the middle, or the end of the year may be

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dispensed with, either with the consent of the master or for an excusable cause. In *Rex* v. *Hanbury* an absence for a fortnight did not defeat the settlement, though the wages were deducted for that time. Now it is impossible to distinguish this case from that in principle. It has been said, however, that the absence in that case was for a shorter period than in the present: but I wish that those who used such an argument would have drawn the line, and given us the *ne plus ultra*. Probably, if the first case after the statute had arisen upon an absence of thirteen weeks, the court would have started at the question: but the court have gone on step by step, and having held that service for a fortnight may be dispensed with, I think we are bound by the principle of those cases to say that this pauper gained a settlement; for on his return he was received again into his master's service, where he continued under the old contract. There is no pretence to say that he entered into a new contract; and the master's object in apprehending him by a warrant was to compel him to complete the service under the old contract." *Buller* and *Grose*, Js., were of the same opinion.

If a servant, at her master's instance, go from his family on account of illness, to the hospital, and her mistress give her the remainder of her wages, it is a dispensation, although she never return.

Rex v. *Christchurch*, *Burr. S. C.* 494; 2 *Bott*, 436. E. Maxey was on the 24th day of August, 1757, hired into Christchurch for a year, and served till the 7th of August, when she was frightened into fits and incapable of doing any service. Her master being disturbed by her fits, desired Mr. Limonier, who lived in Bethnal Green, to take her into his house, that she might be under the care of her sister who lived there; but if Mr. L. refused to receive her, she was then to return to her master's house. Mr. L. took her in: and she resided there about five days, and then was taken into the hospital. The day after she had been received into Mr. L.'s house she returned to her master's to fetch away her clothes, and her mistress paid her two shillings, which made up the full year's wages. No words of discharge passed between her and her mistress; but she looked upon herself as then discharged from her service; but believed that had she recovered her health, her master would have received her again into his service. *She continued under the indisposition till after the year from the time of hiring was expired*, and never returned again into her master's service, who, on the 17th of August, 1758, hired another servant in her place. Lord *Mansfield*. "This is certainly a fair *bonâ fide* service for a year, without any fraud on either side. If a master give his servant leave to go upon any other service, or to be absent for a short time, and pay him his whole wages, this is a good service. If the servant be taken ill by the visitation of God, it is a condition incident to humanity and is implied in all contracts. Therefore the master is bound to provide for and take care of the servant so taken ill in his service, (*a*) and cannot deduct wages in proportion to the continuance of the servant's sickness. And there is no difference, whether the accident of sickness happen in the middle or at the end of the year. It is equally the act of God and without any fault of the servant. And in the present case, the servant's being at Mr. Limonier's or in the hospital, is just the same thing as her being kept in the master's house under his own roof."

A pauper in liquor met with an accident, which disabled him for twenty-nine weeks. His master always refused to receive him back or employ him: Held, a dispensation. (*b*)

Rex v. *Sharrington*, 2 *Bott*, 449; 4 *Doug.* 11. The pauper hired himself before Michaelmas, 1782, for a year, to Mr. Hardy, brewer at Letheringsett, to drive a team and do whatever he was bid. After having lived with his master seven weeks, as he was driving the beer waggon, being in liquor, he fell off the shafts and broke his thigh. He was carried to the Norwich Hospital, where he continued for twenty-nine weeks. On quitting the hospital he returned to Hardy, who refused to receive him, offering to pay him for the seven weeks, and to make him a present, which the pauper refused. He then went to Sharrington and continued fourteen weeks, and then by an order of justices on the 30th of September, 1783, he was sent to Hardy, who then also refused to receive him. The pauper

(*a*) But see title, "*Casual Poor*" (*ante*, 121.)

(*b*) *Rex* v. *Coningsby*, p. 573, *Parke*, J., recognised the doctrine of dispensation where the absence was occasioned by the misconduct of the servant; and *Taunton*, J., said, "he yielded to authority rather than reason."

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continued in Letheringsett at a public house. He did no work for Hardy after he came out of the hospital, being incapable of work. The court were of opinion that a settlement was gained by this service at Letheringsett. Counsel did not appear on the other side, and the court said, "it was sufficient, as the pauper tendered his services to his master after his recovery."

Absence at the end of the service on account of illness, is no dissolution, although the master deduct a sum from the wages on that account.

Rex v. *Maddington, Burr. S. C.* 675; 2 *Bott*, 438. The pauper, being hired for a year from Michaelmas, continued in his service till about three weeks before the next Michaelmas, when having been kicked by one of his master's horses he went home to his friends about five miles off, without his master's knowledge or asking his leave, to cure his leg; and continued there during the remainder of the year, and never returned to his master, except for wages, some short time after Michaelnas; when he was paid the whole except 6*s.*, which the master deducted on account of the said absence, which the pauper consented to. The court held "that the servant gained a settlement, and they thought it to be within the reason of the determination of the *Islip case*, p. 562. There was a reasonable cause of absence, and the master ought not to have deducted any part of his wages."

The master removed to another town, before the servant's year ended, and paid her the whole year's wages, and something over, and the servant, five days before the end of the year, entered another service: Held, a dispensation.

Rex v. *St. Bartholomew, Cornhill, Cald.* 48; 2 *Bott*, 445. The pauper U. Owen was hired for a year on the 11th of June 1771: in April 1772 her master told all his servants that he was going to live at Manchester, but did not know the time; and that they might look out for services, or stay with him until he went, as they chose; the pauper continued with her master in St. B. till the 4th of June, when he paid her the whole year's wages, and half a guinea over, and that same day he left London. His going that day was quite a casual matter, and if he had remained in London he would have continued the pauper in his service. The pauper went into a new service two days after her master left London. Lord *Mansfield*. "The only question is, whether the servant continued *bonâ fide* in her service during the whole year? To be sure there is a distinction between exceptions from the contract originally, or subsequent dissolution and dispensation of the service; but if the case be of the latter description and *bonâ fide*, it can make no difference when the servant is engaged or where; or whether the service be in the same or another occupation; she quitted her service at the desire of her master, and received half a guinea beyond her wages as an equivalent no doubt for her board. It was accidental and a favour to her master. *Rex* v. *Richmond*, p. 570, is full as strong as this, for there a new servant came into the very place. Fraud vitiates everything; but the justice as well as reason of the thing are here with the settlement. Suppose she had come from a distant county, and had no other settlement, shall she lose her only one which she deserves so well?"

Five days before the end of the year the master became bankrupt, and the mistress discharged the servant, paying the whole year's wages: Held, a dispensation.

Rex v. *St. Andrew's, Holborn*, 2 *T. R.* 627. M. Robinson was hired for a year, and was continued in her service until within four or five days of the end of the year; when her master becoming bankrupt, and the messengers taking possession of the house, her mistress *discharged* her, paying her the whole year's wages. This case was not argued, the court being clearly of opinion that the bankruptcy of the master did not dissolve the contract of hiring without the servant's consent; and that the pauper gained a settlement.

If a mistress on account of some difference discharge a servant, and pay her her full wages, which the servant accepts, it is a dispensation.

Rex v. *St. Philip, Birmingham*, 2 *T. R.* 624. The pauper was hired for a year to E. Poole, in Powick, where she served until within eight days of the end of the term, when on account of some difference between them she gave her mistress warning that she would leave her service at the end of the year. The mistress, on having hired another servant, by reason of some impatient behaviour of the pauper, discharged her and paid her the full wages, which she accepted and quitted the service, and left the parish eight days before the year ended; but she said she would have served the year if her mistress would have let her. *Ashhurst*, J. "This was not an absolute dissolution of the contract, though it be true that an agreement to put an end to the service will defeat the settlement, yet if it be not voluntary between the parties, as if a master fraudulently turn her away with a view to prevent a settlement, or wrongfully discharge her, this will not defeat the settlement. Now this was I think a mere wrongful

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act of the mistress, which was *submitted* to but not *agreed* to by the servant. Something should have been stated to show that it was voluntary on her part; but it may be inferred she did not go by her own consent, but rather in consequence of the wrongful dismission of the mistress, for she was desirous of serving the whole year." *Buller*, J., thought this "one of the clearest cases of dispensation. The warning given by the servant, and the payment of the whole year's wages by the mistress, showed a consciousness in each that they could not dissolve the contract before the end of the year." *Grose*, J. "It is clear if the servant be turned away by the wrongful act of the master, it will not prevent the settlement. Now here it is either the wrongful act of the mistress, or it is a dispensation from service. *Rex* v. *Gresham* is distinguishable; this is more like *Rex* v. *Richmond*."

Where the master died three weeks after the hiring, and the pauper continued with the widow and sons to the end of the year, this is an abiding in the same service.

One of the sons, on a frivolous pretence, turned her out of doors three weeks before the end of the year, she offering to stay to the end of the year, but carrying away her clothes the next day, and taking what the son insisted was her full wages for the year, according to the agreement, though she demanded a larger sum. This is a dispensation.

Rex v. *Hardhorn with Newton*, 12 *East*, 51. M. Lingard was removed from Newton with Seales to Hardhorn with Newton. Order confirmed. Case:—The pauper was hired by R. Gratrise in Hardhorn for a year. Three weeks after the beginning of the year the pauper's master died, and the farm was continued by his widow and two sons, George and William. About three weeks before the end of the year, the pauper fell out with George about her work, because she threw more sand upon the floor than he deemed necessary, and was by him turned out of doors, though she was willing to stay. The next day she came again for her clothes, when George paid her 4*l.* 10*s.* as for her full wages. There was a dispute about the amount of her wages, George insisting that the pauper was hired for 4*l.* 10*s.*, and she demanding 5*l.* 15*s.* The pauper, however, accepted 4*l.* 10*s.* and never got anything more, though she employed an attorney for that purpose. The pauper, when she came the next day for her clothes, offered to stay to the end of the year, but George would not let her. Lord *Ellenborough*. "There must be an abiding in the service for a whole year, in order to confer a settlement; as far as lay in the pauper there was such; but she was wrongfully and forcibly turned out of doors by her master against her will, and when she returned the next day for her clothes he gave her 4*l.* 10*s.*, which he said was the whole of her wages; but she did not assent to that, but demanded more, though she took what he was willing to give her in part, and offered to stay to the end of the year, maintaining her right to her full wages. She, therefore, did all she could to abide in the service, according to her contract, and did so, except so far as she was prevented by an act of force. And he distinguished between this and *Rex* v. *Grantham*. The servant having there been improperly turned out of doors by his master, in the first instance, took him at his word, and refused to return to his service, though invited by his master so to do; and when the master at last agreed to pay him his full wages, he left the service contrary to the express request of the master to stay." *Grose*, J. "There is no consent by the servant, and as the servant tendered herself to perform the service, that was equivalent to the performance of it in law." *Le Blanc*, J. "Where the dissolution has not been assented to by both parties, the court has inquired into the cause of the dismissal. The pauper did not here, as in *Rex* v. *Leigh*, hire herself into another service (*a*) before the end of the year, which was there held to be a dissolution of the contract." He added, "her taking her clothes and what money he was willing to pay, does not show her consent to abandon the contract, which she offered to fulfil to the end of the year." *Bayley*, J., agreed.

(*a*) See *Rex* v. *St. Bartholomew*, p. 566.

An information was laid against the keeper of a gaming-house. He quitted it, and told his servants he had no longer occasion for their services, and paid the full year's wages; this is a dispensation.

Rex v. *St. Mary, Lambeth*, 8 *T. R.* 236. The pauper, on the 15th of January, 1797, hired herself to J. Serle, for a year, from the 18th of that month, at seven guineas wages. She went into his service on the 18th, and remained until the 11th of January in the next year, when an information having been laid against her master for keeping a gaming-house, he quitted his house, and told his servants (and the pauper amongst them) that he had no longer any occasion for their services, and then paid the pauper her whole year's wages. He would have kept the pauper but on account of his being obliged to quit his house; and the pauper was unwilling to leave his service. She then went to her sister, and did not engage in any other service until the year expired, though from the time that her

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wages were paid she considered herself at liberty to go where she pleased. Lord *Kenyon*. "If this point were not encumbered with decisions, and we were to resort to the very words of the act of parliament on which the question arises, I should perhaps yield to the argument of the counsel in support of the rule. Or if the cases cited by them proved the point for which they were cited, I should be strongly inclined to adopt them on this occasion. But it has been frequently said here, that it is of great importance that decided cases should be adhered to; and on this subject in particular I applaud the rule *stare decisis*. The cases cited by the counsel on both sides are nine in number; and though they approach each other very nearly, there is a line of distinction between the four (*Rex* v. *Richmond, Bartholomew, St. Philip Birmingham,* and *Holborn*), that were relied upon by the one side, and the five (*Rex* v. *Castlechurch, Gresham, Grantham, Clayhydon,* and *Whittlebury*), on the other. I cannot distinguish the present case from the four that were cited in support of the order; and it was decided in each of those that it was a dispensation with the service, and not a dissolution of the contract. Perhaps I should have had some difficulty in saying, in some of those cases, that it was only a dispensation with the service; but it is sufficient to say, that those cases were so decided, and having been so determined they ought not now to be shaken. But the cases cited on the other side are distinguishable from those, 'because in them the contract was dissolved by the mutual consent of both parties.' The distinction between the different sets of cases is certainly a very nice one, but I think that this case must be governed by the four to which I alluded; and if this be a question of evidence, it appears that the sessions by their determination have 'impliedly found that the parties did not consent to dissolve' the contract." *Grose*, J. "I consider the servant was wrongfully turned away. The master could continue in his house no longer, and the servant insisted on the whole year's wages, and was unwilling to leave the service."

Where a master turns away his servant to prevent his gaining a settlement, it is a fraud, and will not defeat the settlement.

Eastland v. *Westhorsley*, 1 *Stra.* 526; *S. C. Fortes.* 216; 2 *Bott*, 426. A servant was hired for a year: the day before the year expired, the master told him, that to prevent his gaining a settlement in that parish, he should go away immediately, which the servant refused to do, insisting to serve out the year, whereupon the master turned him out of doors. The court held this to be such a fraud in the master as should not prevent the settlement of the servant.

A quitting the service because the pauper wished to be settled elsewhere, is fraudulent, and a dispensation only.

Rex v. *Frome Selwood*, *Burr. S. C.* 565; 2 *Bott*, 437. R. Stent, the husband of the pauper, was hired for a year at King's Weston, and served till within ten days of the end of it, when Stent declaring to his master that he wished not to be settled in King's Weston, asked his leave to go and visit his relations, to which the master consented. After the year was expired Stent returned to his master, and then hired himself as a day-labourer, and as such continued with him three months. On making up their account Stent allowed out of his daily wages for the days he had been absent in the preceding year. The court held the settlement to be in King's Weston, regarding the consent of the master as fraudulent, and a mere evasion of the settlement.

Rex v. *Sulgrave*, p. 560. The pauper was hired for a year, and afterwards told by the master "he shall go away a fortnight at Michaelmas because of his settlement," and at the year's end he was paid a year's wages. This is a dispensation, and not an exception.

A mistress hired a servant from Shrove Tuesday until Old Michaelmas day following, and three weeks before the latter day asked her to "stay again," to which the servant replied, she had no objection, if they could agree about

Rex v. *Market Bosworth*, 2 *B. & C.* 757; 4 *D. & R.* 306. Case:—The pauper was hired by and lived with Mrs. W. from Shrove Tuesday, 1821, till Old Michaelmas. Three weeks before Old Michaelmas Mrs. W. asked the pauper to "stay again." They agreed on wages, and an earnest was given. Nothing was said about time. A fortnight before Old Michaelmas her mistress said to her, "I have hired you," but mentioned no time; "remember you are hired for fifty-one weeks." The pauper said "Very well." She lived with Mrs. W. until Old Michaelmas day, 1822. She asked to have her week just before Christmas; Mrs. W. said, "You shall have three or four days now, I cannot spare you the whole week." She

staid away three successive days and nights, and had the other four days at different times during the year, returning on each of them to sleep at her mistress's, and her mistress gave her two or three holidays besides; she never was absent without her mistress's permission, and always returned into the service, and at the end of the year received her wages. *Bayley*, J. "The question in this case ought to have been decided by the sessions. It appears that three weeks before Old Michaelmas the mistress asked the pauper to stay again, to which she replied, that she had no objection if they could agree about wages; they did agree for 3*l.* 10*s.* and one shilling earnest was paid: now it is quite clear that that constituted a general hiring for a year; and the question is whether the subsequent conversation between the mistress and the servant amounted to an alteration of the original bargain, so as to convert that which had been a hiring for a year into a hiring for fifty-one weeks only, or whether it was a dispensation by the mistress with one week's service: now it is laid down in *Nolan* as a general rule, that where the absence of the servant takes place on the master's account and at his request, the courts have been inclined to infer a dispensation, inasmuch as the absence originates with him in whom the power of dispensation is vested, and is only acquiesced in by the servant. Apply that rule to the present case. There having been a general hiring for a year, the mistress afterwards states to the servant that she had hired her, but that she had mentioned no time, and desires her to remember that she was hired for fifty-one weeks. The servant made no overture to the mistress for the change of the original agreement. According to the above rule, therefore, this ought to be construed to be a dispensation. In the first instance there was an hiring for a year at an entire sum of 3*l.* 10*s.*, and there is no stipulation afterwards that the pauper was to be paid wages for fifty-one weeks, at the rate of 3*l.* 10*s.* for the whole year; I think, therefore, that there was no alteration of the original bargain, but that there was a dispensation of the service for one week, and the sessions were warranted in considering this either as a case of dispensation or of fraud. *Rex* v. *Sulgrave* (p. 560) is an authority expressly in point; and *Rex* v. *Coggeshall* (p. 510) is another case which in principle bears upon this." *Holroyd* and *Littledale*, Js. concurred.

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wages. They agreed, and one shilling earnest was paid, but nothing said as to the time the service was to continue. A fortnight before Old Michaelmas the mistress said, "I have hired you," but mentioned no time: "remember you are hired for fifty-one weeks;" to which the servant replied, "Very well." The servant continued for a year under this agreement. She had three days' holidays at Christmas, and four other days at different periods, and at the end of the year received her wages: Held, to be a yearly hiring and service to confer a settlement.

Rex v. *Potter Heigham*, *Burr. S. C.* 690; 2 *Bott*, 442. A servant, hired for a year, continued till the day before the end of his year, when he desired his master to *discharge* him; telling his master that as he had hired himself for the next year to a person in a distant place, he wished to pass that day with his friends; and requested to have that time to himself to spend with them, to which the master consented, and he was accordingly discharged. He then received the whole of his wages, except sixpence, which he allowed to his master for that day. The court held this not to be a dissolution of the contract, but an absence by leave of the master; and adjudged that the servant gained a settlement.

If a servant on the last day of his year desire his master to *discharge* him that he may go and see his friends, and his master thereupon do so, deducting sixpence for that day, it is a dispensation.

Rex v. *Bray*, *Burr. S. C.* 682; 2 *Bott*, 440. On Thursday before Michaelmas-day, 1767, (a Saturday), J. Hunt was hired for a year to J. Lee, of Bray, farmer, as a carter, to go into his service on the Monday following, until Michaelmas, 1768, for six guineas. At the time of the agreement Lee desired him to go into his service before Monday, but Hunt said it would not suit him as he was then in service; and Lee replied, that if he would come into his service on Monday morning, he would shift all that time. He went into his service on the Monday. At the time of the agreement the pauper was in the service of J. Lewis, of South Stock, under a contract which expired on Michaelmas-day, 1767, which service he left on the night of the Michaelmas-day, 1767. He continued in the service of John Lee till the day before Michaelmas-day, 1768, when he desired leave of his master to go to see his relations before he went to another service; his master deducted one shilling from his wages for that day, and paid him the residue; he then went away and returned no more. On the pauper's going away Lee told him that if he quitted the service before Michaelmas-day there might be a dispute about his settlement, and desired him to come back. Lord *Mansfield*. "This is a hiring for a year, with a dispensation

Dispensation of the first day on change of places.

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of the first day. The pauper thought he had his master's leave the last day, and had allowed a shilling for it, which is more than one day's wages. Both master and servant were clear that at the end of the year there was only an absence of one day, and at the beginning of the year the pauper had his master's leave for being absent the first day. Both master and servant meant it as a settlement."

Leave to go thirteen days before the year expires, and payment of full wages, is a dispensation, the servant wishing to quit, and another servant hired.

Rex v. *Richmond, Burr. S. C.* 704; 2 *Bott*, 443. W. Springall was hired for a year to A. Crawford, of Richmond, on the 30th of October, to serve till the 30th of October following. On the 4th of September following, the pauper married a fellow-servant, who had given a month's warning in August, and was to quit in September; but was desired by her master to stay till the 17th of October, which she did; and then the master said to Springall, that he supposed, as his wife was going away, he would like to do so too. He replied he should like it better, if it was agreeable to his master. His master said he had no objection, as he had another footman coming, and would pay him his whole year's wages: which he accordingly did on the 17th in full to the 30th. On the 17th both left the service. Lord *Mansfield.* "There is no necessity of an actual service upon every day of the year. The master can always dispense with it. He can give leave of absence. Nay, if the servant is absent without leave, in the middle part of his year, such absence may be purged, as it has been termed, by the master receiving him again, that is, the subsequent consent of the master ratifies the act done. I am clearly of opinion, that the servant has in the present case sufficiently served his whole year. The master voluntarily gave him leave of absence for the last thirteen days; and, of his own accord, paid him the whole year's wages."

If the servant absent himself, with leave, for the last five weeks of his service, and pay his mistress the sum earned by him during that time, it is a dispensation.

Rex v. *Nether Hayford, Burr. S. C.* 479; 2 *Bott*, 435. J. Gare was hired for a year, to widow Bliss, of Farthingstone, and continued in her service until five weeks before the end of the year, when, with his mistress's leave, he parted with her and went to one Litchfield, at Kislingbury, and stayed there the five weeks. After the end of the year, Gare went to Mrs. Bliss for his year's wages; she laid down the whole to him, and he voluntarily deducted 10*s.* for his five weeks' absence, being the sum he had earned and received for his five weeks at Kislingbury. If his mistress had, during the five weeks, required him to return to her, he would have done so. Lord *Mansfield.* "The question turns singly upon this, whether his absence for five weeks was a dissolution of the contract? If he had his mistress's leave, it was not; if he had it not, it was. And we are all of opinion, that it was only an absence with leave, for it appears that both parties considered the contract between them as subsisting, and not dissolved. He paid her the whole that he had earned in the five weeks that he was absent, considering himself as her servant during that time. For otherwise the deduction would not have been a deduction of the particular sum earned by him, but a deduction in proportion of his whole year's wages to the time of his absence. And he looked upon himself as liable to be called back within the five weeks. Therefore we are all of opinion that the contract was not dissolved."

Service with others, by first master's consent, equivalent to service with the master.

Rex v. *Beccles*, 2 *Stra.* 1207; *Burr. S. C.* 230. T. Elm was hired to a blacksmith for a year, at 3*l.* During the year, the master gave him leave to work with another smith for three days, with a second for a week, and with a third for a fortnight, and agreed that the servant should have the advantage of it. After which he returned and stayed out the year, and the master by his consent deducted the proportion of wages for the time he was away. The sessions thought the first contract was thereby dissolved. *Lee*, C. J. "It is only a licence of departure for a certain time; the contract remains; the service by the master's consent with another person is service of the master; it is not necessary the service be with the same person. If it had been without the master's consent, the absence has been dispensed with by the master's thus receiving him again." The other judges concurred in opinion that this was no dissolution of the contract, but a mere lending of the service of his servant, than which nothing is more customary in harvest time.

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So where a servant procures another to take his place for a time, paying him himself, and receiving from his master his whole year's wages.

Rex v. *Goodnestone, Burr. S. C.* 251 ; 2 *Stra.* 1232. W. Markham was hired for a year, and lived with and served his master, J. Wyborne, in Northbourne, till within three weeks of the end of the year, when he asked leave of his master to go to the herring fishery. The master consented, if he could get a man to do the master's work to his liking. Markham did so, and paid the man. Markham went to sea, and returned about three weeks after the end of his year; the master paid him all his year's wages. *Lee*, C. J. "I cannot distinguish this case from *Rex* v. *Beccles*, where absence with the master's consent was holden not to dissolve the contract. In the present case no dissolution of the contract is stated ; leave of absence was given by the master, and he paid the whole year's wages."

A yearly servant, on complaint of master, was committed, and after nine days' confinement, was released. He returned, and served out the year: Held the service continued.

Rex v. *Barton-upon-Irwell*, 2 *M. & Sel.* 329. J. Edwards was hired for a year as a servant to Watkins of Great Lever, whom he served about nineteen months there. After having been in that service about two months, being then married, he was taken before a magistrate on the complaint of his master, and committed to the house of correction for one month. When he had been in custody nine days, at the instance of his master, he obtained a discharge from his imprisonment, returned immediately to Great Lever, and served him as before. On such return no mention was made of the terms on which he was to serve. He received no wages for the time he was in custody. The pauper had been charged, upon the oath of Watkins, with cruelty to one of his master's horses, and with disobeying his orders, and the justices had convicted him of that offence, and sentenced him to be imprisoned for one month. Lord *Ellenborough*. "It would be clearly against the policy of the law, if the servant, by his own act of delinquency, should have the power of dissolving the contract. The justices have that power, (*a*) but they have not exercised it. The imprisonment of the servant was so far from being a cessation of the service, that perhaps his labour might have been required of him by the master, even while he was in prison. Then what further circumstances appear upon this case? It is stated that the master deducted the wages for the period during which the pauper was absent. But after that period he returns into the service, (then, indeed, he was married, but he goes on under the old contract,) and nothing passes between the master and the servant with respect to any alteration, or any new contract, during the remainder of the 19 months. The master, indeed, had an election to avoid the contract, but he made his election to continue the pauper in his service, which it was in his power to do. In *Rex* v. *N. Cray* there was an incomplete service." *Le Blanc*, J. "I think there was not any dissolution of the contract; the master might have discharged him, but he did not: he must then have returned on the footing of the old hiring. It is said, there was an interruption of the service; but during the whole time he was subject to his master. It was under the authority of the contract that his master acted when he punished him for misconduct, therefore it was not a dissolution. The master perhaps might have elected to dissolve it, but he has not done so. Neither do I think this was an interruption of the service to prevent a settlement." *Bayley*, J. "The relation of master and servant continued notwithstanding the commitment of the servant procured by the master. The commitment did not set free the servant from his contract to go wherever he pleased after the imprisonment ceased. That would be allowing him to avail himself of his own wrongful act. Then, as to the service during the nine days, perhaps the servant could not strictly be said to be actually serving while in prison, but there was a service for more than a year under a hiring for a year." *Dampier*, J. "It seems to me that the master had no intention of dissolving the contract, for, instead of that, he hastens back the return of the servant by begging off his punishment for the whole of the period, except nine days." Order quashed.

So also where the master made a complaint against

Rex v. *Hallow*, 2 *B. & C.* 739; 4 *D. & R.* 299. T. Hewett was removed from Powick to Hallow. Order confirmed. Case:—The pauper

(*a*) The statute, 20 Geo. II. c. 19, s. 2, authorises the magistrates to commit, or discharge from service, upon such complaints.

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the servant before a justice, who, under the 20 Geo. II. c. 19, committed him for one month for misconduct, and his year expired while he was in prison.

went into the service of J. Price, of Tibberton, having been previously hired by Price, at Pershore Mop, a few days before Old Michaelmas, when the pauper's previous service in Hallow expired, to serve Price as waggoner's boy, from Old Michaelmas to Old Michaelmas following, at the wages of 5*l.* The pauper went into the service of Price, and remained with him till about a month before the said Old Michaelmas-day, when disputes having arisen between Price and the pauper, in consequence of his having charged the pauper with misconduct, Price caused the pauper to be summoned to answer such charges before P. G., a justice. Price and the pauper appeared before P. G., and the complaint was heard, and upon the hearing it was agreed between P. G. and Price, that the pauper should either beg Price's pardon, and be received back into his service again, or if the pauper refused to beg his pardon, that he should remain the rest of his year in prison. The pauper refused to beg Price's pardon, whereupon he was committed for one month. The year for which the pauper had been hired expired two days before the expiration of the month for which he was committed. The pauper remained in gaol during the whole of that month, and left the gaol at the expiration thereof. During his imprisonment, the pauper's clothes remained at Price's; and when the pauper left the gaol, he went to Price's and took away his clothes, and received from Price all his wages, with the exception of 7*s.*, which Price deducted for the time the pauper had been in gaol, and he then quitted Price's house. *Abbott*, C. J. "I am of opinion that there was a complete service for a year, notwithstanding the commitment under 20 Geo. II. c. 19; but I wish to be understood as speaking of a commitment under that statute only. The second section is for the punishment of servants in the character of servants. It gives the magistrate power to put an end to the service, if he thinks fit: when that power is exercised it puts an end to all questions of settlement. But the statute gives another power also, viz. that of imprisoning the offending party for any period not exceeding one month. If an imprisonment for a month, under that provision, defeats the settlement, imprisonment for a week, or even for a day, must have the same effect. There is nothing to show that the legislature contemplated or intended to produce such an effect. I therefore think that a servant committed under the statute in question, must be considered as abiding in the master's service, within the 8 & 9 Will. III. c. 30. *Bayley*, J. "I am of opinion that this case falls within the distinction taken by *Le Blanc*, J., in *Rex* v. *Barton-upon-Irwell.* He there says, 'It was under the authority of the contract that his master acted when he punished him for misconduct, therefore it was not a dissolution.' So here the pauper was imprisoned at the instance of the master. The latter might have pressed for a dissolution of the contract, but, instead of that, there was an understanding between him and the justice, that the pauper should either beg his master's pardon, or remain the rest of the year in prison. It has been conceded that that does not operate as a dissolution, and I think it may be put either as a constructive service or a dispensation. In the case cited, it was held that the servant gained a settlement; and I cannot see why the imprisonment should have a different effect at the end from that which it had in the middle of the year. It has been urged in argument, that the master, by taking the servant back, is to be considered as dispensing with his service during his absence. But the contract not being dissolved, if the servant were released from prison before the end of the year, the master would be under the necessity of receiving him." *Holroyd*, J. "There is a great difference where the servant's absence from actual service arises, as in this case, at the instance of the master, and where it is occasioned by any criminal act done by the servant, and independently of the master. The ground of the commitment of the servant, was absence from his duty for a day; possibly the master might have had a right to discharge him for that neglect; but he neither did that of his own authority, nor applied to the justice to do it, so that the relation of master and servant continued. I think that the service also continued, just the same as if the occurrence had happened in the middle of the year. The servant being imprisoned

and punished as a servant, might have insisted upon going back to his master, or the master might have compelled him to return, as soon as he was discharged out of custody.—*Littledale*, J. "In this case neither the master nor the justice having discharged the servant, the relation of master and servant continued. Then the servant, when in prison, did not absent himself voluntarily from the master's service. The imprisonment was at the instance of the master; the servant might still be ready and willing to work for him. I am therefore of opinion, that it must be considered as a constructive service." Order of sessions quashed.

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Where a female servant, who was fined for a malicious trespass, was advised by her mistress not to pay the fine but go to prison, this is a dispensation.

Rex v. *Coningsby*, 3 *N. & M.* 199; 4 *B. & Ad.* 156. E. Flintham, single woman, was removed from Coningsby to Stickney. Order quashed. Case:—A few days before May-day, 1829, the pauper was hired by Mr. Gosling from the same May-day at the wages of 3*l.* 10*s.*, and went into his service in Stickney on that day. About harvest time in the same year, she was apprehended upon the complaint of W. Foster, her master's neighbour, on a charge of having wilfully and maliciously damaged property belonging to him. The magistrates fined her, and she not paying the fine, was committed to prison for one month. It was by the advice of the mistress (who was present at the hearing of the complaint) that the pauper went to prison instead of paying the fine. When she was taken to prison, her mistress told her she was to return when her time was out; and she also sent her provisions occasionally during her imprisonment. She was discharged at the end of the month, returned immediately to her master's, and went about her work as usual. She stayed in the service till May-day, 1830, and on going away received her whole wages. The question was, whether she gained a settlement in Stickney. *Denman*, C. J. "This head of settlement is made to depend upon two things—first, there must be a hiring for a year; and secondly, an abiding and continuance in the same service for a whole year. Those words strictly construed would perhaps import actual service. It has been decided, however, that there may be a dispensation by the master with the performance of the servant's duties for a time, and that during such period there is a constructive service sufficient to satisfy the words of the statute. The consent of the master to dispense with such service may be either expressed or implied, and it is implied where the servant having absented himself for a time, has returned to the service, and been received by the master, and had his full wages paid. I think in this case the absence of the pauper during the imprisonment must be taken to have been with the consent of the mistress. It may be collected from the statement that the pauper could have paid the fine, and that the mistress interfered to prevent her. After the term of imprisonment expired, she received her back, and paid her her full wages. It has been ingeniously argued that the absence here was not permissive, because the law compelled the pauper to be imprisoned unless she paid a fine. But she had her election either to pay the fine or go to prison, and she did the latter by the advice of her mistress, who supplied her with provisions during her confinement. It seems to me, therefore, that the service was dispensed with by the mistress. *Rex* v. *Westmeon*, (*post*,) and *Rex* v. *North Cray*, (*post*), are distinguishable, for there the masters did not consent to the absence, and showed their dissent in the most effectual way by deducting from the wages." *Parke*, J. "To constitute a settlement by hiring and service, there must be a hiring for a year and a service for a year, but the service need not be actual: of necessity it may be constructive, because no servant serves his master every hour of every day, and a dispensation from service may be implied. Even in the case of a wilful absence, it has been held that if a master receive back his servant afterwards, and pay him his wages, that is a dispensation with the service during the period of absence. In *Rex* v. *North Cray*, and *Rex* v. *Westmeon*, the absence of the servant was wilful, for the imprisonment was occasioned by his own misconduct; but those cases are distinguishable from the present, because the pauper never returned to the service after the imprisonment. Absence during imprisonment, like absence from other causes, may be purged by consent. It has been said

Deduction of wages evidence of master's dissent to absence.

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that the master, during the term of imprisonment, could not recal the pauper to his service. But it was observed, the same may be said where the absence is occasioned by illness proceeding from the misconduct of the servant, or where the servant during such absence is at a great distance from the master." *Taunton*, J. "I am of the same opinion. *Rex* v. *North Cray*, and *Rex* v. *Westmeon*, are distinguishable, because it did not appear that the master again received the servant into his service; but I cannot help thinking the good sense to be in what is stated by Lord *Mansfield*, and *Buller*, J., in *Rex* v. *North Cray*. The pauper, eight or nine days before the expiration of the service, had been committed for not giving security to indemnify the parish as the father of a child likely to be born a bastard, and Lord *Mansfield* says, 'The single question is, whether the pauper served his year, in *fact* he did not, did he then *constructively?* There is not a pretence that the master consented to dispense with the time he did not serve; *his absence and imprisonment were the consequences of his own criminality.* His imprisonment was not illegal.' Those observations apply to the present case; and I think this doctrine of dispensation has been carried too far. The current of authorities, however, compels me to say there may be a constructive service even during the time for which the servant is committed in execution for misconduct; and I yield to authorities, not to reason." *Patteson*, J. "I think that we are bound by the authorities to hold that there was a dispensation with the service during the time the pauper was imprisoned." Order of sessions quashed.

4. *Of Change of Master in the same Service.*

4. *Of change of master, &c.*

It is not essential that the whole year's service should be under the *same* master or mistress, though there must be an identity in the service. The removal, therefore, of the master with whom the contract was made, and the service commenced, either by death or by the transfer of the farm or establishment to another person, will not prevent the servant from gaining a settlement, by continuing the service under the new master to the end of the year. This rule of settlement law has been considered so little disputable, that very few cases upon it have been brought before the Superior Court. *Rex* v. *Hardhorn-with-Newton*, p. 567.

If the master let his farm, and the servant continue with the lessee for the remainder of his year, it is a continuance of the same service.

Rex v. *Ivinghoe*, 1 *Stra.* 90; 2 *Bott*, 414. N. Young was hired for a year to J. Knight, who rented a farm in Ivinghoe, and he lived with him half a year, who then paid him half a year's wages, and let the farm to Smith, who entered, and took all the stock and servants, and in harvest time took Young off from keeping sheep, and sent him to harvest work, for which he paid him 5*s.* extra, and at the year's end paid him the other half year's wages. No words passed about dissolving the contract with Knight when he left the farm, or making any new contract with Smith. The question was, if this shall be deemed the *same service*, so as to gain a settlement? *Pratt*, C. J. "This is a good settlement: if a master command his servant to live with another for a certain time, it is a service to the first master: and here being no new contract, it is carrying on the service of the first master. And the subsequent master paying his wages did not alter the case; and the 5*s.* given by Smith does not alter the case, it is no more than if a gratuity be given by a neighbour to a servant for his extraordinary trouble when lent by his master to such neighbour for a week or so. What agreement there was between Smith and Knight *non constat*, but here is no act done by the servant which shows his consent to change his master; the contract not being destroyed, he might have brought an action against the first master." The other judges concurred; *Fortescue*, J., saying, "The difficulty arises upon the word *same*, which may extend to *master*, *parish* and *business*. And taking it in those senses, this case comes within the words of the statute; and there can be no doubt it comes within the reason of it; for he is no more likely to be chargeable now, than if he had actually served Knight all the year."

So where the servant continues with an executor for the remainder of the year.

Rex v. *Ladock*, *Burr. S. C.* 179; 2 *Bott*, 397. J. Roberts was hired for a year in Ladock. His master died within the year, leaving W. Huddy his executor. The executor asked the servant if he was willing to serve

out the year with him. The servant agreed to it, and did serve the executor in St. Enoder during the remainder of the year. By the court. "This is a continuance of the same service; the contract was not dissolved by the death of the master, and the servant gained a settlement in St. Enoder. And this is a stronger case than that of Ivinghoe, the assignee of the farm in that case being a mere stranger; whereas this was the case of an executor on whom the law casts a privity of contract."

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5. *Of Dissolution.*

5. *Of Dissolution.*

If the service for the year has not been completed before the contract be *dissolved*, no settlement will be gained, and a *dissolution* of the contract may be effected by the consent of the parties or by operation of law.

Where a servant, with his master's consent, left the service a few days before the expiration of the year, and was paid the whole year's wages, he gained no settlement.

Rex v. *Castlechurch*, *Burr. S. C.* 68; 2 *Stra.* 1022; (*a*) 2 *Bott*, 430. The pauper was hired for a year, and served from the 7th January to the 26th of December following, when he went away with his master's consent, and took his clothes with him, and was paid the whole year's wages. Lord *Hardwicke*. "I should think this is not a good settlement. The legislature has expressly determined the time of service: they require that it shall continue for *one whole year*. In this case the contract was determined, and the pauper ceased to be a servant to the master. If so, he could not be said to continue in the service during the twelve days, and consequently it was not a service for *a whole year*." The other judges concurred.

The *contract* may continue, yet the *service* be discontinued.

Pawlet v. *Burnham*, *Fol.* 187; 1 *Sess. Ca.* 71; 2 *Bott*, 424. The pauper covenanted with R. A. to serve him for a year, but three weeks before the expiration of the year departed from the service with his master's consent, and abated 6*s.* out of his wages for the remainder of the year. It was contended that as the case stated the pauper to be a covenant-servant, which must be presumed to be by deed, he could not be discharged by parol consent, and therefore he continued a hired servant during the year. The court. "Here is no fraud expressed or implied. It is not within the words of the act, nor the meaning. Can a man compel his servant to gain a settlement *nolens volens?* As to the covenant being by deed, and so the service continuing, perhaps he might bring an action on the covenant: and as to that point the service continued, but not as to gaining a settlement, where the statute saith he must serve for a year, which this man hath not served."

Where a servant on being paid his wages for the time he had served, left the service, but afterwards returned and served the remainder of the year without further agreement, it was held to be a dissolution.

Rex v. *Ross*, *Burr. S. C.* 688; 2 *Bott*, 441. T. Chest hired himself for a year to E. Miles, and served him in Langarren only three days. A difference arising between them about the business the pauper was employed in, Miles bid the pauper go about his business. On which the pauper immediately ran away and quitted his service, and hired himself to J. Whitby for a year, and served Whitby for six months in Whitchurch. Miles then insisted on Whitby's not keeping the pauper in his service. Whitby paid the pauper his wages to that time, and the pauper quitted that service, and went one or two voyages up the river Wye, as labourer to a barge-master, for a fortnight. Then at Whitby's request, and with Miles's consent, he returned into Whitby's service without coming to any new agreement, or any mention of wages, and continued in Whitby's service in Whitchurch seven months, being a month over the end of the year for which he was hired, in order to make out his lost time, and then received his wages. It was argued that the fortnight's absence was purged by the master's receiving him again. But the court said "Here is an absolute dissolution of the contract, both by master and servant, at the end of six months. Whereas the statute requires a continuance in the same service for a whole year. The new service cannot be connected with the old hiring."

Where before the end of the year, the mistress asked the servant whether she choose to

Rex v. *St. Peter Mancroft*, 8 *T. R.* 477. The pauper was let to Mrs. Morton, about a fortnight before Michaelmas, 1797, by a letter sent by Mrs. M. to the pauper's friends, stating that she gave 3*l.* a year wages, on

(*a*) By the report in *Strange*, it appears that the servant went away without leave, stayed till the year was up, when he returned for his clothes, and was paid his whole wages.

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go away on a certain day (within the year), assigning as a reason that she had hired a new servant, who wished to come to her then, and the servant said it was immaterial to her, and agreed to go, which she did; the court thought it sufficient to dissolve the contract.

which the pauper agreed to go, and sent to her mistress to let her know when she should come, and in consequence of a second letter desiring her to come on Thursday the 11th day of October, she went to her service on the 12th of that month: on her going her mistress objected to her not having come the day before, for which the pauper gave as a reason, that she had only quitted her last place late on Old Michaelmas-day. About three weeks after she went, the pauper said to her mistress that it was proper to come to some agreement, as they had never had any further than a few lines, to which her mistress answered, "You know what wages I sent you word, and as the general way is to let for a month's wages or a month's warning, I do not wish to confine you for a year:" but did not say any thing about not choosing to hire for a year; she received her wages quarterly, and about a fortnight before New Michaelmas-day her mistress asked her whether she chose to go away on New Michaelmas-day or Old Michaelmas-day, assigning as a reason for her asking, that she had hired a new servant, who wished to come to her at New Michaelmas. The pauper said it was immaterial to her, as she had not got a place, and agreed to go at New Michaelmas, which she did, at which time the other servant came into her mistress's service. Her mistress was not in a condition of life to keep two servants; and if a place had offered at New Michaelmas, the pauper looked upon herself as in a situation to take it, though when she first got to her mistress she considered herself as to live with her until Old Michaelmas. Upon quitting her service upon New Michaelmas-day, which was a fortnight after the agreement to go, her mistress paid to her the whole which remained due of the 3*l.* wages, although at the time when the pauper agreed to go away at New Michaelmas, nothing was said about wages. The pauper would not have objected to going away at New Michaelmas, if her mistress had proposed to make a deduction for the time, but would have mentioned it to her, and told her she was willing to stay till Old Michaelmas. The pauper liked to go away at New Michaelmas rather than Old Michaelmas, but would not have stayed after Old Michaelmas if her mistress had requested it. The pauper considered the conversation which passed on the fortnight before New Michaelmas, as a month's warning to go away at Old Michaelmas. Lord *Kenyon.* "Upon this case, as disclosed, there was strong evidence to induce the sessions to adjudge that the contract between the mistress and the servant was dissolved before the end of the year, and consequently that the latter did not gain a settlement in St. Peter's, Norwich. The distinction established in all the cases was perfectly clear, that where the servant continued liable to serve during the whole year, though the master dispensed with the actual service for any part of it, the servant gained a settlement, because the relation of master and servant subsisted all the year, and the master might resume the right to the service if he chose; but where the parties absolutely put an end to the contract before the expiration of the year, as in the present case, the servant did not gain a settlement. Though it was at first doubted whether or not the master could dispense with the service at the end of the year, so as to give the servant the benefit of the contract for the purpose of a settlement, it had been long settled that it was immaterial whether the service was dispensed with at the beginning, the middle, or the end of the year." *Grose*, J. "The sessions should state the result of the evidence, and in a case of this kind, they should state the fact one way or the other, whether this were a dispensation with the service, or a dissolution of the contract." Case to be re-stated.

If a servant is prevented by illness from entering upon his service at the time agreed, and upon going to his place, his master refuse to receive him, and then he continue there, agreeing to

Rex v. *Wintersett, Cald.* 298; 2 *Bott*, 379. The pauper, George Challenger, was hired at Barnsley statutes, which are held a few days before Martinmas, to Thomas Oundsworth, of Stainsburgh, for one year, received 1*s.* for his godspenny, and was to have three guineas wages; the very night of the hiring the pauper *fell ill*, and continued sick and unable to go, and *did not go into his service till a month* after Martinmas, when the pauper and his mother went to the master's house, who being from home, they were shown to his wife, who complained that the pauper had not come to

his service according to the agreement, and *therefore refused to receive him:* whereupon the pauper's mother said, "*we must fall into your will for wages, and take what you will allow us;*" and left the pauper in his service, where he continued till Martinmas following; when the mother was sent for, and received forty-eight weeks' wages after the rate of 1*s.* 2*d.* per week, *being less than the rate of the original wages.* By Lord *Mansfield*, C. J. "The service had never commenced under the first contract; if it had, no doubt the master must have supported him in his sickness. But that is not the question; the point is, that the agreement acted upon here was a fresh agreement when he recovered from his sickness, and the beginning of his service was then. Under the former, the mistress refused to receive him. Then considering the old contract at an end, *the actual service* was but for eleven months, that is, to the Martinmas next; and the submitting to the abatement of the month's wages at the end of the year is an affirmance of the agreement made by his mother; and this, as rescinding the original agreement, destroys more than the *legal or constructive service;* it shows also that there was no hiring for a year, so that both the hiring and service must be considered as imperfect and ineffectual." *Buller*, J. "If a servant be taken ill after the service has commenced, the master is bound to support him, and cannot turn him away on that account. But it is not true, that the service began under the first contract. That was executory. It was made some days before Martinmas to commence at Martinmas; and in fact it never commenced. When the pauper went, they made a new contract, and under that his service commenced."

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take whatever he should be allowed, the service only commences at the second agreement.

Rex v. *Whittlebury*, 6 *T. R.* 464. J. Roberts was hired by J. Grimsdick of Paulerspury, from Michaelmas to Michaelmas, at the wages of 50*s.* He entered into and continued in the service until five days of the end of the year, when he went to Towcester statute to seek for a place: while he was there he was suddenly taken ill of a fever, which continued for six weeks, and he was deprived of his reason a part of that time; he went from the statute to his mother, but neither of them having any money to maintain him during his illness, he that night desired his mother to go to his master for his money, and to bring away his clothes; the mother went the next day, and at her return she brought his money all but 1*s.* which his master had stopped for the remainder of the year, and gave it to him together with his clothes, with which he was satisfied, and he thought himself at liberty to hire himself to another master if he had been well enough. Lord *Kenyon*, "I confess I have not been able to raise the least doubt in my mind on this case. There is no doubt but that the parties may put an end to the contract during any part of the year, either at the beginning, or in the middle, or only a day before the end of it; and if they do, the servant gains no settlement, because the act requires that the relation of master and servant should continue during a whole year. It is not necessary here to decide whether in every case the receipt of wages before the expiration of the year puts an end to the contract, or whether a servant being taken ill during the year, the master can of his own authority discharge him, and put an end to the contract, or whether in such a case justices may put an end to the contract; but it is here stated that five days before the end of the year (and it is immaterial whether that happened five months or five days before the year expired), the pauper sent his mother to his master for his money, and the latter paid the wages stipulated for the whole year except 1*s.*, which he deducted because the whole year's service was not performed. As far therefore as the master had the power, he did put an end to the contract before the end of the year; he had no right to deduct the shilling, but on the ground that the pauper did not continue his servant until the end of the year. Then what was the conduct of the servant? He received his money, saying that he was satisfied; and it also appears that he thought he might have hired himself to another

The servant being taken ill, sent for his clothes and money, which his master sent, *deducting for the absence during illness:* Held a dissolution. (*a*)

(*a*) "Dissent shown in the most effectual way, by deducting the wages." Lord *Denman*, *Rex* v. *Coningsby*, p. 573.

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master before the end of the year. One party said, I put an end to the contract as far as lies in my power; the other said, I also agree to put an end to it as far as respects me; therefore both parties, whose consent was necessary, did consent to dissolve the contract before the expiration of the year." *Grose*, J. "It must be remembered that when the servant sent for his money, his wages were not due; no money was due till the year expired, or till there was an end of the contract. The message therefore was an offer by the servant to put an end to the contract." *Lawrence*, J. put it on the same ground.

A servant is taken ill, and receives his whole year's wages, and voluntarily leaves the service to go to the hospital, and never returns, this is a dissolution.

Rex v. *Sudbrooke*, 4 *East*, 356. The pauper hired himself for a year, and after eight months, being too ill of a fever to do his work, his master paid him his whole year's wages, when *he left his master's service* and went to the hospital, and never returned into the service. (*a*) Lord *Ellenborough*, C. J. "The doctrine of dispensation has only been allowed where both parties contemplated the continuance of the relation of master and servant. But here the servant being ill and unable to do his work, voluntarily *left his master's service* before the end of the year, when his master paid him his whole year's wages; we must therefore take it, not only to be a ceasing to *abide*, in the words of the act, but a relinquishment of the service altogether. After that, neither party could maintain any action against the other for the affirmance of the contract or continuance of the service. Then if neither had any remedy against the other upon the contract, or any compulsory means of enforcing its execution, it must be dissolved in point of law. In *Rex* v. *Christchurch*, p. 565, at the time of the servant's departure, both parties contemplated the continuance of the service if the servant recovered, for she was sent to Mr. L. at her master's *desire*, and with a *request* from him to take her in, and if he refused she was to return to her master. I do not overlook the circumstance pressed upon us, that there was an advance of the *whole year's* wages before the end of the year; but the same circumstance occurred in *Rex* v. *Godalmin*, 2 *Const.* 497, and *Rex* v. *Castlechurch*, p. 575, and yet no settlements were there holden to have been gained by the servants who quitted their master's service before the end of the year by mutual agreement." *Lawrence*, J. agreed that the question to be considered was, whether the master did or did not retain his control over his servant during the whole year? It is stated the servant left his service, by which we are not merely to understand that he left the house, for that would not be a leaving of the *service*, unless *the contract were dissolved*. *Le Blanc*, J. said, "That however we may lament that the words of the statute have been departed from, yet as an extended construction of it has been made in some cases, if this case come within the words and precise determination of those authorities, we must have abided by them; but unless it could be shown to fall within some precise determination, the court will not extend the departure further. I do not found my opinion upon the mere circumstance of the servant's leaving his master's house to go to the hospital, but that I think that the parties came to a determination to put an end to the contract. The servant's illness cannot enable the master to determine the contract; but if the servant should choose, on account of illness, to go away, illness cannot prevent him from coming to an agreement with his master to put an end to the contract. Did they agree here? The servant received his whole year's wages, went away before the end of the year, went to the hospital, and never returned to his master again. Are we not to conclude that this was done by mutual consent? *Rex* v. *Castlechurch* shows the payment of the *whole* year's wages makes no difference if the parties agreed to put an end to the contract before the end of the year. And that though illness would not enable *one* of the parties to put an end to the contract, it might still induce both to come to such an agreement."

Terms had been mentioned, but no agreement made

Rex v. *Rushall*, 7 *East*, 471. The pauper some time before Old Michaelmas-day, 1802, the time at which the service in which she was then living,

(*a*) It was assumed as a fact, that the pauper continued ill during the remainder of the year. See 4 *East*, 356, *note*.

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at Wiston in Sussex, was to end, wrote to her mother, desiring her to look out for a place for her; which she did, and in consequence treated with Mrs. Peck of Rushall, Wiltshire, who informed the mother that she would give her daughter the same wages as she did her other servants, (being ten guineas a year, and a guinea for tea), and wait till she came down, and desired that she would come as quickly as she could; but the mother made *no absolute agreement* for her daughter, but afterwards informed her that she had got a place for her, if she liked it. The pauper left her service at W. immediately on its expiration, and went without delay to her mother's; and on Monday, the 18th, Mr. P. applied to her, to know if she liked to come into his service, saying that he wanted her to come immediately, as he had company to dinner. She went to Mr. P.'s house, and then it was, for the first time, agreed between Mr. P. and her, that the wages should be ten guineas for the year, and a guinea for tea, with liberty of parting at a month's wages or a month's warning. She then went to work, and continued in Mr. P.'s service until Old Michaelmas-day following. About five weeks before that time *she gave her mistress notice that she should quit her service at the next Old Michaelmas-day.* On Old Michaelmas-day, 1803, the pauper came to her mistress to receive her wages, who paid her her whole year's wages and the guinea for tea, but told her she wanted a week of serving out her year. The pauper said she was willing to stay out another week; but the mistress replied that it did not signify, as she had got another servant in her place, who was then in the house (which in fact she was). She then left the house, and never returned into the service afterwards. Lord *Ellenborough.* "The case expressly states that the mother made *no absolute agreement* for her daughter. The daughter arrived at Rushall about a week after Old Michaelmas-day, when upon Mr. P.'s application to her to know if she liked to come into his service, she went there, and then it was, as the case states, for the first time agreed between Mr. P. and her, &c., with liberty (which was not before mentioned) of parting at a month's wages or a month's warning; this was on the 18th of October. Then about five weeks before Old Michaelmas-day the pauper gave her mistress notice to quit at Old Michaelmas-day. The mistress could not object to receive the notice, and, therefore, looked out for another servant; but when the pauper went to receive her wages, the mistress paid her the whole year's wages, but told her that she wanted a week of serving out the year. The pauper then said, indeed, that she was willing to stay another week; but as the mistress in consequence of the warning which the pauper had given her, and which she had accepted, had provided herself with another servant, and did not want two of them, she told the pauper it did not signify, as she had got another servant in her place, on which the pauper left the house. There can be no doubt upon this statement, that both parties agreed to put an end to the service before the end of the year. The servant gave above a month's warning to quit at Old Michaelmas, which she had a right to do, and the mistress accepted the warning, and both parties acted upon it. And this, it appears, was in fact before the end of the year, whatever the servant might have supposed when she gave the warning. Now 'the rule,' which the Court has laid down as the test, whether the circumstances attending the departure of a servant before the end of a year amount to a dissolution of the contract, or only to a dispensation of the service, is 'whether the master has the power afterwards of compelling the continuance of the service; if he have not, there is an end of the contract; if he have, but choose to dispense with it, it is a dispensation.' If after this, any person had harboured the servant when the mistress desired her services, could she have maintained an action for it? Certainly not; and that is a fair test that the relation of master and servant had ceased to exist." *Le Blanc*, J. added, "The mistress accepted the notice not as being to quit at the end of the year, but as a month's warning."

till a week after Old Michaelmas, when the servant entered upon the place. She continued till Old Michaelmas-day of the following year, and then left by mutual agreement, having previously given a month's warning. It was mentioned between them that she had not completed her year by one week, but she received the whole year's wages: Held a dissolution.

Rule for deciding the fact of dissolution.

Rex v. *Bottesford*, 4 *B. & C.* 84; 6 *D. & R.* 99. J. Whitehead was removed from Bottesford to East Bridgeford. Order quashed. Case:—

The pauper was hired at four pounds wages, but

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the duration of the service was not mentioned; when he went into the service afterwards, the master told him he had forgot to mention, that it was not the custom to hire for more than fifty-one weeks, and that he must therefore hire him again for that time, to which the pauper assented, and received fresh earnest. He remained in the service the fifty-one weeks, and received the four pounds: The sessions thought this a dissolution of the original contract, and the court adopted their finding.

The pauper was hired at the Bingham statutes, which happened about three weeks before Martinmas, 1818, to serve Huskisson of East Bridgeford as a servant in husbandry, for 4*l.*, and received 1*s.* earnest; but no time was mentioned. He was to go into the service about a week after Martinmas, at the regular time for husbandry servants to enter their places. He entered into the service a week after Martinmas, 1818; on the same day his master said to him, "It is not the custom to hire servants in this parish for more than fifty-one weeks, which I forgot to mention to you at the time I hired you at Bingham statutes, and therefore, if you have no objection, I must hire you afresh for fifty-one weeks, and give you another shilling for an earnest," when the pauper accepted of such earnest. The pauper was never out of Huskisson's service from the first moment he came upon the premises, and remained therein until the day after Martinmas, 1819, when he quitted his place, along with the other servants, having first received his wages of 4*l.* *Abbott*, C. J. "I think the sessions came to the right conclusion. I agree that there was originally a contract operating as a hiring for a year, but the service under it was a service commencing a week after Martinmas. It is stated that the pauper was hired three weeks before, but he was to go into the service a week after Martinmas. There is nothing to show that the service was to commence sooner. Certainly it was not to commence on the day the contract was made, for that was entered into three weeks before. If then it was a hiring for a year, the service to commence the week after Martinmas, it is clear that there has not been a service for a year. Did then the master dispense with the service for the last week, or was the original contract rescinded? The case states, that on the same day when the servant arrived at his master's house, the latter said to him, 'It is not the custom to hire servants in this parish for more than fifty-one weeks, which I forgot to mention to you, and therefore if you have no objection, I must hire you afresh for fifty-one weeks, and give you another shilling for earnest;' when the pauper accepted the earnest. I consider that as a dissolution of the original contract, and the substitution of another. If this was a fraud, (although I have great difficulty in saying what is a fraudulent contract in this respect), the sessions ought to have found fraud. They have not done so. I, perhaps, should not have interfered to set aside the decision of the sessions, if they had drawn a contrary conclusion, but I should not have been so well satisfied with it." *Bayley*, J. "I agree that there may be a dispensation at any period of the year; but whether there is a dispensation or not, is a question of fact for the sessions to decide. If there had been a hiring here for a year, to commence at Martinmas, and the contract had not been dissolved by the express consent of both parties, then the sessions might have drawn a conclusion different from what they have drawn. Suppose this to have been a hiring for a year, that might be dissolved. But still that was for the sessions to decide. If there was fraud in the case, that was for their decision. My own judgment is, that the sessions have drawn the right conclusion from the facts stated." *Holroyd*, J. "I think it cannot be taken, from the manner in which the case is stated, that this was originally a hiring from Martinmas. The latter part of the case removes all the doubt I had entertained as to whether this was to be considered as a hiring for a year, and a dispensation of the first week's service; for what afterwards takes place must be considered as a dissolution of the original contract with the consent of both parties." *Littledale*, J. concurred.

If the master, at the servant's request, give him leave to go to another service, before the end of the year, though he pay him the full wages, it is nevertheless a dissolution.

Rex v. *Thistleton*, 6 *T. R.* 185. The pauper was hired to Mr. Raworth, of Knawston, from Martinmas to Martinmas, and entered upon the service. Before the end of the year he went to Billesden statutes, and hired himself to Mr. Humphreys, of Billesden, to enter into his service on the 19th of October, if Mr. R. would let him come then, and if he was refused, he was then to come at the end of his year. The next day the pauper asked his master to let him go, who said he could not spare him; he must get a new servant first: some time after he hired a new servant, and then said, "I have got a new servant, you may go now; I have not work for you both." The master then paid him his whole wages, and he went away.

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This was about a fortnight before Martinmas, and he entered into his new service in three days. Lord *Kenyon*, "The distinction between the different cases upon this subject seems to be this; if the pauper be absent from the service with the concurrence, remaining however subject to the control, of the master, he may acquire a settlement, because this only amounts to a dispensation with his service; but if the master has once parted with his control over the servant, there no settlement is gained; and the receiving of the whole year's wages does not make any difference. In this case the master had given up all control over the servant; he himself was instrumental in enabling the servant to make another contract with another master; and from what passed between those parties, it was evidently the intention of both that the pauper should become *sui juris*, and should be enabled to contract with another master. The cases, in which it has been determined that a settlement was gained, notwithstanding the servant was not in actual service during the whole year, proceeded on artificial reasoning, on a supposition that the relation of master and servant continued throughout the year. But that idea is inconsistent with what was done in this case; for if that relation had subsisted here, the master might have insisted on the pauper's returning into his service after the wages were paid: but he agreed not to insist on that when he parted with the servant. It is miscalling this a dispensation with the service; for upon the agreement to part, the pauper's liability to serve the first master ceased." *Grose*, J. "If we were to say that the service for the latter part of the year was service performed under the first master, we should determine that he was serving two masters at the same time, which would be contrary to the statute."

During the service under a hiring for a year, a second agreement for another year, to commence immediately, at different wages, and for a different sort of service, is a dissolution, and not a mere variation of the first contract. (C. J. *dissentiente.*) (a)

Rex v. *Great Chilton*, 5 *T. R.* 672. The pauper was hired at Martinmas, by W. Grenwell, of Great Chilton, as a servant in husbandry for a year, commencing from Martinmas, (11th Nov.) his wages were to be about 8*l.*, with meat and lodging, in his master's house. He entered upon his service at Martinmas, and resided in his master's house. In January following he married, but continued as a menial servant with Grenwell until May-day following. Some days before May-day, Grenwell and he agreed that he with his wife should go as a hind to reside on and manage another farm which Grenwell had in the same township; this second agreement was for a year from that May-day, and he was to have 5*s.* a week, the house to live in rent-free, and some other trifling perquisites, as persons in that capacity usually have. He served as a hind two years from that May-day, being all that time a married man. Lord *Kenyon*, "This case appears to me not free from difficulty and doubt: but upon the whole, I think that the pauper gained a settlement in Great Chilton. To *Rex* v. *St. Giles's, Reading*, p. 559, I perfectly accede, but that cannot decide the present case. There the pauper was hired generally, which the law construes to be a hiring for a year, at a time when it was competent to him to acquire a settlement by hiring and service; he was then unmarried: when the year expired, there was an end of the contract; by continuing in service after that time, the court would infer a second hiring for another year: but at the end of the first year he was a married man, and was disabled from gaining a settlement by a service under a contract entered into at that time. But in the present case the pauper was unmarried when he made the first agreement; and though he married in the course of that year, it has been very properly admitted that that alone did not defeat his settlement, if he served out the remainder of the year under the original agreement made before his marriage. But it has been contended that that contract was dissolved. I admit, that if there were an end of the relation of master and servant when the second agreement was made, the pauper could not gain a settlement in Great Chilton, but I do not think that that was the case. An alteration, indeed, in the man's situation took place: perhaps it was more convenient for him to live with his wife in a separate house than to continue to live in his master's family, and there-

(a) See *Rex* v. *Buckingham*, *ante*, 556.

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fore it was agreed that he should go to another farm of his master's in the same township. But that alone did not put an end to the former contract. If a master, who had kept house, and an establishment of servants, chose to break up housekeeping in the middle of the year, and to put his servants on board wages, that would not put an end to the relation between the master and his servants, nor defeat the settlements of the latter. Then it was objected that the servant's employment after his marriage was different from that under the original contract; but I cannot discover much difference, for under both agreements he was to serve in husbandry. And even if the nature of the service were varied, that would not defeat his settlement. A footman who was converted into a butler, would gain a settlement by completing a year's service, notwithstanding such a change in his station. In this case also there was a prolongation of the time of service, and he was to continue half a year beyond the period originally agreed upon; there was also an alteration of wages adapted to his change of situation: but I do not think that either of these circumstances affects the case. *The whole question turns on this, whether or not there was a dissolution of the former contract? for if there were, the second agreement was made at a time when by law he was disabled from gaining a settlement by hiring and service.* I speak with great diffidence on this case, understanding that the majority of the court are against my opinion. But it strikes me that there was no end of the relation of master and servant, even for a moment, during the whole time the latter continued in the service; and that as the first contract was not dissolved by the subsequent alteration of situation, the pauper gained a settlement in Great Chilton by serving more than a year under a yearly hiring entered into when he was an unmarried man. *Rex* v. *Alton*, p. 520, warrants this opinion, though that indeed appears to be a more doubtful case than the present; because there, under the second agreement, the pauper was to work by the piece, which seems to imply a liberty either to work or not, as he pleased." *Ashhurst*, J. "At first I was inclined to think that the first contract was not absolutely dissolved, and that the second was merely a continuation and modification of it: but on further consideration, I am of opinion that the first contract was entirely put an end to by the second. This is very distinguishable from *Rex* v. *Alton*, for there the principal alteration was in the terms of the contract respecting wages, the servant was to be paid by the piece instead of by the year, whereas in this case there was a variation also in other circumstances. Under the first contract the pauper was to live in his master's house as part of his family, and was to receive the yearly wages of 8*l*. Under the new contract the terms were materially altered: the servant was to go into another farm of his master's, he was to receive weekly wages, and was to continue in service for a year from that time. After the second contract, if the master had wished to compel the servant to return to his own house, and to live in his family at the former wages, the latter might have resisted, on the ground of the second contract, which shows that the former one was abandoned, and that the pauper was not serving under it. Then if the second were a new contract, distinct from the former one, the services under the two cannot be coupled for the purpose of giving the pauper a settlement, because at the time of entering into the second he was married." *Grose*, J. "I agree to the *Alton case;* and here, if the original agreement had continued in force, the pauper would have gained a settlement by serving a year under it. But the question is, whether or not there was a dissolution of the service, and of the first contract? I cannot say that the service under the second contract was a service under the first, because, on comparing the two contracts together, it appears that there is a difference in the duration of the term, in the kind of service, and in the wages, the former of which is most material; and where two agreements are totally inconsistent, the second must operate as a dissolution of the first. By the first contract the pauper was hired for a year, to commence at Martinmas; he served under that till May following, when he made another agreement with his master for another year, to commence at that day. Suppose at the end of the first year the servant had

said that he would no longer continue in his master's service, for that he had been serving under the first agreement only, and was not bound to serve under the second; there is no doubt but that the master might have compelled him to serve until the May following, by virtue of the second agreement. This shows that the second agreement put an end to the first. It is not necessary to lay so much stress on the two other instances of difference between the two contracts, the kind of service, and the quantum of wages; *I rely most on the alteration of the term of service, which I think is decisive.*" *Lawrence*, J. "It seems to me that in those cases no question arises respecting the benefit of any particular settlement gained by the pauper, but that the question must be considered on the facts as between the two contending parishes, because if the pauper be not settled in one, the burthen of maintaining him and his family falls on the other; and therefore there can be no bias in favour of one or the other settlement. In order to gain a settlement by hiring and service, there must be a hiring for a year, and a service for a year; *and the service for the last forty days must be performed under a contract of hiring entered into when the pauper was unmarried.* Then the question in the present case is, whether or not there was a dissolution of the first contract? and not whether there was a discontinuance of the service; for in *Rex* v. *St. Giles's, Reading*, the pauper continued all the time in the master's service; and there is a difference in this respect, whether the contract be put an end to by flux of time, or by agreement. The only way in which it can be considered that the pauper gained a settlement in Great Chilton, is by treating the second as a prolongation of the original contract; and it has been argued that by the second agreement the pauper was to serve until the end of the then current year, and for six months longer. But it strikes me that this is not the fair construction of the second agreement; at the end of the first six months' service, the pauper did not agree to serve for six months after the end of that year, but for a year to commence at the time of the second agreement. On the whole, it appears to me that the second contract was distinct from the former one, and put an end to it, because the second was inconsistent with it; so that the pauper gained no settlement in Great Chilton, because the service for the last forty days was not performed under a yearly hiring entered into when he was unmarried." Both orders quashed.

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Rex v. *Overnorton*, 15 *East*, 347. Order of removal of W. Bickerstaffe from Overnorton to Great Rollright, discharged. Case:—On Monday after Michaelmas-day, the 17th of October, 1803, the pauper was hired to serve Jolly of Overnorton, for *the year*, at 9*s*. 6*d*. per week. He served under that hiring, and received the 9*s*. 6*d*. every week, either on the Saturday or the Monday following, till the 13th of October, on which day, for the last time, he received 9*s*. 6*d*. Three or four days previous to the 13th of October, he had a conversation with his master, and agreed to serve him for another *year*, at 10*s*. a-week. On the 20th of October, he received 10*s*., concerning which no explanation took place at the time, but the pauper said in evidence that he received it under the *new* hiring. He continued in the service all that year, and seven weeks after. He was married eight weeks after the first hiring. [It was contended that the hiring at so much a-week for the year, must mean the current year, *i. e.*, 1803. But the Court said, that the justices were to determine what year was meant, and they had considered that it was for the space of a year from the hiring.] He then contended that the first hiring was put an end to on the 13th of October before that year was expired, and then the pauper, being married, could not gain a settlement under the second hiring. *Grose*, J. "Whatever the decisions might originally have been upon the construction of the statute, the rule of law is now inveterate, that if the justices find a hiring for a year, and a continued service for a year, though not under the same hiring, that is decisive to give a settlement." *Le Blanc*, J. "The sessions would have done better not to have found any special case, for strictly speaking it is a question of fact, whether the first contract was intended to be for the space of a year, or only to the end of the current year. But if they thought it was only to enure to the end of the current year, they

Dissolution of contract not inferred from change of wages.

It is a question for the sessions whether the hiring was for the rest of *the year* or for *twelve months*.

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would have come to a different decision. But however equivocal the expression might have been at first, when the master and servant, on the 13th of October in the following year, spoke of a contract for *another year*, that showed that they had originally intended a yearly hiring. Then there was clearly a continued service of the same description for a year." *Bayley*, J. "The sessions were the proper judges to draw the conclusion as to whether the original contract was dissolved before the end of the year; and I cannot say they have done wrong. There was no reason for dissolving it." Order of sessions confirmed. (*a*)

Where the master *gave up his business*, discharged the servant, paying him his full wages, and the servant left the house, and worked with another person, during the rest of the year, the contract is dissolved.

Rex v. *Bray*, 3 *M. & S.* 20. Removal from Bray to Great Marlow. Order quashed. Case:—J. Butler, at Old Michaelmas, 1806, hired himself at yearly wages for a year to Hussey, of Cookham, as a servant in husbandry, and entered upon his service at that time. He lived with Hussey until twenty-eight days before the expiration of the year, at which time Hussey gave up his farming business, sold his stock, and discharged the pauper, and all the other servants in husbandry, paying them their full wages; and he told the pauper and the other servants that they might go where they liked. The pauper accepted his wages, took his clothes and left Hussey's house, and worked with another person, with Hussey's knowledge, during the twenty-eight days. Lord *Ellenborough*. "We take it that the *sessions held this to be a dispensation;* but then a question occurs, why did they so? What is to be the limit to this doctrine of dispensation if it is to be carried thus far? It should seem as if the master might, at the end of a day, or a fraction of a day, if he has no longer occasion for his servant, send him away, and thereby dispense with the whole year's service. But is not that absurd? Where, indeed, the relation of master and servant continues, but the master foregoes the benefit of actual service for part of the time, that has been held a dispensation; but here is everything which can be predicated of a dissolution of the contract, for the master paid off and discharged the pauper with the rest of his servants, and the pauper left the house, and engaged himself with another master during the remainder of the year. I cannot but say that I am sorry for some of the cases on this subject, which have created such an artificial system: I think that not only the decision of the sessions in this case is unreasonable, but that several of the cases on which it professes to stand are unreasonable also." *Le Blanc*, J. "*Rex* v. *Bartholomew*, p. 566, was under special circumstances. Here the pauper, after quitting the service of Hussey, worked under a distinct engagement; and though not such an engagement as would gain him a settlement, still it was inconsistent with the continuance of his former contract." *Bayley*, J. "The moment the pauper quitted the service he was to be at full liberty to contract a new relation, and he did so." *Dampier*, J. "The master pays him his wages, and tells him to go whither he liked, and the pauper accepts his wages, and contracts a new relation during the time." Order of sessions quashed.

Where a servant, eleven weeks before the end of his year, in order to procure a discharge from his master, engages a man to supply his place, and hires himself to another for the remainder of the year, the contract is dissolved.

Rex v. *Mildenhall*, 12 *East*, 482. Removal from Wilcot to Mildenhall. Order confirmed. Case:—W. Dowling, at Michaelmas, 1803, agreed with J. Stratton, of Wilcot, to serve him for a twelvemonth, at 6*s.* per week in the winter, and 6*s.* 6*d.* in the summer, and a certain allowance besides. He went into the service at Old Michaelmas, and served his master till July, within eleven weeks of the expiration of the year. The pauper not behaving as he ought, his master and he had a dispute, in consequence of which *the pauper asked his master to discharge him:* but he answered he would not unless the pauper would get another man to stand in his stead. The pauper got W. Racey, to whom he agreed to give a guinea and a half out of his own pocket, to take his place, besides his wages, which were to

(*a*) This case has been confirmed, but the true principle of it is that there was no dissolution of the first contract, and that the pauper served a year, *i. e.*, till the 17th of October, 1804, under the first hiring. *Grose*, J.'s observation in reference to *this case* cannot be supported, for if all the service was not under the first hiring, no settlement could be gained; for service under the second hiring, made when the pauper was *married*, could not connect with the former service.

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be paid to him by Stratton. By the evidence of the pauper it appeared that when he brought Racey to his master, the master said, "If this man does any otherwise than well, I can send for you, and make you serve your time out;" to which the pauper replied, "Very well." (*a*) On the contrary, the master stated in evidence that "he did not recollect having said to the pauper that he should expect him to return; and that it was not his intention to have him back; and that they parted on bad terms." The guinea and a half was paid by the pauper to R. at the time he entered the service; and R. also served out the remainder of the year with Stratton, and received the wages from him for that time. The pauper during the remainder of the year hired himself as a day-labourer, and R. continued to serve S. under a new agreement till the end of the year. *Bayley*, J., asked "If there was any case where the pauper had been held to gain a settlement by hiring and service, where, after leaving his master during part of the year, he actually hired himself to another?" Upon which *Rex* v. *Goodnestone*, p. 570, was quoted; and Lord *Ellenborough* then said, "That was an express case of dispensation of service, and the servant might have returned within the year;" and he added, "that there were reasonable grounds here to warrant the conclusion which the sessions had drawn, that this was a dissolution." His lordship also said, (in reply to the argument that the sessions had admitted illegal evidence in receiving the account of the master's *intentions*,) "what follows is not giving evidence of the master's intention, but is merely stated by the master in confirmation of his accuracy in not recollecting what the pauper had stated him to have said, as if the master had said, what confirms me in supposing that no such conversation passed, is, that he had no intention to take the pauper back again. The sessions evidently understood the master as contradicting the pauper, and can we say they did wrong? Though it is said that the pauper might have returned at a day's notice, I do not think that varies the case." *Grose*, J. "The pauper, upon a quarrel with his master, applied for his *discharge:* the master refused, unless upon condition that the pauper procured another person to serve in his stead: and the pauper complied with the condition. And then the sessions, contrasting the master's evidence with the pauper's, have concluded that he was discharged, and the contract dissolved, and we cannot quarrel with that conclusion which it was competent for them to draw." *Le Blanc*, J. "Unless the Court saw clearly that the sessions had concluded wrongly, they would not reverse that conclusion." *Bayley*, J., concurred. Order confirmed.

If a master insist upon turning his servant away, and lay down his wages then due, which the servant takes up and then goes away: it is a dissolution, and the contract cannot be set up again by the servant afterwards returning at the *request* of his master.

Rex v. *Gresham*, 1 *T. R.* 101. William Thompson hired himself for a year, at the wages of 3*l.*, to Mr. Cremer, of Beeston Regis; he entered upon his service, and continued therein for about a quarter of a year; and upon some dispute between him and his master, his master insisted upon turning him away, and threw down 15*s.*, which the pauper took up, and went away to his father's house, where he continued for six days, during which time he looked upon himself as a free man: the pauper then returned *at the request of his master*, and continued in the service to the end of the year, when he received 45*s.*, being the remainder of his wages agreed for at the hiring. Lord *Mansfield*. "The absence of a servant from his master's service is an equivocal act, and therefore may be explained by other circumstances; but if it appears that the contract has been once dissolved, it cannot be set up by a new agreement. In this case the contract was absolutely dissolved: the master insists upon turning him away, and pays him down all his wages that were due; the consent on the other side is by taking the money up; then how does he come back again? It is upon the *request* of the master: there is nothing by which the absence can be explained. 'The meaning of *purging an absence* is where the act itself is doubtful." See *Rex* v. *St. Philip* and *Rex* v. *Hardhorn*, p. 566.

(*a*) It would seem that this fact was not credited, and not that it was immaterial: for by *Rex* v. *Maidstone*, p. 590, the power to recal the servant seems a criterion of dispensation.

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If the servant, nine days before the year is out, goes on a Sunday morning to get another place when his year should be up, and does not return till Tuesday morning, when the master pays him his wages to that time, and will not let him stay out the year, it is a dissolution.

Rex v. *Clayhydon*, 4 *T. R.* 100. The pauper agreed with W. Hodges, in Dunkeswell for a year, at 2*l.* 15*s.*, and served till nine days before the end of the year, when on a Sunday morning he went away, in order to get another place when his year should be up, without mentioning it to his master; he returned on the Tuesday following about six o'clock in the morning, when he asked his master what work he should go about; the master told him he might go and serve the master he had worked for the day before. He saw his master about an hour afterwards, who then paid him his wages up to that time only. No conversation passed. He then went away, and did not afterwards return: *he wished to have stayed out the year, but his master would not let him.* The sessions by quashing the order of removal were, it would seem, of opinion, that this was a service in Dunkeswell. Lord *Kenyon*, C. J. "It is now too late to say that a *constructice service* will not confer a settlement, though I very much doubt whether a greater certainty on this subject would not have been attained by attending strictly to the words of the act; however, in order to preserve an uniformity of decisions, we must adopt the construction which has so frequently been put upon it. But I do not know that it ever has been decided that a settlement was obtained, *unless by construction the relation between master and servant continued during the whole year.* *Rex* v. *Islip*, p. 562, and *Rex* v. *Maddington*, p. 566, which have been relied on, do not govern the present. In the former, the servant did not return until after the expiration of the year, and the facts of that case left the question open, whether or not the relation between the parties subsisted during the whole year? The Court there thought that the master improperly refused his consent, and that though the servant was not in the actual discharge of his duty in his master's house, yet as he was liable to be called into his master's service during the remainder of the year, that he was constructively in that service down to the end of the year. But the present case differs from that; because, during the continuance of a year, a further act was done; when the servant returned after his absence the master not only found fault with him, but refused to take him again into his service; it is true that the servant wished to continue, but both parties did that which put an end to the contract; the one paid, and the other received the wages. After that period the servant was no longer under the control of the master. In *Rex* v. *Islip* the servant was under the master's control during the whole year; he was liable to be called into the master's service whenever the master thought proper; but here the relation between the master and servant was rescinded before the end of the year by the act of both parties; then it is impossible to say that the pauper was constructively in the service after that time. So in the case of *Rex* v. *Maddington*, though the servant left the service three weeks before the end of the year, and went to his friend, because he was not able to perform his service, yet there was no act done during the year to put an end to the contract: afterwards, indeed, when the master paid the wages, he deducted a part of them; but he could not by an act *ex post facto* deprive the servant of the benefit to which he was before entitled. But *Rex* v. *Gresham*, p. 585, is extremely like the present; there the court held, that by the act of accepting the wages, the servant agreed to put an end to the contract. I am therefore of opinion that there could be no *constructive* service in this case, when the parties themselves, by mutual consent, put an end to the relation of master and servant within the year." *Grose*, J. "It is clear, that at the time the wages were paid, both parties consented to put an end to the contract, for it is stated no conversation passed at the time; and though the servant may have wished to stay till the end of his year, he did not communicate that wish to his master. The other fact stated, that he accepted a sum short of the whole year's wages, which shows that it was understood by both that he intended to dissolve the contract." Order of sessions quashed.

If a servant consent to quit, and take the wages

Rex v. *Seagrave*, *Cald.* 247; 2 *Bott*, 448. The pauper was hired from Old Martinmas to Old Martinmas. On September 25th he told his master

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he was going to be married; his master made no answer; he went on Saturday and was married: upon his return he had no intention of quitting his service; the master said he would not employ him any longer; he said he would go if he would pay him his year's wages; the master refused, and said he would only pay him for the time he had served, and asked him if he would take his wages, or go before a justice? his master set out about his business to his farm, when the pauper called him back, and said he would take the money for the time he had served, and *that he parted with his own consent.* The court thought that the last words of the case were so clear and unequivocal a dissolution of the contract, that they would not permit it to be argued.

for the time he had served, it is a dissolution.

Rex v. *Roxby*, 5 *M. & R.* 40; 10 *B. & C.* 51. Order of removal of R. Farmery from Roxby to Winterton, quashed. Case:—The pauper was hired before Old May-day, 1819, (13th of May,) to serve J. B. in Winterton, from the said Old-May day to Old May-day, 1820, as a servant in husbandry, at sixteen pounds wages. He served till the 11th of May, 1820, when, wishing to visit his friends fifteen miles distant, and to attend some statutes on the 12th of May on the way there, and avoid returning back to his master, he requested his master's permission to go altogether: and they settled the pauper's wages, and part was deducted for the time he had to serve. The pauper slept at his master's house, with his permission, on the evening of the 11th of May, and finally left his master's house on the 11th. 1820 was leap-year. The sessions considered this a dissolution of the contract. Lord *Tenterden.* "The question whether this was a dissolution or dispensation was for the sessions, and they have decided it. I should not be disposed to interfere with their judgment, even if I thought it was wrong, which I do not." Order of sessions confirmed. As to the other point in this case, see *ante*, 511.

Settling wages the day before the year ended, is a dissolution; the pauper by his master's permission slept that night at his house.

Rex v. *Grantham*, 3 *T. R.* 754. Read, the pauper, was hired a fortnight after Martinmas, 1784, by N. Leadenham, of Allington, for a year, and entered upon his service, and continued about six weeks, when, with his master's leave, he went to assist his father who was ill, in Allington, with whom he stayed thirteen weeks, when he returned, in consequence of a warrant obtained against him by his master, into his service under the original contract, and continued therein until Sunday evening, three days before the end of the year, when his master came home in liquor, and abused him, and threw him down, and afterwards turned him out of doors. The pauper slept at his father's that night, in Allington, and the next morning his master would have had him return to his service, and stay out the year, but *he refused to go again*, and threatened that, unless he paid him the whole of his wages, he would complain of the ill usage he had received to a magistrate. The master then agreed to pay him his full year's wages, deducting for the thirteen weeks he was with his father; which he took, and then left his service, *contrary to the express request of his master.* Lord *Kenyon.* "The circumstance stated in the case, that this transaction happened only three days before the end of the year, might have led us at first to suppose there was some fraud intended on the part of the master; but none is stated. It has been rightly said, that an *actual* service is not necessary, for that a *constructive* service is sufficient. But the question here is, Whether we can say that there was a constructive service for the whole year? and whether the relation of master and servant subsisted during that time? If the absence be for a reasonable cause, it is immaterial whether that absence be at the beginning, the middle, or at the end of the year. And it has been argued that this was an absence for a reasonable cause, on account of the ill treatment of the master; but here there was no *animus revertendi*, which distinguishes the present from the class of cases alluded to. When the servant was ill used, though he could not have left the service without his master's consent, or without applying to a magistrate to be discharged on that account, yet the master did consent to the servant's leaving him, and both parties agreed to put an end to the contract. If the master had afterwards complained of the

A servant, who quits the service for ill treatment, and refuses to return, though his master required it, dissolves the contract, although the whole wages are paid.

Absence (*absque animo revertendi*), evidence of a dissolution.

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pauper's not serving him for those three days, the latter might have answered him by saying that the contract was dissolved. And if its being absolutely put an end to only three days before the expiration of the year will not defeat the settlement, what line can be drawn with respect to the time of the service which is necessary to give a settlement? If one day or three days may be dispensed with, any other time may be equally so. In some cases, indeed, where it has been equivocal what the transaction really was, and the servant has paused and considered whether he would absolutely quit the service or not, other circumstances have been admitted to explain the absence; but here was no suspense, no *locus pœnitentiæ;* for both master and servant agreed to put an end to the service." *Ashhurst*, J. "Though the master at length consented to give the servant his full wages, that was not intended to operate as a dispensation with the remainder of the service, but as a redemption of his credit."

Same point.

Rex v. *Upwell*, 7 *T. R.* 438. S. Brown, the pauper, was hired at Michaelmas for a year, and continued in the service until within fifteen days before the next Michaelmas, when her master kicked and beat her; she complained to her father of this ill treatment, and *required her master to dismiss her* from his service, under a threat of applying to a magistrate for redress; *her master* then *paid her the whole of her wages*, and told her she might serve the remainder of the year, but she refused so to do, and immediately left the service. When this case was called on, the court said there was no question in it, for it must be considered as an agreement by both parties to put an end to the contract several days before the end of the year, and consequently that the pauper had gained no settlement, and that *Rex* v. *Grantham* was decisive of the present.

Same point.

Rex v. *Corsham*, 2 *East*, 303. Removal from Kington St. Michael to Corsham. Order confirmed. Case:—The pauper's husband was hired by Mr. Dalmer of Corsham, at four guineas per annum, with whom he continued to serve within a fortnight or three weeks of the expiration of the year, when, upon a dispute between him and his master, he, in consequence of his master's kicking him, would not stay, but went to his father's house. In the following week, and before the end of the year, he returned with his father to Dalmer's house, and received the whole of his wages, and 2*s.* 6*d.* over for himself: his master asked him to stay, but he refused, and went back to his father's house. Lord *Ellenborough*. "*Rex* v. *Grantham* and *Rex* v. *Upwell* have decided this. In both there was a payment by the master of the whole year's wages, and a departure from the service before the end of the year against the will of the master; and in both the court held no settlement was gained. There is nothing material to distinguish this case from those, and it is better to abide by them. It is indeed a question of fact, but of fact mixed with law, and the circumstances are stated that we may draw the proper legal conclusion." *Grose*, J. "The payment of the whole year's wages was to prevent an action, and argues no consent to dispense with the service."

A servant, dismissed, applied to a magistrate. He directed her master to take her back or pay the whole wages. He paid the whole wages, and the servant offered herself to others: This is a dissolution.

Rex v. *King's-Pyon*, 4 *East*, 351. The pauper, Alice Wheale, was hired to Mr. Davies, of King's Pyon, to serve him from Old May-day, 1800, to Old May-day following. At the end of eight months she had a dispute with her master about some burnt stockings, and he *dismissed her from his service.* She applied to a magistrate; and instances of neglect were stated, but denied; she was desirous of continuing in her service, but her master refused; and the magistrate ordered her master to take her back into his service, *or pay her the whole of her wages;* he refused to take her again, but paid her the whole of her money, but not some wool which he had stipulated to give her as part of her wages, if she behaved well. *After receiving her wages, she offered herself as a servant to several persons.* The sessions thought this was a dispensation. Lord *Ellenborough*. "We are not called upon to say whether the magistrate had or had not a right to discharge the servant from her service: it is enough that he proposed an option to the master to take the servant back or pay her the whole of her wages. The master refused to take her back, but agreed to pay the

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whole wages, and did pay them ; and the servant showed her assent to the dissolution of the contract by taking the wages, and offering her services to other persons. Both parties gave the magistrate a power of dissolving the contract, by showing their assent to what he directed in that respect. Then, after all this, could the master or servant have maintained an action against the other, the one for not performing the remainder of the service, the other for not employing her during that time ? This is the true question to be considered. I should not wish to carry the idea of dispensation further than it has already been carried, which seems to me to be stretched as far as ingenuity could go upon the false idea that a servant has *a right* to acquire in gaining a settlement. I do not mean to disturb any of the cases which have been already decided ; but I am not inclined to carry the decisions further still from the plain words of the act of 8 & 9 Will. III. c. 30." *Lawrence*, J. " Here is nothing like an abiding in the service for a year." He then referred to Lord *Kenyon's* judgment in *Rex* v. *Thistleton*, p. 580, and *Rex* v. *St. Peter's, Mancroft*, p. 576, and added, " If the pauper be absent with the concurrence of the master, it is a dispensation ; but if the master cannot resume the right to the pauper's service, it is a dissolution." *Le Blanc*, J. agreed.

The master insisting upon it, the servant left his master's house, and afterwards asks a magistrate's order to be received again, or paid his whole wages, and afterwards enters another service, it is a dissolution.

Rex v. *Leigh*, 7 *East*, 539. John Brazier hired himself on the 31st March, 1795, as a servant in husbandry for a year to S. Jones, of Lulsley, for 6*l.* 10*s.* He resided at L. in J.'s service till March 25th, 1796, upon which day, by his master's leave, he went to the mop, a meeting for hiring servants, to seek a new service for the ensuing year. He returned to his master's at three o'clock in the morning of the 26th March, with some ribbons in his hat. In the course of that morning *his master* came to him and observed, " He supposed masters were scarce at the mop and that he had enlisted for a soldier, and *told the pauper he should stop no longer in his service.*" The pauper told his master he had not enlisted (which was the fact), and that he wished to stop his year out. But the master said he would not keep the pauper any longer in his service, and at the same time offered the pauper something less than 6*l.* 10*s.* as wages, which he refused to accept. The pauper said he would have accepted the full year's wages if then tendered to him by his master, but that he had rather have stayed out his year. *The pauper left his master's house immediately* in consequence, *and never returned* to it. On the 27th of March, a summons having been taken out by the pauper, he and his master appeared before a justice, and the pauper applied to him to direct his master either to receive him into his service for the remainder of the year, or to pay him his whole year's wages ; the magistrate verbally directed 2*s.* 6*d.* to be deducted from the year's wages and retained by the master. On the same day the *pauper hired himself to and went into the service of a Mr. Smith.* About a week after he went to Jones for his wages, who paid the full sum of 6*l.* 10*s.* Jones, some days after, applied for a return of the half-crown directed by the magistrate to be deducted, but it was never returned to him. Lord *Ellenborough.* " How can there be said to have been a constant refusal of the servant to put an end to the contract, when he actually entered into another service before the time when his first contract would have expired. That is an insuperable difficulty. His not receiving his wages before the year was out did not vary the case, for he would have received them at any time, if offered. *Rex* v. *Pyon*, p. 588, is almost in terms the same." *Le Blanc*, J. added, " If there was any fraud, the magistrate must have been party to it."

Master consents to servant's leaving his service one day before the end of his year, pays him his full wages, and the servant takes another place : Held, a dissolution.

Rex v. *Maidstone*, 12 *East*, 550. Removal of the wife of G. Langridge, who had deserted her, from Maidstone to Thurnham. Order quashed. Case :—The pauper's husband, at Michaelmas, 1797, hired himself at twelve guineas for a year to S. T., of Thurnham, to serve him as a waggoner, and entered upon his service, and continued in it till October 8, 1798, on which day he was married to the pauper, *and his master consented to his leaving the service*, and paid him his wages. Nothing was subtracted on account of his leaving his master on the 8th of October. On the 9th of October he

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hired himself to and went into the service of one Stone. Michaelmas-day fell on the 10th of October in the years 1797 and 1798. Lord *Ellenborough*, during the argument, said, " The case states that the master consented to the servant *leaving his service;* then upon that statement can we say there is a dispensation ?" He afterwards added, " This is clearly a case of *dissolution;* and that he would not extend the doctrine of dispensation any further than it had already gone." That here " *the master consented to his servant's leaving his service,*" and that there could not be a stronger plea than this by the servant in an action against him by his master for deserting his service." Then he said, " though the opinion of parties is not to be pressed, yet their acts are material, upon the question of dispensation or dissolution." And " here it is stated that after L. had left his first master's service on the 8th, he went on the following day, and which was the day before Michaelmas-day, and hired himself into the service of a new master. Here then is an express renunciation on the part of the master of his rights over the servant two days before the end of the year; and the servant's assent to this is signified by his departure from the service, and contracting the next day an obligation to another master, into whose service he entered immediately, subject to all the rights of the new master over his service. How then can I say, in the words of the statute, that there was a continuing and abiding by the servant *in the same service during the space of one whole year*, when it appears that that period of service was abridged by the last two days of the year ?" *Grose*, J. agreed. *Le Blanc*, J. " I think the sessions would have been well grounded in finding as a fact, that this was a dispensation of the service on the part of the master, and not a dissolution of the contract; for, according to the cases, it is always a question for the sessions to decide, whether the consent of the master to the servant's leaving his service a few days before the end of the year, for a particular purpose, but paying him his whole year's wages, be a dispensation of the service for the remainder of the year, or a dissolution of the contract ? Here the servant wanted to marry, and one entire day before the end of the year the master gave him leave to marry and go away from his service. It was a fair and reasonable conclusion to draw, that if the servant wished to go away one day before the end of his service for the purpose of marrying, the master would have no objection to dispense with his service, and give him a holiday for one day; for the service would have ended on the 9th. But the sessions not choosing to draw this conclusion themselves, which I think they might have done, send the case to us upon the dry facts stated, and have not found that the master did consent to give his servant a holiday, and to dispense with his service for the remaining day of the year, but merely state as a fact, that the master consented to his *leaving his service.* Under these circumstances I cannot say that the sessions have done wrong, though I think they might have drawn a different conclusion." *Bayley*, J. said, " The sessions had done right. In order to constitute a case of dispensation, I think the master should have power to recal the servant to his service all through the year; but where the master agrees generally to let the servant go away from his service, without reserving to himself the right of recalling him throughout the whole year, I think that puts an end to the contract of service altogether."

Pregnant servant discharged by a justice, gains no settlement.

Rex v. *North Basham*, 2 *Bott*, 45, *Cald.* 566. The pauper, in order to avoid a settlement in East Basham, having three days and a half before the end of the year married a female servant big with child by him, went with his master before a justice, to be by him discharged from his service. The master was willing that the pauper should be settled in his parish, and said so before the justice; and the justice, after hearing both parties, discharged the pauper from his service. The master paid him his wages, all but for the three days and a half. Lord *Mansfield.* " This was a discharge before a justice, and it certainly was not fraudulent on the part of the master, for he had no objection to the settlement. It was a solemn discharge by the consent of both parties, and as such, a dissolution."

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A female servant may be discharged by her master for being pregnant, and thereby loses her settlement.

Rex v. *Brampton, Cald.* 11; 2 *Bott*, 444. H. Wright was removed from Ashover to Brampton. Order confirmed. Case:—The pauper hired herself to Mr. Langsdon for a year, and served *till within three weeks of the end of the year, when her master discovering her to be with child, turned her away, and paid her her year's wages, and half-a-crown over;* whereupon she went to her father's at Ashover, from whence she was removed; she was willing to have stayed her year out if she might; but that it was not material to her, as she had received her whole year's wages, and not being half gone with child, she hoped she could have done her work to the end of the year. Lord *Mansfield.* "The 8 & 9 W. III. c. 30, is an explanatory law, and must not be carried beyond the words by construction. It declares that there must be a hiring for a year, and a continuance for a year in that service to gain a settlement. With respect to the hiring in conformity to the nature and object of the act, the court has been critical and exact; but service, from the nature of the thing, admits often of questions upon the circumstances; as, whether the absence was *with leave*, from *sickness, &c.?* But these questions have always been brought to this point, *whether the contract was put an end to within the year?* This cannot be done by dismission of the servant without good and sufficient cause. In *Rex* v. *Castlechurch*, p. 575, there was a discontinuance by agreement, and the contract therefore determined; in such case the payment of the full wages, which might be mere benevolence, could make no difference. The question then is, *is this contract dissolved within the year?* The answer depends upon this, Has the master done *right* or *wrong* in discharging his servant for this cause? I think *he did not do wrong.* The marginal note cited from 18 *Vin. Abr.* 459, whatever degree of authority it may be entitled to, is well warranted in principle. If the master agrees to the contract's going on, the overseers, it is true, shall not take her away because she is with child; but shall the master therefore be bound to keep her in his house; to do so would be *contra bonos mores;* and, in a family where there are young persons, both scandalous and dangerous. Where a servant's absence is said to be *purged* (which is an improper expression) by receiving him again, the receiving only explains and shows the nature of the absence; the consequence of it indeed is, that such reception must generally be considered as amounting to a dispensation, and thereby subjects the master to the payment of the whole wages. But the effect of a positive act of the master, *i. e.* the dismission of his servant under a *criminal* charge, shall never be done away by an implication arising from the payment of the whole wages." *Willes*, J. "This case differs from *Rex* v. *Richmond*, p. 570, nor is it like *Rex* v. *Islip*, p. 562, where the cause of the discharge was not reasonable. Here, if the master had daughters, it would not be fit that he should keep such a servant; though I think he could not avail himself of the authority of a magistrate; the jurisdiction of the justices being confined to cases in *husbandry.*" *Ashhurst*, J. Same opinion. Order affirmed. *Rex* v. *Marlborough*, 2 *Bott*, 423, is to the same effect.

Suspicion of guilt will not justify discharge.

In *Rex* v. *Welford*, 2 *Bott*, 446, where the like decision was made, it is added that the pauper, a man-servant, could not be discharged from his service, on account of a *supposed* criminal intimacy with a female servant in the same family. *Secus*, if the criminality had really existed. See tit. "**Servants.**" Vol. V.

A servant apprehended on a charge of bastardy, and detained some days from his service, gains no settlement.

Rex v. *Westmeon, Cald.* 129; 2 *Bott*, 447. R. White was hired on the 11th of October, 1779, to J. Gibbs, for a year; he entered on the same day, and continued in his service till the 6th October following, when he was apprehended as the father of a bastard child, then six months old: he was carried to an inn, and kept in custody by the parish officers till the 10th October; his master, on 6th October, settled with him at the inn, saying, that he might not see him again, and deducted 1*s.* out of his wages, on account of his not serving the whole year; "though he said he had no objection to the pauper's gaining a settlement, yet perhaps the other farmers might:" he did not in any other manner assent to or dissent from the pauper's absence: nor did the pauper, *after his being so taken, return*

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to his said service. Lord *Mansfield.* "It is not necessary to enter into the question how far this is a crime, because the master has not discharged the pauper upon that ground: that it is wrong and an offence no man will deny; but whether to be animadverted upon both by the ecclesiastical and common law, is not material here: to be sure, it was not punishable as a crime at common law: and the statutes seem only to go to the punishment of the parents for the purpose of securing an indemnity to the parish. But here this offence is not assigned as the reason for discharging the servant; and if it were, I have no difficulty to say, that I think a master hiring a servant after an offence committed, and that not in his own house, shall not at the close of the year discharge him under this pretence: it is not a debauching of his servant, or turning his house as it were into a brothel. I do not go on that ground, nor upon the consent or implied agreement to go before the end of the year, for there was none: it was against the intention of both parties that it should affect the settlement; and if the case were to go upon that, it ought to be returned to the sessions to have that fact stated; there was no fraud intended, because there was no agreement; nor did the master either mean to prevent or promote the settlement; but he deducts a something to leave that question open, which it was the object of other persons who were interested to have discussed. The true point then is, supposing no wages paid and no agreement, here are four days wanting in the service, and it is by means of his own act that he becomes incapable of completing it. His conduct is an offence against morality and the laws, in what jurisdiction soever those laws are administered; and the consequences of it are equivalent to a wilful absence: I therefore think he did not gain a settlement: it is well put, that had an action been brought for his wages, he could not have recovered for these four days."

Absence through misconduct is equivalent to wilful absence.

Commitment of servant as a putative father, interrupts the service.

Rex v. *North Cray*, 2 *Bott*, 450; *Cald.* 562; 4 *Doug.* 243. The pauper, who was absent nine days before the expiration of his service under a yearly hiring, was charged on oath with being the father of a bastard child not then actually born: he was apprehended by warrant, and committed for want of security, October 11th; the last day of his year he gave a bond of indemnity to North Cray; his master was one of the overseers; the pauper was discharged from prison by an order of magistracy, and the master paid him all his wages, except for the time of his imprisonment, Lord *Mansfield.* "There was no evidence of the master's consent." And by the Court, "There is no actual service, and the pauper was absent through his own criminal act." (See *Taunton*, J., *Rex* v. *Coningsby*, p. 573.)

A servant, to avoid an order of bastardy, absconds with his master's privity. In nine days he returns and *agrees* to work with his master again, and at the end of the year receives the balance of the whole wages, *minus* 2*s.* 6*d.* for the absence. No settlement was gained thereby.

Rex v. *East Kennett*, 2 *Bott*, 452; *Cald.* 562. The pauper was serving under a yearly hiring from Michaelmas, at 7*l.*, and hearing in May following that there was a warrant out against him for getting a bastard child, told his master he must be off, and asked him for money to go off with; his master gave him three guineas and a half; he ran away, leaving some clothes and his threshing tackle; two or three days after, he was taken up, and obliged to marry the woman. After nine days' absence he returned to his master's house for his clothes, &c.: the master said to him "Where are you going?" The pauper answered, "I do not know;" upon which the master said, "You may as well work for me again as any other." The pauper agreed, and continued to work there without any fresh agreement, and at the expiration received, including the 3*l.* 13*s.* 6*d.* his 7*l.* wages, all but half-a-crown, which the master deducted for his absence. The pauper, when he ran away, never thought of going back to him, but considered himself discharged. Lord *Mansfield*, C. J., adverting to the concluding part of the case, said, "It showed the fact, though it did not alter the law. The servant desires to be off. How off? His service. He received his wages, and if not the whole, it was on account. He goes back, not on the old contract, but for his clothes, and a new agreement takes place. No settlement was gained."

Such absence may be cured.

In *Rex* v. *Kenilworth*, 2 *T. R.* 598, *Buller*, J., said, "The circumstance of the pauper's having been apprehended on a charge of bastardy, I lay

out of the question; for it was competent to the master to receive him again after he was discharged out of custody, if he pleased." (*a*)

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Rex v. *Preston*, *Burr. S. C.* 69. A person served under a hiring his whole year within five days, and then left his master by consent, the parish officers having first given him two guineas to leave the parish, he being about to be married. The justice held this to be no settlement, and stated the case specially. It was objected that this departure was fraudulent. By the court: "The justices might upon evidence have examined into that point; and if they had thought that this departure was fraudulent, they would, without question, have stated it to have been so; that not being done, we cannot intend any fraud, nor that the party hath gained any settlement, it being agreed on all sides that he hath not served his year." But they decided the case upon a defect in the order.

If fraud be not found by the sessions, the court will not act upon such an imputation.

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4. The Place in which the Settlement is Acquired.

4. *The place in which the settlement is acquired.*

Although the law requires a hiring for a *year*, and a service for a *year*; yet a *residence* for *forty days* in any particular parish or place, during such hiring and service, will complete the settlement. But as a servant may during a hiring and service for a year reside forty days in several different parishes, it is held that the settlement will be in that parish where he *last* completes a forty days' residence.

Forty days' residence necessary to a settlement.

A residence for less than forty days in a parish will not gain a settlement. In *Goring* v. *Moltsworth*, *Sess. Ca.* 327; *Sett. & Rem.* 219; 1 *Barnard.* 436; a person hired for a year, served the year with a master living at Goring, and who kept a boat, which navigated from Goring to London, but the servant was not forty days in the whole year at Goring, but served out the year on board the boat. By the Court: "This was no settlement at Goring."

They need not be continuous.

Greenwich v. *Longdon*, *Burr. S. C.* 243; 2 *Bott*, 398 G. Wall was hired and served for a year as a livery servant to Saunderson, commander of a yacht, who had a house and family at Greenwich, and resided there when not on the king's service. His master made frequent voyages to Holland, and he always attended him, and he was never forty days together at Greenwich, but during his service he was there forty days' at different times. By the Court: "It need not be forty days altogether; it is sufficient if within the year he reside forty days in the whole."

But must be within the compass of a single year.

Rex v. *Denham*, 1 *M. & Sel.* 221. Order confirmed by the sessions for the removal of C. Tranter. Lord *Ellenborough* delivered the judgment. "The question was, whether it was necessary there should be forty days' residence within the compass of a year, or whether, if the service were for several years uninterruptedly, a residence of forty days within those several years would be sufficient? The facts were these; the pauper was hired for a year to Smith, and served that year; at the expiration of which he was hired to him for another year, and served half of it; and during that year and a half he was resident in B. for forty days, but he did not reside in B. for forty days either within the first year or within the half year, nor (as was admitted) within any one period of a year whilst he continued with Smith. The sessions were of opinion, that this residence was not sufficient, and we think their opinion right. By 13 & 14 Car. II. c. 12, s. 1, poor persons coming to settle in any parish, if likely to be chargeable to the parish, may be removed within forty days after they so come to settle as aforesaid; and it is under this act that forty days' residence is required. By 1 Jas. II. c. 17, s. 3, the forty days' continuance shall be accounted from the delivery of notice in writing to one of the officers of the parish to which such poor person removes: which notice, by 3 & 4 Will. & Mary, c. 11, s. 3, is to be read in church the next Lord's day, and registered in the book kept for the poor's accounts. By the same statute if any

History of the forty days' residence.

(*a*) In *Rex.* v. *Kenilworth*, 2 *T. R.* 598, *post*, it was said that "If the law intervenes and disables a person from completing his contract, it puts an end to the contract,"—a doctrine not quite consistent with the cases cited p. 571, 2, 3.

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unmarried person, not having child or children, shall be lawfully 'hired into any parish or town for one year, such service shall be adjudged a good settlement therein, though no such notice in writing be delivered and published as aforesaid.' And by 8 & 9 Will. III. c. 30, s. 4, 'No person so hired as aforesaid shall be adjudged to have a good settlement in any such parish or township, unless such person shall *continue and abide* in the same service during the space of *one whole year*.' Upon these clauses settlements by hiring and service now stand. It has been decided that so as there is a hiring for a year, and service for a year, it is not necessary the whole of the service shall be under the yearly hiring, but service not under a yearly hiring may be connected with service under a yearly hiring, and both services if uninterrupted may be taken into the account: but it has never been decided that residences beyond the compass of a year can be connected; and as the legislature, by requiring a hiring for a year, and a continuance and abiding in the same service during the space of one whole year, seem to have contemplated something which was not to be complete in less than a year, but was to be complete within that period, we think we abide most closely by the words, and give effect to the most probable intention of the legislature, by holding that the whole residence must be within the compass of a single year. Suppose the same service to continue uninterruptedly for twenty years, and the servant to sleep twice in every of such twenty years at the same inn in travelling, and to be at that inn the last night of his service, would it be expedient and reasonable that an inquiry extending over so long a period of time at detached intervals should be gone into for the purpose of ascertaining the settlement of a pauper? What notice could the officers of that parish have had that he was come to settle there? And yet there his settlement would be, if we were to hold that residence for forty days beyond the compass of a single year would do."

The whole service need not be under the yearly hiring.

The forty days' residence need not be under the same year's hiring.

Rex v. *Findon*, 4 *B. & C.* 91; 6 *D. & R.* 116. W. Steff was removed from Bedgrave to Findon. Order confirmed. Case:—The pauper continued in Mr. Ventris's service, under successive yearly hirings, from the 2nd November, 1807, until the 2nd November, 1811, when the pauper was again hired by Ventris for another year. The pauper served his master at St. Peter's in the East, Oxford, from the 2nd November, 1811, until the 14th April, 1812. He then accompanied him to several places until the 2nd November, 1812, when he was again hired by Ventris for another year, and he travelled about with his master until the 20th December, 1812, on which day they arrived at Findon (the appellant parish) where they continued more than forty days, and afterwards he accompanied his master to St. Peter's in the East, where they continued from the 25th February up to 2nd April, 1813, a space of thirty-eight days, and on the 2nd April, 1813, left Oxford for Beeding, where they continued until the 2nd May following, thirty days, when they parted by mutual consent. *Abbott*, C. J. "The settlement of the pauper is clearly at Oxford: he was undoubtedly settled there on the 2nd April, 1813, having resided there more than forty days within the last year of his service, and gained no subsequent settlement. It is not necessary that the whole of the residence should be under the last year's hiring." *Bayley*, J. "I think this point was in effect decided in *Rex* v. *Denham*, p. 593, and *Rex* v. *Flamboro'* which was before the court in 1819. It has never been decided that the forty days' residence must be under the last year's hiring. In *Rex* v. *Apethorpe*, p. 554, it was held that part of the residence must be under a contract of yearly hiring." See *Reg.* v. *St. Pancras*, p. 476.

If the forty days' residence are within the compass of a year they need not be within one year from the yearly hiring.

Rex v. *Child Okeford*, 3 *Bar. & Ad.* 809. E. Miller was removed from Child Okeford to Marnhull. Order quashed. Case:—On the 17th April, 1825, the pauper was hired to serve Mr. J. Rossiter, in Child Okeford, as a servant in husbandry, at five guineas a year. He served him under that agreement till the 11th of April, 1826, when the pauper made a fresh agreement with his master, at 5*s.* a week as an out-door servant, and served him under this second agreement for upwards of two months. The service was never discontinued nor was the nature of it changed except as to the pauper becoming an out-door servant from the 11th April, 1826. The

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pauper resided from the 17th April, 1825, till the 3rd May following, in the parish of Child Okeford. On the 3rd May, 1825, he accompanied his master to and resided in that of Marnhull, till the 6th April, 1826, when he returned with his master to Child Okeford, and resided there during the remainder of his service, under the first agreement from the 6th to the 11th April, and under the second agreement upwards of two months. Lord *Tenterden*. "The authorities establish, that in order to gain a settlement by hiring and service, some part of the forty days' residence must be while the party is serving under a yearly contract. It is now sought to add another term to that, namely, that the whole forty days' residence shall be within a year from the time of the yearly hiring. *Rex* v. *Denham*, (p. 593), does not go so far. Nothing was said in that case as to the time when the computation of the year was to commence. Lord *Ellenborough* there dwells upon the inconvenience which would result from picking out a few days' service in several years, and thus extending the inquiry in a case of settlement through an unreasonable period of time; but all that is decided there is, that to give a settlement by hiring and service, there should be forty days' residence within the compass of one year. It is not said that that year is to be computed from the time of making the yearly contract. There is no ground for holding that it must be so reckoned." *Littledale*, J. "It is sufficient if the forty days' residence be within the compass of a year; it need not be within one year from the yearly hiring." *Parke*, J., having been present only during a part of the argument, declined giving any opinion. *Taunton*, J., concurred. Order of sessions confirmed.

If the last forty days' service be in different parishes, the settlement is where the servant *lodges* the last night.

Lowess v. *Lanstephan*, *Burr. S. C.* 825; 2 *Bott*, 404. The pauper was hired for a year to J. Williams, of Lanstephan, where his master occupied his own estate. He continued with his master in Lanstephan till some time before St. Peter's Tide, when his master and family removed to Lowess, in which parish his master rented another farm. He continued with his master in Lowess till the 16th of January following, when his master and family removed to Lanstephan, and his master afterwards constantly resided there. But the pauper was sent back by his master to Lowess to thresh the corn and look after his master's cattle. The pauper staid in Lowess two or three nights and days, and ate and lodged there; and then returned again to Lanstephan in like manner as aforesaid; and so continued between the parishes to the end of his year, which was the 17th May following. The pauper never continued forty days together in either of the two parishes after the said 16th January, but lived and resided as aforesaid more than forty days in the whole in each. He believed he resided most at the latter part of his service in Lanstephan, and *lodged* (*a*) there the last night; and went from thence in the morning to Lowess, and took some cattle of his master's from thence to the Hay-fair, where he finished his service. The court held him to be settled in Lanstephan.

(*a*) See *Rex* v. *Ringwood*, *post*.

Same point.

Rex v. *Hulland*, *Doug.* 657; *Cal.* 118; 2 *Bott*, 406. A person who has resided part of the year in one parish, and part in another, at different times and intervals, making when added together more than forty days in each, is settled in the parish where he lodged the last night.

Although the last forty days was after marriage.

Rex v. *Iveston*, *Cald.* 288; 2 *Bott*, 407. The pauper was hired for a year to serve as a collier; he resided at Kyo from Martinmas, when he was so hired, till the May-day following, when he married; about fourteen days after his marriage, he took a cottage in Iveston, and without the privity of his master, removed thither from Kyo with his wife, where they continued about forty days, and until about fourteen days preceding the expiration of his service, and then they *returned* to Kyo. The court thought this case similar in principle to *Rex* v. *Hulland*, and precisely to that of Lowess, and that they ought to be adhered to: and the settlement was therefore in Kyo.

In *Rex* v. *Great Bookham*, *Cald.* 290; 2 *Bott*, 407, *n.*, the same point was considered as fully settled.

If a yearly servant serve forty days in A., then go with his mas-

Rex v. *Undermilbeck*, 5 *T. R.* 387. Removal from Undermilbeck to Dalton. John Dixon, late husband of the pauper, was hired for a year, and entered upon his service in April, 1783, and continued with his master till

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ter's leave to B., his father's parish, and there remain above forty days, then go to another parish to work for his master, and then for the last three days sleep in B., his father's parish, he gains a settlement in B.

December following, when his master, having little to do in the winter season, gave him leave of absence for six weeks to work for himself wherever he pleased, allowing 15s. out of his yearly wages. Dixon then went to his father's house in Sawrey, and continued there seven weeks, being one week longer than he had leave for. About that time his master contracted with one Braithwaite, that he and his servant Dixon would assist Braithwaite in making some fence walls in Pennington, where Dixon continued working with his master above forty days, the same being till within about three or four days of the end of the term, when he went away again to his father's house in Sawrey, with his master's consent; and whilst he so continued in Sawrey, the year's service with Bowness expired. During the time that Dixon worked in Pennington he slept at Dalton, but never worked a day's work in Dalton. When Dixon went the last time to his father's house in Sawrey it was on the Saturday, and his year's service would not have expired till the Tuesday following. On the Monday morning he went to make up some fence-wall on his father's account in Sawrey, but was taken ill that afternoon, and continued out of health for some weeks afterwards. Dixon afterwards went to his master, who paid him his wages, deducting 15*s.* for the six weeks' absence, and 2*s.* 6*d.* for the other week he was absent more than agreed for. It was argued that the residence in Sawrey for the last three days could not be connected with the former service in that place, because *Dixon did not serve there at all during those three days*, therefore the last forty days' service was in Dalton. Lord *Kenyon*. "It has been properly admitted that the contract was not dissolved by the servant's absence for seven weeks, because the master consented to it, and received part of the servant's earnings; and as the service continued in contemplation of law during the whole year, I think the servant was settled in Sawrey, where he slept the last night, he having before that time served there forty days in the course of the last year. For it has been decided, after much argument, that the last day's service may be connected with any preceding service in the same parish, notwithstanding any intervening service elsewhere for forty days."

A settlement may be gained by service in a parish where the master never lives.

St. Peter's in Oxford v. *Chipping Wycomb*, 1 *Stra.* 528. The master of the Oxford stage-coach hired a servant for a year, to stay in an inn at Wycomb where the coach baited, and to take care of the horses; he lived there for the whole year, and the master all the while lived in Oxford. The question was, where that servant gains a settlement, or whether any by that service? And by the whole Court:—"He gained a settlement in Chipping Wycomb, though his master never lived there."

The settlement is at the place of the last forty days' service, though the master is not settled there.

Bishop's Hatfield v. *St. Peter's, St. Albans, Fol.* 197; 2 *Stra.* 794. Langley was huntsman to Mr. Arnold, who lived sometimes in Westminster and sometimes in Northamptonshire, but Arnold had no settlement in St. Peter's; Langley served the last forty days of his year in St. Peter's with Arnold. The Court of King's Bench held Langley's settlement to be in St. Peter's, by serving Arnold the last forty days of his year there, though Arnold had no settlement there.

So a person hired as a groom to running horses, and going from place to place to take care of them, will gain a settlement by residence at the last place, though his master had neither house nor estate there.

Rex v. *East Ilsley, Burr. S. C.* 722; 2 *Bott*, 402. The pauper was hired for a year, and so for two years afterwards, successively, to the Earl of Portmore, to look after his running horses; and during the three years removed from place to place with the horses, the last ten months of which time he resided with the horses at East Ilsley, which was a public place for exercising and training running horses; the earl had no house in East Ilsley, nor any estate there. The question was, whether a groom, residing at a public place, where his master had no house or estate, merely for the purpose of training running horses, should gain a settlement at that public place? And the Court were unanimous that this was a good settlement.

Residence of a yearly servant with his master at a sea bathing place for forty days confers a settlement.

Rex v. *Bath Easton, Burr. S. C.* 774; 2 *Bott*, 403. Thomas King, the pauper, was hired as a covenant-servant for a year to Mr. Robinson, who then resided at his house at Bath Easton, as his only place of general residence. He entered upon the service, and served the year and some months. He served the first part of the year at Bath Easton, but about the latter end

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of April, 1764, he attended Robinson with the rest of his family to Exmouth, where Robinson went for sea-bathing. Robinson hired by the week, at fourteen or fifteen shillings by the week, the whole of a small lodging-house at Exmouth, which belonged to an innkeeper, who kept it ready furnished solely for the purpose of letting it to strangers; in which he stayed for the space of ten weeks; during the whole of which time the pauper served him there. Robinson then hired by the week lodgings in another house in Exmouth, being obliged to quit the former on account of its being engaged to a lady and her niece from London, who came to Exmouth for the same purpose of sea-bathing. He stayed at the last-mentioned lodgings, and the pauper with him, for the space of two months, except an absence of about three weeks on an excursion into Kent, where the pauper attended him; after which he returned to Exmouth, and the pauper with him, who continued in his service at Exmouth till his master discharged him, just before his leaving that place, and returning to his residence at Bath Easton, which was when he gave up the lodgings last-mentioned, at the expiration of the said space of two months. Exmouth is a place generally resorted to by persons from Exeter and London for sea-bathing: but merchants also resort to it from Exeter as to a village. Lord *Mansfield.* "This was a common hiring for a year: there is nothing particular in it. And in the case of a common hiring for a year, a service with the master gains a settlement to the servant in the place where the last forty days of such service were performed. Here the service with the master for the last forty days ended at Exmouth. There was no continuance of service with the master after the master's return to Bath Easton. In *Alton* v. *Elvetham* (*a*), there were many particular circumstances: the servant was born at Elvetham under a certificate from Alton, and could not gain a settlement there by his original hiring and service in that place; nor without a discontinuance of it, and a new subsequent hiring. But no discontinuance ever happened in that case; the service did not end at Scarborough,—it continued. The servant at Scarborough proposed a new agreement for another year; his master said, it would be time enough when they returned home to Elvetham; whereupon the servant continued on for about six weeks until they returned to Elvetham, when he was again hired by his master for a third year, and served it out at Elvetham, and continued in his master's service for seven years more in Elvetham. So that it was a continuation of the original hiring; the contract did not end at Scarborough. The question, therefore, in that case was, whether serving his master, who resided at Scarborough as a sojourner, for about forty days, should gain the servant a settlement there, when his former hiring at Elvetham was not discontinued nor ended at Scarborough, but, on the contrary, continued and went on until and after their return to the master's general residence at Elvetham; but that case does not lay it down generally, that no servant can gain settlements at places where people go to drink waters, though they serve their masters or mistresses there for forty days; if it does, it is wrong; for no such general rule ought to be laid down. We are all of opinion that this servant who went with his master to this place, and served him there for the last forty days of his service, which ended at this place, and was not at all continued at any further time or place, is legally settled there by serving the last forty days at it." *Willes*, J., strongly declared his assent to this opinion; and added, "that he hoped it would be understood, that serving a master forty days at a public place gains a servant a settlement at that public place." *Rex* v. *St. Peter's in Oxford* (p. 596); is to the same

(*a*) The judgment in *Alton* v. *Elvetham*, *Bott*, 400, which may be considered as over-ruled by the above case, so far as it supported the doctrine as to a distinction between residence at a watering place and any other place, is as follows. Lord *Mansfield.* "This was an order made for the removal of the wife of the pauper from Elvetham to Alton. The sessions state these facts: Alton, in 1722, gave a certificate to the father of the pauper to Elvetham; under which the father went to Elvetham, and has dwelt there ever since; the pauper

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A hiring may be in an extra-parochial place, and a

effect, and will be found in its most correct form in the judgment of Lord *Mansfield* in *Alton* v. *Elvetham*.

Rex v. *St. Andrew's, Holborn*, 2 *Bott*, 408. The pauper, W. More, was removed from St. Andrew's, Holborn, to Aston-juxta-Bridworth. Order quashed. Case:—The pauper, about 1760, became a yearly servant to Mr. Squire, an attorney in Furnival's Inn, London, with whom he lived about eight years. The usual place of Mr. Squire's residence was Furnival's

and other children were born there. The pauper, on the 29th of August 1734, was hired for a year as a covenant-servant by Sir Henry Calthorpe, at Elvetham, and served that year out in that parish; that at the expiration of this year, he was hired again as a covenant-servant by him for another year, and served that year; but it happened that the last forty days of the second year were at Scarborough, in Yorkshire; that he did not, at the end of the year, quit the service, but on the 29th of August, 1736, he applied to his master to make a new agreement for another year, when the master said it would be time enough when they returned home to Elvetham; whereupon he continued for about six weeks with his master at Scarborough, when they returned home to Elvetham; then he was hired for a third year, and served that year out at Elvetham, and continued in his service for seven years more, and his wages were advanced every year; and afterwards he quitted that service, and married, and had four children, mentioned in the order. The justices considered him serving altogether in Elvetham, and that he could not gain a settlement there. It has been contended that they were in the wrong, for he ought to be considered as having gained a settlement at Elvetham, notwithstanding the certificate. That is not contended for directly, because service for a year of a certificate person will not gain a settlement; therefore it is indirectly contended for that he had gained a settlement. His master goes (probably for his health) to Scarborough, and happens to stay there forty days; and it is contended that the servant then gained a settlement at Scarborough, which discharged the certificate, and that he afterwards gained a settlement at Elvetham. The general question is, whether this accidental service of forty days at Scarborough acquired a settlement to the servant? It is immaterial whether the master has or has not a settlement in the place where the service is, because that will not prevent the servant gaining a settlement; but the objection here is, whether the forty days at Scarborough are to be considered barely as a continuation of the service at Elvetham or a new *bonâ fide* service at Scarborough? There are several cases where a servant, though locally absent, may yet be considered as continuing his service in the place to which he was hired. So if a servant was ill, and went to Bath, by the consent of the master, that would be a continuation of the service. Therefore the consideration here is, of convenience and inconvenience, of justice and injustice, which will have great weight, unless there are authorities which stand in the way. I will consider this, first, under the circumstances of the case; then, secondly, I will consider the authorities. The general ground upon which this must be determined, if there are no authorities, is this: substantially, the master lived at Elvetham; he hired his servant to be a servant there; the parish was jealous of the servant coming in there, and got a certificate from Alton. Sir Henry happens to go to Scarborough, as a sojourner for a particular purpose, not as an inhabitant. When they are to make an agreement for a third year, they both consider themselves as absent from home. It would be perilous for these public places of resort, if such a service were to gain a settlement. Besides, what fraud would be brought upon parishes, if settlements might be gained in this manner, when a parish trusts to certificates? Suppose a person in service has an accident upon the road by breaking a leg, and he stays forty days at a place, shall that be a settlement? Suppose he stays forty days with his master, in a sea-port, being wind bound, would that gain a settlement? The master's abode here is at Elvetham, which I lay great stress on. The domicile (as the civilians call it) of Sir Henry was not at Scarborough. I shall next consider the authorities cited, the principal of which was *Rex* v. *St. Peter's in Oxford*. The court will pay regard to former determinations for the sake of certainty. But if an authority were single, and plainly productive of inconvenience, the court will, in such case, over-rule it. But the present authority does not at all contradict the doctrine I have been laying down. This case was cited to show that a passage of transitory residence might gain a settlement. I shall state the case as it is in Strange, where it is said, that in the case of Rufford it was not doubted, but that hiring into an extra-parochial

Inn, but he used frequently to go to Bath for his health, when the pauper always accompanied him. His stay on those occasions was sometimes four or five months together. He was always in lodgings there, and generally on the South Parade, in the parish of St. James's in Bath. During the three last years, Squire resided rather more at Bath than at Furnival's Inn; and the last time the pauper was at Bath with him, Squire stayed several months in his lodging on the South Parade. The pauper quitted Squire's service in May, 1766, having resided about four months previous thereto in Furnival's Inn: Furnival's Inn is an extra-parochial place, no township or vill within the meaning of 13 & 14 Car. II. c. 12, and no removal had ever been made to it. Lord *Mansfield.* "It appears that Furnival's Inn is not a vill within stat. 13 & 14 Car. II. c. 12. The hiring there lays the foundation for a settlement, but none can be gained there. You must look back to the last place except Furnival's Inn, where forty days were served;

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settlement may be gained by a service under it in a parish or township; and if the master and servant be at a watering-place during the last forty days, a settlement will be gained there.

place would gain a settlement. And so *Powell*, J., somewhere said, that if a servant were hired for a year in Ireland, and the service were performed here, it would gain a settlement. But here I cannot but observe, that it is a great pity that cases should get abroad under the sanction of great names, which being taken from notes that gentlemen took only for their own use, and not by any public officer appointed for that purpose, are incorrect often in the state of them. The present case, as reported in Strange, is most certainly misreported. It is stated that the pauper was hired for a year into Christchurch, without saying how or under what circumstances her mistress lived there; and that her mistress went upon a visit to Fawley-court. Now her mistress being a single woman, could not possibly have any abode in Christchurch, but as a visitor or friend. And it is further said, that the only doubt was, whether the settlement gained at Christchurh was superseded or not? That could not possibly be so. For she could by no means gain a settlement in Christchurch, which was not only an extra-parochial place, but a single house only, having been once a monastery, being in the nature of one of the king's palaces, which may be extra-parochial. I mention this, to show the incorrectness of cases, which cannot be relied on. This case is also in *Foley*, 215, and *Cases of Settl.* 139, reported differently. But all of them together may serve to help us to the truth, and which, upon inquiry, I find to be this: Mrs. Cook, the mistress of the servant, had two daughters, one married to Dr. Clavering, dean of Christchurch, the other to Mr. Freeman, who lived at Fawley-court; and as she lived alternately with these two gentlemen, her sons-in-law, and was as much at Fawley-court as at Christchurch, and (as I observed before) it was not possible the servant should be settled at Christchurch, because it was an extra-parochial single house. This was, I think, the only material case cited at bar; but there is another which I have had mentioned to me, *Bishop's Hatfield* v. *St. Peter's in St. Alban's* (p. 596), where a huntsman was hired by one M. Arnold, who lived sometimes in Westminster and sometimes at Northampton, and the servants resided, where the hounds were kept, at St. Alban's; and the only question was, whether the servant could acquire a settlement there by such service, as his master had none? and there was no doubt but he could, for he came exactly within the case of a stage-coachman, who was hired to serve at Wycomb, though the master lived at Oxford; where it was held, that the servant's settlement does not at all depend upon the master's. But that case was very different from the present; for the question was not, whether there was a continuance of service with the master in Westminster or Northampton, but he was settled by living in that place with the hounds; and the master, I suppose, might be probably a member of parliament, and might have a house to go to for hunting merely, which is a very common case in the neighbourhood of London. However, there is no precision in the case on which the court can rely; and upon the whole, I think it not at all inconsistent with our present resolution, which is, that in the present case the whole of the service was only a continuation of the service at Elvetham. However, I would have it observed in the present case, that I lay great stress on both the master and servant considering Elvetham as their home, as also upon the precedent and subsequent service, and upon the circumstance of the certificate. There was another objection at bar, but not relied on: that it does not appear but that the husband may be living, and he is not removed, and may have gained a settlement since. But this the court will not presume. If he be living, they must remove him after to his family." And both the orders were confirmed.

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that place is Bath; and it being now settled that settlements may be gained at watering-places, the settlement was gained there, notwithstanding the *Scarborough case.*"

Service with the same master, but not in the same place where the hiring was, will gain a settlement in the last place.

Rex v. *Ashton, Fol.* 88; *Sett. & Rem.* 23; 2 *Bott*, 388. A servant was hired for a year in Ashton, where she served half a year; then her master, and she with him, removed to Patshall, where her master took another farm; the servant continued with him in Patshall for the other half year. By the Court: "Here is what the act requires, a hiring for a year, and service for a year; for it is the same service, and the statute doth not tie it down to one place. If a person is hired to a master in one parish, and goes with him into another, and serves him for one whole year, the parish he continues last in for forty days before the end of his year is the place of his settlement; and the reason why the forty days gain a settlement is, because he comes there with his master, and you cannot remove him from his master; and having continued with him forty days unremovable, he gains a settlement."

It is not necessary that the servant should lodge at his master's house.

Rex v. *Whitechapel*, 2 *Sess. Ca.* 114; *Fol.* 146; 2 *Bott*, 393. A person was hired for five years to work at a glass-house in Whitechapel, at the rate of 10*s.* a week; but never lodged with his master in the house at any part of the time, but at another house in the parish. By the Court: "He has gained a settlement there; for being hired to serve above a year, and having served and resided in the same parish pursuant to such hiring, he hath fully complied with the statute, and it is not material where he lodged, so that it were within the parish."

Where a person, during his service, marries, and then lodges with his wife for the last forty days in another parish than that where his service is performed, he nevertheless gains a settlement in the parish where he lodges. And this, though it was unknown to the master where he lodged.

Rex v. *Hedsor, Cald.* 51; 2 *Bott*, 405. Bemoval from Little Marlow to Hedsor. The pauper was hired for a year to Lord Boston, and served him as a gardener for several years in Hedsor; ninety-five days before the end of the fourth year he married a woman of Little Marlow, and from the time of his marriage until the end of that year's service he lodged with his wife in Little Marlow forty nights, but not successively, but did not lodge for forty nights elsewhere after his marriage. It did not appear that Lord Boston had any property in Little Marlow, nor where the pauper lodged the last night of the year's service in which he married. It appeared that he did not see Lord Boston within that year in which he married, nor had any consent to be absent those forty nights; and that he never performed any service in Little Marlow on account of his master; that he continued to serve Lord Boston several years after his marriage. It was urged if a servant continued forty days in a parish in *his master's service*, the reason he gained a settlement was, his coming into such parish *with* his master; but the court would not permit the servant to gain a settlement where his master had no property, and without his consent or knowledge, and clandestinely with respect to his master, and in fraud of the parish, who might not know where he slept, and therefore could not remove him. In reply, a variety of cases were cited to show that a man is settled where he lodges the last forty days, although not successive. Lord *Mansfield*, C. J. "The cases seem to have settled it."

Rex v. *Nympsfield, Cald.* 107; 2 *Bott*, 405. The same point was given up as being settled.

It is not necessary that the residence should have relation to the duties of the servant.

Rex v. *Dremerchion*, 3 *Bar. & Adol.* 420. J. Williams and family were removed from Northop to Dremerchion. Order confirmed. Case:—The pauper, J. Williams, hired with one W. Evans for a year from the 1st of May, 1819, to the 1st of May, 1820, and served with him for a year, residing in Dremerchion from the 1st of May, 1819, until November in the same year, when he married. From that time he resided on the week days from Monday to Saturday evening at his master's house in Dremerchion, during which time he was working for his master; but Saturday night, the whole of Sunday, and until Monday morning, the pauper passed with his wife in St. Asaph parish. The pauper's year expired on Sunday, the 30th of April, 1820. He had slept the night before in St. Asaph, and he slept there that night (Sunday night) also, and on Monday morning he returned to his master's residence in Dremerchion, and commenced working as a day-

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labourer. The contract of hiring was agreed by the pauper and his master not to be dissolved by the marriage in November, 1819. The pauper slept more than forty nights during the year in St. Asaph, but no part of the time passed in St. Asaph was in furtherance of the service, being only allowed by the pauper's master as an indulgence, nor was there any service in fact performed by the pauper for his master in St. Asaph. The question was, whether the pauper was settled in Dremerchion. Lord *Tenterden*. "There is a distinction recognised in several cases between apprentices and hired servants. The last parish in which the servant completes a forty days' residence is that in which he is settled. But as to apprentices, the residence must be in furtherance of the contract of apprenticeship. The 7th and 8th sections of the 3 Will. & Mary, c. 11, are differently worded; the seventh provides that if a party be hired into any parish, such service shall be a good settlement; the eighth requires a binding and inhabitation in the parish. Why there should have been such a distinction I do not know, but it has been made. *Rex* v. *Hedsor* (p.600) is a stronger case than this; there the sleeping out of the master's parish was without his consent." *Parke*, J. "It is clearly established that a servant is settled in the parish where he sleeps for the last forty days of his service. Here it is agreed that there was no dissolution of the contract." *Littledale*, J., and *Patteson*, J., concurred. Order of sessions quashed.

A servant obtained a settlement in the parish where he had lived and served his master ten months, and not in the parish to which he had been sent as a lunatic, and in which he had resided the last two months of the year's contract.

Rex v. *Sutton*, 5 *T. R.* 657. Case:—H. Boardman, the pauper, was, about Christmas, hired for a year by Mr. Kerfoot, of Great Sankey, to serve in husbandry for 7*l.* 10*s.*, and 5*s.* more in case the master approved of his service. He continued in that service until by the visitation of God he was deprived of his reason in November following, when his father fetched him away to his own house at Bold, and in two or three weeks afterwards he received the wages of 7*l.* 10*s.*, but not the 5*s.*; and the father afterwards kept him at home as part of his family for about ten years in Bold, where the father died; the son all that time, as well as since, continuing in the same situation. Order confirmed. Lord *Kenyon*, J. "The cases that have already been decided on this subject have settled the principle on which our judgment must proceed in this case. As this is a removal from Bold to Sutton, all we are called upon to decide in this case is, whether or not the pauper be now settled in Sutton; and whether the settlement which he gained in that place has or has not been superseded by a subsequent settlement? for any question that may hereafter arise between Bold and Great Sankey will not affect this case. The pauper was hired for a year in Great Sankey; he continued in that service as long as he was capable of performing it; but in the course of the year he was deprived of his reason, and consequently rendered incapable of discharging his duty to his master. But in the consideration of questions of this kind it is immaterial whether the servant's incapacity to perform his service proceed from an infirmity of body or of mind. Where indeed the servant commits a crime, the master may apply to a justice to have him discharged; but if no such application be made, the relation of master and servant subsists. In this case, there being no fault in the servant, nor any application to a magistrate to discharge him (for which, indeed, there was no cause), I am clearly of opinion that the relation of master and servant continued during the whole year, and consequently that the pauper acquired a settlement by that service. If he had recovered his reason before the expiration of the year, the master might have been compelled to receive him again into his house. It was said by Lord *Mansfield*, in *Rex* v. *Christchurch* (p. 565), that the absence of the servant on account of sickness will not prevent his gaining a settlement, and that it is immaterial whether or not such absence happen in the middle or at the end of the year. With regard to *Rex* v. *Sharrington*, (p. 565), though it was not argued, it appears that the court exercised their judgment upon it, and I subscribe to the doctrine of it. These observations are sufficient to dispose of this case; but there is another question behind, and as probably the magistrates below will be called upon to make another order, I will beg to say a few words upon it for the sake of their informa-

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tion. That question is, whether, supposing the pauper gained a settlement by reason of his service with Kerfoot, he is settled in Great Sankey, the parish where the master lived, and where the service was in contemplation of law performed, or in Bold, where the father lived and received his son for the last forty days of the year? And upon this question I have as little doubt as on the other point; being of opinion that the settlement is in Great Sankey, where the service was in law performed, though the servant did not in point of fact reside there the last forty days of the year. In general the servant is settled in the parish where he serves the last forty days; but I consider the residence with the father under these circumstances as a residence in an hospital. We should thwart our own feelings, and act contrary to humanity and principles of public policy, if we were to determine that the father in this case brought a burden on his parish by receiving his son into his house from motives of tenderness and affection. And it must be remembered that this is not a case *sui generis;* there are others that stand *in pari ratione.* In general a bastard is settled in the parish where he is born; but if he be born in a gaol or house of correction, his settlement is in his mother's parish. And I think that *Rex* v. *Sharrington* goes some way to warrant my opinion in this case; for I cannot consider the pauper's residence with his father as a performance of service with his master; he was there *diverso intuitu* in order to recover from his illness, and not for the purpose of serving his master. I am therefore clearly of opinion that the pauper's former settlement has been superseded by the subsequent one which he gained in Great Sankey." The other judges concurring, both orders were quashed.

A servant leaving his master's house from illness, and residing at his father's house in a different parish to the end of the year, his master supplying him with food and medical attendance, and paying him wages for the whole year, gains a settlement in the parish where he resided during his illness.

Reg. v. *East Winch*, 4 *P. & D.* 342; 12 *A. & E.* 697. The pauper was removed to East Winch. Order confirmed. Case:—The pauper, R. Griggs, was living in East Winch, the place of his father's settlement. He was let by his father before Old Michaelmas-day, 1791, to W. Knight, of the parish of Leziate, from such old Michaelmas-day till the following Old Michaelmas-day, at the wages of two guineas and his board and lodging. He entered such service and continued therein, sleeping at his master's house in Leziate until about a week after the next Midsummer, when he was taken ill, and being unable to work was sent by his master to remain at his father's house at East Winch till well enough to return to his work, and during such time he received victuals from his master, and was attended by a medical man at his master's expense. Having continued unable to work during the remainder of the year, he did not return again to sleep at his master's, and after the expiration of his year he received his wages for the whole year. The case stated various acts of relief by the parish of Leziate: the sessions finding that the parish of Leziate gave the relief through a misconception of the law. Lord *Denman*, C. J. "We should certainly adhere to former decisions for the sake of avoiding the introduction of doubts. But here I think the doubt would be introduced by acceding to the argument against the order of sessions. A residence during a dispensation from service has certainly been understood to be a residence under the service. If, however, we were to adopt the doctrine which it is sought to induce from *Rex* v. *Sutton*, p. 601, we should introduce exception upon exception, by making the sessions inquire into the particular cause of the dispensation. I agree in that decision to the extent of holding that the service there continued in law for the time during which it was impossible to perform it in fact." The other judges concurred. Order of sessions affirmed.

The pauper is settled where his place of rest is.

Rex v. *Mildenhall*, 3 *B. & Ald.* 374. Removal from Mildenhall to Newmarket, All Saints. Order quashed. Case:—On the 1st May, 1817, the pauper let himself as a yearly servant to R. Bailey of Mildenhall, and entered into his service on the same day. The pauper was employed by his master every day from the commencement of his service up to the 5th of April, 1818, to drive the mail cart to and from Newmarket and Mildenhall. For this purpose he started every night from Mildenhall, and arrived at Newmarket about eleven o'clock in the evening; and after delivering

the bags, &c. which generally occupied about an hour, went to bed at an inn in Newmarket, in a bed hired for him exclusively for a year, and paid for by his master. He slept until about four o'clock in the morning, when the mail-coach arrived at Newmarket from London, and the pauper used to get up and receive the Mildenhall mail-bags, and drive his cart back to Mildenhall, where he generally arrived about six o'clock. He then, after putting up his horse, &c. went to bed in a room provided for him in his master's house at Mildenhall, and slept two or three hours. He was employed during the rest of the day in Mildenhall, as his master chose, and sometimes, which was about eight or ten times in a month, he did not go to bed at all at Mildenhall. He kept all his clothes, and took all his meals in his master's house, and the room and bed in which he there slept were exclusively appropriated to him, and he considered that Mildenhall was his home, but that he took his night's rest at Newmarket. He kept no clothes nor anything else at Newmarket, and other persons occasionally slept in the same room there with him. From the 5th April, 1818, until the 1st of May, he never drove the mail-cart at all, but lived wholly in his master's service at Mildenhall. On the 1st May, 1818, he quitted Bailey's service. By the court: "Here the pauper was, by the nature of his service, compelled to wait a few hours in the middle of the night for the return of the mail. During that time he slept there; but that sleep was not his ordinary and sufficient rest; for after he returned to his master's house at Mildenhall he went to bed in his own room, which was there provided for his exclusive use. He did not therefore go to Newmarket as to his place of rest, and unless that were so, he could gain no settlement there. Besides, it was for the respondents below to establish affirmatively a settlement in Newmarket, and if that is left doubtful, the court will not quash the order of sessions. But here, in fact, Mildenhall appears to have been the place of rest of the pauper during his service." Order confirmed.

4. The Place in which Settlement is acquired.

VI. Of Settlement by Apprenticeship. (a)

6. Of Settlement by Apprenticeship.

The subject of settlements by *apprenticeship* is susceptible of the following divisions, under which it will be treated:—

1. *Of the Statutes relating to Apprentices and their Settlement.*
2. *Of the Instrument of Binding.*
3. *The Parties to the Binding.*
4. *The Date and Execution of the Instrument.*
5. *The Term of Years.*
6. *Of the Premium and Duty thereon, and Statement thereof.*
7. *Of the Stamp on Indenture without regard to the Premium.*
8. *The other Essentials of the Contract.*
9. *Of Parish Apprentices, and Allowance by Justices.*
10. *Of inrolling the Indentures.*
11. *Of the Service and Residence.*
12. *Of serving different Masters.*
13. *Of Parish Apprentice since, 56 Geo. III.*
14. *Of vacating the Apprenticeship.*

1. Of the Statutes relating to Apprentices' Settlements.

By the 4 & 5 Will. IV. c. 76, s. 67, it is enacted that from and after the passing of that act, no settlement shall be acquired by being apprenticed in the sea service, or to a householder exercising the trade of the seas, as a profession, or otherwise, or by any person now being such an apprentice in respect of such apprenticeship.

After 12 Aug. 1834, no settlement to be acquired by apprentices to seamen and fishermen.

The earlier enactments upon this division of the poor laws relate chiefly to the manner in which pauper children should be placed out as appren-

(a) See Vol. I. "Apprentices;" and *Chitty on Apprentices.*

1. *Statutes on Apprentices' Settlements.*

tices, and the duty imposed upon overseers, &c. in this respect, with a view to the relief of parishes, and the permanent benefit of the paupers. The only statute which *expressly* provides that a *settlement* may be acquired by *apprenticeship*, is the 3 Will. & Mary, c. 11, s. 8. But the 13 & 14 Car. II. c. 12, s. 1, by authorising two justices to remove any *apprentice* into the parish *where he last resided forty days*, unless he found security, &c., *impliedly* made a residence by an apprentice for *forty days* in any one parish, a sufficient settlement (and see 31 Geo. II. c. 11, s. 1.) There are other provisions regulating the *mode* in which the relation of master and apprentice must be created, particularly in the case of *parish* apprentices, the observance or neglect of which frequently may affect the settlement.

5 Eliz. c. 4.

The 5 Eliz. c. 4, s. 25–48, contained various regulations respecting apprentices, and prohibiting persons who had not *served seven years* from setting up in any craft, mystery, or occupation. It also contained many regulations respecting the *qualifications* of *persons* entitled to *take* apprentices, and the *term of years* for which apprentices should be bound, and as to the *mode* of *binding*. Most of these enactments were repealed by 54 Geo. III. c. 96.

5 Eliz. c. 5. Who may take apprentices.

The 5 Eliz. c. 5, s. 12, enacts, "That from henceforth it shall be lawful to all and every owner and owners of ships or vessels, and to every householder using and exercising the trade of the seas by fishing or otherwise, and to every gunner or gunners, commonly called cannoneers, and to every shipwright, to take and keep one or more apprentice or apprentices to be brought up in the said trade or trades, every of the same apprentice or apprentices to be to them bound for ten years or under; and every apprentice so taken, being above seven years of age, shall be by the same covenants bound, ordered, and used to all intents according to the custom of the city of London: so that the same covenant or bond of apprenticeship be made by writing *indented*, and *enrolled* in the town where the same apprentice shall be then inhabiting, if it be a town corporate; and if the town be not incorporate, then to be *enrolled in the next town incorporate* to the habitation of every such apprentice: and that the officers of every such town corporate shall take for every such enrolment not above twelvepence; any law, statute, or other matter whatsoever to the contrary notwithstanding."

Must be by indenture, and enrolled.

43 Eliz. c. 2. Binding parish apprentices.

The 43 Eliz. c. 2, s. 5, enacts, "That it shall and may be lawful for the said churchwardens and overseers, or the greater part of them, by the assent of any two justices of the peace aforesaid, to bind any *such* children (*a*) as aforesaid to be apprentices where they shall see convenient till such man-child shall come to the age of twenty-four, (now twenty-one by 18 Geo. III. c. 47,) and such woman-child to the age of twenty-one years, or the time of her marriage; the same to be as effectual to all purposes, as if such child were of full age, and by indenture or covenant bound him or herself."

7 Jac. I, c. 3.

The 7 Jac. I. c. 3, enacts, how money given for the binding out of poor children apprentices shell be employed, and by whom, and within what time the money shall *be put out;* and contains a provision "that if there be not fit persons in the parish to be bound apprentice, then poor children of any of the next adjoining parishes shall be bound apprentices," and then directs what poor children shall be so bound, and contains regulations to prevent the misapplication of money.

3 Car. I. c. 40.

The 3 Car. I. c. 40, s. 22, contains a further provision as to overseers putting out apprentices.

13 & 14 Car. 2, c. 12.

Forty days' residence as an apprentice.

By 13 & 14 Car. II. c. 12, s. 1, "It shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid in any tenement under the yearly value of

(*a*) This, with reference to the first section of the act, means "children of all such whose parents shall not by the said churchwardens and overseers, or the greater part of them, be thought able to keep and maintain their children."

ten pounds, for any two justices of the peace, whereof one to be of the *quorum* of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, *apprentice*, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

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The 3 Will. & Mary, c. 11, s. 8, enacts, "That if any person shall be bound an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement, though no such notice in writing be delivered and published as aforesaid."

3 Will. & Mary, c. 11. Binding and inhabitation as an apprentice confers settlement.

Nothing more was required by 13 & 14 Car. II. c. 12, to settle an apprentice duly bound, than a residence of forty days; and the 3 Will. & Mary, c. 11, exempts him from the necessity created by different statutes of giving notice of his inhabitancy.

The 8 & 9 Will. III. c. 30, s. 5, after reciting, that under the 43 Eliz. c. 2, it has been doubted whether the persons to whom children were bound were compellable to receive such children as apprentices, enacts and declares, "That where any poor children shall be appointed to be bound apprentices, pursuant to the said act, the person or persons to whom they are so appointed to be bound shall receive and provide for them according to the indenture signed and confirmed by the two justices of the peace, and also execute the other part of the said indentures; and if he or she shall refuse so to do, oath being thereof made by one of the churchwardens or overseers of the poor, before any two of the justices of the peace for that county, liberty, or riding, he or she, for every such offence, shall forfeit the sum of ten pounds, to be levied by distress and sale of the goods of any such offender, by warrant under the hands and seals of the said justices, the same to be applied to the use of the poor of that parish or place where such offence was committed; saving always to the person, to whom any poor child shall be appointed to be bound an apprentice as aforesaid, if he or she shall think themselves aggrieved thereby, his or her appeal to the next general or quarter sessions of the peace for that county or riding, whose order therein shall be final, and conclude all parties.

8 & 9 Will. III. c. 30. Master bound to take parish apprentice.

By 9 & 10 Will. III. c. 11, no certificated person can acquire a settlement in any parish by apprenticeship: he must take a tenement of 10*l.* per annum or execute some parish office.

9 & 10 Will. III. c. 11.

The 2 & 3 Anne, c. 6, s. 6, altered by 4 Anne, c. 19, s. 16, provides, "That parish boys bound apprentices, may be turned over to the sea service as therein mentioned; and contains regulations relative to such apprentices and their masters." See as to Settlement, 4 & 5 Will. IV., c. 76, (p. 603).

2 & 3 Anne, c. 6. Sea service.

The 8 Anne, c. 9, contains regulations as to duties to be paid on premiums given with apprentices, before the 44 Geo. III. c. 98, s. 1, and again altered by the 55 Geo. III. c. 184, as regards the amount of duty.

8 Anne, c. 9. Duties on premiums.

The 8 Anne, c. 9, s. 32, enacts, "That there should be paid the sum of sixpence for every twenty shillings, for every sum of fifty pounds or under, and the sum of one shilling, of every twenty shillings, of every sum amounting to more than fifty pounds, which should, after the first day of May, one thousand seven hundred and ten, and during five years thence next ensuing, made perpetual by 9 Anne, c. 21, s. 7, be given, paid, contracted or agreed for, with or in relation to every clerk, apprentice, or servant, which shall be, within the kingdom of Great Britain, put or placed to or with any master or mistress to learn any profession, trade, or employment, and proportionably for greater or lesser sums; which said duties, rates, and sums, shall be paid by the said masters or mistresses respectively."

Sixpence for every twenty shillings for fifty pounds or under, and twelve pence for every sum of above fifty pounds to be paid for every clerk or apprentice put out for five years.

To be paid by the master.

Sect. 33 places this duty under the management of the commissioners of stamps.

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8 Anne, c. 9. The premium to be inserted in the indenture, &c. on forfeiture of double the sum.

Sect. 35. "That the full sum or sums of money received, or in anywise directly or indirectly given, paid, agreed, or contracted for, during the term aforesaid, with or in relation to every such clerk, apprentice, and servant, as aforesaid, shall be truly *inserted and written in words at length in some indenture or other writing,* (*a*) *which shall conlain the covenants, articles, contracts or agreements, relating to the service of such clerk, apprentice,* or servant as aforesaid, and shall *bear date upon the day* of the signing, sealing, or other execution of the same; upon pain that every master or mistress, to or with whom, or to whose use, any sum of money whatsoever shall be given, paid, secured, or contracted, for or in respect of any such clerk, apprentice, or servant, as aforesaid, which shall not be truly and fully so inserted and specified in some such indenture, or other writing, shall, for every such offence, *forfeit double the sum so given, paid, secured, or contracted for.*"

Indentures within the bills of mortality to be stamped within a month of its date.

Sect. 36, provided, "That two new stamps should be used (besides the stamps theretofore requisite in respect of such indenture, or other writing) one of which to denote the duty of sixpence in the pound, and the other the duty of one shilling in the pound; and all indentures, &c., within the cities of London or Westminster, or limits of the bills of mortality, *should be brought to the head office* for stamping (*b*), and the duties be paid to the receiver-general within one month after the respective dates thereof."

Beyond the bills to be brought to the collector within two months.

Sect. 37. "All indentures, &c. executed, not within the limits of the bills of mortality, should, at the option of the party concerned, be brought or sent either to the head office or to the collectors resident without the limits of the said weekly bills, or to some officer appointed for the duties by this act granted in Scotland, *within two months after the date,* execution, or signing of every such indenture or witing respectively. If the payment is made to the receiver-general in the head office, then the indenture shall be forthwith stamped, and in case payment should be made to the collector or other officer, without the limits of the said weekly bills, he is required to endorse on such indenture, &c., a receipt for the monies so paid, in words at length, bearing date the day on which such payment shall be made, and to subscribe his name thereto, (to the intent that he may thereby be charged with every sum so paid to him,) and forthwith deliver back the indenture or writing so endorsed to the bringer thereof.

And if executed within fifty miles of the bills, to be stamped within three months; if beyond fifty miles, within six months of date.

Sect. 38. "That every such indenture &c. so endorsed (in case the same be executed within fifty miles, to be computed from the limits of the weekly bills of mortality,) shall *within three months after the date* or making thereof, and if executed at a greater distance from the limits aforesaid, shall, *within six months after the date* or making thereof, be brought or sent to the head office, where the same (being produced with the said receipt endorsed) shall be immediately stamped.

Indentures, in which the full sum received is not charged, &c., void. (*c*)

Sect. 39. "All such indentures or writings as aforesaid, wherein shall not be *truly inserted and written the fall sum and sums of money received,* or in any wise directly or indirectly given, paid, secured, or contracted for, with or in relation to such clerk, apprentice, or servant as aforesaid, or whereupon the duties payable by this act shall not be duly paid or lawfully tendered, or which shall not be stamped, or lawfully tendered to be stamped, according to the tenor and true meaning of this act, within the respective times herein for that purpose severally and respectively limited, *shall be void,* and not available in any court or place, or to *any purpose whatsoever;* (*c*) and the clerk, apprentice, or servant, whom the same shall concern or relate to, shall in such case be utterly incapable of being free of any city, town, corporation, or company, and of following or exercising the intended profession, trade, or employment; any charter, law, or custom to the contrary notwithstanding." (*c*) (See *Rex* v. *Chipping Norton,* 5 *Bar. & Ald.* 412.)

And apprentices not to be free of any city, &c.

(*a*) Not applicable to assignments. *Rex* v. *Ide,* 2 *B. & Adol.* 866, (*post.*)

(*b*) This is virtually repealed by the 55 Geo. III. c. 184, requiring the stamp duty to be impressed before the indenture is executed. There is now *only one* stamp; see 5 *B. & Ald.* 412, *post.*

(*c*) And no settlement gained, *Rex* v.

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8 Anne, c. 9. Parish or public charities not charged.

Sect. 40. "That nothing in this act contained shall be construed to extend to charge any master or mistress with the payment of any of the said duties, in respect of any money by him or her received with any apprentice or servant, who shall be put or placed out *at the common or public charge of any parish or township, or by or out of any public charity*, or to require the stamping with any such new stamp as aforesaid, of any indenture, articles, covenant, agreement, or contract relating to such apprentice or servant as last-mentioned; any thing herein contained to the contrary notwithstanding." See also 55 Geo. III. c. 184, Sched. part i. *post.*

No indenture to be admitted in evidence, unless oath made of the sums really paid, &c.

Sect. 43. "That no indenture or writing required by this act to be stamped as aforesaid, shall be given or admitted in evidence in any suit to be brought by any of the parties thereunto, unless such party, on whose behalf the same shall be given or admitted in evidence, do first make oath that to the best of his or her knowledge, the sum or sums therein for that purpose inserted or mentioned was or were really and truly all that was directly or indirectly given, paid, secured, or contracted for, on behalf or in respect of such clerk, apprentice, or servant, to or for the benefit of the master or mistress to or with whom such clerk, apprentice, or servant was put or placed."

Where anything shall be given to any master, not being money, the full value of such thing to be answered for the duties.

Sect. 45. "That during the said five years, where any *thing or things*, not being lawful money of Great Britain, shall directly or indirectly be given, assigned, conveyed, delivered, contracted for, or secured, to or for the use or benefit of any master or mistress, with or in respect of any such clerk, apprentice, or servant, for whom a duty is chargeable by this act; the duties hereby granted and last-mentioned shall be answered and paid for the full value or values of such *thing or things*, and the same duties for the said values shall be secured and answered in the same manner and form, and under the like pains, penalties, forfeitures, and incapacities, as are before in this act provided for securing the said rates upon monies given or paid, or agreed to be given or paid, with such clerks, apprentices, or servants as aforesaid.

9 Anne, c. 21.

The 9 Anne, c. 21, renders perpetual the duties and regulations of 8 Anne, c. 9, and the words "*or other considerations*," are substituted for "*thing or things*," in the prior act.

12 Anne, st. 1, c. 18. An apprentice of one who came into a parish *by certificate*, shall not gain a settlement.

The 12 Anne, stat. 1, c. 18, s. 2, enacts, "that if any person shall be an apprentice, bound by indenture to any person, who did come into, or shall reside in any parish in England, *by means or license of such certificate*, and not afterwards having gained a legal settlement in such parish, such apprentice shall not gain any settlement in such parish by reason of such apprenticeship or binding; but every such apprentice shall have his settlement as if he had not been bound apprentice." See the section, *ante*, (Hiring and Service.)

10 Geo. II. 31.

The 10 Geo. II. c. 31, regulates to what waterman an apprentice may be bound; and see *Rex* v. *Gravesend*, 3 *Bar. & Adol.* 240, *post.*

20 Geo. II. c. 19. Justices, upon complaint of apprentices, to summon the

The 20 Geo. II. c. 19, s. 3, enacts, "That it shall and may be lawful to and for any two or more such justices, upon any complaint or application by any apprentice put out by the parish, or any other apprentice, upon whose binding out *no larger a sum* (*a*) than five pounds of lawful British

Edgeworth, 3 *T. & R.* 323; 5 *B. & Ald.* 412; 8 *Taunt.* 495; *ante*, Vol. I. tit. "Apprentice," and *post* (6th head), and see *Rex* v. *Chipping Norton*, 5 *Bar. & Ald.* 412. But a premium, given by parish officers upon the binding out of a poor apprentice, need not be set out in the indenture, such indenture being exempted from duty by 8 Anne, c. 9, s. 40, and the insertion of the premium being required for no other purpose but to ascertain the amount of the duty. (*Rex* v. *Oadby*, 1 *B. & Ald.* 477; and see 55 Geo. III. c. 184, Schedule, tit. "*Apprentice*," *post*; and 18 Geo. II. c. 22, s. 23, 24; and 22 Geo. II. c. 45.) An indenture of apprenticeship executed *before* 44 Geo. III. c. 98, and not properly stamped with the premium stamp, could not afterwards be properly stamped; *quære* as to an indenture executed *since* that act; 5 *B. & Ald.* 414.

(*a*) The powers of this and similar statutes extended to cases where *no sum* at all was paid, 5 & 6 Vic. c. 7.

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money was paid, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill-treatment of or towards such apprentice, by his or her master or mistress, to summon such master or mistress to appear before such justices, at a reasonable time to be named in such summons; and such justices shall and may examine into the matter of such complaint; and upon proof thereof made, upon oath, to their satisfaction (whether the master or mistress be present or not, if service of the summons be also, upon oath, proved) the said justices may discharge such apprentice, by warrant or certificate under their hands and seals; for which warrant or certificate no fees shall be paid."

20 Geo. II. c. 19. master, &c., and upon satisfactory proof, to discharge the apprentice.

Justices, upon complaint of masters against apprentices, and proof upon oath, to punish the offender by commitment, &c.

Sect. 4. "That it shall and may be lawful to and for such justices, upon application or complaint made, upon oath, by any master or mistress, against any such apprentice, touching or concerning any misdemeanor, miscarriage, or ill-behaviour, in such his or her service (which oath such justices are hereby empowered to administer), to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time, not exceeding one calendar month; or otherwise by discharging such apprentice, in manner and form before mentioned."

Stannaries not included.

Sect. 7. "That nothing in this act contained shall extend to the stannaries in the counties of Devon and Cornwall."

22 Geo. II. c. 45.

The 22 Geo. II. c. 45, ss. 5, 6, 7, 8, contains important provisions enabling the master or apprentice, on certain terms, and on payment of double duty, to render the indenture valid, even within two years after the termination of the apprenticeship. (See these clauses, title "Apprentice."

31 Geo. II. c. 11. Person bound apprentice by deed, &c. though not indented, being first duly stamped, is entitled to a settlement where apprenticed.

The 31 Geo. II. c. 11, s. 1, enacts, "That no person who shall have been bound an apprentice, or who shall hereafter be bound an apprentice, by any *deed*, writing, or contract, *not indented*, being first legally stamped, shall be liable to be removed from the town, parish, or place, where he or she shall have been so bound an apprentice, and resident *forty* days, by virtue of any order of removal, granted by two justices of the peace of any county, riding, division, city, borough, town corporate, or place; or by virtue of any order, of the justices at their general or quarter sessions, by reason or on account of such deed, writing, or contract, not being indented only."

Apprentices to chimney sweepers.

The 28 Geo. III. c. 48, enabled the overseer, with the consent of justices, and subject to certain regulations, which are fully detailed, vol. i. title "Apprentice," to apprentice poor boys of the age of eight years until they were 16, to chimneys weepers. This was repealed by 4 & 5 Will. IV. c. 35, which enacted, "That no child under the age of ten should be put apprentice, and by 3 & 4 Vic. c. 85, s. 3, no child under the age of 16 shall be bound to a chimney sweeper, and by s. 5, all indentures then existing shall be from 1st July, 1842, null and void, if the child shall *then* be under 16 years of age.

32 Geo. III. c. 57. A covenant for maintenance of *parish apprentices*, with whom no more than *five* pounds (*a*) shall be given to continue in force no longer than three months after the death of the master, &c.

The 32 Geo. III. c. 57, intituled "An Act for the further Regulation of Parish Apprentices," enacts, "that from and after the first day of July, one thousand seven hundred and ninety-two, in case of the death of any master or mistress of any parish apprentice, during the term of such apprenticeship, upon the binding out of which apprentice no larger sum than five pounds has been or shall be paid, such covenant as is before mentioned for the maintenance of such apprentice, inserted in the indenture of apprenticeship, by which such apprentice shall have been or shall be bound, shall not continue and be in force for and during any longer time than for three calendar months next after the death of such master or mistress, and that during such three calendar months such apprentice shall continue to live with and serve, as an apprentice, the executors and administrators of such master or mistress, some or one of them, or such person or persons as such executors or administrators, some or one of them, shall appoint; and the master or mistress whom such apprentice shall

(*a*) 5 & 6 Vic. c. 7, *ante*, 608, is applicable to this statute.

accordingly serve during the said three calendar months, and also such apprentice shall during that time be subject and liable to all the laws which are or shall be in force for the better government and regulation of masters and parish apprentices; and that in all such parish indentures of apprenticeship as aforesaid, which shall be made from and after the first day of July, one thousand seven hundred and ninety-two, there shall be annexed to the covenant in such indentures to be entered into on the part of the master or mistress of such apprentice, for such maintenance as aforesaid, a proviso declaring, that such a covenant shall not be made to continue and be in force for any longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship; which proviso may be in the form or to the effect mentioned in the schedule hereunto annexed, marked with the letter A. (p. 611); and in case such proviso shall happen to be omitted in any such indenture, the covenant therein contained on the part of the master, for the maintenance of the apprentice, shall be deemed and taken to continue in and be in force for no longer time than for three calendar months next after the death of such master or mistress, in case such master or mistress shall die during the term of such apprenticeship; any thing in any such covenant to the contrary notwithstanding."

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32 Geo. III. c. 57.

Proviso to that effect to be annexed to covenant, but if omitted, the covenant to continue no longer in force.

Sect. 2. "That within such three calendar months after the death of such master or mistress, it shall and may be lawful for any two justices of the peace of the county, city, town, riding, division, or place, where such master or mistress shall have died, on application made to them by the widow of such master, or by the husband of such mistress, or by any son or daughter, brother or sister, or by any executor or executrix, administrator or administratrix, of such master or mistress, by indorsement on any such indenture of apprenticeship, or the counterpart thereof, or by any other instrument in writing, (which indorsement or instrument may be in the forms or to the effect mentioned in the schedule hereunto annexed marked with the letters B. and C., p. 611) to order and direct that such apprentice shall serve as an apprentice any one of such persons so making such application as aforesaid (such person having lived with, and having been part of the family of, such master or mistress at the time of his or her death,) as the said justices shall in their discretion think fit, for and during the residue of the term mentioned in such indenture of apprenticeship; and the person obtaining such order shall declare his acceptance of such apprentice, by subscribing his or her name to such order; and that from and after such order shall be made, the executors and administrators, and the personal assets, estate, and effects of the master and mistress so dying as aforesaid, shall be released and discharged of and from any promise or covenant whatsoever, contained in any such indenture of apprenticeship, on the part of such master or mistress, his or her executors or administrators, to be done and performed; and the person obtaining the same shall be, and be deemed and taken to be, the master or mistress of such apprentice, in like manner as if such apprentice had been originally bound to such master or mistress; and that such last-mentioned master or mistress, his or her executors and administrators, each and every of them, shall be held and bound by the several promises and covenants contained in any such indenture of apprenticeship on the part of the master or mistress therein named, his or her executors or administrators, to be done and performed, in like manner as if such master or mistress obtaining such order as aforesaid had duly executed the counterpart of such indenture; and that such master or mistress and apprentice shall be subject and liable to the several penalties, provisions, and regulations which shall then be in force for the better government and good order of masters and parish apprentices; and that all justices of the peace shall have the like powers and authority with respect thereto as they shall then have by any act or acts of parliament relating to parish apprentices."

Within three months after the death of a master, two justices may order apprentices to serve the residue of their terms with persons of the description herein specified, on application, &c.

Sect. 3. "That all and singular the regulations and provisions hereinbefore made, and directed to take place on the death of the original master

Provisions to take place on the death of the orig

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32 Geo. III. c. 57.

nal master to extend to subsequent ones.

If no application be made, or the justices should not think fit that the apprenticeship should be continued, it shall be at an end.

Act to extend to such parish apprentices only as shall be living with the master.

or mistress, shall be deemed and taken to relate to the like event of the death of any such subsequent master or mistress, and to their several relations and representatives before enumerated, from time to time, as often as the case shall happen, during the continuance of the term mentioned in any such indenture of apprenticeship."

Sect. 4. "That in case no such application shall be made as aforesaid within three calendar months next after the death of such master or mistress, or in case such two justices, to whom any such application as aforesaid shall have been made, shall not think fit that such apprenticeship should be continued, then the said apprenticeship shall be determined, and the indenture of apprenticeship and covenants therein contained shall be at an end, in like manner as they would have been at the expiration of the term therein mentioned."

Sect. 5. "That nothing hereinbefore contained shall extend, or be construed to extend, to any parish apprentice, but to such only as shall be living with, and shall make part of the family, or shall be in the actual employment, of such original master or mistress, or of any subsequent master or mistress appointed under and by virtue of the several provisions of this act at the time of the death of any such masters or mistresses respectively."

By sect. 6. "Justices may order the necessary sums for maintenance and clothing of apprentices to be levied by distress."

Masters may assign over apprentices with the consent of two justices, &c.

Sect. 7. "That it shall and may be lawful for any master or mistress of any such parish apprentice as aforesaid, by indorsement on the indenture of apprenticeship, or by other instrument in writing, by and with the consent of two justices of the peace of the county, city, town, riding, division, or place where such master or mistress shall dwell, testified by such justices under their hands, to assign such apprentice to any person who is willing to take such apprentice for the residue of the term mentioned in such indenture of apprenticeship: provided always, that such person to whom such apprentice is intended to be assigned, shall at the same time, by indorsement on the counterpart of such indenture, or by writing under his or her hand, stating the said indenture of apprenticeship and the indorsement and consent aforesaid, declare his or her acceptance of such apprentice, and acknowledge himself, herself, his or her executors and administrators, to be bound by the agreements and covenants mentioned in the said indenture, on the part of the master or mistress of such apprentice to be done and performed; which indorsement or instrument may be in the forms or to the effect mentioned in the schedules hereunto annexed, marked with the letters D. and E.; and in such case such apprentice shall be deemed and taken to be the apprentice of such subsequent master or mistress to whom such assignment shall be made, to all intents and purposes whatsoever, and so from time to time, as often as it shall be necessary or convenient for any such subsequent master or mistress to part with any such apprentice; and all justices of the peace shall have the like power and authority, in the several cases last mentioned, with respect as well to the subsequent master or mistress, masters or mistresses, as to the apprentice, as such justices shall then have by any law for the better regulation of parish apprentices."

Justices may discharge apprentices whose masters cannot employ or maintain them.

Sect. 8. "And whereas no express provision has been made for the discharging of any such parish apprentices from a master or mistress who is become insolvent, or is so far reduced in his or her circumstances as to be unable to employ or maintain such apprentices, it is enacted, That it shall and may be lawful for two justices of the peace of the county, city, town, riding, division, or place, where any such master or mistress shall live, on the application of such master or mistress requesting that any such apprentice may be discharged for the reasons aforesaid, to inquire into the matter of such allegations, and to discharge any such apprentice from his apprenticeship, in case the said two justices shall find such allegations to be true."

Not to extend to apprentices with whom more than

Sect. 9. "That nothing hereinbefore contained shall extend, or be construed to extend, to the indenture made on the binding of any apprentice

by the churchwardens or overseers of the poor of any parish or place, or the major part of them, under and by virtue of the powers given to them by the statute made in the forty-third year of the reign of Queen Elizabeth, in the case of any such binding, where a larger sum than five pounds shall be given, but that such binding shall be subject and liable to the like rules and regulations as they would have been subject and liable to in case this act had not been made." Where *no* money given, see 5 & 6 Vict. c. 7, p. 608.

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32 Geo. III. c. 57.

five pounds shall be given.

Sect. 10. "That no indorsement or indorsements on any parish indenture of apprenticeship hereinbefore mentioned, made or executed in pursuance of this act, shall be charged or chargeable with any duty imposed upon stamped vellum, parchment, and paper, but the same shall be, and are hereby declared to be exempted therefrom, and that no other instrument or instruments in writing hereinbefore mentioned shall be charged or chargeable with any higher duty than with the duty imposed, or to be imposed, on parish indentures of apprenticeship."

No indorsement on parish indentures to be liable to stamp duty, and no other instrument to be charged higher than the duty on parish indentures.

Sect. 11. "Empowers justices discharging any apprentice under the last recited act to order his clothes to be delivered up, and the master to pay a sum not exceeding ten pounds to the parish officers for placing him out again, &c.; and may compel the parish officers to enter into recognisance to prosecute masters for ill-treatment of apprentices," &c.

Clothes and money may be ordered.

Schedule referred to in this Act.

(A.) Form of Proviso to be added to the Covenant for Maintenance. (A.)

P. 602.

PROVIDED always, that the said last-mentioned covenant on the part of the said F. M. [the master], *his executors and administrators, to be done and performed, shall continue and be in force for no longer time than for three calendar months next after the death of the said F. M., in case he, the said F. M., shall happen to die during the continuance of such apprenticeship, according to the provisions of an act passed in the thirty-second year of the reign of King George the Third, intituled,* [Here set forth the title of the act.]

(B.) Form of the Order of two Justices, directing a Parish Apprentice to continue with the Widow [*or, as the case may be,*] of his deceased Master, by Indorsement on the Indenture or Counterpart thereof; on which binding no more was paid than the sum for that purpose mentioned in this act. (B.)

P. 609.

County of } *WHEREAS F. M.* [the master], *within named, late of the parish of in the said county, died on the day of being within three calendar months now last past; we, two of his Majesty's justices of the peace for the county aforesaid, whose names are hereunto subscribed, on the application and at the request of A. M., widow* [or, as the case may be,] *of the said F. M., living with and being part of the family of the said F. M., at the time of his death, do hereby order and direct that A. P., the apprentice within-named, who was in the service and actual employment of the said F. M. at the time of his death, shall serve the said A. M. as such apprentice for the residue of the term of such apprenticeship within-mentioned, according to the provisions of an act passed in the thirty-second year of the reign of King George the Third, intituled,* An Act for the further Regulation of Parish Apprentices. *Witness our hands, this day of .*

I, the above-named A. M., do hereby declare that the above order is made at my request; and that I do accept the said A. P. as my apprentice, according to the terms and covenants contained in the said indenture, and according to the provisions of the said act. Witness my hand the day and year above written.

(C.) Form of the like Order, by a separate Instrument. (C.)

County of } *WHEREAS it appears unto us, two of his Majesty's justices of the peace for the said county, that A. P.* [the apprentice] *was bound an apprentice by the churchwardens and overseers of the poor of the parish of , to F. M.* [the master], *late of the said parish of , and that*

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the said F. M. died on the day of , being within three calendar months now last past: now we, the said two justices, on the application and at the request of &c. [then to the end, as before, *mutatis mutandis.*]

32 Geo. III. c. 57.

(D.) (D.) Form of the Assignment of such a Parish Apprentice, with the Consent of two Justices, by Indorsement on the Indenture or Counterpart.

County of } BE it remembered, that the within-named F. M. [the master], *by and with the consent and approbation of I. P. and K. P., two of his Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, doth hereby assign A. P., the apprentice within named, unto N. M.* [the new master], *to serve him during the residue of the term within mentioned; and that he, the said N. M., doth hereby agree to accept and take the said A. P. as an apprentice for the residue of the said term, and doth hereby acknowledge himself, his executors and administrators, to be bound by the agreements and covenants within-mentioned on the part of the said F. M. to be done and performed, according to the due intent and meaning thereof, and pursuant to the provisions of an act passed in the thirty-second year of the reign of King George the Third, intituled,* An Act for the further Regulation of Parish Apprentices. *In witness whereof, we, the said F. M. and N. M., have hereunto set our hands, this day of*

We, two of his Majesty's justices of the peace above mentioned, do consent thereto. Witness our hands, this day of . } *I. P. K. P.*

(E.) (E.) Form of the like Assignment by a separate Instrument.

County of } WHEREAS it appears unto us, I. P. and K. P., two of his Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, that A. P. was bound an apprentice by the churchwardens and overseers of the poor of the parish of , to F. M. of the same parish of , by indenture bearing date on or about the day of , until the said A. P. should attain his age of twenty-one years. Now be it remembered, that the said F. M., by and with the consent, &c. [and so to the end as before, *mutatis mutandis.*]

Names of apprentice to be entered in a book.

By the 42 Geo. 3, c. 46, overseers of the poor are required to keep a book for entering the name of every apprentice bound out by them; each entry to be signed by two justices, according to the form in the schedule; and by s. 3 any person may inspect such book, and take a copy upon payment of sixpence; and every such book shall be sufficient evidence in all courts of law whatsoever in proof of the existence of such indentures, and of the several particulars specified in the said register respecting such indentures, and of the several particulars specified in the said register respecting such indentures, in case it shall be proved to the satisfaction of such court that the said indentures are lost or have been destroyed.

Book may be inspected, and shall be deemed evidence.

51 Geo. III. c. 80. Indentures and certificates heretofore signed by two persons only, acting as churchwardens, as well as overseers, shall be valid. (a). See 1 & 2 G. IV. c. 32, p. 618.

The 51 Geo. III. c. 80, after reciting part of the forty-third year of Elizabeth, relating to the appointment of overseers and the power to bind children apprentices; and also reciting that in divers small parishes two persons only have been annually appointed to act in the capacity of churchwardens as well as overseers of the poor; and that divers indentures for the binding of parish apprentices, and certificates of the settlements of poor persons, have been executed and signed by such two persons, purporting to be the churchwardens and overseers of such parishes; but by reason that the said indentures and certificates have not been signed by distinct persons as churchwardens, and other distinct persons as overseers, such indentures and certificates have been or may be deemed to be void; enacted, "that all indentures for the binding of *parish apprentices*, and *all certificates of the settlement of poor persons*, which have been heretofore

(a) This enactment obviates the objections to the settlement taken in *Rex* v. *All Saints, Derby*, 13 *East*, 143; and was suggested by the decision in that case, *per Bayley*, J., 2 *B. & Ald.* 202. See also 54 Geo. III. (p. 613).

executed and signed by two persons only, acting or purporting to act in the capacity of churchwardens as well as of overseers of the poor, and also such indentures and certificates as shall hereafter be so signed, shall be considered as good, valid, and effectual, as if the same had been executed and signed by distinct persons as churchwardens, and distinct persons as overseers of the poor, according to the said recited act; any thing therein or in any other act contained to the contrary thereof notwithstanding." (*a*)

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51 Geo. III. c. 80.

Sect. 2. "Provided always, that nothing in this act contained shall extend to do away or alter any decision which may have taken place in any court of law respecting the binding of any parish apprentice, or the settlement of any poor person before the passing of this act."

The act not to affect prior decisions.

54 Geo. III. c. 96, repeals 5 Eliz. c. 4, s. 31, which prohibited persons who had not served a seven years' apprenticeship from setting up or being employed to work in a trade.

54 Geo. III. c. 96.

And sect. 2 enacts, "And whereas by the said statute divers rules and regulations were enacted respecting the *qualification of persons entitled to take* and become apprentices, and the term of years for which such apprentices should be bound, and as to the mode of binding such apprentices; and it was also enacted by the said statute, that all indentures, covenants, promises, and bargains, of and for the having, taking, or keeping of any apprentice, otherwise thereafter to be made or taken, than is by the said statute limited, ordained, and appointed, should be clearly void in the law to all intents and purposes; and that every person that should from thenceforth take or newly retain any apprentice contrary to the tenor and true meaning of the said act, should forfeit and loose for every apprentice so by him taken the sum of ten pounds; and whereas it is expedient that so much of the recited act should be repealed; be it therefore enacted, that so much of the said recited act shall be and the same is hereby repealed; and that it shall and may be lawful *for any person to take*, or retain, or become an apprentice, though not according to the provisions of the said act; and that indentures, deeds, and agreements in writing entered into for that purpose, which would be otherwise valid and effectual, shall be valid and effectual in law, the repeal of so much of the said act as is herein last above recited notwithstanding."

Repeals 5 Eliz. c. 4, ss. 25, 30, 41, as to qualification of persons to take and become apprentices, and enables *all* persons to do so.

Sect. 4. "That this act, or any thing herein contained, shall not extend or be construed to extend to defeat, alter, or prejudice the custom and order of the city of London concerning apprentices, or the ancient custom, usages, privileges, or franchises of the said city, or of any other city, town, corporation, or company lawfully constituted, or the citizens and freemen thereof; or any bye-law or regulation of any corporation or company lawfully constituted."

Proviso for customs of London, and other cities, and bye-laws of Corporations.

The 54 Geo. III. c. 107, intituled, "An Act to render valid certain Indentures for the binding of Parish Apprentices, and Certificates of the Settlement of Poor Persons," after reciting that churchwardens sworn into office for a *whole parish* have *acted* as churchwardens of *townships* within such parish, without being sworn to act in the latter capacity, enacts, "That all indentures for the *binding of poor apprentices*, and all certificates of the settlements of poor persons, which have been heretofore signed and executed, or which shall hereafter be signed and executed by a person or persons, who at the time of his or their signing and executing such indenture, or certificate of settlement, *acted as churchwarden* or churchwardens, chapelwarden, or chapelwardens, of the *township, hamlet, or chapelry*, binding such poor apprentice, or granting such certificate of settlement, shall be deemed and taken to be as good, valid, and effectual as if the same had been signed and executed by a person or persons actually sworn into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry: provided always, that such person or persons

54 Geo. III. c. 107. Indentures and certificates of settlements valid, although churchwardens, &c. not sworn in townships, &c.

Proviso.

(*a*) *Rex* v. *St. Margaret's, Leicester*, 2 *B. & Ald.* 200, *post.* This act extends to parishes where there are three officers only, one of whom acts as churchwarden as well as overseer.

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shall have been *duly sworn* into the office of churchwarden of the *parish* wherein the township, hamlet, or chapelry binding such poor apprentice, or granting such certificate, be contained, or into the office of churchwarden or chapelwarden of such township, hamlet, or chapelry."

54 Geo. III. c. 107. Indentures and certificates valid, if executed by overseers of the poor of any township, &c.

Sect. 2. "That all indentures for the binding of poor apprentices, and all certificates of the settlement of poor persons, which shall have been heretofore signed and executed, or which may hereafter be signed and executed by the overseers of the poor of any *township*, hamlet, chapelry, or place, and the churchwarden or churchwardens, chapelwarden or chapelwardens, acting for or appointed in respect of such township, hamlet, chapelry, or place, or the major part of them, shall be deemed and taken to be as good, valid, and effectual as if the said indentures and certificates had been signed and executed by such overseers and the churchwardens of the *parish* wherein such township, hamlet, chapelry, or place is situate, or the major part of them."

Proviso for settlements.

Sect. 3. "That nothing herein contained shall be construed to alter, impeach, or affect the settlement of any person, for whose removal any order of justices shall have been duly made before the passing of this act."

55 Geo. III. c. 184.

The 55 Geo. III. c. 184, "An Act for repealing the Stamp Duties on Deeds, &c. &c., and for granting other Duties in lieu thereof," passed 11th July, 1815, contains the following Schedule of Duties and Exemptions on *Indentures of Apprenticeships.*

SCHEDULE. PART I.	Duty. £	s.	d.
APPRENTICESHIP and CLERKSHIP.—Indenture or other instrument or writing containing the covenants, articles or agreements, for or relating to the service of any *apprentice*, clerk, or servant, who shall be put or placed to or with any master or mistress, to learn any profession, trade, or employment whatsoever; *except articles of clerkship to attornies and others, hereinafter specifically charged.*			
If the sum of money, or the value of any other matter or thing which shall be paid, given, assigned or conveyed, or be secured to be paid, given, assigned or conveyed, to or for the use or benefit of the master or mistress, with or in respect of such apprentice, clerk or servant, or both the money and value of such other matter or thing shall not amount to 30*l.*	1	0	0
If the same shall amount to 30*l.* and not amount to 50*l.*	2	0	0
If the same shall amount to 50*l.* and not amount to 100*l.*	3	0	0
If the same shall amount to 100*l.* and not amount to 200*l.*	6	0	0
If the same shall amount to 200*l.* and not amount to 300*l.*	12	0	0
If the same shall amount to 300*l.* and not amount to 400*l.*	20	0	0
If the same shall amount to 400*l.* and not amount to 500*l.*	25	0	0
If the same shall amount to 500*l.* and not amount to 600*l.*	30	0	0
If the same shall amount to 600*l.* and not amount to 800*l.*	40	0	0
If the same shall amount to 800*l.* and not amount to 1,000*l.*	50	0	0
And if the same shall amount to 1,000*l.* or upwards . .	60	0	0
And where there shall be no such consideration as aforesaid, moving to the master or mistress; if the indenture or other instrument shall not contain more than 1080 words	1	0	0
And if the same shall contain more than that quantity . .	1	15	0
APPRENTICESHIP and CLERKSHIP.—Indenture, or other instrument or writing, containing the covenants, articles, or agreements for or relating to the service of any such apprentice, clerk or servant as aforesaid, who shall be put or placed to or with a *new master or mistress*, either by assignment, transfer, or turn-over, or upon the death, absence or incapacity of the former master or mistress, or otherwise; or any writing whatever, whereby any such assignment, transfer or turn-over may be effectuated or ascertained.			

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SCHEDULE.	Duty.
APPRENTICESHIP and CLERKSHIP—*continued.*	Such and the like duty, in proportion to the amount or value of such new consideration only, as is before charged on any original indenture of apprenticeship.
Where there shall be any such valuable consideration as aforesaid, moving to the new master or mistress, exclusive of any part of the consideration to the former master or mistress, which may be returned, or given, or transferred to the new master or mistress	
And where there shall be no such new consideration; if the indenture or other instrument or writing shall not contain more than 1080 words	1 0 0
And if the same shall contain more than that quantity .	1 15 0
And where there shall be *duplicates*, or *two parts*, of any such indenture or other instrument or writing, relating to any such apprentice, clerk or servant as aforesaid, each part shall be charged with the duty before mentioned, in all cases where the same shall not exceed thirty-five shillings; and where the same shall exceed that sum, only one part shall be charged with the said *ad valorem* duty, or duty in proportion to the consideration, and the other part shall be charged with a duty of	1 15 0
Note.—And *the part* bearing the *ad valorem* or higher duty shall belong to and be kept by the apprentice, clerk, or servant, or some person on his or her behalf, upon his or her being first placed out; and in case of any subsequent placing out, by assignment or otherwise, *the part* bearing the *ad valorem* duty on that occasion (if any) shall belong to and be kept by the former master or mistress, or his or her representatives, or by the apprentice, clerk or servant, or some person on his or her behalf; and in each of the said cases, *the other part*, bearing the lower duty hereby charged thereon, shall belong to and be kept by the original master or mistress, or the new master or mistress, as the case may be; and the same shall be respectively received in evidence accordingly.	
Exemptions from the preceding and all other Stamp Duties. (*a*)	
Indentures or other instruments for placing out poor children apprentices, by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, or pursuant to the act of the thirty-second year of his Majesty's reign, for the further regulation of parish apprentices.	
And all assignments of such poor apprentices; provided there shall be no such valuable consideration as aforesaid given to the new master or mistress, other than what may have been or shall be given by any parish or township, or by any public charity.	

56 Geo. III. c. 139.

How *parish apprentices* shall be bound.

The 56 Geo. III. c. 139, enacts, "That from and after the first day of October, in the year of our Lord one thousand eight hundred and sixteen, before any *child* (*a*) shall be *bound apprentice by the overseers of the poor of any parish, township, or place*, such child shall be carried before two justices of the peace of the county, riding, division, or place, wherein such parish, township, or place, shall be situate, who shall inquire into the propriety of binding such child apprentice to the person or persons to whom it shall be proposed by such overseers to bind such child; and such justices shall particularly inquire and consider whether such person or persons reside, or have his, her, or their place or places of business within a reasonable distance from the place to which such child shall belong, having regard to the means of communication between such places, or whether any circumstances

(*a*) Not applicable to adults, *Rex* v. *St. John, Bedwardine, post;* and the 18 Geo. III. c. 47, enacts, "that no parish apprentice can be bound longer than the age of twenty-one," (p. 603).

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Justices to inquire into certain matters.

May examine the parents.

In what case justices to make an order that overseers bind the child apprentice.

shall make it fit in the judgment of such justices that such child should be placed apprentice at a greater distance; and if the father or mother of such child shall be living, and shall reside in or near the place to which such child shall belong, such justices shall (if they see fit) examine such father or mother, or either of them, and shall particularly inquire as to the distance of the residence or place of business of the person or persons to whom it shall be proposed to place such child, and the means of communication therewith; and such justices shall also inquire into the circumstances and character of such person or persons; and if such justices shall, upon such examination and inquiry, think it proper that such child should be bound apprentice to such person or persons, such justices shall make an order, declaring that such person or persons is or are fit person or persons to whom such child may be properly bound as apprentice, and shall thereupon order that the overseer or overseers of the place to which such child shall belong shall be at liberty to bind such child apprentice accordingly; which order shall be delivered to such overseer or overseers, as the warrant for binding such child apprentice as aforesaid, and such order shall be referred to by the date thereof, and the names of the said justices in the indenture of apprenticeship of such child; and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship, before the same shall be executed by any of the other parties thereto: provided always, that no such child shall be bound apprentice to any person or persons residing or having any establishment in trade, at which it is intended that such child shall be employed out of the same county, at a greater distance than forty miles from the parish or place to which such child shall belong, unless such child shall belong to some parish or place which shall be more than forty miles from the city of London; in which case it shall be lawful for the justices who shall authorise the apprenticing of such child to make a special order for that purpose, in which order such justices shall distinctly specify the grounds on which they shall think fit to allow of the apprenticing of such child to a person or persons residing or having an establishment in trade at a greater distance than forty miles from the parish or place to which such child shall belong."

Proviso as to employing apprentice out of the county where bound.

Indenture to be allowed by two justices of the county into which apprentice is to be bound, as well as by two justices of the county from which he is bound. (a)

See 3 & 4 W. IV. c. 63, p. 619.

Sect. 2. "That in all cases where the residence or establishment of business of the person or persons to whom any child shall be bound, shall be within a different county or jurisdiction of the peace, from that within which the place by the officers whereof such child shall be bound shall be situated, and in all other cases where the justices of the peace for the district or place within which the place by the officers whereof such child shall be bound shall be situate, and who shall sign the allowance of the indenture by which such child shall be bound, shall not have jurisdiction, every indenture by which such child shall be bound at any time after the said first day of October shall be allowed as well by two justices of the peace for the county or district within which the place by the officers of which such child shall be bound shall be situated, as by two justices of the peace for the county or district within which the place shall be situated wherein such child shall be intended to serve: provided always, that no indenture shall be allowed by any justice of the peace for the county into which such child shall be bound, who shall be engaged in the same business, employment, or manufacture, in which the person to whom such child shall be bound is engaged; and notice shall be given to the overseers of the poor of the parish or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district, within which such parish or place shall be, shall allow such indenture; and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice, and admit such notice."

Notice to overseers before indenture allowed.

Sect. 3. "That the allowance of two justices of the peace for the county, within which the place in which such child shall be intended to serve an

(a) Sect. 2 is not applicable to assignments, and a further provision is made as to the two parties by 3 & 4 Will. IV. c. 63, *post*.

apprenticeship shall be situated, shall be valid and effectual, although such place may be situated in a town or liberty within which any other justices of the peace may in other respects have an exclusive jurisdiction."

56 Geo. III. c. 139.

Allowance by county magistrates valid in places having exclusive jurisdiction. (a)

Sect. 4. "And whereas there are several cities and boroughs which are counties of themselves, and several districts situated without the limits of the county to which such districts respectively belong; be it enacted, that the distance to which parish apprentices may be bound shall not be construed to be limited to such cities and boroughs being counties, but shall extend to the county in which any such city and borough, and any such district, though belonging to another county, shall be locally situated."

Distance to which apprentices bound not limited to cities which are counties of themselves.

Sect. 5. "That no settlement shall be gained by any child who shall be bound by the officers of any parish, township, or place, by reason of such apprenticeship, unless such order shall be made, and such allowances of such indenture of apprenticeship shall be signed as hereinbefore directed."

No settlement gained unless directions complied with.

Sect. 6. "That in case any overseer or overseers shall bind an apprentice to any person or persons, without having obtained such order and such allowances as hereinbefore required, and in case any person or persons shall receive any such apprentice as so bound, without such order and allowances having been first obtained, the said overseer or overseers, and the said person or persons, shall each respectively forfeit the sum of ten pounds for each apprentice so bound, to be recovered as the penalties hereinafter given are directed to be recovered."

Overseers binding apprentices contrary hereto.

Penalty,

Sect. 7. "That from and after the said first day of October, it shall not be lawful for any parish officers to bind out any child as *parish* apprentice, until such child shall have attained the age of nine years; any thing in any act or acts of parliament to the contrary notwithstanding."

Children not to be bound till they have attained nine years.

Sect. 8. "That if any person or persons to whom any child shall be bound apprentice by the overseers of the poor of any parish or place, shall, after the said first day of October, remove his, her, or their residence or establishment of business out of the same county, or forty miles from the parish or place wherein the same was when such child was bound apprentice, such person or persons shall, at least fourteen days previous to such removal, give a written notice thereof to the churchwardens or overseers of the poor of the place where such apprentice shall then reside, unless such person or persons shall reside in such place under certificate; and in that case such persons shall give the like notice to the churchwardens or overseers of the poor of the place where such apprentice shall then be legally settled, and which churchwardens and overseers, and also the master or masters, mistress or mistresses, of such apprentice, shall cause such apprentice to appear before two of his Majesty's justices of the peace for the county or district within which such apprentice shall be then serving, who shall inquire whether it may be fit and proper that such apprentice should continue in the service of such person or persons, or be discharged therefrom, or bound or assigned over to any other person or persons; and shall thereupon make order, either for the continuance of such apprentice with such person or persons, or for the discharge of such apprentice, or for the binding or assigning of such apprentice to any other person, as to them in their discretion shall seem meet; and if they shall see fit, shall also require the person or persons so giving notice of removal, to pay the amount of the premium received with such apprentice, or such portion of it as to them shall seem meet, for the expense of assigning or binding such apprentice to any other person, to be approved by the said justices: and the person or persons to whom such apprentice shall be so bound or assigned, shall be subject to the same rules and regulations as the person or persons to whom such apprentice shall be originally bound; and in case any such master or masters, mistress or mistresses, shall remove as aforesaid, and shall take any such apprentice to any other place, without such order as aforesaid, or shall wilfully abandon and leave any such appren-

In cases of masters' removal, &c. how apprentices shall be disposed of.

Notice of removal.

Masters, &c. removing and taking apprentices without order.

(a) This provision, it seems, is not affected by the Municipal Corporation Act, 5 & 6 Will. IV. c. 76, s. 111.

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56 Geo. III. c. 139. Penalty.

tice, without giving such notice as aforesaid, every person so offending shall forfeit the sum of ten pounds for every such apprentice, to the churchwardens and overseers of the poor of the parish, township, or place wherein, at the time of such removal or taking, the apprentice shall have been legally settled, for the use of the poor of the same parish, township, or place; provided an information shall be exhibited for such offence within three calendar months next after the commission of the same."

Provisions of 32 Geo. III. c. 57, enforced with respect to assigning or discharging apprentices.

Sect. 9. "And whereas it may be expedient that those to whom parish apprentices are bound or assigned, should be empowed to place out or assign over such apprentices to others, and it is proper that such placing out or assignment should in all instances be under the inspection and controul of the magistrates; and it is fit that the person to whom such putting out or assignment shall be made, and also the apprentice, shall be made subject to the ordinary jurisdiction of justices of the peace with respect to masters and parish apprentices; and it is inexpedient that any master or mistress should in any way discharge or dismiss from his or her service any parish apprentice without the consent of such justices: be it therefore enacted, that from and after the first day of October, in the year one thousand eight hundred and sixteen, it shall not be lawful for any master or mistress to put away or transfer any parish apprentice to any other, or in any way to discharge or dismiss from his or her service any parish apprentice without such consent of justices as is directed in an act passed in the thirty-second year of the reign of his present majesty, intituled *An Act for the further Regulation of Parish Apprentices;* and that no settlement shall be gained by any service of such apprentice, after such putting away or transfer, unless such service shall have been performed under the sanction of such consent as aforesaid."

Discharging apprentices without consent of justices.

Sect. 10. "That any person or persons who, after the first day of October, in the year one thousand eight hundred and sixteen, shall put away or transfer any parish apprentice to another, or who shall in any way discharge or dismiss from his or her service any parish apprentice without such consent as aforesaid, shall forfeit a sum not exceeding ten pounds for every apprentice so transferred."

Indentures not valid unless approved by two justices.

Sect. 11. "And whereas the salutary provisions enacted by an act passed in the forty-third year of the reign of her majesty Queen Elizabeth, intituled *An Act for the Relief of the Poor*, are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of peace: be it further enacted, that after the said first day of October, no indenture of apprenticeship, by reason of which any expense whatever shall at any time be incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace, under their hands and seals, according to the provisions of the said act and of this act."

Sects. 12 and 14 relate to the recovery, and sect. 13 to the disposition of the penalties.

Power of overseers extended to churchwardens.

Sect. 18. "That the provisions and penalties herein contained, respecting overseers of the poor, shall be deemed to extend to all churchwardens having the power and authority of overseers of the poor; and that all the provisions herein mentioned and contained respecting any parish or place, shall extend to any incorporated or other district for the maintenance of the poor; and that the officers of any such district, having power to bind apprentices, shall be subject to all the rules, regulations, and penalties herein mentioned and contained respecting overseers of the poor."

1 & 2 Geo. IV. c. 32. Certain indentures and certificates of settlement declared valid.

See 51 Geo III. c. 80, p. 612.

The 1 & 2 Geo. IV. c. 32, enacts, "That all indentures for the binding of parish apprentices, and certificates of the settlement or settlements of poor persons, which have been, *previous* to the passing of this act, executed or signed by *one* churchwarden or chapelwarden, acting or purporting to act in the capacity of churchwarden or churchwardens, chapelwarden or chapelwardens, for any parish, township, hamlet, chapelry, or place in England, for which *two* churchwardens or chapelwardens had formerly

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been appointed, shall be deemed and taken to be as good and effectual to all intents and purposes as if the same indentures or certificates had been executed by one or more churchwarden or chapelwarden, churchwardens or chapelwardens, legally appointed; any law, statute, usage, or custom to the contrary notwithstanding."

1 & 2 Geo. IV. c. 32.

Proviso for decisions already made.

Sect. 2. "Provided always, that nothing in this act contained shall be construed to affect or set aside any decision or judgment made or given in any court of judicature respecting any such indentures or certificates, or to alter, impeach, or affect the settlement of any person for whose removal any order of justices shall have been duly made previous to the passing of this act, or to legalize or make valid any indentures or certificates to be signed or executed as hereinbefore mentioned after the passing of this act."

3 Geo. IV. c. 126, 4 Geo. IV. c. 95, no apprentice or collector of tolls of turnpikes to gain a settlement.

The 3 Geo. IV. c. 126, s. 51, enacts, "That no collector or person renting such tolls (turnpike), or residing in such toll-house as aforesaid, and no apprentice or servant of any such collector or person, and by 4 Geo. IV. c. 95, s. 31, no apprentice of any collector of tolls for overweight residing in any house used or erected by the trustees, shall thereby gain a settlement in any parish or place whatsoever."

6 Geo. IV. c. 16. Apprentices discharged from indentures by master's bankruptcy.

By the 6 Geo. IV. c. 16, s. 49, it is enacted, "That where any person shall be an apprentice to a bankrupt at the time of issuing of the commission against him, the issuing of such commission shall be and enure as a complete discharge of the indenture whereby such apprentice was bound to such bankrupt."

7 & 8 Geo. IV. c. 56. Stamps on sea indentures, &c. reduced.

The 7 & 8 Geo. IV. c. 56, s. 17, "and for the greater encouragement of navigation," enacts, "That no higher duty of stamps than two shillings shall be charged upon the indenture of any apprentice bound to serve at sea in the merchant service, nor upon any memorandum or agreement made between the master and mariners of any ship or vessel, for wages or service on any voyage in such ship or vessel; anything in any other act to the contrary notwithstanding."

3 & 4 Will. IV. c. 63. Indentures allowed by justices acting for two counties to be as valid as if granted by justices acting for different counties.

By 3 & 4 Will. IV. c. 63, s. 1, after reciting doubts to have arisen on the construction of 56 Geo. III. c. 139, it is enacted, that "from and after the passing of this act all indentures for the binding of parish apprentices which have been previous to the passing of this act allowed, and shall hereafter be allowed, by two justices of the peace acting as well for the county or district within which the place by the officers of which such child shall be bound shall be situated, as for the county or district within which the place shall be situated wherein such child shall be intended to serve, shall be deemed and taken to be as good, valid, and effectual, to all intents and purposes, as if the same had been allowed by two justices of the peace acting only for the county or district in which the place from which such child shall be bound is situated, and also by two other justices of the peace acting only for the county or district within which the place shall be situated in which such child shall be intended to serve."

Indentures with seal of corporations annexed to be valid.

Sect. 2. "And whereas, by divers acts of parliament heretofore made and passed, the directors, guardians, acting guardians, or other officers of incorporated hundreds, parishes, and other districts are by the said acts of parliament respectively authorised to bind poor children apprentices in the manner by the said acts of parliament respectively prescribed and directed; and whereas the said directors, guardians, acting guardians, and other officers have bound out poor children apprentices by indentures to which the said directors, guardians, acting guardians, and other officers have been, by their description as directors, guardians, acting guardians, or other officers of such incorporated hundreds, parishes, and other districts respectively, made parties of the one part, or to which they have, by their said descriptions respectively, been binding parties, and which indentures have been executed by the said directors, guardians, acting guardians, and other officers, by affixing thereto the seal of the corporation of which they are directors, guardians, acting guardians, and officers respectively, and in no other manner by them: and whereas doubts have been entertained as to the effect and validity of indentures so executed; and it is desirable to remove such doubts; be it declared and enacted,

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3 & 4 Will. IV. c. 63.

that from and after the passing of this act, in all cases where any indentures for the binding out poor children apprentices have been heretofore or shall be hereafter executed by any directors, guardians, acting guardians, or other officers, of any hundreds, parishes, or other districts now incorporated or hereafter to be incorporated under and by virtue of any act of parliament, by affixing thereto the seal of the corporation of which they are or shall be directors, guardians, acting guardians, or other officers respectively, such execution of the said indentures respectively shall be deemed and taken to be a good, valid, and effectual execution of the said indentures respectively by the said directors, guardians, acting guardians, or other officers of such incorporated hundred, parishes, or other districts respectively."

Indentures to be allowed by two justices, one of them acting for the county and one for the city, &c.

Sect. 3. "And whereas it is expedient that justices of the peace in every city, borough, or town corporate should have concurrent jurisdiction with county magistrates in apprenticing any child or children within the limits of such city, borough, or town corporate; be it therefore enacted, that from and after the passing of this act every indenture for the binding of parish apprentices within any city, borough, or town corporate shall be allowed by two justices of the peace, one of such justices acting for and on behalf of the county, and the other of such justices acting for and on behalf of the city, borough, or town corporate within the limits of which such child shall be bound."

This act not to set aside decisions already come to.

Sect. 4. "Provided always, and be it further enacted and declared, that nothing in this act contained shall be construed to affect or set aside any decision or judgment made or given in any court of judicature respecting any such indentures."

4 & 5 Will. IV. c. 76.

Justices, in binding poor children apprentices, to certify that rules of commissioners have been complied with.

By stat. 4 & 5 Will. IV. c. 76, s. 15, "the commissioners are empowered to make and issue (*inter alia*) rules, orders and regulations for the apprenticing the children of poor persons." And by sect. 61 it is enacted, "that from and after the period at which any rule, order, or regulation of the said commissioners shall come into operation for the binding of poor children apprentices, in addition to such assent or consent, order or allowance of justices, as are now required by law, such justices or any one justice are and is hereby authorised and required to examine and ascertain whether the rules, orders, or regulations of the said commissioners then in force for the binding of poor children apprentices have been complied with, and to certify the same at the foot of every such contract or indenture, and of the counterpart thereof, in such form and manner as the said commissioners, by such rules, orders, or regulations, may direct; and until so certified, no such contract or indenture of apprenticeship shall be valid; provided nevertheless, that nothing in this act, or in any rule, order, or regulation of the said commissioners, shall affect the jurisdiction of any justices of the peace over any master or apprentice during the period of apprenticeship."

Justices' power reserved as between master and apprentice.

Apprentices at

No settlement can now be acquired by service under an apprenticeship at sea, (s. 67).

Military officers not liable to have parish poor apprenticed to them.

The annual Mutiny Act usually enacts, "that no officer of his Majesty's forces, residing in barracks or elsewhere, under military law, shall be deemed liable to have any parish poor child bound apprentice to him; but that every such officer shall be wholly exempt from taking or receiving, or from having bound to him, any such child as an *apprentice*, any law, statute, or usage to the contrary notwithstanding."

Children under 16 not to be apprenticed to chimney-sweepers.

3 & 4 Vict. c. 85, s. 3, "That from and after the passing of this act (7th August, 1840) it shall not be lawful to apprentice to any person using the trade or business of a chimney-sweeper, any child under the age of sixteen, and that every indenture of such apprenticeship which may be entered into after such date shall be null and void."

No person under ten years of age to be an apprentice in a mine or colliery.

The 5 & 6 Vict. c. 99, enacts, that after the 10th August, 1842, no person shall take an apprentice who shall be bound to work, or liable to be called to work, or be otherwise occupied within a *mine* or *colliery*, who shall be under the age of ten years, or for a longer term than eight years, except as the apprentice to a mason, joiner, engine-wright, or other

mechanic, whose services may be occasionally required below as well as above ground, every indenture contrary to the act to be *void*. Any person serving under articles of apprenticeship within any mine or colliery shall be discharged at eighteen years of age, and the articles void.

2. *Of the Instrument of Binding.*

Existing apprentices to be discharged at eighteen.

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2. Of the Instrument of Binding.

2. *Of the Instrument of Binding.*

The 3 W. & M. c. 11, s. 8, in conformity with the 5 Eliz. c. 4 & 5, requires that the binding shall be by *indenture*, that is, by deed *indented;* and a deed in the manner and form of an indenture, but not *actually indented*, was insufficient. *Rex* v. *Mellingham*. 2 *Bott*, 492; *Rex* v. *Stratton, Burr. S. C.* 272. But the formality of indenting was removed by 31 Geo. II. c. 11, s. 1, which enacts, "that no person who shall have been bound an apprentice by any deed, writing, or contract, *not indented*, being first legally stamped, shall be liable to be removed." See statute, *ante*.

Persons bound apprentice by deed, though not indented, is not liable to be removed.

But the binding must still be by *deed*, though *indenting* is no essential part of it.

Rex v. *Ditchingham*, 4 *T. R.* 769. The pauper H. Cook at eight years of age was placed out by the parish officers of B. to a parishioner, under the following agreement, which was written on the leaf of the parish book, together with several other agreements of the same sort, viz. "August 7, 1774. At a general parish meeting, held this day, it is agreed that R. Fisher shall take H. Cook and maintain her after the manner of an apprentice, with washing, lodging, clothing, &c. from this day until Michaelmas, 1780; R. Fisher to have 20*l.* with her, and at the expiration of the time to double clothe her: witness my hand, R. Fisher." This agreement was not stamped. The court said, that although a modern act of parliament had dispensed with the necessity of having the deed of apprenticeship indented, still the binding must be by deed. (See also *Rex* v. *Mawman, Burr. S. C.* 290.)

The binding must be by deed.

A printed indenture of apprenticeship which is antedated is not therefore void, and residence under it will give a settlement. The indenture was dated 13th June, 1813, but executed in June, 1815. *Rex* v. *Harrington, post.*

Antedating it does not render it void.

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3. The Parties to the Binding.

3. *The Parties to the Binding.*

The relation of master and *apprentice* may be contracted as freely as that of master and servant: though it is usual for the parent to be a party to the deed and to covenant for his good conduct. In the case of parish apprentices, the law imposes certain duties upon the parish officers and neighbouring magistrates, the observance of which is essential to the validity of the contract. (See 56 Geo. III. c. 139, p. 615.)

We have seen that the legislature has prevented the apprentices in the sea-service, or to fishermen, from acquiring settlements after August, 1834.

Apprentices to sea service cannot now acquire a settlement.

Reg. v. *St. Giles's*, 2 *G. & D.* 542; 2 *B.* 458. An order for the removal of a pauper from St. Giles, to the parish of St. Mary at Hill, was quashed. Case:—The pauper was duly bound by indenture of apprenticeship, bearing date on or about the month of August, 1831, to the sea service, for the term of seven years, and served his master and resided in the appellant parish as his apprentice, so as to have gained a settlement in that parish, before the passing of the 4 & 5 Will. 4, c. 76, but his apprenticeship had not expired when that statute came into operation. In support of the settlement it was argued that the words "*shall* be acquired" are to be carried on to the latter part of the clause, so as to prevent persons "being apprentices" at the time of the passing of the act, as well as future apprentices, from *afterwards* acquiring settlements, and by this construction effect is given to the whole section. Lord *Denman*. "We think that is the true construction, and the argument is strengthened by reference to section 65, which contains retrospective words that are omitted in the 67th section." *Patteson* and *Coleridge*, Js. concurred. Order of sessions quashed.

But such apprentice whose term of apprenticeship was running at the time of the passing of 4 & 5 Will. IV. c. 76, but who had previously served and resided so as to gain a settlement, retains his settlement.

3. *The Parties to the Binding.*

In general, however, an infant may bind himself to serve an apprenticeship so as to acquire all the rights and benefits thereof, and to subject himself to the jurisdiction of justices, although he cannot, whilst under age, be sued on his covenant unless by special custom as in London. (*a*)

An infant may bind himself apprentice by indenture, because it is for his benefit. (*b*)

Rex v. *Arundel*, 5 *M. & Sel.* 257. George Slater was removed from Arundel to Ferring. Order quashed. Case:—The pauper was bound apprentice to one Barber, by indenture, in the usual form, (*c*) having a thirty shilling stamp, and regularly executed by Barber and the pauper, but not signed by any of the parish officers of Arundel, or assented to by any of the justices; and the question was, whether the signature of the parish officers, and the assent of the justices, were necessary to the validity of this indenture under the circumstances: the pauper was a cripple settled in Arundel; his mother in the first instance applied to Barber, expressing a wish that her son might be placed with him as an apprentice. The pauper when the indenture was executed was eighteen years of age, and had been for about a year before, and was then in the Arundel workhouse, from whence he went to the attorney's office, where the indenture was executed, and there met his father and the parish officer; and it was agreed between Barber and the parish officer that the pauper should go into the service of Barber, and that the parish should pay the sum of 40*l.*, which was paid accordingly out of the fund belonging to Arundel. The pauper's father was present when the indenture was executed, and it was read over at the time. The pauper had not been previously consulted, and it was not with his good will that he went into the service, but he never expressed to any one any objection to being bound. Barber lived at Patching at the time of the binding, and afterwards removed to Ferring, where the pauper continued with his master, under the indenture, for nearly a year. Lord *Ellenborough*. "This indenture must be considered clearly as for the infant's benefit, and not having been vacated it must be considered as binding, so as to confer a settlement on him by reason of his service under it. This was not the binding of a parish apprentice, it was to a person not residing in the parish; and all that the parish officers did was the advancing of 40*l.* as the premium. (*d*) As to any supposed controlling influence of the parish officers, I do not see how we can enter upon that subject, nothing being stated concerning it in the case. The influence, however, seems to have been that of the mother; the parish officers make the advance, and the pauper executes the indenture. I think the binding was undoubtedly for his benefit, and therefore valid." *Bayley*, J. "The pauper executed the deed without objection, and there was not any compulsion used at that time." Order of sessions quashed.

An infant may bind himself.

Newbury v. *St. Mary's in Reading*, *Fol.* 154; *And.* 373; 2 *Bott*, 490. A poor boy of fourteen years of age bound himself apprentice for seven years to a weaver. It was argued that this was not a binding according to the statute, and therefore did not gain a settlement; and that the indenture was void, because an infant could not bind himself. But by the Court: "It did gain him a settlement; for an infant may make an indenture for his own benefit."

Infants of seven years might have been bound.

In *Rex* v. *Saltren*, *Cald.* 444; 1 *Bott*, 717. Where the infancy of the apprentice was made an objection to the validity of the binding, *Willes*, J. said, "No age is specified in the 43 Eliz., under which this binding is made, or in the 8 & 9 Will. III., which compels the master to receive the apprentice and gives the appeal. Still, it is said that, under 5 Eliz. c. 4, it is necessary that the apprentice should be above ten years of

(*a*) *Cro. Car.* 179; *Moore*, 135; *Com. Dig. London*, N. 2.

(*b*) The indenture of an infant is voidable at his election. *Ex parte Davis*, 5 *T. R.* 517.

(*c*) The indenture began, "This indenture witnesseth, that G. Slater, of Arundel, aged nearly eighteen years, of his own free will doth put himself apprentice to C. Barber of Patching, cordwainer, &c. for four years, &c.; and the said C. Barber, in consideration of the sum of 40*l.* to him in hand paid, &c."

(*d*) This was before 56 Geo. III. c. 139. See s. 11, p. 616.

age, and that all the subsequent statutes are in *pari materia*. But that statute relates only to *husbandry*, which may require more bodily strength than most other occupations; and that statute cannot be connected with 43 Eliz., which was made for the maintenance of the poor. The present case is that of a female child bound to *housewifery*. In other instances, the legislature has not considered seven as too tender an age. The children of vagrants may at that age be bound out, and the strength and ability of children, which from seven years of age to ten must vary greatly in point of fitness, in this respect is matter of consideration and discretion in the magistrates." And *Ashhurst* and *Buller*, Js. agreed, "that the statute does not require any precise age, and that the whole consideration of *fitness* is in the discretion of the parish officers and the magistrates, who are the proper tribunal for such inquiries."

3. *The Parties to the Binding.*

Legislative restrictions as to binding infants.

The legislature has, in many instances, interposed for the protection of children of tender years, and prohibited apprenticeship under certain years, and to particular occupations. Since August, 1840, no child can be bound an apprentice to a chimney-sweeper under the age of 16, formerly under 10, and earlier still, under 8 (p. 620). No child under the age of 10 can be bound to work in mines or collieries (p. 620), and the overseers cannot bind a child under 9 years of age (p. 617).

A boy under eight years of age could not be bound apprentice to a chimney-sweeper; the indenture is void by 28 Geo. III. c. 48, s. 4, and will not confer a settlement. (a)

Rex v. *Hipswell*, 8 *B. & C.* 466; 1 *M. & R. Mag. Ca.* 474. E. Miller was removed from Morpeth to Hipswell. Order confirmed. Case:—The pauper's husband, Joseph Miller, son of Jane, the wife of Thomas Salkeld, was, *at the age of five years*, bound by Thomas an apprentice to W. Wright, a chimney-sweeper, by an indenture made the 21st day of May, 1804, between T. S., yeoman, and pauper's husband, his son, and W. Wright, chimney-sweeper. The pauper's husband of his own free will, and with the consent of his father, bound himself apprentice with W. W., after the manner of an apprentice, to dwell with and serve him from the date thereof for seven years. And W. W. covenanted with the apprentice that he would teach him the trade of a chimney-sweeper, which the master used; and also would provide him with meat and clothes. In the case of the master's death, the apprentice might choose a master for himself. The pauper's husband served under it as an apprentice to W. W. during the time specified in the indenture. *Bayley*, J. "The title of 28 Geo. III. c. 48, is general, 'For the better regulation of chimney-sweepers and their apprentices.' The preamble states, 'that the laws in being respecting masters and apprentices are not sufficient to prevent the complicated miseries to which boys employed in climbing chimneys are liable.' The 1st sect. empowers parish officers to bind under certain circumstances. The 2d sect. contains a regulation applicable to parish apprentices. The 3d sect. enacts, that a particular form of indenture shall be adopted, equally applicable whether the binding is by the parish officers or the parents. It is not, however, necessary to decide whether those clauses apply to all bindings; because the fourth and several other sections clearly extend to all cases of bindings, whether by parish officers or parents, and reach all bindings or contracts of apprenticeship or service. The former branch of the 4th sect. enacts, that all indentures, &c. for binding any boy under eight years of age as an apprentice to a chimney-sweeper, 'than is by this act limited,' shall be void in law to all intents and purposes. The words, 'than is by this act limited,' are not sensible; but the object of the legislature is manifest, namely, to render void every indenture by which a child under eight years of age is bound apprentice to a chimney-sweeper. If the former part of the section left any doubt upon this subject, it would be removed by the latter part, the meaning of which is perfectly clear, 'that every person who shall henceforth have, take, employ, retain, or keep any

(a) From J. *Holroyd's* judgment in *Rex* v. *Stoke*, 7 *B. & C.* 571, it seems that if an indenture is voidable only, and the parties at any time avoid it, no previous service will confer a settlement. This point is not noticed in the report of the same case in 1 *M. & R.* 458.

3. *The Parties to the Binding.*

such boy or boys as or in the nature of an apprentice or apprentices, or servant, employed in the capacity of a climbing-boy or chimney-sweeper as aforesaid, who shall be under the age of eight years as aforesaid, *contrary to the tenor and true meaning of this act*, and being convicted thereof, as hereinafter mentioned, shall forfeit and pay for every such apprentice or servant so by him or her had, taken, employed, retained, or kept, any sum not exceeding 10*l.* nor less than 5*l.*' But it is said, that *void* has been sometimes held to mean *voidable* only; and where the provision is introduced for the benefit of the parties only, such a construction may be right; but where it is introduced for public purposes, to protect those who were incapable of protecting themselves, it should receive its full force and effect. It would be contrary to the spirit of the act to consider the indenture in this case as voidable only; the consequence is, that no settlement has been acquired by service under it." *Littledale*, J. "The 4th sect. as it stands is certainly not very intelligible, nor can it be rendered so without either inserting or rejecting some words. By either of those means it may. By inserting the words 'or otherwise,' the sense is rendered complete; by rejecting the words 'than is by this act limited,' the same result is produced; and the rejection of those words gives effect to the enactment. The 4th sect. thus considered most clearly comprehends this case, and the indenture is therefore void."

An adult may bind himself.

It is clear from many of the cases, and from the language of several of the statutes, that a person of the *full age of twenty-one* may bind himself to serve as an apprentice.

The *master* may also be an *infant*.

Rex v. *St. Petrox in Dartmouth*, 4 *T. R.* 196. The father of the pauper's husband agreed with Mary Hayne, widow, to bind his son, then aged about *eight years*, an apprentice to R. H., son of M. H., who was then between the *ages of fourteen and fifteen*, and was then resident in his mother's house as a part of her family, and had no habitation or business of his own. Lord *Kenyon* said, "It has been properly admitted that this indenture was not absolutely void, but only voidable, on account of the infancy of the parties; and unless there were some other objection the pauper is entitled to the benefit of the apprenticeship."

The master's condition is immaterial.

A *female* may be bound apprentice by the parish to a day labourer, to learn housewifery; and it will be good, unless it is found to be fraudulent. *Rex* v. *St. Margaret's, Lincoln, Burr. S. C.* 728; 1 *Bott*, 713.

So the master may have no right to take an apprentice. (*a*)

Anon. T. 9 *Anne.* If an apprentice be bound to a master who has no right to take an apprentice, yet a settlement will be gained by service under such an indenture (*a*).

(*a*) *Guy* v. *Felton*, 4 *Taunt.* 876. In an action for harbouring an apprentice it was proved that the plaintiff, to whom the boy had been apprenticed, was not twenty-four years of age when the indenture was executed, in 1809; was not a housekeeper, as required by 5 Eliz. c. 4, s. 26; and carried on no trade mentioned in the statute. *Mansfield*, C. J., delivered the judgment: "Upon looking into the statute, which is a great and comprehensive law, and probably at the time a very wise one, to prevent there being idle persons, it appears that apprentices are obliged to be bound; but with respect to the words of sect. 41, on which the present question arises, certainly they at first startle one,—it says, 'all indentures made otherwise than is by this statute appointed, shall be clearly void to all intents and purposes.' *Many cases have been cited, which say that indentures not conformable to the act shall be only voidable*, and not void. If 'voidable' was applied to adults only it would be extremely strange. *With respect to infants, if applied to them, one can understand it. In all these cases the question arose with respect to infant apprentices;* but there has been no case cited where the doctrine that the contract is voidable and not void is applied to the case of a master. There is a ground which makes it impossible for the plaintiff to recover, for it is further provided that every person who shall take an apprentice contrary to this act, shall forfeit 10*l.*, making it not only void, but unlawful; and if such a taking is illegal, it is impossible that the master can recover damages for the violation of a supposed right, originating only in a contract which the law forbids." Rule for nonsuit absolute.

Rex v. *Closworth*, 6 *A. & E.* 286; 1 *N. & P.* 437. R. Bartlett was removed from Closworth to Pendomer. Order quashed. Case:—Previous to 1817, the pauper, an Englishman, being then of age, was at Twillingate in Newfoundland, in the employ of Messrs. Colbourne & Son, of Sturminster Newton, in Dorsetshire, who had a mercantile establishment in Newfoundland, and at Poole in Dorsetshire, and were Newfoundland merchants. J. Colbourne, the son, occasionally resided in each place, and the home of Colbourne's vessel, on board of which the pauper served, was the port of Poole. In the beginning of 1817 the pauper bound himself to Mr. John Colbourne by an indenture of apprenticeship for three years, to serve as an apprentice on board any vessel Mr. Colbourne might have. The instrument was not executed in England, but in Newfoundland, and was signed and sealed by the pauper and his master, then residing in Newfoundland. It was not stamped at the time of its execution, nor within two months afterwards; but at the hearing of the appeal was given in evidence, bearing an English one pound stamp, and a receipt for the penalty indorsed. No evidence was given of the law of Newfoundland relating to such instruments, but it was admitted—"that legal indentures executed in Newfoundland, do not, according to the laws of that island, require a stamp, in order to render them valid there."—The pauper served under the above instrument for more than forty days in Saint James, in Poole. It was admitted, and the sessions adjudged, that the instrument, if executed in England duly stamped, was a valid indenture of apprenticeship. The question was, whether the binding was a valid one, so as to confer a settlement by service under it in England. Lord *Denman*. "It appears to me that a good settlement has been gained under this indenture. The objection made to it is grounded on the 13 & 14 Car. II. c. 12, which speaks of an apprentice legally settled; and no doubt, at the time that statute was passed, the apprentice contemplated by the legislature must have complied with the requisites contained in the 5 Eliz. c. 4. To what extent those requisites must have been complied with it is not necessary now to inquire, as the 54 Geo. III. c. 96, after reciting the divers rules laid down by that statute respecting the taking of apprentices, enacts, that so much of the said recited act shall be repealed, and that it shall and may be lawful for any person to take or become an apprentice, though not according to the provisions of the said act. The objections therefore on the 5 Eliz. c. 4, fall to the ground. The provisions of the 5 Eliz. c. 5, which applies to seamen's apprentices, are then brought before our notice, to show that an apprentice must be bound in this country; but *Rex* v. *Gainsborough* (*post*) is a decision upon that very statute, and shows that non-compliance with the provisions referred to, does not vitiate an indenture. Lord *Hardwicke*, indeed, in *St. Nicholas* v. *St. Peter's* (p. 635), said that the construction of both statutes (meaning the 3 W. & M. and the 5 Eliz.) must be the same; but he only in fact added an immaterial term to his judgment, for all bindings by apprenticeship were at that time in some way or another connected with the 5 Eliz. c. 4, and it is *clear* Lord *Hardwicke* did not mean to say that all the provisions in that act relating to apprentices should be complied with to confer a settlement. With regard to the law of Newfoundland, there is certainly nothing to show that this indenture is according to the forms required there; but I do not think that is necessary, as a contract of teaching and learning is *primâ facie* a legal contract, requisite for the conduct of trade in all parts of the world, and it is found expressly that the apprentice was of age at the time that he bound himself. Had that not been so, a question might have arisen as to the necessity of showing that an infant could bind himself by the laws of that colony. But that difficulty does not arise. I therefore think that the indenture is valid, and that the residence under it in this country has conferred a settlement." *Williams*, J. "I am of the same opinion. It appears to me that this was a legal contract entered into between these parties, both of whom were competent to contract, and that the relation contracted between them was that of master and apprentice. The different acts of parliament have been relied on to

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A settlement may be gained by apprenticeship under indentures made in Newfoundland, the pauper being of full age at the time of binding himself.

Any person may take, or be an apprentice.

Proof of foreign law not required, the apprentice not being an infant.

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show that nothing can be valid as an indenture of apprenticeship, except what is in compliance with the rules laid down in them, but the case adverted to by my lord shows that that is not so. In the cases also where there has been a binding for less time than seven years, although the strong language of the stat. 5 Eliz. c. 4, has been forcibly urged in argument, that indentures not in compliance with the act 'shall be clearly void in the law to all intents and purposes,' there are many decisions which show that a binding for a less period is valid. It seems to me that there is nothing in the case to show that these parties did not legally contract the relation of master and servant, and therefore the residence of forty days under the apprenticeship in the township in question conferred a settlement." *Coleridge*, J. "Taking the two statutes of 13 & 14 Car. II. c. 12, and the 3 W. & M. together, one mode of gaining a settlement is created by being bound an appentice by indentures, and by forty days' residence in a parish under that apprenticeship. It has been said to-day, (reversing the order of the arguments used,) that a settlement has not been gained under this indenture, for two reasons; first, that there is no proof of there being any contract of apprenticeship, as this instrument was made in a foreign country, and there is no evidence to show that it is according to the laws of that country; and secondly, that the case is not brought within the settlement laws. It is very true that no evidence has been given of the law of Newfoundland on that subject; but this is a written contract entered into between the two parties, which the court can look at. Apprenticeship is, in other words, merely a contract to teach and to learn, and we have a right to look into the instrument to see whether, on a fair construction, the language of this instrument imports such a contract; for, if so, it must be taken to be, until something else be shown to the contrary, a contract of appenticeship. But then it is said, as it appears this contract was entered into in a foreign country, it is not within the purview of the acts relating to settlement. The argument is, that the statutes of Charles, and of William & Mary, are to be construed with reference to the statute of Elizabeth, which was the foundation of apprenticeships; and that that statute clearly imports that the party bound must be resident in this country, and the regulations as to husbandmen and householder—tradesman in a corporate town—householder—inrolment at the next market town, and so on, are referred to, all for the purpose of showing that the statute refers only to contracts made in this country. It seems to me that that argument could only be sustained on the supposition that no contract of apprenticeship is good for the purpose of a settlement, unless it is made in strict compliance with the statute of Elizabeth. But that cannot be maintained by any lawyer; for although the words of that statute are strong, as my brother *Williams* has just pointed out, yet from an early period it was held, (and decision after decision has gone to that effect,) that for the purpose of a settlement when there has been *de facto* a binding and a service, the settlement shall be acquired. It was held indeed that it would be acquired, although not merely the provision as to time, but every one of the provisions of that statute were broken through; although it was questionable whether the master himself had a right to take an apprentice, which right only grows out of that very condition of being a householder, that has been so much relied upon to-day to show that the act can only have reference to a contract made in this country. For it has been determined (a) that a mere lodger, not holding a house, was able to take an apprentice." Order of sessions discharged.

(a) *Rex* v. *Petrox*, p. 624.

A parish indenture was duly executed and allowed, but the master was fraudulently imposed upon the justices: This does not prevent a settlement.

Rex v. *Great Sheepy*, 8 *B. & C.* 74; 2 *M. & R.* 286. Order of removal of E. Burton from Great Barford to Great Sheepy confirmed. Case:—The pauper was bound apprentice by the parish on the 28th day of April, 1807, (the pauper being then aged seven years, or thereabouts,) to G. Wilkins, of Deddington, butcher, with him to dwell and serve till he should be twenty-one. The father of the pauper, whose settlement was at Great Sheepy, had died, and his widow had gone to reside with her father, G. Wilkins, at Deddington, Great Sheepy relieving the widow till the pauper was seven

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years old. The parish then proposed to the mother to put the pauper apprentice to Measham cotton works, and told her they should no longer relieve her unless the pauper was apprenticed. Upon this the mother requested the officers to bind the pauper to her father, in order that the boy might not be removed from her. The officers consulted their rector, (a magistrate,) and having received his sanction, they and the mother, and Wilkins, met together, and went before the justices, without the pauper, for the purpose of binding him. The justices allowed the binding, and the indenture was executed by all parties, and a premium of 6*l.* was paid to Wilkins by the parish officers. There was nothing in the appearance of Wilkins to excite any suspicion that he was an improper person, and there was not any fraud or collusion on the part of the magistrates, or of the parish officers. The pauper continued to dwell with Wilkins, in Deddington, after the execution of the indenture, running on errands and doing whatever he was bidden to do till after he was nine years of age, when he left his grandfather and never afterwards returned to him; but after the binding he continued to go to school by day as he had gone before, and he never knew that he had been bound apprentice, neither did he receive any instruction in the trade of a butcher; and although Wilkins had been a butcher, it did not appear that he ever killed meat after the binding, and he was a man of needy circumstances. The sessions found that the pauper and the grandfather had colluded together and fraudulently imposed the grandfather upon the parish as a proper master for the child, and on the ground of this fraud alone held that no settlement was gained under the indenture, though they acquitted the parish officers of all participation in the fraud, and found that they had acted *bonâ fide* in the matter. Lord *Tenterden*. "The sessions have found that a fraud was committed, but not by the parish officers. It appears that an imposition was practised on them by the master. If it were competent, after a great lapse of time, to inquire into the fact, whether fraud had been committed in the binding out of an apprentice by any of the parties to the indentures, a vast number of settlements might be disturbed and great expense incurred. The law, by requiring in the case of a parish apprentice, that the master shall be approved by two justices, has endeavoured to provide that there shall be a proper master, and that everything shall be done correctly. Where the justices have sanctioned a binding, and there has been no fraud in the parish officers, the safest course for us is to say, that service under such a binding confers a settlement, although the master may have imposed upon the justices. The sessions have mistaken the effect of the fraud found by them. Even supposing that they were right in finding such fraud, still it will not prevent a settlement." Order of sessions quashed.

May be bound to two masters successively. (a)

Rex v. *Louth*, 8 *B. & C.* 247. An indenture by which an apprentice was bound for seven years, to serve A. B. for the first four years, and his own father for the last three, to learn two different trades, is valid, and one stamp is sufficient. More fully stated, *post*.

The *apprentice* must be a *party* to the *deed*.

Rex v. *Chesterfield*, 2 *Salk.* 479; 5 *Mod.* 329. A servant was put out by his late master to a barber, who was to teach him to shave and make periwigs, for which he was to have 5*l.* The servant was no party to the covenants between his master and the barber. And the court adjudged it not to make a settlement, because it was no service, and the servant was no more than a boarder there for his education, which was no service to make a settlement.

If the binding be by the act of other parties, without his own intervention, no settlement is gained thereby.

Rex v. *Cromford*, 8 *East*, 25. The pauper's husband, W. H., went on the 1st of May, 1796, being then 14 years of age, as apprentice to N. Kniveton, of Wirksworth, weaver, and continued to serve him as an apprentice for five years. The following indenture was executed by the master and the father of W. H., but *not by* W. H. himself: "This agreement, made the 1st day of May, 1796, between N. K., weaver, and J. H., minor; the

(a) The steward of the owner of land, without special authority, cannot, it seems, accept an apprentice. He cannot assign him. *R.* v. *Spreyton*, *post*.

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said N. K. shall teach W. H., the son of J. H., the art and mystery of weaving, &c. in the best way he can, for five years from the date above; and that N. K. shall find W. H. all utensils belonging to the business; and that W. H. shall receive of N. K. half of what he earns, and the remainder to N. K." W. H. did not execute or become a party to any other indenture. Lord *Ellenborough*, C. J. "Here is neither a binding of the son himself apprentice, nor if I may so say, of his parent for him, for there is no contract for his serving his master; nothing to bind the son to serve. He might serve in fact, but was under no obligation to do so: he only continued to be taught as long as he pleased, but was not obliged to stay. This was no apprenticeship." The other judges concurred.

An indenture is void if the pauper, an adult, (though assenting,) is not a party to the deed.

Rex v. *Ripon*, 9 *East*, 295. Removal from Ripon to Darlington quashed by the sessions. The pauper, being twenty-three years of age, was put apprentice by her father-in-law, with her own consent, to one Husbands, in Hunton. She was present at the making of the agreement; but the indenture was only executed by the master and her father-in-law, but not by herself: neither was it ever tendered to her for that purpose, though she lived under it with her master for nearly twelve months in Hunton. And, without argument, by the court, "Is it possible to maintain this to be a competent binding of an adult who was no party to the indenture? The relation of master and apprentice did not exist."

Father has no authority to bind his infant son apprentice without his assent.

Services under an indenture executed by the master and the father, but not by the apprentice, will give no settlement.

Rex v. *Arnesby*, 3 *B. & Ald.* 584. Removal from Arnesby to Abthorpe. The pauper served some years under an indenture of apprenticeship in Abthorpe. The indenture stated that Simcoe, the pauper, son of Samuel Simcoe, glover, with the consent of his father, did put himself apprentice to W. S. framework-knitter, to learn his art, and with him, after the manner of an apprentice, to serve from the 10th day of May, 1802, for the term of seven years. It was regular, except that it was executed only by the father of the pauper and the master, and not by the pauper himself. *Abbott*, C. J. "The words of the 3 & 4 W. & M. c. 11 are, 'that if any person shall be *bound* an apprentice by indenture, and inhabit in any town or parish, such binding and inhabitation shall be adjudged a good settlement.' Before therefore any settlement can be gained, the court must see that the party is bound by indenture. Now the ordinary mode is for the party to bind himself, by executing the indenture. Even if he does not do that, still in the special case of a parish apprentice he may be bound without such execution; but then the binding takes effect by the authority of an act of parliament. This, however, is not the case of a parish apprentice; and unless we were to hold that it is competent for a father to bind his son apprentice without his assent (for which no authority can be produced), we must hold this indenture to be invalid. *Rex* v. *Houghton-le-Spring* (p. 488) is very different. This was a case of hiring and service, the statutes applicable to which say nothing of the *mode* in which the contract of hiring is to be made; and there it was held that the deed executed by the servant, and his employment under it, were evidence to show the terms under which the hiring had been made. And I think that the decision was right. This case, however, stands upon very different grounds." *Bayley*, J. "An infant can only *bind himself* apprentice by deed; and the question in this case is, whether according to the words of the act this party is bound by indenture. The indenture indeed purports to bind the son, but the son has not executed it. It is said, however, that he has done that which is tantamount to an execution. If we were to hold that to be so, we should hold, contrary to all principle, that an infant might be bound by his act *in pais*, without executing the deed. *In the case of a parish apprentice there is a special power given by the statute of Elizabeth to parish officers, and there an apprentice may be bound without his assent till he come of age.* But a father has at the common law no such right. The passage cited from *Comyn's Digest* is unsupported by any authority. I think therefore that the indenture in the present case was invalid, and that no settlement was gained by the service under it." *Holroyd*, J. "The apprentice did not gain a settlement by the service in this case; for an infant cannot

But a parish apprentice may be bound without his assent.

be bound merely by an act *in pais*. It has been argued, that as he has taken the benefit of the deed by serving under it, he must be bound by it. But that argument is not, as it seems to me, available. In *Rex* v. *Cromford*, (p. 627), the apprentice had served out his time; and in *Rex* v. *Ripon*, (p. 628), the indenture was executed by the father of the apprentice and the master, with her consent, and she also served under it. Yet, in both those cases, the indentures were held to be invalid. According to my recollection the distinction is this: where a party takes the benefit of a deed, but does not execute it, he will not be liable under it as for a covenant broken, but he may be liable under the implied contract raised by the acts of benefit which he takes under it. Here the infant was not bound by indenture, and no settlement was gained." *Best*, J. "It is said that the service here was tantamount to an execution: but where is that argument to stop? It might go the length of proving that a service for a single day, and that perhaps without proof of his knowledge of the contents of the indenture, would bind the apprentice. The dictum to which we have been referred applies only to land *qui sentit commodum sentire debet et onus, et transit terra cum onere;* and even there it would be a difficult point to establish that where a person took possession of the land for a single day, he was bound by all the covenants of a long lease which he had never executed. It seems impossible to consider this as the case of a person bound by indenture; and unless that he be so, he is not within the statute, and has gained no settlement."

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A parish apprentice bound to a master, not legally liable to receive him, will acquire a settlement although the apprentice did not execute the deed.

The case of *Rex* v. *St. Nicholas, Nottingham*, 2 *T. R.* 726, has been thought to be at variance with the doctrine laid down in the above case; but there is this distinction in the circumstances of them which may reconcile their apparent contradiction. In *Rex* v. *Arnesby*, the binding was *voluntary*, but the indenture was not executed by the apprentice, and therefore invalid: whereas in *Rex* v. *Nottingham* the binding was by the *parish*, and the execution by the apprentice was not necessary to make the binding valid. The principal objections in *Rex* v. *Nottingham* were, that the master resided in another county from that in which the justices resided who allowed the indenture, and from which the pauper was bound. It was admitted that the master could not have been compelled, under the 8 & 9 Will. III. c. 30, s. 5, to receive the pauper, but he had executed the indenture (*a*) and received the apprentice, and consequently the objection with respect to him, it was held, could not be supported; and with regard to the other objection, it was observed, that by the 43 Eliz. the parish officers are to bind out the children 'where the justices shall see convenient,' and whether in or out of the parish is not specified. The judgment of Lord *Kenyon*, therefore, must be taken as applicable to the particular facts of the case, and not as laying down any general principles as applicable alike to all questions of apprenticeship." His lordship said, "If the master does not reject the binding, but assent to it, there is a concurrence of all parties to give validity to the binding, and if no objection be made to the binding before the apprentice has resided forty days, he thereby gains a settlement." *Ashhurst*, J. "At all events there can be no doubt that the parish officers may make such a binding as this, by consent of all parties. Here the master consented by receiving the pauper. The pauper did not object, but lived under the indenture five months. That implies his consent, and it was only on ill-treatment that he applied for his discharge; now that application is an acknowledgment on his part that the indenture is binding. The pauper having then served more than forty days, ought to have the benefit of it." *Grose*, J. "I consider all the parties consented to the binding. The case of *St. Margaret's, Lincoln*, (p. 624), was considered as an express authority." (*b*)

(*a*) In a note to *Rex* v. *Arnesby*, 3 *B. & Ald.* 588, it is said the master did not execute the indenture, and it is so copied into 4 *Burn*, 498, 25th edit.; by reference to the report, however, this will be found incorrect.

(*b*) Mr. *Nolan* treats this case as an authority; for he says, speaking of an

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The child of a person receiving relief from the parish in which he resided, may be bound, although the child is resident in another parish.

The consent of the apprentice not requisite for the validity of the binding.

Rex v. *St. George, Exeter*, 5 *Nev. & Man.* 61; 3 *Adol. & Ellis*, 373. Mary Lee and children were removed from St. George, Exeter, to Crediton. Order quashed. Case:—The settlement of the paupers depends upon that of John Lee, the deceased husband of Mary Lee. John Lee was born in Crediton of parents legally settled in that parish. When he was about twelve years old, an indenture dated 15th October, 1811, was executed by the parish officers of Crediton, for the purpose of binding him apprentice to William Mugford, who was his uncle, and resided in the parish of St. George, Exeter. At the time of the execution of this indenture his father was at sea, and his mother having other children living with her in Crediton, was in the receipt of relief from that parish. John Lee himself was not residing with her, but had lived for a year or more with his uncle (Mugford) in the parish of St. George. The indenture was executed by the churchwardens and overseers of Crediton at the pay table of that parish, neither Mugford nor Lee being present, nor the magistrates who signed the allowance of the indenture; and it does not appear at what time or in what place they signed it, but it bears the signatures of two magistrates of the county of Devon. A counterpart was executed by Mugford at his house in Exeter, but Lee was not present when he executed it, and was not a party to it, nor to the original indenture. He continued to reside with Mugford, serving him in his business of a thatcher, till about a year after he attained the age of twenty-one years. The question was whether the residence and service would confer a settlement, Lee having lived out of the parish of Crediton a full year before the indenture was executed. Lord *Denman*. "One point was made, which however was not intended to be reserved by the sessions, namely, whether before the 56 Geo. III. c. 139, a child could legally be bound by the parish officers to a master not resident in their parish. We have no doubt on this point; it is expressly decided by *Rex* v. *St. Nicholas, Nottingham*, (p. 629,) the authority of which case has never hitherto been questioned. The point which was intended to be reserved was, whether the parish officers had power under 43 Eliz. c. 2, s. 5, to bind out any child not at the time resident in their parish. That section, by the word 'such,' refers to the first section of the same act, and the first section has these words, 'the children of all such whose parents shall not by the churchwardens and overseers, or the greater part of them, be thought able to keep or maintain their children.' The words are not grammatically correct, but their meaning is obvious. At the time of the passing of the statute of 43 Eliz. c. 2, there was no law of settlement, nor could the children of paupers, if at a distance from their parents, be sent home by the parish officers. In that state of the law the provisions of the 43 Eliz. c. 2, s. 5, could not apply to any children not actually resident in the binding parish. But since the law of settlement has been introduced, all the unemancipated children of a pauper are considered as part of his family, and we think that *the parish officers of any parish where the pauper is settled and residing, and unable to maintain his children, may bind out his child, with the assent of two justices, and in the proper form*, without the formality of having that child, if resident at a distance, brought home to his family. The case of *Rex* v. *Cole Orton* (1 *B. & Adol.* 25) would at first sight seem to lay down the rule that the statute of Elizabeth is to be construed without any reference to any subsequent statutes; but on consideration we do not think that any such rule is there laid down. All that is decided is, that when a child is resident in a parish, and the parents are unable to maintain it, the parish officers may bind out the child though the parents be not settled in the parish, which is quite consistent with their having power to bind out one of a family legally settled and resident in and chargeable to their parish, though

The statute of Eliz. may be considered in reference to subsequent statutes.

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apprentice put out by the *parish*, "His consent shall be implied if he lives under the binding." Mr. *Gambier*, on the contrary, in his clear and correct work, says, "The adoption of the contract is not tantamount to execution," and quotes *Rex* v. *Arnesby*, p. 628. See also *Rex* v. *Cromford*, p. 527.

the individual be at the moment resident elsewhere. As to the consent of the child, it is not requisite in the case of a parish apprenticeship, and no danger need be apprehended that a child may be taken from a friend or relation against the will of that friend or relation, and against the will of his parents, and bound to a stranger, for the whole matter is under the superintendence of the justices, who cannot be supposed likely to sanction such an arbitrary proceeding. Under these cicumstances we are of opinion that the order of sessions must be confirmed."

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Rex v. *Haughley*, 4 *B. & Ad.* 650; 1 *Nev. & M.* 525. T. Rampling was removed from Mendlesham, in the hundred of Stow, to Haughley. Order confirmed. Case:—By the 18 Geo. III. c. 35, all persons seised of messuages, lands, tenements, and hereditaments, of the annual value of 30*l.* and upwards, in the parishes within the hundred of Stow, were incorporated by the name of "the guardians of the poor within the hundred of Stow," and were to have a common seal, and to sue and be sued by that name, and the poor in the hundred were placed under the management of the corporation; and it was enacted, that it should be lawful for the directors and acting guardians thereinafter mentioned, at any general meeting, or at any of the quarterly meetings by that act directed to be held, with the consent of the justices of the peace, to bind any poor child or children under their management apprentice for such term as they should see fit, not exceeding seven years, in like manner as churchwardens and overseers of the poor, with the assent of the justices of the peace, were then by law empowered to do. The act afterwards directed, that the acting guardians, or so many of them as should think fit, should assemble on the 24th day of June then next, and elect by ballot twelve of the guardians, who should be called directors of the poor within the said hundred. The qualification of a director was, the being seised of messuages, &c., of the annual value of 30*l.*; but it was provided, that such of the guardians as were seised of messuages, &c., of the annual value of 400*l.*, and the justices resident in the hundred, should be directors without ballot. A poorhouse was to be built under the management of the directors; and upon its being finished, a general meeting of the guardians was to be held, at which the vacancies which had occurred among the directors who had been balloted for were to be filled up; and the guardians were at a meeting to elect twenty-four guardians, who, together with the directors qualified as aforesaid, and the twelve directors chosen by ballot, were to be the directors and acting guardians of the said hundred, for putting in execution all the powers and authorities of that act. The directors and acting guardians were to hold four general quarterly meetings in each year; one of them to be always held on the Friday after the 24th of June, and to be for filling up vacancies in the directors chosen by ballot, and for choosing acting guardians; after which the acting guardians were at such meetings to choose six persons from among themselves, who, with the directors, were to audit the accounts, and to choose a treasurer and clerk; and they were thereby authorised and required to transact and do all other business to be done at such quarterly meetings respectively, in pursuance of that act. By an act of the 5 Geo. IV. c. 18, for altering and enlarging the powers of the recited act, the provisions in the 18 Geo. III. c. 35, respecting apprenticeships, were repealed, and re-enacted with a clause enabling the directors and guardians, present at any meeting held in pursuance of the 18 Geo. III., to bind poor children by indentures *under the common seal of the corporation.* A quarterly meeting of the directors and acting guardians being duly held under the directions of the act, 18 Geo. III., by an indenture bearing date the 1st day of October, 1821, it was witnessed that the *directors and acting guardians* of the poor within the hundred of Stow in the county of Suffolk, incorporated for the better relief and maintenance of the poor within the said hundred, by and with the consent of two justices for the said county whose names were subscribed, and in pursuance of an order of two justices of the said county therein also named, did put and place Thomas Ram-

The indenture must be executed by the board of guardians under a local act in *their true corporate names.*

3. *The Parties to the Binding.*

pling, a poor child belonging to the parish of Gipping, within the said hundred, and residing at and maintained in the house for the poor within the hundred, apprentice to Robert Steggall of Gipping, for the term of one year. To this indenture the common seal of the corporation was affixed at such meeting, but the indenture was not otherwise executed by the directors and acting guardians. It was executed by the master. The pauper served the year, sleeping in the parish of Gipping. The question was, whether or not this binding, previous to the statute 5 Geo. IV. c. 18, was valid under the 18 Geo. III. c. 35. *Denman*, C. J. "The indenture was not executed in the name of the corporation, and is not their deed; and if executed in pursuance of the special power reserved by the 18 Geo. III. to the directors and acting guardians, it should have been signed and sealed by each of them. The binding was invalid." *Littledale*, J. "I am of the same opinion. The name of the corporation is the Guardians of the Poor within the hundred of Stow. The binding parties to this indenture are the directors and acting guardians. They are in the nature of a committee of the corporation appointed for certain purposes." *Parke*, J. "The argument is, that the directors and acting guardians meant to act as the agents of the corporation. But, assuming that to be so, the corporation should have been the binding parties, and the indenture should have been their deed. That brings it to the question whether it is their deed, which again depends upon this, whether they are described as the binding parties by their true corporate name. Now the doctrine upon that subject, as established in *Mayor and Burgesses of Lynn*, 10 *Co.* 124, and recognised in that of the *Croydon Hospital* v. *Farley*, 6 *Taun.* 467, is, that in grants or conveyances the name of a corporation must be the same in substance with the true name, but need not be the same in words or syllables. Applying that rule to the present case, it seems to me that 'the directors and acting guardians of the poor' is not in substance the same name as 'the guardians of the poor.' That being so, the binding, not being by the corporation, is invalid." Order of sessions confirmed.

Watermen, not occupiers of a house, are prohibited from taking apprentices.

Rex v. *Gravesend*, 3 *Bar. & Adol.* 240. The 10 Geo. II. c. 31, s. 5, after reciting the inconvenience which happens by watermen, &c. taking apprentices before they are housekeepers or have any settled habitation for themselves or their apprentices, enacts "that it shall not be lawful for any waterman, though a freeman of the (waterman's) company, or his widow, to take or keep any person as his or her apprentice, unless he or she shall be the occupier of some house or tenement wherein to lodge him or herself and such apprentice, and that he or she shall keep such apprentice in the same house or tenement wherein he or she shall lodge or lie, on pain of forfeiting 10*l.* for every offence." By section 4 it is provided that no such freeman or freeman's widow shall take or retain more than two apprentices at the same time, under a penalty. Held, that, by section 5, any contract to take an apprentice, entered into by such freeman or widow, not being an occupier of some house, &c., or having already two apprentices, was prohibited, and therefore that where a pauper bound himself by indenture of apprenticeship to serve the widow of a waterman, she not having such house, &c., but it being understood that he was to live at the house of a freeman of the company (which he did), and to serve him conformably to the indenture, he having two other apprentices at the time, such indenture was absolutely void, and no settlement was gained by serving under it.

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4. The Date and Execution of the Instrument.

4. *The Execution of the Instrument.*

An indenture antedated two years, to contravene 5 Eliz. c. 4, s. 31, is altogether

Reg. v. *Barmston*, 7 *A. & E.* 858; 3 *N. & P.* 167. Jane Allman was removed from Beeford to Barmston. Order confirmed. Case:—G. Allman, the pauper's late husband, was the son of Wm. Allman the elder, of the township of Lissett, tailor (now deceased). In 1811, G. Allman

4. *Date and Execution of the Instrument.*

void, although the appellant parish was no party to the fraud.

acquired a settlement in Barmston; afterwards, by an indenture of apprenticeship, he, then a minor, put himself apprentice to his father, to learn his trade of a tailor. The indenture was attested by two witnesses, one of whom was at the time of the trial in America, and the other was called. At the time of the execution nothing passed with respect to the hereinafter mentioned alterations. This indenture at first bore date the 12th of December, 1813, and was for seven years, but afterwards and before it was executed (but how long before did not appear), the parties, for the fraudulent purpose of enabling G. Allman to exercise the trade of a tailor, and have the full benefit of the stat. 5 Eliz. c. 4 (then in force), in that respect, after a five years' apprenticeship, as fully as if he had served seven years, as required by that statute, caused the date of the indenture to be altered, the year of the reign of King George III., from 53d to 51st, and the year 1813 to the year 1811, and the figures 1811, in the body of the indenture, were written over a line which had previously occupied the blank space in which they were introduced. G. Allman served his father in Lissett under this indenture for five years, and afterwards served him as journeyman at intervals until his father's death, 1820. There was no evidence that the appellant parish was a party to the alterations of the indenture. The sessions held this indenture to be fraudulent and void. Lord *Denman.* "The question in this case was, whether a settlement was gained by apprenticeship; the only material facts as to which were the following:—the pauper put himself apprentice to his father, by an indenture which at first bore date the 12th December, 1813, and was for seven years; but afterwards, and before it was executed (how long it did not appear), the parties, for the fraudulent purpose of enabling the pauper to exercise the trade of a tailor, and have the full benefit of the statute 5 Eliz. c. 4 (then in force), in that respect, after a five years' apprenticeship, as if he had served seven, caused the date of the indenture to be altered from the 53d Geo. III. to the 51st, and the year 1813 to 1811, and the figures 1811, in the body of the indenture, were written over a line which had previously occupied the blank space into which they were introduced. Under this indenture there was a sufficient service to gain a settlement. And if, as was contended, the result of this statement was that the pauper was bound for five years only, we should not have disturbed the rule of law laid down in *Rex* v. *St. Nicholas, Ipswich,* (p. 635,) and so many other decisions. We think, however, that the state of the case is very different. The sessions have found a fraudulent purpose, and the facts from which they arrived at that conclusion. And although, as was contended by the learned counsel in support of the rule (and not denied on the other side), as the grounds of the finding are stated, this court may examine into its correctness; yet it is equally certain that it will sustain the conclusion of the sessions where that can be reasonably done; and we think it may in the present instance. When the near relation of the parties is considered, and, moreover, that there was a purpose of evading the statute, which certainly prohibits the carrying on a trade except by a person who has served an apprenticeship of seven years, under a penalty,—we are of opinion that the sessions were well warranted in concluding that the indenture was, by the facts disclosed, avoided. A doubt was suggested, upon the language attributed to Lord *Hardwicke,* in the case of *Rex* v. *Tedford, post,* whether this was a species of fraud into which the sessions could inquire, as it respected the conduct of the parties themselves to the contract, and not of either of the contending parishes. When, however, the real character of a transaction, which may be apparently regular, is a question, we cannot see how the conduct of the parties, upon which the whole depends, can be withdrawn from consideration; and do not find that any such distinction as that above alluded to has been observed. And accordingly, in *Rex* v. *Gravesend,* (p. 632,) where the indenture was regular upon the face of it, facts were proved in order to shew that an evasion of a statute, prohibiting the master (a waterman), from taking more than two apprentices, was intended, and the indenture was avoided thereby. We think, therefore, that the sessions were warranted

4. *Date and Execution of the Instrument.*

A printed indenture of apprenticeship, which is antedated, is not therefore void.

The notice required by 5 Geo. III. c. 46, s. 19, and which is in fact printed under the indenture, states that such indenture will be void, but the statute does not.

in drawing the conclusion of fraud; that the indenture was therefore void; and that their orders should be confirmed."

Rex v. *Harrington*, 6 *N. & M.* 165. R. Cook was removed from Manchester to Harrington. Order quashed. R. Cook had a derivative settlement in Harrington, and had gained no settlement in his own right, unless he gained one by apprenticeship. In June, 1815, he was bound apprentice by indenture to one M. M'Graa, a ship-smith in Workington, for six years. The indenture was a printed form filled up, and had at the foot of it the notice required to be added to all such printed forms, by 5 Geo. III. c. 46, s. 19. The indenture bore date 13th June, 1813, but was not executed, in point of fact, until June, 1815. It was properly stamped, and in all other respects, except as to its being ante-dated, was perfectly regular. The pauper served between two and three years, and gained a settlement, under the indenture, in a third parish, provided a settlement could be gained at all by service under it. The sessions held the indenture absolutely void, by reason of its being so ante-dated, and no settlement gained by service under it. Lord *Denman*. "It is contended that no settlement was gained, because the indenture was avoided by 8 Anne, c. 9, and 5 Geo. III. c. 46. By 8 Anne I think the indenture is certainly not avoided under these circumstances. The 35th section of that act imposes a *penalty* upon the master to whom any sum of money is paid, &c. for and in respect of any clerk, &c. which shall not be truly inserted in some indenture or writing bearing date on the day of execution; but in another section (39) the cases are specified in which the indenture or other writing is to be void; and as the case of ante-dating is not there mentioned, we cannot say that the indenture is void under that statute. By 5 Geo. III. c. 46, it is declared and enacted, that all printed indentures of apprenticeship shall have the notice there given printed under the same. That notice states that the indenture will be void in certain cases, of which one certainly is the insertion of a wrong date. That is an act for altering the stamp duties upon admissions into corporations and companies, and for further securing and improving the stamp duties in Great Britain; and in order to secure the stamp duties upon printed indentures, &c., for binding clerks and apprentices, requires that this notice shall be printed at the foot of it. But there are no words there which can operate to make the indenture, &c. void in the cases mentioned in the notice." *Littledale*, J., "The 35th section of 8 Anne, c. 9, appears to impose a *penalty* for inserting a wrong date; but the 39th section enumerates the cases in which the indenture is to be *void*, and this is not one of them. The 19th section of 5 Geo. III. puts people *in terrorem*, as it were, but certainly does not of itself operate to make the indenture void in the cases specified." *Williams*, J., and *Coleridge*, J., concurred. Order of sessions quashed.

Not essential that the *master* should execute.

It will be observed by the cases under the last head, that although, generally speaking, the parties to the deed become so by executing it, yet there are some instances in which this ceremony is not essential to the validity of the instrument. In 1 *Nol. P. L.* 499, it is said, "although the master and apprentice must be parties to the deed, yet the settlement is not prevented by the *master's* neglect to execute, provided the apprentice is bound, and the law is the same whether it be a parish or a voluntary apprentice;" and several of the preceding cases are cited; to which may be added *Rex* v. *Ribchester*, *post*; and *Rex* v. *St. Peter's on the Hill*, 2 *Bott*, 495. The pauper was bound an apprentice in *St. Peter's in Chester* for seven years to a carpenter, but the indenture was not executed by the master. *Lee*, C. J. "It is objected that this indenture is not good, because it is not executed by the master, but that makes no difference if the apprentice himself were bound."

Same point.

Rex v. *Fleet*, *Cald.* 31. The indenture was properly executed by the parish officers, and allowed by two justices, but neither that nor the counterpart was executed by the master. It was contended that as the 8 & 9 Will. III. c. 30, s. 5, requires the master to execute a counterpart, a settlement could not be gained unless the master executed. But Lord *Mansfield*,

C. J. said, "There is no doubt. The binding was authorised by the 43 Eliz. long before the act requiring a counterpart. But, though the binding was valid, it was doubtful, till that act was made, whether the persons to whom they were bound were compellable to receive them. That statute was therefore made, and it subjects the master, upon his refusal to receive the apprentice, to a penalty; but in no other repects confirms the power of binding, which was already fully established."

4. *Date and Execution of the Instrument.*

Rex v. *St. Cuthbert, Wells*, 5 *Bar. & Ad.* 939; 3 *Nev. & M.* 100. By an indenture of 23rd August, 1744, the parish officers of Ditcheat put and placed J. Ivey, of the age of eight years, an apprentice to Mr. Powell, for and in respect of Mr. Wilmot's estate, with him to dwell and serve, and there was a covenant by Powell to teach him the business of husbandry. The indenture was executed by two of the parish officers, and by *Wilmot.* (*a*) Powell was a farmer, and the tenant of a farm at Ditcheat, the property of Wilmot, who was a stocking maker, resident at Wraxhall, in Ditcheat, but who afterwards resided in St. Cuthbert, (the appellant parish,) where J. Ivey lived with him, and was employed as a stocking weaver. J. Ivey, at the time he was bound, was living with his sister, Mrs. Ward, at Ditcheat. By directions of the parish officers, she took her brother to Wilmot, at Wraxhall. Wilmot said he was not quite ready for him; and she, at his request, kept her brother for a quarter of a year: Wilmot paying for his board. After that time, Wilmot sent for him, and the boy went and lived with him, first at Wraxhall, and then in the appellant parish, for more than forty days. *Denman*, C. J. "It does not appear that any master was bound by this indenture. It is stated merely that the original was signed by the parish officers, and the pauper, (*a*) Powell does not appear to have signed it." His lordship afterwards added, "There ought to have been a positive finding by the sessions of every essential fact. It is not found that Powell ever assigned the apprentice to Wilmot, or consented to his serving him. The order must be quashed." *Patteson*, J. "There is no statement that Powell knew anything of the transaction."

But the master must *assent.*

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5. Of the Term of Years.

5. *Of the Term of Years.*

Although the 5 Eliz. c. 4, declared apprenticeships for less than seven years void, yet before the 54 Geo. III. c. 96, it was held that such contract is voidable only, and not void; and that, therefore, a service under an indenture for a less term than seven years entitles the apprentice to a settlement.

St. Nicholas v. *St. Peter's, Ipswich*, 2 *Stra.* 1066; *Burr. S. C.* 91; 2 *Bott*, 493. There was an *indenture* of apprenticeship *for four years*, which the apprentice served accordingly. It was urged that this could not gain a settlement; for the 5 Eliz. enacts, that all indentures otherwise than by that statute shall be clearly void in the law to all intents and purposes; and by the same statute, persons dwelling in cities and towns corporate shall take apprentices *for seven years at the least;* whereas this master, dwelling in a town corporate, had taken this apprentice only for four years. By Lord *Hardwicke*, C. J. and the court: "The indenture is not void, but only voidable at the election of the parties themselves, if they think fit to take advantage of it; and not by a third person. It can only be avoided by the master or servant, who were the parties to it; but not by the parish, who have had the benefit of the service of this apprentice."

Binding for *less than seven* years does not render an indenture void, but voidable only. See remarks on this statute in *Rex* v. *Louth, post.*

Rex v. *St. Petrox, Burr. S. C.* 248; 2 *Bott*, 496. The pauper was bound a parish apprentice in *St. Petrox, until her age of twenty-one, without* the alternative, *or till time of marriage*, as the 43 Eliz. c. 2, s. 5, requires. It was urged that she gained no settlement, the binding being

A binding of a parish female till twenty-one does not render the binding void.

(*a*) In the report in *N. & M.* it is said that the *pauper* signed it, and Lord *Denman* makes the same observations. But the child was only *eight* years old.

5. *Of the Term of Years.*

contrary to the statute, and therefore void. But by the court: "*St. Nicholas* v. *St. Peter's* is in point. The indenture is not void, but only voidable by the parties themselves, if they shall think fit to take advantage thereof; but it is neither void nor voidable by the parish as to gaining a settlement."

So a binding for six years is merely voidable.

Rex v. *Evered, Cald.* 26; 1 *Bott*, 638; cited *per* Lord *Ellenborough*, *Gray* v. *Cookson*, 16 *East*, 27. The apprentice was bound, when an infant, for six years, by indenture, and afterwards when of age he had run away. Such a binding is not void, but merely voidable.

The same point was determined in the case of a parish apprentice, in *Rex* v. *Chalbury*, 1 *Bott*, 706.

Binding for an unlimited time only voidable.

Rex v. *Woolstanton*, 1 *Bott*, 707. An *unlimited* binding of a parish apprentice is not *void*, but only voidable. The statute for putting out parish boys apprentice, as to that part which speaks of binding them till the age of twenty-four, is only directory; but if it were compulsory, the indenture would be, for want of this, only voidable.

We have seen that apprentices to certain crafts must be of a certain age, *ante*.

A binding for a term that *may* extend beyond the age of twenty-one, only voidable.

Rex v. *St. Gregory, Canterbury*, 2 *Adol. & Ellis*, 99; 4 *Nev. & Man.* 137. A statute incorporated guardians of the poor of a certain district, and gave them power to bind out apprentices for any number of years, "provided such child be not bound for a longer term than until he or she shall have attained the age of twenty-two, if a boy, and twenty, if a girl." An indenture by which a boy, fifteen and a half, was bound for seven years, is *voidable* only, and not void, and a settlement may be gained under it. Lord *Denman* showed that *Rex* v. *Hipswell*, p. 623, and *Rex* v. *Gravesend*, p. 632, were not applicable, for in one the indenture was expressly avoided by the statute; in both, the binding was an illegal act. These decisions did not overrule *St. Peter's* v. *St. Nicholas*, p. 635, where the words of the statute were much stronger. Here the words, "provided such child," &c. are as mild a form of directing, and only directing, as can be, and very far short of the language which has been held to render the one event voidable only. *Taunton*, J. "The directions of a statute may be accompanied with a proviso, affording an inference that the act will not be legal unless the proviso be observed, as where the statute imposes a penalty for not doing it, thereby denoting its illegality. But the power here is of a permissive nature, and is an authority or privilege, and within Lord *Tenterden's* distinction in *Rex* v. *Gravesend*. All the judges observed in reference to *Rex* v. *Hipswell*, that a judgment on grounds of public policy was unsafe and unsatisfactory."

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6. *Of the Premium, &c.*

6. Of the Premium and Duty thereon, and Statement thereof in the Indenture.

The statute 8 Anne, c. 9, s. 32 to 45, p. 605, and the 9 Anne, c. 21, p. 607, first imposed a *duty* on any *premium*, whether pecuniary or otherwise, given with any apprentice, and which at present is regulated *in amount* by the 55 Geo. III. c. 184, p. 614. The 35 and 39 sects. of 8 Anne, c. 9, declared *void* all indentures of apprenticeship, unless the full premium were truly inserted in the deed, and unless the deed were brought to the stamp office within certain times, and duly stamped, but contain exemptions in favour of certain parish apprentices; and the 18 Geo. II. c. 22, s. 23, 24, and 22 Geo. II. c. 45, s. 5, 6, 7, 8, contain provisions for remedying the defect. The statutes of Anne regulating the *time* of stamping are still in force.

The stamp is therefore an essential part of an indenture of apprenticeship; and formerly it was requisite that there should be one stamp in respect of the instrument itself, and another in respect of the fee or premium, where a fee was given; but two stamps have not been necessary in any such case since the consolidation of the stamp duties by the

44 Geo. III. c. 98, which afterwards gave place to the 55 Geo. III. c. 184, by which the amount of duty upon these instruments is now regulated.

6. *Of the Premium, &c.*

Cuerden v. *Leyland*, 2 *Stra.* 903; 2 *Sess. Ca.* 134; 1 *Bott*, 545. Case:—The pauper was bound apprentice by indenture, and the master had 20*s.* paid him; he served three years, but the master never paid the duty of 6*d.* in the pound according to 8 Anne, c. 9, s. 39, which says, that if the duty be not paid, the indenture shall be void to all intents and purposes whatsoever. The case was referred to *Fortescue*, J., who went the circuit, and he held it a settlement, because the master had six months to pay the duty in; so that during those six months a settlement was gained, and it should not be in the power of the master to defeat it by matter *ex post facto.* And pursuant to this opinion, the sessions held it a settlement. But upon debate in the King's Bench, the order was quashed; for they said it was making the indenture good to one purpose, when the act of parliament had made it void to all intents and purposes whatsoever. And though it was a hard case, they could not break through the positive words of the act.

Where the duty is not paid, the indenture is void, and no settlement acquired.

Baxter v. *Faulam*, 1 *Wils.* 129; 1 *Bott*, 549. The question upon a demurrer was, whether an indenture of apprenticeship, where 6*d.* is mentioned to be the sum given with the apprentice, was void for want of the duty being paid for that sum. By the court: "No duty was ever intended to be paid for so insignificant a sum, there being no coin in England small enough to pay it. And by the act no stamp is required for less than 20*s.*"

No duty and no stamp required when the consideration is 6*d.*

Rex v. *Yarmouth*, *Burr. S. C.* 379. W. Jackson was bound an apprentice in St. Julian's, Norwich, in consideration of 6*d.* given to the master with the apprentice, and no duty was proved to be paid for the same: the point was given up, on the authority of *Baxter* v. *Faulam.*

Same point.

Rex v. *Chipping Norton*, 5 *B. & Ald.* 412. Jane Eely was removed in 1821 from Aynho to Chipping Norton. Order confirmed. Case:—By indenture of the 30th October, 1794, William Eely, the late husband of the pauper, bound himself to serve R. Philips, of Chipping Norton, as an apprentice for seven years, and Philips, in consideration of 25*l.*, the sum given with the apprentice, covenanted to instruct him in the business of a cooper. The indenture was duly stamped, with a stamp denoting the payment of the several duties, amounting in the whole to 6*s.*, imposed by different statutes *upon the indenture itself:* but it was not stamped with any stamp in respect of the *premium*, as required by 8 Anne, c. 9, within the time required by that statute, nor until the making of the order of removal, and after the entering of the appeal. Before the hearing of the appeal, the indenture was stamped, upon the payment of 5*l.* penalty, and of 1*l.* with a stamp denoting payment of a duty of 1*l.*, being the *ad valorem* duty stamp used to denote the payment of such duty under 55 Geo. III. c. 184, and 1*l.* being the duty payable under that statute in respect of a premium of 25*l.* given with an apprentice. The duty payable in respect of the like premium under 8 Anne, c. 9, was 12*s.* 6*d.* only; the duties payable under both the last-mentioned statutes were, after they were paid into the Exchequer, applicable to the same purposes. The stamps used by the commissioners under 55 Geo. III. c. 184, are of a different sort from those which were required to be procured and used by 8 Anne, c. 9, *which were poundage stamps.* These stamps were used until the passing of 44 Geo. III. c. 98, which imposed an *ad valorem* duty, and the poundage stamps were disused, and the dies with which they were formed were then broken up, and are not now in existence. Eely served under the indenture seven years.—*Abbott*, C. J. "I am of opinion that this indenture was void, not having been stamped within the time required by law; and consequently that the pauper gained no settlement by serving under it. By 8 Anne, c. 9, s. 32, a premium stamp is imposed, and by sect. 36, indentures signed within the limits of the weekly bills of mortality were required to be stamped within one month after the date, and by sect. 37, every indenture entered into elsewhere in Great Britain shall be either stamped within two months, or brought within that time to some collector or officer appointed for the management of these duties, who shall indorse a receipt for the duty

An indenture of apprenticeship, executed before the 44 Geo. III. c. 98, but not stamped with the premium stamp within the time prescribed by 8 Anne, c. 9, is altogether void, although at the time of the trial in 1821, it was stamped according to 55 Geo. III. c. 184.

6. *Of the Premium, &c.*

paid, bearing date on the day of payment. By sect. 38, indentures executed within fifty miles, to be computed from within the limits of the weekly bills of mortality, shall be stamped within three months; and if at a greater distance, within six months after the date or making thereof. By sect. 39, all indentures not stamped within the respective times for that purpose limited by the act, are declared void, and not available in any court or place, or to any purpose whatsoever. Here, therefore, the legislature expressly requires that the instrument shall be stamped within the prescribed time, and declares that, in case of omission, it shall be void to all intents and purposes; and that forms a distinction between this case and those that have been cited in argument." (*a*) Order of sessions quashed.

Where a premium is given, an indenture executed since 55 Geo. III. must be stamped within *the times* limited by 8 Anne, c. 9.

Rex v. *Church Hulme*, 5 *B. & Ad.* 1029, n. (*b*). T. Longstaff was removed from Church Hulme to Nether Knutsford. Order quashed. Case:—The pauper, by indenture of the 30th September, 1820, bound himself, with the consent of his father, to serve Peter Orme, then residing in Nether Knutsford, as an apprentice, for five years; and P. Orme, in consideration of 10*l.*, which was given with the apprentice, covenanted to instruct him, &c. Under this indenture, which was duly executed by all the proper parties, the pauper served his master in the appellant township upwards of three years. The indenture was not stamped until after the order was made for the removal of the pauper and within a few days of the sessions, when it was stamped at the instance of the inhabitants of the respondent township, and not of any of the parties to the indenture, though they were living. The indenture had been stamped with the proper stamp required by 55 Geo. III. c. 184, sch. A., part I., (viz. 1*l.*), upon payment of a penalty of 5*l.*, within a few days before the trial of the appeal. It was urged that 44 Geo. III. c. 98, had repealed all former stamp acts. Lord *Tenterden* said, "It repeals the duties imposed by those acts; but it, as well as the other stamp acts, studiously retains all the other provisions." He afterwards added, "I cannot distinguish this case from *Rex* v. *Chipping Norton*. That case went on the ground that the provisions of the stat. 8 Anne, c. 9, were in force, and therefore that an indenture of apprenticeship must be stamped with the premium stamp, within the time required by that statute. That case is decisive of the present, if the provisions of the 8 Anne still continue in force. Now, it has not been shown that they are repealed; on the contrary, it appears that the legislature, in the statutes repealing duties previously imposed, has studiously retained all the provisions, clauses, regulations, directions, &c. contained in the several acts relating to the duties repealed. That being so, no settlement was gained by the pauper in Knutsford. The order of sessions must be confirmed." *Littledale*, J. "I think the provisions in question are continued by 55 Geo. III. c. 184, s. 8, as well as by the preceding acts." *Parke*, J. "The respondents were bound to show either that the decision in *Rex* v. *Chipping Norton* was wrong, or that the provisions in question in stat. 8 Anne, c. 9, had been repealed by some act since 44 Geo. III. c. 98. It appears to me that neither can be done." *Taunton*, J., concurred. Order of sessions confirmed.

The 8 Anne as to *time* is still in force.

If time of stamping is immaterial, the court will not inquire when or what penalty is paid.

Rex v. *Preston*, 5 *B. & Adol.* 1028. Where an instrument is not required by law to be stamped within a particular time after its execution, the court, upon its being offered in evidence, will not inquire when the stamp was affixed, nor, if a penalty was incurred, whether the proper penalty was paid on the stamping. An indenture of apprenticeship without premium was executed April 27th, 1825, but not stamped till July, 1832, when a 1*l.* stamp was put on it, and a 5*l.* penalty paid. Afterwards a double duty (2*l.*) was paid. The indenture was offered in evidence to prove the settlement of a pauper by service under it. Held, that as it was not within stat. 8 Anne, c. 9, which limits the time for stamping inden-

(*a*) Evidence of its contents would have been admissible, it seems, if it had been lost before the time for fixing the stamp had expired. *Bousfield* v. *Godfrey*, 5 *Bing.* 418.

tures, the court was not called upon to notice the circumstances under which the stamps were affixed.

The premium given by the parish officers, upon the binding out of a poor apprentice, need not be set out in the indenture in words in full length; such an indenture being exempted from any duty by 8 Anne, c. 9, s. 40, the insertion of the premium being required only to ascertain the amount of the duty.

Rex v. *Oadby*, 1 *B. & Ald.* 477. A poor child, by indenture executed by himself, his father and master, bound himself an apprentice. The parish paid all the expense of binding, and gave the master a premium of one guinea. The premium was not mentioned in the indenture. Was it void for this omission? The court thought that the act was entirely a revenue act. It contains no provisions but those relating to duties. Its title is, "for laying certain duties on candles, and certain rates on monies paid with clerks and apprentices." It had been urged that the premium should appear, as justices had a jurisdiction when the sum paid did not exceed 5*l.* and might award restoration of part. But the court thought there was not in general such a penury of words in statutes, that if that had been the intention, it would not have been expressed in some corner of some clause. *Bayley*, J. said, "Though sect. 39 in terms requires the sum paid to be inserted, yet it was only for the purpose of raising a duty. When therefore sect. 40 exempts parish indentures from the duty, it entirely supersedes the necessity of inserting the sum paid; and the reason of the provision ceasing, the provision itself ceases to be necessary." *Abbott*, J. "The court ought not, without seeing its way clearly, to hold this to be a good objection, for it may involve questions of considerable importance; such as the freedom of a corporation, and the following of a profession."

A public annual charitable subscription held to be a "public charity."

Rex v. *St. Matthew, Bethnal Green, Burr. S. C.* 574; 1 *Bott*, 641. 5*l.* was inserted in the indenture as given with the apprentice, and was paid to the master, and the indenture had no stamp denoting the duty of 6*d.* in the pound being paid. This sum was paid out of a voluntary annual subscription for putting out children apprentices, brought up at the charity school of the parish of St. John, Wapping; and trustees are appointed annually for managing the charity, and a treasurer. It was objected, that this being a private and not a permanent charity, and consequently not within the exception of the act of parliament as to *public* charities, the indenture, therefore, not being stamped, was void. But by Lord *Mansfield* and the court: "It is a *public* charity, and a very laudable one. It is not necessary that it should be a permanent charity. The reason of the distinction between a public and private charity is obvious; a private charity might be calculated to evade the act; a public one cannot be supposed to have been so. But upon payment of the duty and penalty, and a receipt thereof from the stamp office produced in evidence, the writing is made good." (See 8 *Mod.* 365.)

A poor child, apprenticed to B. by the trustees of a charitable fund with a premium, was verbally, and without the knowledge of the trustees, transferred to A. who received 6*l.* *part of the* 15*l.* *paid as the premium*. This transfer is void for want of a stamped assignment.

Rex v. *Fakenham*, 2 *Adol. & El.* 528; 4 *Nev. & Man.* 553. S. Carter was removed from Heigham to Fakenham. Order confirmed. Case:—To prove a settlement in Fakenham, the respondents produced the will of John Norman, dated 19th February, 1720, whereby certain real estates were devised to trustees and their heirs, upon trust (at certain intervals after testator's death) to put to school, and at the age of fifteen to bind out apprentice to some trade a son of some one of his or his first wife's relations, until the whole number of boys together in being, that should be thus put to school and provided for, should amount to thirty. And the testator directed that as often as there should be a deficiency of the descendants of his or his first wife's relations, the trustees should put to school and place out apprentice a son or sons of some inhabitant or inhabitants of Ber Street Ward, or Upper Conisford Ward, in Norwich, or of the parish of Catton, in Norfolk; and the testator directed, that at the end of sixty years after his decease, the number of boys should be increased by two, three or four in a year, until it reached 120, of his or his said first wife's descendants, if they could be known or made out by his trustees, and if not, of such others as aforesaid out of Ber Street or Conisford Wards, and Catton, if enough were there to be had, if not, out of the neighbouring parishes in Norwich, at the discretion of his trustees, such children of strangers to be chiefly of such parents as had been reduced by losses and had paid to church and poor.

6. *Of the Premium, &c.*

By an indenture of apprenticeship, dated 1st February, 1821, but not stamped, the pauper, with his father's consent, bound himself apprentice to H. Vincent, of Norwich, tinman, to learn his art for seven years, at a premium of 15*l.* stated in the indenture to be paid to the master by George Morse, the treasurer appointed according to the will of Norman, for the purpose of annually binding out poor children apprentices; and Vincent covenanted with the pauper, and his father, and Morse, to teach the pauper the art or mystery of a tinman, and to pay the father 3*s.* a week for the first year, and an additional shilling a week during each succeeding year of his apprenticeship. The indenture was executed by Vincent, the pauper, and Morse. The pauper was bound out as the son of a relation of Norman or his first wife. The premium was paid out of the rents of the trust estates, and the indenture was prepared by the clerk to the charity and paid for by the charity. There never had been a deficiency of the sons of such relations, and no stranger had had the benefit of the bequest. The pauper served Vincent, in Norwich, under the indenture, for about three years and a half, when at the request of the pauper (who was still a minor) Vincent consented that he should serve the remainder of his time with the pauper' brother, in his trade of plumber and glazier, and agreed to give to the brother 6*l.* *as part of the* 15*l.* paid as a premium on the binding of the apprentice for taking him. In pursuance of this agreement, Vincent returned to the pauper 6*l.* as part of the premium received with him. For this sum the pauper accounted with his brother. There was no agreement in writing between the first and second masters, or between the pauper and his second master. The pauper served his brother two years, and was taught by him the trade of a plumber and glazier, and during that time slept in Fakenham. Neither the trustees under Norman's will, nor the treasurer, were parties to the agreement with the pauper's brother. The question was whether the indenture required a stamp either originally or upon the pauper's going to serve his brother; and whether the service with the brother was insufficient to confer a settlement, either on the ground that the trade of the brother was different from that of his first master, or that neither of the trustees nor the treasurer were parties to the agreement between his master and brother. During the argument Lord *Denman* observed, "The object of the charity may not be general, and yet the founder of the charity may not have had particular individuals in view. A particular class may be contemplated. You must contend that the charity was private till the happening of a certain event. The case is like that of foundations where a preference is given to founders' kin." He observed, "It appears to me, that the exemption in the statute in favour of assignments (*a*) does not meet this case. Perhaps one case contemplated by the legislature may have been, where the master dies, and the charity follows up the original binding by giving money with the apprentice to another master. But the trustees here were no parties to the transfer of the apprentice. We must construe that transaction in a manner consistent with the other facts of the case. It appears that a premium of 15*l.* was given by the charity to the first master. He parted with the boy, and agreed, as the case states, to give 6*l.* to the second master, as part of the premium received by the apprentice. 'As part' must be taken to mean, as the calculated proportion which the second master ought to have received, we cannot suppose the sessions to have found that it was part of the identical 15*l.*; that being so, the money given to the second master was not the money of the charity, therefore no settlement could be gained by service under that master without a stamped assignment." *Littledale*, J. "I am of the same opinion. On the transfer of the apprentice to the second master there was a new arrangement both as to premium and as to trade, which the trustees of the charity were no parties to. Whatever exemption the statute originally gave to the indenture was then taken away. The apprentice

It may be a public charity, although a *class* is contemplated.

(*a*) See 55 Geo. III. c. 184, p. 614, which exempts all assignments of such poor apprentices.

was not assigned to serve in the new trade under the trusts of the deed." *Williams*, J. "It is a transaction entirely between the two masters, and not one in which the trustees were concerned. The exemption, therefore, does not apply." Order quashed.

But the assignment of an apprentice was not within 8 Anne, c. 9; and therefore required no stamp, nor the statement of the consideration (*a*).

Rex v. *Ide*, 2 *B. & Ad.* 866. J. Stroude was removed from Hennock to Ide. Order confirmed. Case:—By indenture of 25th of April, 1817, made in pursuance of an order of justices, and in conformity to the 56 Geo. III. c. 139, the pauper was bound apprentice by the overseers of Ide, to A. Badcock, of the same parish. By an assignment, dated the 2d of May, 1817, made pursuant to the 32 Geo. III. c. 57, and in the form prescribed by that act, and with the consent of justices, the apprentice was assigned by A. Badcock to J. Long, of Hennock, and lived with Long in that parish, in service under the assignment, a sufficient length of time to gain a settlement. The assignment was executed by Badcock and Long, and the justices; and at the time of the production of it in court on the hearing of the appeal, it bore a 1*l.* stamp, which had been affixed on payment of the penalty a short time before, and more than six months after the date and making of it. Badcock paid Long 5*l.* as the consideration of this transfer of the apprentice to him; but this was not set out in the assignment, nor was any mention made of it therein. Lord *Tenterden*. "I am of opinion that this instrument was sufficiently stamped, and in due time. It is said that the assignment is within the meaning and provisions of the statute of Anne, whereby it is required that the premium paid on the indenture of apprenticeship shall be truly set forth in the instrument; and here the sum paid by the new master to the old is not set out. Therefore the question arises whether an assignment of an indenture of an apprentice is within that statute. Now, it has been often held that acts which impose a charge on the subject must be construed strictly. The stamp acts, therefore, cannot apply to instruments not specifically designated therein, and hence the modern stamp acts are framed so elaborately to comprehend all possible cases. Unless, therefore, the assignment of an apprentice be distinctly intended in the statute of Anne, we cannot hold it to be subject to the duties there imposed. But every word there manifestly applies itself to the original instrument only, and not to a subsequent assignment. Under the late stamp acts, the indenture of apprenticeship, and an assignment thereof, are treated separately, and are made subject to separate duties, which clearly shows that the legislature thought the latter would not be included under the terms used in the statute of Anne." *Parke*, J. "Considering the strict construction that ought to be put on a statute which imposes duties upon the subject, I think an assignment of this kind cannot be looked upon as included in the statute of Anne." *Taunton* and *Patteson*, Js. concurred. Order of sessions quashed.

A bequest of money to put out children apprentices, is a "public charity" within 8 Anne (*b*).

Rex v. *Clifton-upon-Dunsmore*, *Burr. S. C.* 697; 1 *Bott*, 641. G. Hammond, about thirteen years of age, was bound apprentice by indenture stamped with a treble sixpenny stamp, to W. W. of Swinford, for seven years. The consideration money in the indenture (being 7*l.*) received by the master, was mentioned in the indenture to be paid by J. Baily of Clifton, being *charity money* left by C. B. widow. The indenture was not stamped with any stamp denoting 6*d.* in the pound to have been paid, nor any apprentice duty paid. One *item* of the will was, to "Clifton 50*l.* *to be given as my brother thinks fit;* some of it to put out children apprentices." The court held *this* to be a *public charity*, and that therefore the duty was not payable on the apprentice fee.

(*a*) An assignment of an indenture of apprenticeship does not require more than a 1*l.* stamp, although it extends the period of apprenticeship. *Morris* v. *Cox*, 2 *M. & G.* 659.

(*b*) Where the master proved he received a premium of 12*l.*, a recital in the indenture that it was paid out of a charitable fund is not sufficient evidence of that fact. Had the recital been the only proof of any premium, then the recital would have been evidence of the charitable fund. *Rex* v. *Skeffington*, *post*.

6. *Of the Premium, &c.*

Money given by the apprentice's grandfather to the master to clothe the boy, before he enters upon his apprenticeship, is not such a consideration as the statute requires to be set out in the indenture.

Rex v. *North Owram*, *Burr. S. C.* 145; 1 *Bott*, 462. The mother of S. Spenser, the pauper, proposed to put him apprentice to a master at North Owram, who refused to take him because he wanted clothes; but proposed to take him if they would clothe him, or give him money to clothe him with. The grandfather of the boy said he would do so. And it was agreed, that the grandfather should pay 30*s.* to the master to clothe the boy, and that the master should take him as an apprentice. In pursuance of that agreement, the master did lay out 30*s.* in clothing for the boy. Afterwards an indenture was executed by the master and the apprentice: the 30*s.* was paid by the grandfather to the master. The apprentice served under such indenture for six years in North Owram. In the indenture a covenant was made for the master to find clothes for the apprentice during the term. But no mention was made of the 30*s.*, neither was any duty paid for the same, nor was the indenture stamped with the additional stamp required by the 8 Anne, c. 9, to denote such sum given with the apprentice. By the Court: "The not inserting in words at length the full sum received or contracted for, subjects the master to a forfeiture, but doth not make the indenture void. And upon the state of the case, the master is to be looked upon in no other condition than if he had been a stranger employed as an agent by the grandfather to clothe the boy; and the grandfather was obliged to repay him, and did repay him. This clothing was before the binding, so that it amounts to no more than putting a boy apprentice ready clothed. It is not a premium received by the master. *The statute means money given for the benefit of the master.* But he has no benefit from this 30*s.* He was not obliged to clothe the boy before he was his apprentice; and this agreement was executed before the indenture was sealed." And adjudged that the apprentice gained a settlement.

Consideration money given with an apprentice by parish officers is not liable to the duty imposed by 8 Anne, c. 9. (*a*) The binding was voluntary, and the party receiving the apprentice not privy to the gift.

Rex v. *St. Petrox in Dartmouth*, 4 *T. R.* 196. J. Hambling, the father of the pauper's husband, deceased, having been told by the parish officers of Townstall they would give him 20*s.* to bind out his son an apprentice, did so bind him out: and the agreement between H. the father, and M. Haynes, a widow, and the mother of an infant, to which infant the boy was to be bound, was, that he should pay M. H. 20*s.* as a consideration for such apprenticeship. It did not appear that she *knew* of any promise made by the overseers to Hambling respecting such advance of money. Hambling afterwards received from them the 20*s.*; he paid 5*s.* of that sum to M. H. and promised to pay her the remainder, but he applied it to his own use. The indenture had no stamp for the consideration money. Lord *Kenyon.* "We must consider this to be a fair binding to the son, because the sessions have not stated it to be fraudulent. Then, if it were, as it professed to be, a binding to the son, and not colourably to the mother, the statute requires no duty for the consideration money, even though the money were not raised at the charge of the parish. The act of Parliament, taking it altogether, undoubtedly imposes the duty on money paid to the master or mistress ONLY; for it says, 'that every master or mistress *to or with whom, or to whose use* any sum shall be given, paid, secured, or contracted for or in respect of any such apprentices,' &c. Now here the master did not receive the money which was given with the apprentice, but for reasons (not here stated) the mother received it; and it is not stated that she received it *as agent for her son.* But even supposing that the master had received or contracted for the consideration money, it was not subject to the duty imposed by the statute of Anne, because it was money raised at the common and *public charge* of the parish of T., and as such it comes within the proviso in that act. It was assumed in argument, that there can be no binding of a parish apprentice within the meaning of this proviso, unless it be compulsory under 43 Eliz., with the concurrence of two magistrates. But that cannot be the construction of the statute, for one of the purposes of raising rates for relief of the poor, was to put out children apprentices at the expense

(*a*) Parol evidence is admissible to show that the money was paid by the parish, and therefore that no stamp was required. *Rex* v. *Llangunnor, post.*

of the parish; that is not restrained to a compulsory binding, which is under a subsequent clause. The object of the act is as well answered by a binding with the consent of the parents, as by a compulsory binding without their interference. All that is required is, that it should be obligatory on the children. If the parents discharge their duty, there is no necessity for the interference of the magistrates or parish officers; but if they neglect it, or are not able to procure masters, the parish officers are bound to interfere, and they stand *loco parentis*." *Ashhurst*, J., giving no opinion on the objection that the payment had been made to the master of the apprentice, and not to the mother, said "that the money having been paid out of the public fund of the parish, was decisive." *Grose*, J. agreed.

The father providing lodging, board, &c. for the apprentice, and the master to pay four shillings per week to the father for the same, no additional stamp is necessary.

Rex v. *Portsea*, *Burr. S. C.* 884. An indenture of apprenticeship covenanted "that *sufficient meat, apparel, physic, and lodging, and all other necessaries*, during the term, should be *provided* for the apprentice *by the father*; for *which purpose* the master *was to allow* him 4*s*. per week." There was a covenant for deduction from this payment in case of absence or loss of time. It was objected that *the duty had not been paid for the lodging and physic*, covenanted to be *found by the father*. And it was answered, "that the 4*s*. per week was an *equivalent*, and the additional stamp unnecessary." And the court held that this answer was sufficient, as there was nothing before them to show that 4*s*. per week was not an equivalent; and they were not to presume it was *not* an equivalent; (*i. e.* that it was not equal to the amount as cost of the board, &c.;) if it were less than that cost, then the overplus paid for by the father would be a benefit to the master, he being at common law bound to provide for his apprentice: as to this obligation, see *Rex* v. *Leighton* (p. 644). And *Ashton*, J. hinted that the 8 Anne, c. 9, s. 45, which says, "that where anything or things, *not being lawful money of G. B.*, shall directly or indirectly be given," means *such* other equivalents as a horse, or other valuable thing of that sort; *not* such an agreement as this is, "to provide necessaries for a son."

Where an apprentice covenants to provide himself meat, drink, lodging, &c., and the master covenants to pay him wages; it must appear that the wages are not an equivalent, if it is intended to invalidate the indenture for want of the proper stamp.

Rex v. *Walton in Le Dale*, 3 *T. R.* 515. R. Cunliffe was removed from Walton in Le Dale to Kirkham. The pauper bound himself by an indenture of apprenticeship to Croft and Hall, calico-printers, for seven years. The indenture contained a *covenant on the part of the pauper, that he would provide for himself meat, lodging, apparel, and physic, during the term; and his master covenanted to pay him 5s. per week for the three first years; 6s. per week for the fourth and fifth years; and 7s. per week for the sixth and seventh years*. There was a proviso that the pauper should not be entitled to any wages during sickness or neglect of his work. And in case he was not employed at the business for which he was bound, then his masters should be at liberty to reduce one-half of his wages for two months yearly. The pauper served under this indenture, which was written upon the proper stamp, but no additional duty was paid according to 8 Anne, c. 9. (*a*) It was insisted that the indenture was inadmissible in evidence, and void, not only for want of a stamp for the additional duty, but also on account of the nature of the contract and the clauses contained in the indenture; but the sessions thought otherwise, and reversed the order. Lord *Kenyon*, C. J. "*Pennington* v. *Sudall*, (1 *Bott*, 551,) which has been cited, cannot be taken as an authority deciding anything. If we were to infer anything from that case, it would rather be the reverse of that which has been supposed; because the case went off on an agreement to admit the apprentice to his freedom, which could only have been done under the idea that he had served a legal apprenticeship. The principal question relative to the additional stamp duty cannot be decided on this case, as it is now stated. I believe it is the practice at the stamp-office to set a value on these sorts of benefits as a matter of course, when the indentures are carried to them. Now here the apprentice stipulated to provide himself with certain things, which it is said the master is bound by law to provide for him, and for

(*a*) It was admitted, but not stated in the case, that the wages were equivalent to the board, whilst the apprentice was employed as a printer.

6. *Of the Premium, &c.*

which it is contended an additional stamp duty ought to have been paid, because it is a benefit to the master: but, on the other hand, the master was to make certain weekly payments to the apprentice. Then how can we say that those payments were not equivalent for the maintenance, &c.? I believe they are much more. But before we can decide the material question, the justices must find the fact, whether those payments were or were not an equivalent. I therefore studiously avoid giving any opinion on the general question; and it is enough for me to say at present, that it does not appear but that the master gave an equivalent for the benefit which he received." *Buller*, J. "I do not see anything like a benefit to the master, for which an additional duty ought to have been paid. The master covenanted to pay the apprentice so much per week; that clearly is not within the statute. Then it was provided that in case the apprentice should be ill, and be unable to perform his business, or neglect to do it, he should not receive any wages; but this was no benefit to the master; it was only an agreement that he *should not pay*, but not *that he should receive anything*."

If the friends of an apprentice covenant to maintain him on every Sunday, and to provide him with clothes, this is not such a benefit as is liable to a duty imposed by 8 Anne.

Rex v. *Leighton*, 4 *T. R.* 732. J. Price was removed from Leighton to Church Coppenhall. Order quashed. Case:—The pauper was bound apprentice by his father to R. Lindrop, of Church Coppenhall, shoemaker, under an indenture for four years, to learn the trade of a shoemaker, in which was a *covenant by the father that he would, at his own charge, provide for his son sufficient meat and lodging, on every Sunday during the term, and would provide him with apparel (except working aprons and shoes) and washing.* There was a covenant on the part of the master to provide for the apprentice meat and lodging (except on Sundays) during the term. The indenture was on a 5*s.* stamp. The pauper served the four years for six days and nights in each week, and went to his father's every Sunday. The father expended 5*l.* and upwards in clothing his son, and in providing meat, &c., for him on Sundays during the term; for this no additional duty was paid. Lord *Kenyon*. "This has been *vexata quæstio* ever since I came into Westminster Hall, and various opinions have been entertained upon it. It is true that if an indenture be taken to the stamp-office, they will set their value upon every supposed benefit to the master for the sake of the revenue; but that is by no means decisive. The question depends on 8 Anne, c. 9, ss. 32, 45; the former section imposes a duty on all sums of money given with any apprentice, &c., and the latter enacts, 'that where *anything*, not being money, shall be given, contracted for, or secured, to or for the use or benefit of the master, the duty shall be paid for the full value of such thing, in such manner,' &c. The latter provision was inserted for the purpose of protecting the revenue from any fraud which might otherwise be practised by the parties giving something in lieu of money. For if, as in the case put by *Aston*, J., a horse, or other valuable thing of that sort, be given by the friends of the apprentice to the master, that must be considered to be a benefit to the master, for which a duty should be paid. It occurred to me early in the argument, that in order to see what would or what would not be considered as a benefit to the master, it was necessary to inquire what were the duties that resulted from the bare relation of master and apprentice. And I think that the 8 & 9 Will. III. c. 30, s. 5, throws a great deal of light upon that point; because if, from the time of the statute of Eliz. to that time, masters could not be compelled to provide for parish apprentices, and that law was made for the purpose, it shows that the obligation of providing for apprentices did not result from the mere relation of master and apprentice; for if it had, that part of the statute of Will. III. was unnecessary. The case of parish apprentices is the only one where an apprentice can be put out *nolens volens*; all the others depend on the express stipulation to be made by the parties interested. It has never been held that the obligation of the master extended to the providing clothes for the apprentice, and yet I cannot distinguish that from the obligation to provide sustenance: for the former are equally necessary with the latter: and in other cases than those of parish apprentices, clothes

The duty of feeding and clothing an apprentice does not result from the bare relation of master and apprentice.

6. *Of the Premium, &c.*

are generally provided by the friends of the apprentice. But if everything is to be valued, and a duty set upon it, from which a benefit arises to the master, it might be equally said that the earnings of the apprentice should be liable to the duty. The argument, therefore, that every benefit which the master derives from the apprentice, by proving too much, proves nothing. The authority of *Aston*, J. is in all cases worth resorting to, but particularly so in cases of sessions' law, in which he was remarkably conversant. And his opinion in the case (*a*) alluded to is very strong to this point. I think, therefore, that the *clear meaning of the statute of Anne is, that where money or money's worth is given to the master by the friends of the apprentice, by way of premium, a duty ought to be paid for it; but where meat, clothes, &c. are to be provided for the apprentice, no duty is payable, because there is not anything given to the master.*" *Buller*, J. "The terms of sect. 32 refer to something which *is given to the master* or contracted for, or only apply to cases where the master is to derive a benefit from the apprentice, independent of the benefit to be derived from the apprentice himself; and, therefore, whatever is given for the advantage, benefit, and accommodation of the apprentice, does not fall within the clause. *Grose*, J. concurred. Order of sessions quashed.

(*a*) *Rex* v. *Portsea*, p. 643.

Rex v. *Aylesbury*, 3 *Bar. & Adol.* 569. An order of removal from Aylesbury to Leighton Buzzard, was quashed. Case:—The pauper, on the 4th November, 1823, was bound apprentice, by the trustees of a public charity, to W. Fryer, for seven years. The master covenanted to find the pauper meat, drink, apparel, washing, lodging, and all other things needful during the apprenticeship. Before the indenture was executed, the father of the pauper, who was no party to it, agreed with the master to find the pauper clothing and washing during the term, and he accordingly did so during great part of the time; and the clothes and washing so supplied might amount to 10*l.* in value. The master said he would not have taken the pauper unless the father had made such agreement. There was no evidence that the trustees of the charity were privy to this arrangement. The indenture was not stamped, and it was objected that the apprentice had not been bound by or at the sole charge of a public charity, and therefore required a stamp. Lord *Tenterden*. "I cannot distinguish this case from *Rex* v. *Leighton*, (p. 644,) where this point seems to have been very fully considered. That case turned upon 8 Anne, c. 9, s. 45, the words of which are very similar to those of 55 Geo. III. c. 184, schedule, part i, tit. (Apprenticeship), and the decision proceeded on the ground that there was no obligation on the part of the master, in the absence of express stipulation, to provide clothes or sustenance for an apprentice, and therefore that the agreement so to do by the father could not be considered a benefit to the master; and the concluding words of Lord *Kenyon's* judgment apply to this case. It is urged that this case is distinguishable, because there the father covenanted in the indenture to provide clothes, &c., but that here the benefit is given to the master by the father's agreement, independent of the indenture. But that agreement being prior to the indenture, if it was made without the knowledge of the trustees of the charity, it was a fraud upon them, and therefore void, even if the providing clothes could be considered as anything given to or for the benefit of the master; but I think that the agreement by the father to provide clothes cannot be considered as having that effect." *Littledale*, J. "I think this case falls within *Rex* v. *Leighton*." *Parke*, J. "It is said that there is a benefit conferred on the master by the agreement of the father to provide clothes, and that this is equivalent to a sum of money. Assuming it to be so, the agreement was then a fraud on the trustees of the charity; (*a*) for it is clear from the covenant in the indenture, that they bound out the pauper on the faith that the master was to find apparel, &c., and the latter could not have sued the father for not providing clothes, for there was no binding engagement on him to do so." *Patteson*, J. concurred. Order of sessions quashed.

A pauper was bound apprentice by the trustees of a public charity. The master covenanted to find meat, drink, apparel, washing, &c. Before the execution of the indenture the father of the pauper, who was not a party to the indenture, agreed with the master to find the pauper clothing and washing during the term, and he did so: The indenture does not require a stamp.

(*a*) See *Rex* v. *Baildon*, p. 647.

Rex v. *Wantage*, 1 *East*, 601. The pauper, T. Smart, was bound apprentice to a ropemaker for seven years. The indentures were lost, but

A master stipulating for part of

6. *Of the Premium, &c.*

the apprentice's earnings, is not a consideration within the statute.

it appeared that the pauper was to find himself in clothes, board and lodging; the master was to allow him full journeyman's wages, but was to have 4*d.* out of every shilling of the pauper's earning. The indentures were stamped, but no duty was paid for any consideration reserved to the master. Lord *Kenyon*. "It is impossible to argue that a part of the apprentice's earnings reserved to the master was a benefit to him within the meaning of the statute, when by law he was entitled to the whole, and might be rather considered to have given up that part which he did not reserve, than to have acquired anything."

Where the stamp duty is on the sum contracted for, and that sum is inserted in the indenture, though a less sum be actually paid the indenture is good, and service under it gains a settlement.

Rex v. *Keynsham*, 5 *East*, 309. The pauper, in October, 1791, was bound apprentice for seven years, to J. C., at Bath. Five guineas was agreed to be paid by the father to the master as a premium, and was the sum inserted in the indenture. The only sum paid was the sum of four guineas, which was paid at the time of executing the indenture. *Grose*, J. "We must attend to the intention of the legislature, which was to raise a revenue; for this purpose the act requires (s. 35), 'that *the full sum* of money *received*, or in anywise directly or indirectly given, paid, agreed, or contracted for, with the apprentice, shall be *truly* inserted,' under a certain penalty. By s. 39 the indenture is avoided, 'if the sum received, given, paid, secured, or contracted for,' be not so truly inserted. By requiring the *full sum* to be inserted, it meant that *not less* than the sum upon which the duty was really payable should be inserted. Here, not only the *full sum*, but *more* than the sum for which the duty was payable, has been inserted, and the duty paid upon such larger sum. Then more than the act required has been complied with." *Lawrence*, J. observed, "that he saw no reason why the master might not recover the remainder of the five guineas in an action." (See *Rex* v. *Quainton*, *post*).

Indenture, with covenant to allow the master two shillings a week, and the apprentice to have wages and provide for himself, does not require the additional stamp.

Rex v. *Bradford*, 1 *M. & Sel.* 151. Removal of T. Holgate from Bradford to Thornton. Order discharged. Case:—The pauper, being twenty-one years of age, by indenture of the 3d of April, 1805, bound himself apprentice to D. Fawcett, of Bradford, for three years and twenty-one weeks by an indenture. The pauper agreed to allow his master 2*s.* per week, and to have (leaving a blank) wages, and to provide for himself for the term. The pauper served his master for the term in Bradford, and the 2*s.* a week were deducted out of the wages he received during his service. The indenture was upon a 15*s.* stamp, and it was objected that the 44 Geo. III. c. 98, required a stamp of 1*l.* 10*s.*, and therefore the indenture was void. Lord *Ellenborough*. "If the words of the covenant were transposed, they would run thus: the pauper to have wages and to allow his master 2*s.* per week; and then there would be no doubt of their meaning an allowance out of the wages simply; and what difference does the order in which they now stand make in the sense? It therefore can never be considered as a boon to the master, who, instead of having the labour of his apprentice for nothing, which he was entitled to have, agrees to pay him wages, deducting 2*s.* per week out of them." *Le Blanc*, J. "The master had a right to the whole of the earnings, but allows, by way of wages, such a sum as they are computed at, *minus* 2*s.* per week, on account of his providing for himself."

A step-father agrees to give ten pounds as premium; the mother secretly promised more: ten pounds was inserted in the indenture: Held sufficient.

Rex v. *Bourton-upon-Dunsmore*, 9 *B. & C.* 872. Order of removal of H. Webb, from Stretton-upon-Dunsmore to Bourton-upon-Dunsmore, confirmed. Case:—The pauper resided in a third parish more than forty days, under an indenture of apprenticeship: it was contended that this was void upon this evidence. The mother of the pauper (who was illegitimate) was directed by her husband, who was not the father of her child, to give a premium of 10*l.* and no more; the master required 20*l.*; this the mother refused, but they came to a private understanding with the master, that he should receive something besides the 10*l.*, but the particular sum did not appear. It was agreed that 10*l.* only should be inserted in the indenture, which was done; the step-father paid the 10*l.*, and the mother paid him further two-and-a-half guineas; neither the apprentice or step-father knew of the private understanding, and never knew that a greater sum than 10*l.* had been paid, but the master was not aware that the agreement of the mother was without the privity of her husband. The indenture had

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Agreement by *feme covert*, void.

the proper stamp for any sum not exceeding 30*l.* *Bayley*, J. "The sum really and *bonâ fide* paid and contracted for, was inserted in the indenture. There was no binding agreement for any sum beyond that amount: the promises made by the *feme covert* did not bind her." *Littledale*, J. "Assuming that the contract was binding, there was no contract to pay a specified sum, so that it was impossible to insert in the indenture the sum paid." *Parke*, J. "The Stamp Act attaches on the specific sum given, paid, secured, or contracted for. As soon as the master executed the indenture, he became bound to take the apprentice. 10*l.* was the only sum given, contracted, or agreed for. The promise to pay the extra sum was a mere honorary agreement." Order of sessions quashed.

Where the mother, not a *feme covert*, agreed to give 1*l.* in addition to 4*l.* given by a charity, the 1*l.* must be inserted in the indenture, and stamp paid.

Rex v. *Baildon*, 3 *B. & Ad.* 427. B. Hutton was removed from Baildon to Leeds. Order quashed. Case:—An indenture was made on the 12th of August, 1811, between B. Hutton, of the age of fifteen years, and H. Braithwaite, of Leeds, shoemaker, whereby Hutton, with the consent of his mother, bound himself apprentice to Braithwaite for six years; and Braithwaite, in consideration of 4*l.* paid to him out of the charity of C. Topham, by order of Charles Walker and others, trustees of the charity, for the township of Baildon, covenanted to teach Hutton the art of a boot or shoemaker. The indenture was executed by H. Braithwaite, B. Hutton, and by his mother, Elizabeth Hutton, as consenting thereto. W. Wainman, agent to the trustees of the charity, which was created for the purpose of binding out poor children as apprentices, paid the 4*l.* (mentioned in the indenture), to Braithwaite, the master, as the consideration for his taking the pauper. No other sum of money was contracted for, paid to, or received by the master that Wainman knew of; he was present, and saw the indenture executed, and witnessed the same. The appellants, however, proved that before the boy was bound, the mother entered into an engagement with the master to give him 1*l.* in addition to the 4*l.* to be paid by the charity; and that after the indenture was executed, she paid him the 1*l.* accordingly. The 1*l.* was not mentioned in the indenture, but there was a proper and sufficient stamp. The question was, whether the consideration for the binding was set out in the indenture, according to the 8 Anne, c. 9, s. 39? Lord *Tenterden*. "The object of the legislature undoubtedly was, to secure the insertion in the indenture of the whole sum paid or contracted for with the apprentice. But the thirty-ninth section evidently refers to cases where a duty is payable, whereas in *Rex* v. *Oadby*, (p. 639,) no duty whatever was payable, because the whole premium was defrayed by public charity. That is not so here. Then it is said, that according to *Rex* v. *Bourton-upon-Dunsmore*, (p. 646,) unless there be a binding contract for the payment of the sum with the apprentice-fee, it need not be inserted in the indenture. But there the decision turned upon the disability of the contracting party, who was a *feme covert*. Here we cannot presume that the pauper's mother (who is named as the consenting party in the indenture), was a *feme covert*. It is said that the contract for the additional sum was void by the act of Parliament, and that the master could not have sued for this sum, which was not mentioned in the indenture. We are not called upon to decide how that would have been, if an action had been brought by the master, because the clear intention of the legislature was, that everything received, given, paid, secured, or contracted to be paid with the apprentice, should be inserted in the indenture. Here there was a contract to pay a sum not inserted. A party capable of contracting, and making such a contract, though it were honorary, might not know that the statute would protect him from its performance; but a married woman must be presumed to know that she is not liable upon a contract made by her. Perhaps it would have been better if the legislature had enacted, that all engagements to pay more than the sum mentioned in the indenture should be utterly void. But the words of the statute, as they bear upon this case, are so unambiguous, that without repealing the clause we cannot hold this indenture to be valid." *Littledale*, J. "The principal object of the statute of Anne was to compel the payment of a duty in proportion to the amount of premium paid with the apprentice. Sec. 32 directs

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that the duty shall be paid by the master. If it were to be paid by the person putting out the apprentice, it might then have been said to be sufficient to require insertion of the sum paid by him; but the master must know, where two or three contribute, what is paid in the whole. The words of the statute are too plain to be got over." *Parke*, J. "The indenture is void within the express words of the 8 Anne, c. 9, s. 39. The question is, Whether every sum of money contracted for, with or in relation to the apprentice, was inserted in this indenture? Now what was the sum contracted for at the execution of the indenture? It is stated that the pauper's mother (who must be taken to be a *feme sole*), before he was bound, entered into an engagement with the master to give him 1*l.*, in addition to the 4*l.* to be paid by the charity. In *Rex* v. *Bourton-upon-Dunsmore* the woman was married, and incapable of making any contract; and if she had been competent, the promise was not to pay any specific sum. It has been said, that the present agreement was void, as being a fraud upon the trustees of the charity; but the case does not show that they agreed to give 4*l.* on the faith that no more was to be given. If it had been so, the agreement by the mother might, perhaps, have been void, within the case of *Jackson* v. *Duchaire*." (*a*) *Patteson*, J. "The mother, in this case, contracted for payment of a sum with or in relation to the apprentice, within the words of sect. 39, and nothing can be stronger than those words are." Order of sessions confirmed.

(*a*) *T. R.* 556.

An agreement by a grandfather to pay an additional sum to that given by a charity, is a binding agreement; the indenture void by 8 Anne, c. 9, s. 39, for not stating it.

Rex v. *Amersham*, 6 *N. & M.* 12; 4 *A & E.* 508. An order for the removal of Anna Seamons, from Aylesbury to Amersham, was confirmed. Case:—In 1719, W. Harding devised some estates to trustees to employ the rents thereof towards the putting out poor children of settled inhabitants of Aylesbury or of Walton, apprentices. On the 8th May, 1827, by indenture between the trustees of the said charity, the pauper and Catherine Read, of Amersham, the pauper, by the nomination and placing of the trustees, bound herself apprentice to C. Read for seven years, to learn the business of a dressmaker; and Read, *in consideration of* 10*l.*, to her paid by the trustees out of the charity, covenanted to teach the pauper the art of a dressmaker. Before the execution of the indenture, C. Read attended a meeting of the trustees, and then, and afterwards, the indenture was executed by A. Seamons and C. Read, and attested by J. Parrott, agent to the trustees of the charity, and he paid the 10*l.* to C. Read, the mistress, as the consideration for taking the pauper as an apprentice. C. Read signed a receipt, indorsed upon the indenture, and attested by Parrott, for the 10*l.*, "being the full consideration money within mentioned to be by the trustees to her paid." One Dawney, the pauper's grandfather, had, in April in the same year, applied to C. Read to take the pauper apprentice, and on that occasion Dawney agreed to pay, and C. Read agreed to receive, a premium of 25*l.* C. Read did not know, until she came to Aylesbury, and was introduced to the trustees, that any part of the premium she was to receive was to be paid from the funds of Harding's Charity; and being informed of the fact, was at first unwilling to take the apprentice, but afterwards consented; and upon her going before the trustees to complete the binding, no conversation took place between her and the trustees, or any of them, or between her and Mr. Parrott, respecting any additional sum to be paid to her by Mr. Dawney with the apprentice; nor did it appear that the trustees, or Mr. Parrott, knew or suspected that any additional sum was so paid or contracted for, beyond the sum mentioned in the indenture. After the execution of the indenture, C. Read received from Dawney 15*l.* to make up the sum of 25*l.* which had been agreed upon. The pauper served three years under the indenture. The question was, whether the indenture was void by reason of the full consideration not being set out in the indenture. Lord *Denman*. "The decision in *Rex* v. *Aylesbury*, (p. 645,) does not clash with that in *Rex* v. *Baildon*, (p. 647.) In the judgment of Lord *Kenyon*, in *Rex* v. *Leighton*, (p. 644,) cited in *Rex* v. *Aylesbury*, it is said, 'The clear meaning of the statute of Anne is that where money or money's worth is given to the master by the friends of the apprentice, by way of premium, a duty ought to be paid for it. But, that where meat,

clothes, &c., are to be provided for the apprentice, no duty is payable, because there is not any *thing given to the master*.' That judgment was sufficient for the decision of *Rex* v. *Aylesbury*. The present case falls within the first part of Lord *Kenyon's* words there cited. It is a penalty which the statute imposes upon the master, that if by the statement in the indenture, he cheats the revenue, he loses his control over his apprentice. And, as to the apprentice, an indenture not duly stamped is void for the purpose of settlement, according to *Rex* v. *Edgeworth*," (p. 446.) *Littledale* and *Williams*, Js., concurred. Order of sessions quashed.

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7. The Stamp Duty on the Deed, without regard to the Premium. See Stamp Act, *ante*.

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Rex v. *Llanvair Dyffryn Clwyd*, *Burr. S. C.* 236; 1 *Bott*, 647. J. Edwards, an infant, was by his father bound apprentice by indenture, but the indenture was not stamped. The indenture, not being stamped, cannot be given in evidence at all, being absolutely void to all intents and purposes.

The indenture must be stamped, otherwise it is not admissible in evidence.

Rex v. *Mabe*, 5 *Nev. & Man.* 241, 3 *A. & E.* 531. An order for the removal of N. Halvosso, from Penryn to Mabe, was confirmed. Case:—By indenture duly executed, dated 16th October, 1799, and since lost, N. Halvosso, then being about fifteen years of age, was bound apprentice, with the consent of his surviving parent, to T. Bolitho, of St. Gluvias, tanner, until he should attain the age of twenty-one; no sum of money or value was given or contracted for with or in relation to the said apprentice; the said indenture was stamped with the several stamps imposed on indentures of that class by the several statutes prior to 37 Geo. III. c. 111, amounting to 10*s.*; but the sessions considered it liable, under that act, to an additional stamp duty of 10*s.*, and that it ought not to be received in evidence. Lord *Denman*. "This is an evident *mistake* in the act, but we have no power to correct a mistake of the legislature. According to the only construction which we can put on this proviso, it operates to exempt only money contracts, (or contracts for other valuable consideration,) of a certain limited amount." The other judges concurring, order of sessions confirmed.

Under 37 Geo. III., where *no* money is paid, the indenture requires the larger stamp. See now 5 & 6 Vic c. 7, p. 607, n.

The stamp formerly must have been of the proper *kind* as well as value; even though the stamp used was higher than that required, and applicable to the same kind of instrument. But by 55 Geo. III. c. 184, s. 10, all instruments upon which any stamp shall have been used of an improper denomination or rate of value, but of equal or greater value than the regular stamp, shall be valid, unless the stamp is specifically appropriated to any other instrument by having its name on the face thereof.

Denomination of stamp.

Rex v. *Holbeck*, *Burr. S. C.* 198; 2 *Bott*, 864. P. Orange, the pauper, was bound a parish apprentice by indenture; but the indenture was not stamped. The 5 & 6 W. & M. c. 21, s. 11, lays a duty of 6*d.* upon the indenture of a parish apprentice; and enacts, that such indenture shall not be given in evidence, nor be available in any court, till the duty and also a penalty of 5*l.* be paid, and the parchment or paper stamped. By the Court: "This indenture was necessary evidence to make out the proof of a binding by indenture; for that binding could be no otherwise proved but by the indenture, and the indenture, being unstamped, could not be admitted as evidence, and the justices ought to have paid no regard to it."

An indenture not stamped, cannot be received in evidence.

Rex v. *Louth*, 2 *Man. & R.* 273; 8 *B. & C.* 247. The pauper, Benjamin Furnish, was, in 1780, bound apprentice to his father, Thomas F. a woolcomber, and to J. Grozer, a weaver, *not co-partners*, by indenture duly executed by all parties, upon which there is only one 5*s.* stamp. The indenture was made between Grozer, weaver, Furnish, woolcomber, and the pauper. The pauper of *his own free will*, and with the consent of his parents, bound himself apprentice with Grozer and Furnish, and with them as apprentice to dwell and serve from the date thereof for seven years; the apprentice his said *masters* well and faithfully would serve; hurt to *masters* shall not do; the goods of his said *masters* shall not waste; nor from his *masters'* service at any time absent himself; but as a true apprentice shall behave himself towards his said *masters* and all his; and a

An apprenticeship to two masters, to serve them consecutively in two distinct trades, is valid, and requires only a single stamp.

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just account of all his *masters'* goods, committed to his charge, faithfully should give his said *masters:* and Grozer did covenant with the pauper that Grozer and Furnish, his executors, &c., should teach him in the trade of stuff-weaving and wool-combing, which the said masters then used; and also should provide for the apprentice sufficient meat, and John Grozer to provide him meals and lodgings for the first four years; (to and not exceeding eight hanks per day, and to have four hanks allowed for looming; to have three days each year for himself, and to have four shillings for a low count, if he works any over-work, (and so in proportion): the apprentice to serve the latter three years with T. Furnish; (and not to exceed five pounds per day); the said apprentice to receive one shilling per year wages; and Grozer to be absolutely free from the apprentice at the end of four years from the date thereof; and the said apprentice not to have above three days if he should have to stand for work. The pauper served and resided under such indenture at Leeds for four years and three months, and then removed to Louth. *Bayley*, J. "It was formerly supposed that under the statute of the 5 Eliz. c. 4, an apprenticeship for less than seven years was void. The effect of that statute was, that certain benefits attached on a seven years' binding before 57 Geo. III. But the indentures are voidable only at the election of the parties, and therefore a binding for four years had been held to confer a settlement. It appears to me that this is a valid indenture to constitute the party an apprentice for seven years. There is certainly a degree of peculiarity about it. In ordinary cases, the party is bound for seven years, to serve one master and learn one trade. In seven years, a party may have time to learn two distinct trades; and the acquisition of one may materially assist the party in practising the other. The father, of course, is anxious that his son shall learn as much as possible, and that he shall also be under proper control. The object was to acquire instruction. The father prevails upon a master to take his son for less than seven years; but, at the same time, he wishes to provide a person who shall stand in the relation of master to his son during the remainder of that period. He might not wish to take an assignment. This is nothing more than a stipulation, and, in my opinion, a reasonable one, that there shall be an apprenticeship for seven years, during which the apprentice shall be learning two trades; and that one period shall be fixed for learning one trade, and another for another. The whole is one transaction, and requires only one stamp." During the argument, *Bayley*, J. observed that "the circumstance of the binding being for seven years was important." *Holroyd*, J. "The contract is for a certain period, though the apprentice was to serve two masters, who carried on different trades. It will be a good contract if the apprentice is bound to two masters, to learn successively two different trades. The next question is, whether the indenture is rendered void by the Stamp Act. I am of opinion that it is not void, unless it be shown that the parties adopted this particular form to evade the payment of duties, which by law they would otherwise be bound to pay. Unless that be shown, I think we should construe the indenture so as not to avoid it. Now if it was *bonâ fide* agreed between the father and first master, that his son should have the benefit of a seven years' apprenticeship, that the father should take him at the end of the first four years, he would take him under the indenture, and no new stamp would be necessary. The duty is imposed on every indenture, not with reference to the number of masters, or the number of trades. No fraud being found, I think this is but one binding and one indenture. There may have been two bindings, as far as the masters are concerned, but so far as the apprentice is concerned, there was but one; he was bound by an indenture to serve one master for four and another for three years." *Littledale*, J. "Suppose that, before the 5 Eliz., a parent, intending that his son should learn two trades, (connected or unconnected,) and had agreed with two persons that each should teach him a trade, there would be no objection, at common law, to the two persons taking the apprentice successively. The statute confers privileges on persons who serve for seven years, but it does not render other contracts

An indenture for less than a statutable period *voidable* only.

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void. By the Stamp Act, a duty shall be paid on every indenture, not a distinct duty in respect of each master or each trade. This instrument does not operate as two indentures, or as an indenture and assignment, so as to require two stamps. There was no intention to evade the stamp duties. It relates to one transaction. And if it was originally agreed that the father should take the apprentice at the end of four years, he took him by virtue of the indenture, and not of the assignment.

Pending an appeal at sessions against a removal on a settlement by service under an unstamped assignment indorsed on indentures of apprenticeship, the overseers of the respondent township are not entitled to a mandamus to the overseers of the appellant township to produce the assignment to be stamped.

Rex v. *the Overseers of Westowe*, 1 *N. & P.* 222; 5 *A. & E.* 786. On a rule calling upon the overseers of Westowe, to show cause why a mandamus should not issue to them to produce at the Stamp-office, to be stamped, the assignment indorsed on an indenture of apprenticeship under which the apprentice, a pauper, had been assigned to and had served a master in Westowe; it appeared that the application was made by the overseers of Scarborough, upon affidavits stating that the pauper had been removed from Scarborough to Westowe, on an examination showing a settlement there by several years' service as an apprentice; that Westowe had appealed; that at the last Midsummer sessions the appeal had been respited to give time for an application for a judge's order to produce. Lord *Denman*. "I am clearly of opinion that this rule must be discharged. When the argument for the right of inspection is founded on the deed being a document in which the public are interested, it is impossible to accede to that argument." *Patteson*, J. "It is only on the ground of interest that the parish of Scarborough can have a claim to the inspection of these deeds, and it is upon that, that most of the cases which have been recently decided, turn. Those cases have been cited to show that the inhabitants of Scarborough have not such an interest as to entitle them to an inspection. But they do not pretend to rest their claim on that ground, but solely on these being public documents; but there is no doubt that parish books and papers are not public documents. The injustice to the public of withholding these deeds is then insisted upon; but what does it signify to the public where the pauper is settled? Some parish or other is bound to support him." *Williams*, J. concurred. Rule discharged.

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8. *Of the other Essentials of the Contract.*

8. Of the other Essentials of the Contract.—An Imperfect Apprenticeship cannot operate as a Hiring and Service.

Where parties *intend* to create the relation of master and apprentice, the contract entered into between them for that purpose can have no force with reference to the law of settlements, but as a contract of apprenticeship; and therefore if the contract as such is defective in form or substance, it cannot be available as a contract of *hiring* and *service*. If it has not *all the legal requisites of an apprenticeship*, it is an absolute nullity; and the ingredients to constitute a *hiring* for a year, or a term of years, cannot be picked out of such a contract, so as by a service under it to entitle the party to a settlement.

The defects of *form* which are fatal to the right of settlement by apprenticeship, have been exhibited in the preceding cases: it remains to be seen in what manner the *contract* itself will be insufficient to establish a settlement of this description.

If the intention be to create an apprenticeship, and the indenture is not stamped, it confers no settlement.

Salford v. *Storeford*, 2 *Barnard*, 39; 2 *Bott*, 490. Order of removal confirmed. Case:—Lineacre had been bound an apprentice by indenture, and served his master the last two years of his apprenticeship at Salford; the indenture was not stamped. The justices judged this to be a good settlement by way of service, though not as an apprenticeship. But the court held this to be no settlement, on the authority of *Cuerden* v. *Leyland* (p. 637), and quashed the order.

Where one is taken as an apprentice, but the indentures are not executed, it

Rex v. *Whitchurch Canonicorum*, *Burr. S. C.* 450; 2 *Bott*, 497. The pauper, being of the age of twenty-two years, agreed with a stone-mason that he should take him apprentice for six years, to teach him the trade, and that the indentures should be executed accordingly. He went and

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served five years, when they parted by consent: no indentures were executed. It was contended that this was good as a hiring and service. By the Court: "Here is no hiring, expressed or implied. A binding as an apprentice, and a hiring as a servant, cannot be converted one into the other." *Rex* v. *St. Mary Kalendar, post,* was mentioned as in point.

cannot be converted into a hiring and service.

Where an unstamped agreement recited that the pauper *is to be bound apprentice*, it was held that no settlement was gained.

Rex v. *All Saints in Hereford, Burr. S. C.* 656; 2 *Bott*, 499. The pauper, Abraham Lewis, when a boy, together with his father, entered into an agreement in writing, not stamped, with Mrs. Tringham of All Saints, reciting, that "whereas the boy, with the consent of his father, is to be bound apprentice to her for seven years," she agrees to pay the boy 25*s.* the first year, the four following years 50*s.* each, the sixth year 3*l.*, and the seventh year 4*l.* He served her two years, and received the money agreed on for the time, then left his mistress: no indenture was executed. By the Court: "An *apprenticeship* was certainly the thing in view; but no indenture was executed; nor could the agreement be esteemed to supply the want of it, as it was not stamped. Nor can it be considered in the nature of a *service;* for in that case there must be a hiring for a year, and a service for a year under such hiring. And the binding as an apprentice cannot be converted into the hiring as a servant."

If A. serve seven years as an apprentice, and there be no indenture, he cannot gain a settlement, either as an apprentice or yearly servant.

Rex v. *Margram,* 3 *T. R.* 378. The pauper's mother had made an agreement with Mr. Tyler, agent for the English Copper Company, who lived in Margram, for him *to serve seven years as an apprentice;* and he served in the copper works for eight years, and learned the trade of a refiner, and received weekly wages; as also 20*s.* a-year, as a refiner, and he conceived himself serving as an apprentice, but he signed no indenture or agreement whatsoever, nor was any signed by any other person on his behalf, or to his knowledge. The court, without hearing any argument, were clearly of opinion that this servitude as an apprentice, could not be converted into a service under a hiring.

If, for fraudulent reasons, the indenture is not completed, no settlement can be gained under it.

Rex v. *Highnam, Cald.* 491; 2 *Bott*, 501; *Doug.* 238. The pauper, at seventeen years of age, went to W. Evans, of St. Mary de Crespt, in Gloucester, carpenter, for the purpose of being his apprentice for four years, to learn the trade of a carpenter; but to save the expenses of indentures and duty, (four guineas' consideration being paid by the pauper to his master,) he and his master agreed to sign an agreement on *unstamped paper*, which was accordingly done. Lord *Mansfield*, C. J., and the court held, that it was clear that a fraud was intended; that the pauper meant to be an apprentice and defraud the revenue; and that therefore no settlement could be gained by service under such circumstances.

A contract of apprenticeship may be formed without using the word "apprentice;" but a defective contract of apprenticeship cannot be converted into a contract of hiring and service, so as to give the apprentice a settlement.

Rex v. *Laindon,* 8 *T. R.* 379. Order of removal of J. Claydon from East Horndon to Laindon, confirmed. Case:—The pauper went to Ingrave in November, 1792, and after being one month upon trial with J. Mander, a carpenter, in East Horndon, he entered into this unstamped written agreement: "November 20th, 1792, I, John Mander, do hereby agree with J. Claydon *to serve* me three years to learn the business of a carpenter; the first year to have 1*s.* 2*d.* per day; the second year to have 1*s.* 6*d.* per day; the third year to have 1*s.* 10*d.* per day: witness my hand, J. Claydon, J. Mander. Witness, Robert Beles." The pauper proved that at the time of signing the agreement, he agreed to give Mander three guineas as a premium (*a*) to teach him the said trade, and paid Mander 1*l.* 15*s.*, which, with 1*l.* 8*s.* due for wages during the month of trial, made the three guineas; and that he was not to be, and was not employed in any other work than that of a carpenter. The pauper worked with and served Mander under this agreement the whole three years, and slept the last forty nights in East Horndon, and considered himself as an apprentice under the agreement; but he thought himself at liberty to leave his master if he used him ill. The parol evidence, explanatory of the agreement, was objected to, but received. Lord *Kenyon.* "The justices who made this order, and the

(*a*) The premium indicates an intention to create an apprenticeship.

justices who confirmed it, were of opinion that the pauper was not hired to serve Mander as a yearly servant, but that the relation which was created between them, was that of master and apprentice. The opinions of the magistrates ought not indeed decidedly to influence our judgment, as they have referred the case to us; but when a certain opinion has gone abroad, founded on the decisions of this court, upon which magistrates have been acting, it ought not lightly to be departed from. The first question that arises in this case is, on the admissibility of the parol evidence. This parol evidence was not offered to contradict the written agreement, but to ascertain an independent fact, and I think it was properly received in evidence. That being so, the case appears to be shortly this: in consideration of three guineas paid by the pauper, the master undertook to teach him the business of a carpenter, and the pauper was to serve three years. I am sorry that nice distinctions were ever taken in the determination of cases on this subject; but notwithstanding those little differences, we must consider the whole class of decisions on this point, and extract the principle from them. It is admitted in all of them, that *if two persons intend to enter into the relation of master and apprentice, and owing to some circumstance the relation of apprenticeship is not duly constituted, as if the indentures be not stamped, this shall not change the condition of the parties; if they cannot avail themselves of the consequences of the condition in which they intended to stand, they shall not be put into another condition in which they did not mean to place themselves.* But when it is urged that this relation can only be formed by using the term "apprentice," it may be observed that the argument would lead to an absurd consequence: for then if the word "*clerk*" were used in regular indentures of apprenticeship, the clerk would not gain a settlement by serving under the indenture, merely because he was not retained *eo nomine* as an apprentice; but it would be a disgrace to our laws, if we were obliged to decide according to words, without considering their meaning. It was properly said by Lord *Hardwicke*, that 'there is no magic in words;' and he said this not as a discovery just then made by him, but as a maxim that was handed down to him from his predecessors. *If the relation of master and servant be created by the contract of the parties, though they do not use the very words tantamount, it is sufficient.* In this case, a premium was paid by one man to another, who engaged to teach him a trade: now, what is that but an apprenticeship? The term 'apprentice' is taken from the French word *apprendre*, to learn. Unfortunately, Lord *Mansfield* did not adhere to his first opinion in *Rex* v. *Little Bolton* (p. 545); but even when he gave his second opinion in that case, he took it for granted that the rule remained unshaken, that if the parties *intended* to create the relation of master and apprentice, and it were not legally created, so that the apprentice could not gain a settlement as such, he could not acquire a settlement as a yearly servant: and in *Rex* v. *Highnam* (p. 652), Lord *Mansfield* adopted the opinion he had first given in *Rex* v. *Little Bolton*, conformably to all the other cases. Therefore, we may rely on this last case, and if it be not distinguishable from that of *Rex* v. *Little Bolton*, it is sufficient to say that it is subsequent to it, and that *Rex* v. *Little Bolton* is an anomalous case. When we find the current of authorities one way, I should be sorry that a little inadvertence in the court, in the decision of one case only, should be supposed to break in upon the general rule. For *Rex* v. *Coltishall* (p. 546), which has been cited, is distinguishable from this class of cases; there, by the agreement of the parties, the pauper was *to do any work* that the master set him about. I am, therefore, most clearly of opinion, that in this case the parties intended to form the relation of master and apprentice; and that, as that relation was not legally constituted so as to give the latter a settlement as an apprentice, the relation cannot be converted into that of master and servant, so as to give him a settlement as a yearly servant. And I think we should do infinite mischief, if we were to overturn that which has been so long a settled rule." *Lawrence*, J. "The first point is, that the sessions ought not to have received the parol evidence, because it contradicted the written agreement;

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Parol evidence inadmissible to contradict a writing, but admissible to prove an independent fact. See also *Rex* v. *Llangunnor, post.*

Meaning of "apprentice."

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but it was not offered for that purpose, but to ascertain a fact collateral to the written instrument, in order to explain the intention of the parties, the instrument being in some measure equivocal. The fact being established, the case was this: on the one hand, the pauper paid a premium to the master, and was to receive certain wages: and on the other hand, the master engaged to teach him the business of a carpenter; then the question is, whether or not by this agreement the parties were to stand in the relation of master and apprentice, of which I think no doubt can be entertained. In *Rex* v. *Little Bolton*, Lord *Mansfield* only went thus far: that it must be collected from the words of the instrument, whether or not the party is to serve as an apprentice; his lordship could not mean to say that a contract of apprenticeship could not be formed, so as to give a settlement to the party serving under it, without the introduction of the word 'apprentice.' With regard to the instance put at the bar, of servants at inns, it is to be remembered that they do not pay their money in order to learn a trade, but as a premium to the master to let them have the perquisites of that situation: but in the case of a trade, the relation of apprenticeship is created for the very purpose of the party being instructed in that trade: the two cases do not bear the smallest resemblance to each other. Therefore, there does not appear to me to be any reason for shaking the authority of *Rex* v. *Highnam*, especially as the great body of cases support it. It is much to be lamented that settlement cases should ever have been determined on nice distinctions; it would be better to decide them on some general rule, that every person who reads may understand it." *Le Blanc*, J. "If the master, in consideration of a premium, engage to teach the other his trade, it is the same as if he agree in express words to receive him as an apprentice and teach him his trade." Orders confirmed.

Payments by servants at an inn are not to learn a trade.

A perfect apprenticeship may be constituted without using the word "apprentice."

Rex v. *Rainham*, 1 *East*, 531. Order of removal of Moses Smith from Rainham to Eltham quashed. Case:—The pauper, on the 8th of Nov., 1784, entered into the following agreement with Hills, a sawyer, living in Eltham. "An agreement made the 8th of November, 1784, between J. Hills, sawyer, and M. Smith; viz. Smith doth agree with J. Hills to serve him for three years from the date of the agreement; viz. for the first year 10*s.* per week; for the second year 11*s.*; and for the third year 12*s.* per week; and J. Hills doth agree and promise to learn M. Smith the art of a sawyer, which he now follows: and it is agreed that if Smith shall wilfully lose any time to the prejudice of Hills, he agrees to pay Hills 3*s.* per day for all such neglect. If Smith repents of this agreement before the time expires, he promises to pay Hills 10*l.* on demand; or if Smith is sick, or by any disorder or misfortune rendered incapable of work, not to receive any pay from Hills." The agreement was signed and sealed by both parties, and stamped: no premium was paid by the pauper to Hills. The pauper immediately went to Hills, and resided with him in Eltham for two years and a half. Lord *Kenyon*. "The sessions have stated the deed and the service under it in fact, leaving this court to draw the conclusion: and that can only be done in one way, namely, that this was a contract of apprenticeship. The instrument was under seal, and need not be indented (*a*). It has been determined, that the party serving need not be retained *eo nomine* as an apprentice; but that *it is enough, if the purpose of the contract be, that the one shall teach and the other learn the trade.* That is the case here; for the master engaged to learn, *i. e.* teach the pauper the art and mystery of a sawyer, and the object of the pauper was to be taught the business. No technical words are necessary to constitute the relation of master and apprentice; nor is it necessary that there should be any premium given to the master."

An instrument under *seal*, but not indented, is sufficient.

A contract on the part of the master to teach, without

Rex v. *Bilborough* 1 *B. & Ald.* 115. The father of the pauper, by a parol contract, agreed with Smith that he should teach the pauper to make

(*a*) They need not be indented for the purpose of a settlement, because the 31 Geo. II. has so provided; but deeds of apprenticeship generally require an indenture. *Shep. Touch.* 50.

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stockings during the year next ensuing, for which he was to receive two guineas, and the pauper was to have his earnings, paying his master for the use of the frame; one guinea was paid at the time, and the other guinea was to be paid by 1*s.* a week during the agreement; and the pauper went to learn the business, and work for Smith in the manner specified, and continued to do so for a year and a half, during which time he paid the second guinea, and the price for the use of the frame. Lord *Ellenborough.* "In this case the pauper never contracted to *serve* the master; the only agreement was that the master should *teach* the pauper for a year. In *Rex* v. *Burbach*, (p. 548,) there was an agreement on the part of the pauper to work for two years; that forms an essential distinction between the two cases." (See *Patteson*, J. in *Rex* v. *Newton*, p. 657; and *Rex* v. *Crediton, infra*).

any engagement on the part of the pauper to serve, is not sufficient.

Rex v. *Mountsorrell*, 2 *M. & Sel.* 460. Order of removal from Mountsorrell to Quorndon quashed. Case:—When G. Swain, the husband, was about thirteen years old, his father made an agreement with one Rawlins of Quorndon, that R. should take his son for six years, to teach him the trade of a framework knitter, and he was to allow R. 9*s.* per week for the first three years, for teaching him, and his board and lodging. G. Swain served R. six years in the whole in Quorndon. The court distinguished this case from *Rex* v. *Little Bolton*, p. 545, inasmuch as by this contract the son was entitled to none of his earnings, and instead of his receiving wages from his master, his master was to receive wages from him, as the price of teaching him: it was a hiring of the master to teach the apprentice. The whole contract with the father was bottomed on and had for its object the instruction of the son, and nothing else. Order of sessions confirmed.

The father agreed that R. should take his son for six years, to teach him his trade, and he was to allow R. 9*s.* a week for the first three years for his board, &c.: This is a defective contract of apprenticeship.

Rex v. *Crediton*, 3 *B. & Ad.* 493. An order of removal of J. Middlewich, &c. from St. Mary Major, Exeter, to Crediton, was confirmed. The pauper agreed with one West, a sawyer, of the parish of St. Edmund's, Exeter, for a twelvemonth, to learn sawing, and was to have 7*s.* 6*d.* out of every 20*s.* earned by his master and himself. He served out that year, providing his own board and lodging. At the end of the year he made a new agreement with West for another year, under which he was to receive 8*s.* out of every 20*s.* earned by his master and himself. Nothing was said about Sunday or the hours he was to work; but he was occasionally absent without permission from West. He lived out the second year with West in the parish of St. Edmund's. The sessions decided that the pauper gained no settlement by this service. *Littledale*, J. "It seems to me the sessions came to the right conclusion. In all the cases cited there was some work to be done, though there was a contract to learn. This case falls within *Rex* v. *Bilborough*, (p. 654.) There one Smith, by parol, agreed with the pauper to teach him to make stockings during the year, for which Smith was to receive two guineas, and the pauper was to have his earnings, paying the master for the use of the frame, &c.; and it was held, that no settlement was acquired by living out the year under the agreement, for the pauper never contracted to serve the master; the only agreement was that the master should teach the pauper for a year. In *Rex* v. *St. Mary, Kidwelly*, (p. 554,) the father oft he pauper agreed by parol to give a shoemaker a guinea a week, for teaching his trade to the pauper, for twelve months; and it was held, that the agreement created the relation of teacher and scholar, and not that of master and servant. In *Rex* v. *the Hamlet of Walton*, (*Carth.* 400,) the pauper was put out to a barber for one year to learn to shave, and the barber was to have the benefit of the boy's work, and received some money for teaching, and the boy lived with him for a year; it was held, that the boy was in the situation of a scholar, and not of a servant. On the other hand, in *Rex* v. *Hitcham* (*Burr. S. C.* 489), where the pauper agreed to let himself to his brother, who was a carpenter, for a year, and was to receive no money by way of wages, but his brother was to teach him as much as he could of the trade during the time, and provide him with meat, drink, washing, and lodging, and the pauper was to do all his brother's business in the farming way: that was clearly held to be a

An agreement for a year to learn sawing, and to have a portion of the earnings of himself and his master, is not a hiring, but a defective contract of apprenticeship.

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From an obligation to learn, a contract to teach may be implied. See *Rex* v. *Bilborough*, p 654.

contract for service, and a hiring for a year. Here, as by the express terms of the contract, the pauper was to learn, an obligation on the part of the master to teach must be implied. The agreement for the second year is substantially the same as that for the first. The only difference is, that the wages are increased." *Parke*, J. "I think the sessions have put the right construction on this contract. To gain a settlement by hiring and service the pauper must have hired himself to serve for a year. Here, the relation of master and apprentice, not that of master and servant, was created. The case is not distinguishable from *Rex* v. *Bilborough*. There the contract was that the master was to teach the pauper; here it is, that the pauper shall learn; but if the one is to learn, it must be implied that the other is to teach. The only difference between the agreement for the first and that for the second year is that the wages were different; in other respects the contracts are the same." *Taunton*, J. "I am of opinion that the relation contemplated in this case was that of master and apprentice. The only difference between the first and second agreement is in the sum to be received by the pauper. What then is the purpose for which the pauper agreed to contract any relation with West? It is stated expressly in the agreement to be to learn sawing. I take the true distinction in these cases to be this, where teaching on the part of the master, or learning on the part of the pauper, is not the primary, but only the secondary object of the parties, that will not prevent (where work is to be done for the master) the contract being considered one of hiring and service. In all the cases cited, where the contract was so considered, it appeared that the pauper agreed to work for his master, and the master undertook to teach him the particular trade in which he was conversant; but the teaching and learning were incidental, and therefore it was held to be a contract of hiring. But where teaching and learning are the principal object of the parties, though there was a service, the contract is considered to be one of apprenticeship." Order of sessions confirmed.

A., a carpenter and occupier of land, is applied to by B., who wishes to succeed C. as an apprentice to A. A. says he will take no more apprentices, unless they will work on the land as well as at the trade, and that he will take him to do work as a servant. It is agreed that B. shall live with A. three years, to learn the business of a carpenter, and to do any other work that shall be required by A., who is to pay him certain weekly wages, and also for overwork.

The question, whether this agreement constituted a contract of apprenticeship or of hiring and service, ought to be decided by the sessions. But where the sessions, having decided that it is a contract of hiring and service, granted a special

Rex v. *Ightham*, 6 *Nev. & Man.* 320; 4 *A. & E.* 937. Order of removal from Ightham to Sunbridge was quashed. Case:—The appellants relied on a settlement in Sunbridge, under the following circumstances:—William Webb, the brother of the pauper John Webb, worked with William Wright, a carpenter, residing at Ightham, for three years, under a verbal contract of apprenticeship, and in 1804, when the pauper was about twenty years old, applied to Wright to take the pauper in his place. Wright answered "no," that he would take no more three-years' apprentices unless they would agree to work on his land as well as at the carpentry business. "I will have no more apprentices for three years, unless he is agreeable to do other work as well; I will take him to do work as a servant." Wright occupied three acres of hop ground. William Webb assented, and it was agreed that the pauper should live with Wright for three years, to learn the business of a carpenter, and to do any other work he required him to do; to be paid for the first year 9*s.* a week, the second 10*s.*, and for the third 11*s.*; and if the pauper did any overwork, he was to be paid for it in addition, according to his rate of wages at the time. Wright added, that the pauper might have Sunday to himself if he asked leave. The pauper entered Wright's service in pursuance of this agreement, and served the three years, boarding and lodging at his own expense with a journeyman of Wright's. Lord *Denman*. "This, in my opinion, is a defective contract of apprenticeship. The pauper was to live with Wright three years, to learn the business of a carpenter, and do any other work he required him to do. I think the master might have been sued for not teaching the pauper the business of a carpenter." *Littledale*, J. "The pauper was the brother of a former apprentice: the master says, I will have no more apprentices for three years, unless he is agreeable to do other work as well;—I will take him to do work as a servant. The question then is, whether the working as a servant was subsidiary to the apprenticeship. The brother assented to what the master said, and it was agreed that the pauper should live with the master for three years, to learn

the business of a carpenter, and do any other work he required him to do, for which he was to be paid. It is not unusual for a master to pay his apprentice. Upon the whole, this must not be taken to be a contract of apprenticeship." *Patteson*, J. "I think this is an imperfect contract of apprenticeship. It appears that on the first application by the pauper's brother, the master said he would take no more apprentices unless they would work on the land as well as at the carpentry business; and the pauper, as I understand the case, subsequently consented to work as a servant as well as an apprentice. The pauper's object, however, was to learn, and the master undertook to take him as a servant and teach him the business of a carpenter." *Coleridge*, J. "This case should not have come here. The sessions should have found whether this was a contract of hiring and service, or a defective apprenticeship. In *Rex* v. *Great Wishford*, p. 663, there was evidence to support the finding of the sessions. I agree with the rest of the court, and I would remark, that it would be better if counsel did not press for a case on questions of this description." Order of sessions quashed.

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case, the court, upon the facts found as above, reversed their decision, holding that the agreement was an imperfect contract of apprenticeship.

Rex v. *Newton*, 1 *Ad. & Ell.* 238. An order for removing John Stanley and family from Newtown to Berriew was quashed. Case:—The pauper acquired a settlement in Berriew as a servant in husbandry. Immediately on leaving such service, when he was 21 years old, and unmarried, and without child or children, he agreed by parol with John Williams, a master flannel manufacturer in Newtown, for three years, to learn the art of weaving flannels, and was to be paid by his said master one-half of what he could get, and to find himself meat, drink, clothes, washing, and lodging; and the master was to have the other half for teaching him the art of weaving. The pauper thereupon went and remained in Williams's employ six weeks, and during that time wove for him two pieces of flannel. The pauper then left J. W. by consent, and applied to James Evans, another master flannel manufacturer in Newtown, to take him on the same terms as J. W. had, and informed him of his having left J. W. and what the contract with him was, and how he had been employed by him, and particularly that he had been employed by him to make slays, and could throw the shuttle, but had had bad slays (*Slay* or *sley*, a weaver's reed. See *Johnson's Dictionary* by *Todd*. That part of a loom which strikes up the work. *Ash's Dictionary*), to work with; to which Evans said, that the pauper's having had bad slays to weave with would improve him, and as to throwing the shuttle it was no more than a tailor threading his needle; that he would take him on the same terms he had been with J. W., but for twelve months only, adding, that twelve months would be long enough if he was a good boy. The pauper agreed to go to Evans for twelve months *to learn the art of weaving*, and to give half of his earnings. The pauper went to Evans on the following day, and continued to weave flannels in his master's room, from his master's materials, and with his loom, to the end of the year, on the terms originally agreed upon. *The pauper could not leave nor be turned away during the twelve months*, and was paid by his master one-half of what he earned, and his master kept the other half for teaching him the trade. He found himself meat, drink, clothes, washing, and lodging, and lodged during the above time with his mother in the parish of Newtown. After his time was up with Evans he began to weave by the piece, then he had all he got, like other workmen. *Littledale*, J. "There has certainly been some undulation of opinion in the court at different times on this subject; but I think we are bound by the last decision. The present case is like *Rex* v. *Crediton*, p. 655, but stronger; and there, as in this case, the pauper found his own board and lodging. On the facts of this case as found by the sessions I think the contract was for learning, and was not a hiring for service. In *Rex* v. *Eccleston*, p. 545, the contract was generally 'to serve.' Here by the agreement the pauper was to learn the art of weaving flannels, and the master was to have half his earnings for teaching. The master's observation that twelve months would be long enough if the pauper was a good boy, strongly shows the intention of the parties to have been teaching and learning, and their language throughout has the same tendency. If the master had gone into

An agreement by pauper for three years with a master manufacturer to learn the art of weaving flannels, and, after six weeks' employment, another similar agreement with another master for twelve months, are imperfect apprenticeships.

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a different business I should doubt if he could have insisted on employing the pauper in it. I question whether he had a right to employ him in anything but weaving flannels. Upon the whole, there is nothing here to show a hiring for the purpose of service; and I think that an apprenticeship was not merely the primary, but the only object of the contract." *Patteson*, J. "I cannot distinguish this case from *Rex* v. *Crediton*, and being bound by that authority we must decide accordingly. I confess I am also unable to distinguish the case from *Rex* v. *Burbach*, p. 548; but I think that is overruled by *Rex* v. *Crediton*. The distinction between cases where the agreement is to work or to serve, and where it is to learn, seems to have been first distinctly taken by Lord *Ellenborough* in *Rex* v. *Bilborough*, p. 654, yet in *Rex* v. *St. Margaret's, King's Lynn*, p. 662, the same words are stated. In *Rex* v. *Edingale, infra*, where the agreement was held to be a defective contract of apprenticeship, the boy's agreement was to serve for four years, and that was held an imperfect contract of apprenticeship. I cannot reconcile the cases, but ever since *Rex* v. *Bilborough*, the current of opinion has been to consider agreements like the present as imperfect contracts of apprenticeship." *Williams*, J. "I agree in the opinion expressed by Mr. Justice *Lawrence* in *Rex* v. *Eccleston*, of the importance in these cases of adhering to what has been once expressly determined. When the court begins to decide them on nice and evanescent distinctions infinite trouble is occasioned. The tendency of opinion latterly has been to treat agreements like this as imperfect contracts of apprenticeship; and without considering the several instances in which an inclination has been shown to depart from the doctrine laid down in *Rex* v. *Little Bolton*, it is enough to say, that I think the present case is not distinguishable from *Rex* v. *Crediton*, and ought to be governed by it." Order of sessions quashed.

Agreement to serve for four years with a tailor, to learn his trade, to have meat, drink, &c. and 2*s*. 6*d*. a week the last two years, is an imperfect contract of apprenticeship.

Rex v. *Edingale*, 10 *B. & Cres.* 739. H. Brown was removed from Edingale to Clifton. Order quashed. Case:—The pauper, before the death of his father, which took place about thirty years ago, when the pauper was ten or eleven years of age, had used to work with his father at his trade as a tailor. After the death of his father he was put by his mother, from time to time, to work with other tailors, who paid him for the work he did. At the age of fourteen he went to live with J. Trickelbank, a tailor, residing in Clifton, under an agreement, the circumstances of which were as follow:—The pauper first saw Trickelbank when he went over to his shop on an errand for a suit of black. Trickelbank said the pauper was just such a one as he wanted,—he thought he would suit him. The pauper said his mother would like to make him an apprentice. Trickelbank said he would not take him apprentice, because if he did he should offend the farmers: he would take him on agreement for four years. A week after this, Thornton, the pauper's father-in-law, and the pauper, went over again to Trickelbank, and Thornton agreed with him that the pauper should serve him four years. He was to go to him, to learn his trade, to have meat, drink, washing, and lodging the whole time, to receive no money for the first two years, but 2*s*. 6*d*. a week for the last two years. It was said at the time the agreement was made, that the pauper was to go to him to learn his trade. When the pauper had lived with Trickelbank under this agreement about a year and eight weeks, his father-in-law having neglected to supply him with clothes, Trickelbank agreed with the pauper to give him 1*s*. 6*d*. a week from that time for the remainder of the term, instead of 2*s*. 6*d*. a week for the last two years. In the third year the pauper having quarrelled with his master, ran away and went to his mother at Tamworth; upon which he was taken by Trickelbank before a magistrate, who made him return to his master, with whom he continued to live until the expiration of the four years, and remained four days over to make up the lost time. During the whole time that he thus lived with Trickelbank he worked at his trade as a tailor, and did nothing else. He slept in Clifton during all the time. Lord *Tenterden*. "The question is whether the contract between the master and the pauper is to be considered a contract of apprenticeship, or of hiring and service? If that was a question of fact, as it may be, the sessions have decided it. If, on the

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other hand, it be a question of law for the decision of this court, I am of opinion the contract was one of apprenticeship, and not of hiring and service. We must form our judgment of the nature of the contract from the substance of the bargain between the parties. It appears that when the pauper first saw the master, the latter said he would not take him as an apprentice, because if he did he should offend the farmers; but at the time when the agreement was finally made between the master and the pauper's father-in-law, it was stated that the pauper was to go to him to learn his trade. That being the object of the parties expressed at the time of making the agreement, I cannot distinguish this from *Rex* v. *Combe, infra*, which followed shortly after that of *St. Margaret's, King's Lynn*, p. 662, in which the master offered to take a boy to learn his business, and that being the object for which he was to be taken, the court thought that there was not sufficient to warrant the sessions in finding that the relation of master and servant subsisted between those parties." *Bayley*, J. "A plain intelligible rule is laid down in *Rex* v. *St. Margaret's, King's Lynn*, which was acted upon in *Rex* v. *Combe*, that where the substantial object of the parties to a contract is to learn, and not to serve, the contract should be deemed one of apprenticeship, and not of hiring and service. In this case, it is manifest that learning and teaching were solely in the contemplation of the parties at the time when the contract was made. The sessions, therefore, were right in coming to the conclusion that it was an imperfect contract of apprenticeship. If it were a mere question of fact, we ought, before we reverse their decision, to see clearly that there were not sufficient premises to warrant that conclusion." *Littledale* and *Parke*, Js., concurred. Order of sessions confirmed.

Pauper was "hired" by his uncle, a carpenter, "to learn his trade," and "was to do any other work as well as that of a carpenter." His uncle was to find him part of his food and clothing, but he was to lodge with his father. Pauper served his uncle on these terms five years. At the end of two years it was proposed to draw up indentures, to exempt pauper from the militia; but none ever were drawn up. This is an imperfect contract of apprenticeship.

Rex v. *Combe*, 8 *B. & C.* 82; 2 *M. & R.* 30. Order of removal of Joseph Davis from Presteign to Combe confirmed. Case:—The pauper's father, when the pauper was about fourteen years of age, was about to put him out to service, and took him to Presteign with the intention of hiring him, but he did not hire him. Shortly afterwards, one John Cole, a carpenter, residing in Presteign, and the brother of the pauper's mother, suggested that it was better for the pauper to go and learn his (Cole's) trade of a carpenter, instead of going to service. At length Cole hired the pauper from his mother to learn his trade. The pauper was to do any other work as well as that of a carpenter. Cole was to find the pauper part of his food and part of his clothing, but he was to be lodged at his father's house. The pauper went to Cole, and served him for five years, lodging in Presteign with his parents, who provided part of his clothing and victuals. During the five years, the pauper did any work Cole put him to do, as well as working at the trade of a carpenter. In the second and third year after the pauper had entered upon his service, a conversation took place between the parties about indentures being drawn to bind the pauper Cole until the age of twenty-one, in order to exempt the pauper from the militia. The indenture was to be drawn to bind the pauper till he was twenty-one; but it was understood that he was to be free at the end of five years, to be computed from the time of the original contract. No indenture was drawn nor anything afterwards said upon the subject. At the expiration of the five years, (that being understood by the parties to be the termination of the original contract, whatever was the nature of it,) the pauper agreed to work with his uncle Cole as a journeyman carpenter, under a weekly hiring, and to be paid weekly wages, the pauper boarding and clothing himself, and he was at liberty to go away at the end of any week. He continued with Cole under those terms, except upon one or two occasions varying the amount of the weekly wages, for nine or ten years. Judgment was delivered by Lord *Tenterden*. "The question in this case was, whether the pauper served in Presteign as servant or apprentice. It is clearly established, that if an apprenticeship only was contemplated by the parties, and there was an imperfect contract of apprenticeship, the service will not give a settlement. The case of *Rex* v. *King's Lynn* was relied on, and the judgment of my brother *Holroyd* appears to me to apply to this. [He then quoted it, as in p. 663.] We are of opinion, that all the cir-

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cumstances of this case also lead fairly to the conclusion, that the parties intended to constitute the relation of master and apprentice. The parents at first proposed to send the pauper out to *service*, but the uncle suggested that it would be better that he should go and *learn his trade*. The object, therefore, clearly, from that moment, was to put the pauper with his uncle as a pupil and apprentice, and not as a servant; and his service with his uncle was certainly not under anything like an express contract of hiring, but under an imperfect contract of apprenticeship. We are, therefore of opinion that the pauper acquired no settlement in Presteign." Order of sessions confirmed.

Unstamped memorandum of agreement, whereby pauper was hired, and was to be taught the art and mystery of cotton weaving, is a defective contract of apprenticeship.

Rex v. *Nether Knutsford*, 1 *Bar. & Adol.* 726. G. Hamond was removed from Nether Knutsford to Pownall Fee. Order quashed. Case:—In 1814, the pauper, who was then about fifteen years of age, and his father, Thomas Webb, all residing in Nether Knutsford, agreed that the pauper, who had previously worked for Webb upwards of three weeks, should continue to serve him upon the terms contained in the following memorandum, except as afterwards altered:—"This memorandum, made the 1st day of December, 1814, between T. Webb, weaver, of Nether Knutsford, on the one part, and George, son of P. Hamond, weaver, of Nether Knutsford, on the other part; viz. the aforesaid G. Hamond, of his own free will, together with the united consent and authority of his father, doth covenant, promise, and agree to hire himself in the service of T. Webb, to labour at the art, mystery, trade, or business of a cotton weaver, for the term of three years, from the date above-mentioned, unto the first day of December, 1817; his secrets he will keep, all his lawful commands he will strictly observe and obey to the utmost of his power; he will serve him justly, truly, honestly, and faithfully for the term of three years as above-named. And T. Webb, on his part, did covenant, promise, and agree with G. Hamond and P. Hamond, that, as a reward for all the honest and faithful labours of his son G. Hamond, in the above business, for the term of three years, he, T. Webb, was to give him the one-half of all his just earnings in the above business, according to the present prices, monthly, be they more or be they less; and, in addition to wages named, he will give him every other fent, (a part of inferior quality, usually cut off the end of a cotton piece,) on condition of having the free use of his father's fire for his son's accommodation the time he may want the same. And Webb further agrees with G. Hamond and his father, that, as a complete compensation for all the industrious services of G. Hamond, he would instruct him (~~cause him to be instructed~~) in all the art, mystery, calling, business, or trade of a cotton weaver, to the utmost of his power and ability so to do in the term of three years. As witness our hands, T. Webb, G. Hamond, P. Hamond." The memorandum was read over in the presence of T. Webb, the pauper, and his father, by Bradburn, who prepared it. Nothing was said about Sundays. At the word "hire" Webb gave the pauper a shilling, but nothing was said by either of them; and at the words "cause to be instructed" the pauper's father objected to them; whereupon Bradburn *struck his pen through them*, as appeared on the face of the memorandum. The pauper served T. Webb in Nether Knutsford, under this agreement, three years, and never did any other work for his master but weaving. At the expiration of two years, or thereabouts, Webb removed to Manchester, and the pauper remained in Nether Knutsford, and served the remainder of his time out with his father. The pauper lived and lodged with his father in Nether Knutsford during the whole time, and on Sundays he stayed at home, and did no work for his master. Lord *Tenterden*. "I am of opinion that this was *a defective contract of apprenticeship, and not a hiring*. We must look at the substance of the agreement rather than the precise words. The pauper is hired to labour at the art, mystery, trade, or business of a cotton weaver, for three years (and it does not appear from the case that any other duty was expected from, or was ever done by, him); he promises the master that 'his secrets he will keep, all his lawful commands he will strictly observe and obey to the utmost of his power,' in the terms usual in an indenture of apprenticeship. The master, on his part,

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undertakes to give him, as a reward for his honest and faithful labours, one half of his earnings; and he further covenants, as a complete compensation for all the industrious services of the said G. Hamond, to instruct him in all the art, mystery, or business of a cotton weaver, to the utmost of his power and ability. It appears to me, from the whole of the stipulations taken together, that the contract was for apprenticeship, and not merely for service. As to the promise 'to cause to be instructed,' which the father objected to, I should consider that to have been struck out not with a view to giving up any claim to instruction, but to prevent the boy from being handed over to another teacher." *Littledale*, J., concurred. *Taunton*, J. "I am of the same opinion. And the parties themselves seem to have put the construction upon the agreement which we now do; for when Webb removed to Manchester the pauper is stated to have served the remainder of his time out with his father." Order of sessions quashed.

An agreement to serve as an *articled servant to learn a trade*, and be considered an out *apprentice*, to do any work; wages to be deducted during illness or absence; is an imperfect apprenticeship.

Rex v. *Tipton*, 9 *B. & C.* 888; 4 *M. & R.* 703. Order of removal of James Smith, &c., from Birmingham to Tipton, confirmed. Case:—A written agreement was made in 1822, between the pauper, son of Jacob, and Thompson, a glazier, of King's Norton. Jacob and James severally agreed that James should serve Thompson as an *articled servant* for four years, to learn his trade of glazier, at the wages of 6*s.* a week in the first year, with a progressive increase; James to be considered as an *out apprentice*, and James and Jacob were to provide James with food and clothing. James was to do gardening, or any other work his master should set him about. In case James was unable to work, or was absent, no wages for the time were to be paid. James was faithfully to do all his master's business, and Thompson agreed to *teach and instruct* him in the trade of a glazier. This agreement was signed and attested, but not sealed or stamped. The pauper served under it more than a year. *Bayley*, J., delivered the judgment. "The character in which the pauper was to act is described both as that of an articled servant and of an apprentice. We must, therefore, look to the whole of the instrument, to see what relation the parties contemplated. Now, first, it was not usual for a father to be a party to a contract, whereby his son (of full age) contracts to serve. The fact of the pauper having contracted to do gardening, or any other work, does not necessarily show that the parties contemplated a mere hiring. In *Rex* v. *Combe*, p. 659, the pauper was to do any other work beside that of a carpenter; and yet that contract was considered to be an imperfect contract of apprenticeship. So the stipulation to pay wages does not necessarily imply that the parties contemplated the relation of master and servant. Then the master undertook to teach his trade to the pauper. Learning the trade, therefore, was one great object of the contract. There is a provision in the instrument, that if the pauper should be ill, the master should not pay him wages. That is not an improper stipulation in a bargain for an apprenticeship: but the law imposes on the master the obligation of providing for a servant during illness: there are some circumstances tending to show that the parties contemplated a contract of apprenticeship, and others that they contemplated a contract of hiring. But on the whole, as it appears that the main object was, that the pauper should learn the trade of a plumber, and as the sessions might have thought the wages too low for a servant, we think, though the case admits of great doubt, that this was an imperfect contract of apprenticeship." Order confirmed.

By a parol contract, the master agreed to teach the pauper the trade of a shoemaker for twelvemonths, for which the master was to receive a guinea, the pauper's father finding him board and lodging during the time. This is an

Rex v. *St. Mary, Kidwelly*, 2 *B. & C.* 750; 4 *D. & R.* 309. Williams was removed from Kidwelly to Llandevilog. Order quashed. Case:—When the pauper was about fourteen years of age he lived with his father in St. Ishmael, and being desirous of being apprenticed to a shoemaker, his father agreed with a neighbour, named J. Thomas, a shoemaker in the same parish, to give him a guinea for teaching his son the trade of a shoemaker for twelve months; the father finding the pauper lodging, and everything else during that time. The pauper served the twelve months under that agreement. There was no indenture or writing, but the pauper considered it as an apprenticeship, and his father and master treated and spoke to him as an apprentice during the twelve months, and both told him there was a

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imperfect apprenticeship.

At the expiration of the year, the pauper entered into a fresh agreement to work with his master for twelve months, making shoes at three pence *per* pair the first half year, and at four pence *per* pair the remaining half year, and at the end of six months he quitted the service altogether. The latter is a hiring and service.

guinea paid for teaching him the trade. The pauper's father, at the end of the year, came to an agreement with J. Thomas, that the pauper should work with him for twelve months, making shoes at 3*d.* *per* pair the first half year, and at 4*d.* *per* pair the remaining half year. The pauper worked with J. Thomas about six months under that agreement, and then went away and worked at several places, until his marriage, which happened in 1785. He soon afterwards went to St. Mary. *Bayley*, J. "There is in this case a contract of hiring in the second instance, and if the service under it can be connected with the service of the preceding year, a settlement was gained. In order to gain a settlement by hiring and service, I take it that the service must be under some contract creating the relation of master and servant. Here the first contract created the relation of teacher and scholar, and the service under it cannot be occupied with the subsequent service. *Rex* v. *Bilborough*, p. 654, is an authority in point. There the pauper's father agreed with one Smith that he should teach the pauper to make stockings during the year next ensuing, and should receive the sum of two guineas for such instruction; and it was further agreed that the pauper should have his earnings, and pay Smith for the use of his frame, needles, and other utensils, and for seaming such stockings as the pauper should make. The pauper stayed a year and a half; and therefore if that was a relation of which it could be predicated that there was service performed in the character of servant, it would have been sufficient to confer a settlement: but the sessions thought there was no settlement, and a case being reserved, this court confirmed their decision, on the ground that the relation between the pauper and his master was merely that of teacher and scholar, and not that of master and servant. In this case there was no obligation on the part of the pauper to serve; he was only to be taught; the master could not have punished him for neglecting to serve. Although service under different hirings may be connected, the whole of the several services constituting the year's service must be under a contract creating an obligation to serve. Therefore, inasmuch as in this case there was no relation of servant, and no obligation to serve until the hiring for a year commenced, and there being only a service for half a year under that hiring, no settlement was, in my opinion, gained." *Littledale*, J., concurred.

A shoemaker proposed to the mother of a pauper, a boy, to take him to learn his business. The boy was to serve four years, was to board and lodge with his mother, and was to have half what he earned. The mother consented, and the boy served four years upon those terms. No indentures were executed, *on account of the poverty of the mother*, and no premium was paid. This is a defective contract of apprenticeship.

Rex v. *St. Margaret's, King's Lynn*, 6 *B. & C.* 97. Order of removal of John Cotton, &c., from St. Margaret's, in King's Lynn, to Wolferton, quashed. Case:—Headley, a shoemaker, a friend of the pauper's mother's family, applied to her, and offered, if she would agree to his proposal, that he would take her son, then a boy, to learn his business; but there were no indentures, on account of her poverty. The pauper was to serve for four years, to board and lodge with his mother in St. Margaret's, and to have half what he earned. The pauper entered upon this service, worked in the shop with the apprentices, did not stay with his master on a Sunday, and was not required to do any work but in the shop. The pauper continued in the service four years, boarding and lodging in St. Margaret's. Some time after entering upon the service, Headley sent the following writing by the pauper to his mother, which was neither stamped nor signed:—"An agreement drawn up between Mrs. Cotton and Thomas Headley, that the said Thomas Headley is to find her son, John Cotton, work for four years, and he is to have half what he earns all the four years; and Mrs. Cotton is to find her son, John Cotton, everything else during the four years." *Bayley*, J. "I am of opinion that this was a defective contract of apprenticeship, and not a contract of hiring. Every case of this nature must be determined with reference to its own peculiar circumstances. Where it appears from all the circumstances that the parties at the time of making the contract contemplated the relation of master and apprentice, the contract must be construed as one of apprenticeship; and then if it is a defective apprenticeship, no settlement can be gained by service under it. Where, on the other hand, it appears that the parties contemplated the relation of master and servant, the contract must be construed as one of hiring, and a settlement will be gained by service under it. The payment of a premium is strong evidence to show that an apprenticeship was

Payment of premium evidence of apprenticeship.

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intended; but it is not decisive: and still less is the absence of a premium evidence to show that a contract of hiring was intended. The written agreement, not having been signed or stamped, must be laid out of consideration, and we must look to the original bargain between the master and the pauper's mother, to ascertain the intention of the parties. The proposal, and consequently the purpose of the master, was to teach the pauper his trade; and the pauper was to serve four years for that purpose, to have half what he earned, and to board and lodge with his mother. In ordinary cases, indentures of apprenticeship are executed, but here they were not executed on account of the poverty of the mother. The fact that the execution of indentures was thought of, though not realised, shows clearly that the parties did not contemplate the mere relation of master and servant, but did contemplate the relation of master and apprentice. *Rex* v. *Little Bolton*, p. 545, comes very near the present. There, the pauper proposed to the master, who was a weaver, to teach him to work counterpanes; but although the object of the pauper was to be taught a trade, the master agreed to teach him only upon the condition that he should work for a given time. In many cases the object of the party who hires himself is to learn a particular trade, and the instruction which he receives is a partial remuneration for his services. In *Rex* v. *Burbach*, p. 548, it was agreed that the pauper should work for two years, and have what he got, allowing his master so much per week for teaching him. The court held that to be a contract of hiring and service, but there was nothing to show that the parties ever contemplated the relation of master and apprentice. Here a contract of apprenticeship was contemplated, and not completed, only in consequence of the poverty of the pauper's mother. That being so, I think this a defective contract of apprenticeship." *Holroyd*, J. "I am of opinion that the relation of master and apprentice was contemplated; or, at least, that there is not evidence to justify us in saying that the relation of master and servant was contemplated. The case states that the master, a shoemaker, applied to the pauper's mother, and offered her, if she would agree to his proposal, to take her son, then a boy, to learn his business. The proposal was to teach, and the mother was to consider whether she would accept that proposal. The terms upon which the master proposed to teach the pauper was, that the pauper should serve four years. Now, for what purpose was he to serve four years? To learn the business. I think the sessions were not warranted in finding that the relation of master and servant existed in this case. The fact of the pauper having served, does not warrant the conclusion that he served in the character of servant, and not of apprentice; for mere service does not constitute the relation of master and servant." *Littledale*, J., concurred. Order of sessions quashed.

Where the sessions find the contract to be for an imperfect apprenticeship, Q. B. will not disturb their judgment.

Rex v. *Great Wishford*, 4 *A. & E.* 216. Order of removal of T. Harman from Kidderminster to Great Wishford confirmed. Case:—The pauper's father, being settled in Great Wishford, died in 1818; and in 1823 the pauper's mother applied to Samuel West, a carpet weaver at Kidderminster, to take her son, the pauper, into his employment. West agreed with the mother to take the pauper for two years on trial; after which, if the pauper and master agreed, the pauper was to be apprenticed to West. The pauper was to be found in board and lodging and washing by West, but was to have no wages except what West pleased to give him as pocket-money. The pauper was to draw. The pauper went to West as agreed, and worked for him for about a year and a half, living in West's house, in the borough of Kidderminster, during that period. The pauper then ran away, from Easter to wheat-harvest, when he returned and worked for West for a short time at weekly wages, when he again ran away, and they parted. It was stated by a magistrate on the bench, and assented to, "That every carpet-weaver is first taught the art of drawing as a draw-boy." The chairman took the opinion of the court, whether the service was an imperfect contract of apprenticeship or a living and service, and the court found that it was an imperfect contract of apprenticeship. *Patteson*, J. "The chairman put it to the court of quarter sessions, whether there was in this case an imperfect contract of apprenticeship or a hiring

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and service. The sessions found the one, and I think in doing so they negatived the other. It is now contended, first, that we are not at liberty to enter into the question, the sessions having decided on it; and secondly, if we do enter into it, the judgment of the sessions is right. The line of demarcation is not plain between cases in which this court is and is not bound by the finding of the sessions; but there is clearly no instance in which this court has reversed their decision, unless they have manifestly come to a conclusion which is wrong, either as being unsupported by facts, or as being contradictory to them. We have been pressed, in this case, with the decision in *Rex* v. *Woolpit*, but there my brother *Williams* and I thought the finding of the sessions contradictory to the facts appearing on the case: my brother *Coleridge* was of a different opinion. Here we all think that the sessions came to a conclusion warranted by the facts. The contract might have received either of the two interpretations submitted to the sessions, more especially as it was by word of mouth. In *Rex* v. *St. Margaret's, King's Lynn*, p. 662, *Bayley*, J., said, 'Every case of this description must depend upon its own particular circumstances. If, from all that passed between the parties at the time the contract was made, they appear to have contemplated the relation of master and apprentice, then the contract must be considered to be one of apprenticeship; and if it be an imperfect apprenticeship, no settlement can be gained by serving under it. If, on the other hand, it appears that the parties contemplated the relation of master and servant, then it must be deemed a contract of hiring, and a settlement will be gained by serving under it.' The sessions are to determine upon a view of all the circumstances, as *Bayley*, J., truly says, if the contract itself be ambiguous. In subsequent cases the criterion has been stated in rather different terms than those used by *Bayley*, J., in *Rex* v. *St. Margaret's, King's Lynn*. The test, as latterly stated, and as put in *Rex* v. *Crediton*, p. 548, and *Rex* v. *Newtown*, p. 657, is, whether or not the contract was for learning and teaching. Here it might have been inferred from the circumstances of the contract, either that the master was to take the pauper for two years, to see whether he was a teachable boy, and likely to learn the business; or that he was to take him for two years to do all kinds of work, and that if liked at the end of that time, he was to be received as an apprentice. The sessions have adopted the first construction, and have found an imperfect contract of apprenticeship. My own inclination is towards the same conclusion, though the circumstances will admit of a contrary one. It is suggested that the sessions must have doubted the justness of their own decision, or they would not have referred the matter to the court as they have; but this is an argument which may always arise if the sessions send cases at all. Upon the whole, I think, enough appears in this case to justify the order of sessions." *Williams*, J. "I am also of opinion that there is enough in this case to support the order of sessions. The supposed difference of opinion in *Rex* v. *Woolpit* arose merely from the different views taken with regard to the facts of that case. Here, without saying whether I should or should not have decided as the sessions have, I think that they had ground for finding that there was a contract to teach and learn (as I presume they mean to say), and not a contract for hiring; and if the case shews any ground for their decision, we ought to support it. The word 'employment' might apply to either description of contract. It is true the agreement here was not in terms that the boy should go to be taught, but it might be inferred that he was to go for that purpose. He was to 'draw,' and that, most probably, was to prepare him for the particular business. One expression in the case, with respect to the contract, is ambiguous, and the others are in favour of the finding. I should have been sorry if they had proved so conclusive against the order of sessions that we could not have maintained it; for the sessions appear to have acted upon the case of *Rex* v. *Crediton*, where this court overruled a multitude of former cases (such as *Rex* v. *Little Bolton*, and *Rex* v. *Eccleston*), which had created great confusion, by establishing that a contract, in which the servant was not expressly retained as an apprentice, might not be a contract of apprenticeship, although there was no doubt that the intention of

the parties was teaching and learning. Now a more plain and intelligible ground has been laid down upon which to decide such cases—namely, the object contemplated by the parties; and I am glad that the sessions in this instance appear to have proceeded upon that ground." *Coleridge*, J. "In *Rex* v. *Woolpit*, there was no difference on the bench as to principle. Every one will agree that the jurisdiction, upon matters of fact, is with the sessions; this court has it only when a matter of fact is referred to it by the sessions, or where they have decided on the fact without any evidence, or against evidence. The first question here is, whether the sessions have found a matter of fact. I think that in effect they have. Then is their conclusion necessarily wrong? I think it is right; therefore I cannot say that their decision ought to be interfered with. An imperfect contract of apprenticeship exists where the parties have had a perfect contract of apprenticeship in view, but it has not been thoroughly carried into execution. The object of such a contract is, that the master shall teach and the boy shall learn. That was contemplated here. The parties would not go to the expense of the indenture, but that they said that they would try for two years whether the boy could learn, and the master teach him; and if it proved so, the boy was to be apprenticed. Then there was, in effect, an imperfect contract of apprenticeship. It is said that no express words signifying instruction were used; but I think that is not necessary, if it can be inferred that learning and teaching were contemplated. It would be a new position to lay down, that an intent cannot be collected in the absence of express terms." Order of sessions confirmed.

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9. Of Parish Apprentices.

9. Of Parish Apprentices.

There are some peculiarities respecting parish apprenticeships, which render it expedient to consider them separately.

The authority of the churchwardens and overseers to bind out poor children is derived from the 43 Eliz. c. 2, s. 5 (*ante*), but various regulations have been established by subsequent statutes, among which is a provision that it shall not be lawful for any parish officers to bind out any child as a parish apprentice until such child have attained the age of nine years. 56 Geo. III. c. 139, s. 7 (*ante*).

By the 43 Eliz. c. 2, s. 5, a parish apprentice could be bound only by the *greater* part of the churchwardens and overseers; and therefore where one of the two overseers was also sole churchwarden, and the indenture was executed by the overseers, the binding was held insufficient, as there ought to be two overseers exclusive of churchwardens (*Rex* v. *All Saints, Derby*, 13 *East*, 143); but this was remedied by 51 Geo. III. c. 80 (*ante*), which has a retrospective operation.

Rex v. *St. Margaret's, Leicester*, 2 *B. & Ald.* 200. Removal from St. Margaret's, Leicester, to Foxton. Order quashed. Case:—Barker, the husband of the pauper, was bound apprentice by a parish indenture, dated 30th April, 1791, to Warburton, of Great Wigston. The indenture witnessed, that Chapman and Iliffe, churchwardens of Foxton, and Chapman and Coleman, overseers, do put Barker, apprentice, &c. It was duly allowed, but executed by Chapman and Coleman only. The pauper's husband served a sufficient time under it to gain a settlement in Wigston, if the indenture were valid. Chapman and Iliffe were the two churchwardens at the time when Chapman and Coleman were appointed overseers, and these persons were the officers of the parish in the year comprehending the day on which the indenture was executed. The question was, whether the indenture was valid or not? *Abbott*, C. J. "This act of parliament was a remedial act, and ought therefore to receive a liberal construction; and I do not think, that in holding that this case is within it, we put any forced construction upon its provisions. This case is clearly within the mischief of the act, and I think within the fair meaning of the words by which it is remedied. I am therefore of opinion that the 51 Geo. III. c. 80, extends not only to cases where *both* the parish officers *act in*

51 Geo. III. c. 80, extends to parishes where there are three officers only, one of whom acts as churchwarden as well as overseer.

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a double capacity, but to those also where only one of them is in that situation. The decision of the sessions was before right." *Bayley*, J. "This act was passed almost immediately after the determination in *Rex* v. *All Saints, Derby;* there, only one of the officers acted in a double capacity. It was to remedy the inconveniences resulting from that decision that the act was passed. I think it is not a forced construction of it (when it is admitted that its provisions include the case of a double defect), to hold that they also extend to a case of a defect in one parish officer only." Order of sessions confirmed.

Indenture signed by one churchwarden and one overseer is sufficient.

Rex v. *Hinkley*, 12 *East*, 361. Where an indenture appeared to be executed by W. S. churchwarden, and J. G. overseer of the hamlet of Atterton, and no other evidence was given respecting it, it was holden by the sessions to be sufficient; but the court of King's Bench held that there might be one churchwarden only by custom, and that if any intendment could by law be made to support the indenture, they must make that intendment. (*a*)

Same point.

The 43 Eliz. c. 2, does not require absolutely two churchwardens in every parish for the management of the poor; and therefore an indenture binding out a poor apprentice by *one* churchwarden (where by custom there was but one) and *one* overseer, was held to be good. (*Rex* v. *Earl Shilton*, 1 *B. & Ald.* 275, reported more fully in Vol. I.)

An indenture, executed by the overseers of a *township* which has no churchwardens, and maintains its own poor, is valid, although neither of the churchwardens of the *parish* join in the execution.

Rex v. *Nantwich*, 16 *East*, 228. Order of removal from Pendleton to Nantwich confirmed. Case:—The parish of Nantwich consists of five townships, of which the township of Nantwich is one. These townships act separately in all matters relative to the management of the poor, and separate overseers are regularly appointed, two for each township. Two churchwardens are appointed for the parish at large, who have not been accustomed to interfere at all in the management of the poor in either of the townships. There are no churchwardens appointed in any of the townships. In 1787 the pauper, then being a poor boy, and settled in the township of Nantwich, was put out for seven years as an apprentice to W. and T. D., cotton machine workers, by an indenture duly stamped and executed by the overseers of the township of Nantwich, and duly allowed by two magistrates, *but not executed by either of the churchwardens.* Under this indenture the pauper served Messrs. D. for seven years at Pendleton, and resided there during the whole time. The question was, whether it was necessary that the churchwardens of the parish should execute this indenture? The arguments were upon the construction to be given to 43 Eliz. c. 2; 13 & 14 Car. II. c. 12; 8 & 9 Will. III. c. 30; and 17 Geo. II. c. 38, s. 15; and the cases of *Rex* v. *Clifton* (2 *East*, 168); and *Spitalfields* v. *Bromley* (2 *Bott*, 684), were cited. The court delivered their opinions at great length, and entered very fully into the meaning of these several acts of parliament, as connected with each other. Lord *Ellenborough* said, "I take it to be clear that the churchwardens do not act as an integral part, but that a majority of the conjoint body would be sufficient; or if there were four overseers and two churchwardens, an indenture executed by all the overseers, without the churchwardens, would be valid:" and it was the opinion of the court, that by the operation of the stat. 13 & 14 Car. II. c. 12, an indenture of apprenticeship executed by the overseers of a township which has no churchwardens, and maintains its own poor separately, is a valid indenture, though neither of the churchwardens of the parish join in the execution; and that when overseers are appointed under 13 & 14 Car. II. they alone constitute overseers for the township; the township is to be considered as not having churchwardens; and that the words "where no churchwardens," in the certificate act, mean where there are no such church-

(*a*) Upon this case Mr. *Evans*, in his collection of statutes, observes, "I have never been able to assent to the correctness of this decision, because the presumption is always to be made according to the general course and operation of the law; and if the appointment of one churchwarden would be *primâ facie* void, the existence of a special custom to support it would seem to require positive proof. But see *Rex* v. *Whitchurch* (*post*); *Rex* v. *Upton Grey* (*post*).

wardens as, with the overseers, constitute the officers of that place. See 54 Geo. III. c. 107, s. 2 (*ante*). See *Rex* v. *J. Yorkshire, N. R.* p. 21; and *Rex* v. *Marsh*, p. 21.

9. *Of Parish Apprentices.*

Rex v. *Lutterworth*, 3 *B. & C.* 487. W. Hickley was bound apprentice by the churchwardens and overseers of the parish of Broughton Astley. At the time, the parish formed part of the incorporation of the house of industry at Ullesthorpe, under the 22 Geo. III. c. 83. G. L. was guardian, and acted as such, but was no party to the indenture. *Abbott*, C. J. "I am of opinion that this binding was valid, and that the pauper, by serving under it, gained a settlement. The 7 sect. of 22 Geo. III. c. 83, is calculated to raise a doubt upon the point, for it excludes the interference of the churchwardens and overseers in the care and management of the poor where guardians are appointed. If there were nothing else in the act to guide us, it might be difficult to say that they could interfere in binding parish apprentices. But in subsequent parts of that statute, various powers are expressly given to guardians of the poor; and by 30 sect. they are authorised to provide for poor children till they arrive at a proper age to be placed out, when they are to be bound out according to the laws then existing. One of these laws was the 43 Eliz. c. 2, directing that parish apprentices shall be bound out by the churchwardens and overseers of the poor. And it is better that a binding should take place by several churchwardens and overseers than by a single guardian." The other Judges concurred.

The overseers, and not the guardians, under 22 Geo. III. c. 83, are the proper parties to a parish indenture.

Rex v. *Quainton*, 2 *M. & Sel.* 338. Removal from Quainton to Bicester-Market-End quashed. Case:—The pauper, on the 23d of November, 1811, a poor boy aged thirteen, of Quainton, was, with the consent of the trustees (created by the will of Lady Say and Sele for the purpose of yearly putting out a certain number of poor boys apprentices), bound apprentice to J. Adams, of Bicester, for seven years, for the consideration of 20*l.* stated in the indenture to be paid to Adams by the trustees, who were recited to be parties to the indenture; but it was only executed by the pauper and Adams. This indenture was unstamped, and it appeared that Adams received only 16*l.* 15*s.* 6*d.*, the residue of the 20*l.* being retained by the agent of the trustees for the expenses of the binding. The pauper served under the indenture at Bicester more than forty days. It was first urged that the "two sums" was the gross sum received; and next, as the trustees had not joined in the execution of the indenture, this was not a placing out at the expense of a charity, but was similar to parish indentures, to which the officers must be parties. Lord *Ellenborough*, C. J., said, "Upon the latter point it appeared that the money was paid out of the funds of the public charity, and that it was paid by the trustees in the execution of their trust; and that they acted very wisely not to involve themselves by becoming parties to the covenant; and as to the other point, that the consideration was fully stated. Even if a stamp had been necessary, the consideration would have been sufficiently stated, for it is stated against the party's interest." (See *Rex* v. *Keynsham*.) Order of sessions quashed.

An indenture reciting certain trustees to be parties, and the consideration to be 20*l.*, is good, though not executed by the trustees, and though only 16*l.* 15*s.* 6*d.* of the consideration was paid to the master.

Rex v. *Saltern*, *Cald.* 443. The assent of the justices must be given by their signing.

Justices must sign.

Rex v. *Hamstall Ridware*, 3 *T. R.* 380. The pauper was bound a parish apprentice. The indenture was *separately* assented to by two justices, by signing the same; but the two justices *did not assent to or sign the same at the same time*, or in the presence of each other. It was contended that this was a *ministerial act*, and like the allowance of a rate. But Lord *Kenyon* held clearly that *this was* an act of a *judicial* nature, and as such that the justices must, when they do it, meet and confer together.

Their assent is a judicial act, and they must not assent separately.

Rex v. *Winwick*, 8 *T. R.* 455. By an indenture dated 18th December, 1789, the pauper was bound an apprentice by the parish officers of Winwick to T. H. of Spratton. It was signed by Dr. Freeman, one of the justices, at the parish where he resided; but the other justice, Dr. Preedy, was not then present. A few days afterwards, Dr. Freeman went to the house of Dr. Preedy, where the same was signed by Dr. Preedy, in the presence of all the parties. Lord *Kenyon*. "This case is clearly dis-

One justice may sign alone if he be present when the other signs.

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tinguishable from *Rex* v. *Hamstall Ridware*, because though one of the magistrates first put his signature to this indenture at a time when the other was not present, both the magistrates afterwards met on the subject, and agreed to the propriety of the measure, when the other magistrate also executed the instrument. The principle on which this case is determined was recognised some years ago in a case of murder; a magistrate who kept by him a number of blank warrants ready signed, on being applied to, filled up one of those, and signed and delivered it to the officer, who on endeavouring to arrest the party, was killed; the judges were of opinion that this was murder in the person killing the officer, and he was accordingly executed. And this was not a new principle then for the first time established; it had always been uniformly acted upon."

The binding of a parish apprentice under 56 Geo. III. c. 139, s. 2, into another county, the indenture must be allowed by four *distinct* justices, two of one county and two of the other.

The King v. *Shipton*, 8 *B. & C.* 772. This was an indictment for not receiving an apprentice. The defendant demurred to it, upon the ground that the two justices of the place where the apprentice was to serve were not distinct from the two justices who made the order. The justices had jurisdiction in both counties. But the judges said, although they could not see the reason for it, yet the indenture must be allowed by four distinct persons, two of them being justices of the county from which the apprentice is to be bound, and the other two being justices of the county into which he is to be bound. (*a*).

Two justices refused to bind a parish apprentice, and he was bound with his own and his mother's consent out of the parish money. The sessions found the binding fraudulent: the Court of King's Bench held the binding to be independent of the statute, and a settlement gained.

Rex v. *Kilby*, 2 *M. & Sel.* 501. Removal from Kilby to Great Wigston. Order discharged, When the pauper was four or five years old, the parish officers wished to put him out apprentice, but the mother, a widow, objected on account of his age. In consequence of her objecting, the officers refused to give her any more relief. When the pauper was about eleven years old, the widow being no longer able to support him, went to the parish officer and told him she would consent that her son should be put apprentice. He bid her choose a master, and she chose Dand, of Great Wigston, to whom the parish officer agreed to give three guineas in money, and other things to the amount in the whole of 4*l.* The parish officer, the pauper, his mother, and Dand met together, proposing to have the boy bound before the justices, and went before them for that purpose, but the justices finding that Dand had as many apprentices as they thought he could do justice to, would not let him have any more. The parish officer then declared, if he could not have him bound there, he would have him bound in another place, and accordingly took all the parties to an inn, procured an indenture stamp, which was regularly filled up and executed, and the pauper, with the consent of his mother, bound himself to Dand for seven years (*b*). The premium, three guineas, and the other things making up the 4*l.*, were to be delivered to Dand at the expiration of six weeks from the execution of the indenture, at which time Dand went to Kilby, and received them of the parish officer. The duty paid was 1*s.* 6*d.*, being 6*d.* in the pound upon the 3*l.*, and all expenses of binding were paid by the parish. The sessions found fraud. Lord *Ellenborough*. "This does not appear to have been intended to be a binding as a parish apprentice; if it did it might be defective. But it is, independent of the statute, a binding with the consent of the mother, the son, and the master. The justices have indeed found fraud, but there are no circumstances to warrant such a conclusion, except that when the parties could not obtain the binding before the justices, they went elsewhere and perfected it in another way. It is said this was the parish money, and perhaps there has been a misapplication of it; but still there has been a valid binding, for the pauper, with his mother's consent, binds himself. If the mother had been a party to the indenture, and the action had been brought against her upon it, I do not see how she could have effectually pleaded *per fraudum* or *per minas*." *Le Blanc*, J. "It appears that the mother chose the master, and it is not stated that the

(*a*) This is now remedied by 3 & 4 Will. IV. c. 63 (*ante*).

(*b*) By 56 Geo. III. c. 139, s. 11 (*ante*), such an indenture, by reason of which any expense shall be incurred by the public parochial funds, must be allowed under the hand *and seal* of two justices.

child was of an age not fit to be bound apprentice." *Bayley*, J. "After the allowance was withdrawn, the mother might have obtained relief by application to the justices, if she had been entitled to it." Order of sessions quashed. (See *Rex* v. *Arundel*, p. 662, where the master not belonging to the parish, it was not considered a parish binding, though premium paid by overseers.)

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Rex v. *St. Paul's, Exeter*, 10 *B. & C.* 12; 5 *M. & R.* 94. Order of removal of Jane Bishop from St. Paul's, Exeter, to Tedburn, St. Mary, quashed. Case:—The pauper, in 1818, was bound apprentice, by the parish officers of St. Mary, to H. B. The indenture was made in pursuance of a previous order of two justices, to which reference was made by its date, and was duly executed by the parish officers and by the master. An allowance of the same was written at the foot thereof, which was signed by two justices, but was not under seal. On occasion of this binding, an expense of 17*s.* was incurred by the public parochial funds of the parish of St. Mary; viz., 7*s.* as the costs of preparing the indenture, and 10*s.* were given to the master with the pauper. The pauper resided in St. Mary under this indenture for four years. *Bayley*, J. "On carefully considering the 56 Geo. III. c. 139 (and after conferring with Lord *Tenterden*, who concurs in the judgment I am about to pronounce), we are of opinion that the first ten sections apply to cases where the parish officers are parties to the indenture, and the 11th sect. to cases where the parish officers do not join in the indenture, but where some part of the expense attending the indenture is defrayed out of the public parochial funds. That this is the meaning of the 11th sect. appears to us to be manifest, from the use of the word 'clandestinely' in that section. The mischief recited in the preamble of that section is that the premium was clandestinely provided by the parish officers, &c. The first ten sections, which evidently apply to bindings by the parish officers, require that the indenture should be approved by two justices under their *hands* only. Now parish officers cannot be said to provide the premium *clandestinely* when they join in the indenture. The 11th section, therefore, can apply to those cases only where they are not parties to the indenture, but where they provide some portion of the premium. The indenture in this case was one (the parish officers being parties to it) contemplated by the first ten sections. The allowance was signed, though not sealed, by the justices. It is therefore a valid indenture." Order of sessions quashed.

The allowance of an indenture of apprenticeship, to which the parish officers are parties, must be signed, but need not be sealed, by the justices.

The first ten sections of 56 Geo. III. c. 139, apply to cases where the overseers are *parties to the indenture*; the 11th sect. where they are not,

Rex v. *Mattishall*, 8 *B. & C.* 733; 3 *M. & R.* 386. Case:—The pauper was bound by indenture for three years. The deed was signed by the master, attested by the parish officers, but not approved by two justices. Before it was executed, the master said the pauper should have some better clothes; and thereupon the pauper applied to the parish officers, who agreed to give the master 2*l.* at the execution of the indenture to buy clothes, and 2*l.* more for the same purpose at the end of a year. The first 2*l.* was paid to the mistress, and the other 2*l.* to the pauper. *Bayley*, J. "The enacting part of the 11th sect. of 56 Geo. III. c. 139, goes beyond the recital. If it had not, I could not have said that the money was paid as a premium. It has been said that it does not appear that the money was paid out of the parish funds. If that was not so, it might have been easily proved. The sessions have found that it was paid by the parish officers; that *primâ facie* implies that it was paid by them out of funds belonging to them in that character. We may assume, therefore, that the sessions had premises wherefrom to find that the money was contributed by the parish officers, not out of their private but out of the parish funds. Then we must look to the 11th sect. [which he read]. Here the money was paid, because the master objected to take the apprentice unless he had clothes. It was therefore an expense incurred by the parish, within the very words of the statute. The indenture then, not having been approved by two justices, is void, and no settlement is gained by service under it." *Littledale*, J., concurred. *Parke*, J. "It is perfectly clear that the money advanced to the pauper was an expense incurred by the public parochial funds within the enactment, though it is not a premium within the recital;

Justices must allow the indenture, where any expense is incurred by the parish.

Providing clothes is such an expense.

9. *Of Parish Apprentices.*

I think also it is within the mischief contemplated. By 43 Eliz. c. 2, the assent of two justices was required, where the binding was by the parish officers. But if they secretly advanced the whole or part of the premium (provided they were not the binding parties), the assent was unnecessary. This was the mischief to be remedied. The statute requires the assent in all cases, where the parish officers interfere in the binding out of children, by advancing money for that purpose."

Parol evidence is admissible to show that the consideration mentioned in the indenture was parish money, and therefore that no stamp was necessary. (a)

Rex v. *Llangunnor*, 2 *B. & Ad.* 616. Order for the removal of Hannah Thomas from Llloughor to Llangunnor confirmed. Case:—The pauper was the widow of John Thomas. John Thomas, when fourteen years of age, was put apprentice by the parish officers of Llangendeirne, under an indenture, to which those officers were parties, dated the 24th of October, 1814, to John Morgan, a tailor in Llanelly; he afterwards removed with his master to Llanon, and there served under the indenture more than forty days. Morgan, whilst in Llanon became poor, and Thomas then went by an assignment to serve David Elias, a tailor in Llangunnor, and there served more than forty days. By the assignment of the 16th of December, 1818, John Morgan, with the consent of two justices, whose names were subscribed, did assign John Thomas, the apprentice, to David Elias, &c., to serve him during the residue of the term of twenty-one years, mentioned in the indenture, and that Elias, in consideration of 3*l.* 10*s.* paid him by Morgan, did accept and take Thomas as an apprentice for the residue of the term, and acknowledge himself to be bound by the covenants on the part of John Morgan to be performed. It was objected that the assignment required a stamp, as it purported to be an assignment in consideration of a sum of money paid by Morgan to Elias. Parol evidence was then tendered to prove that the money was, in fact, the money of the parish of Llanon, where Morgan and his apprentice then resided, and paid by the parish officer to Elias. The sessions received it, and, Elias being called, said that he received the 3*l.* 10*s.* from Thomas Evans. Thomas Evans said that he was a deputy overseer in Llanon in 1818, when the assignment took place, and that he then paid 3*l.* 10*s.* of the parish monies of Llanon to Elias for receiving Thomas as an apprentice. Lord *Tenterden*, upon the authority of the cases of *Rex* v. *Scammonden* (*post*), and *Rex* v. *Laindon*, p. 652, "I am of opinion that the parol evidence was receivable: and as John Evans swore positively that the money was money of the parish, and he is not contradicted, I think the proof was sufficient, and, consequently, that the assignment did not require any stamp to render it admissible." *Littledale* and *Parke*, Js. concurred. *Taunton*, J. "It is stated in the assignment that 'the said David Elias, in consideration of 3*l.* 10*s.* paid to him by John Morgan, did thereby agree to accept and take the said John Thomas as his apprentice.' All that is stated with certainty is, that the money was paid by Morgan, but whose money it was does not appear. That is a collateral matter, and parol evidence was admissible to explain it." Order of sessions confirmed.

An indenture, by which a person of twenty one years of age binds himself an apprentice, does not require the approval or allowance of justices, where the premium is paid out of the public parochial funds, under 56 Geo. III. c. 139, s. 11.

Rex v. *St. John, Bedwardine*, 2 *Nev. & Man.* 86; 5 *Bar. & Adol.* 169. Robert Hinton was removed from St. John, Bedwardine, to Hanbury. Order quashed. Case:—The pauper, before he was twenty-one years of age, gained a settlement in Hanbury, the appellant parish, by a hiring and service for a year with J. Stain. After the pauper became of age, being lame, he applied for relief to the overseers of the appellant parish, who recommended him to learn some trade, but refused to bind him out; nevertheless they promised that if he could find a master, they would give 4*l.* The pauper then put himself apprentice to one Hatch, living in the respondent parish. The parish officers of Hanbury gave the money to the pauper, who paid it to Hatch. The indenture was by deed, sealed by the master and the apprentice. Whilst under this indenture, the pauper slept more than forty nights in the respondent parish, and is settled there, if the

(a) So also where there was a written agreement for service, parol evidence is admissible to show that it was also for cohabitation, *Rex* v. *Northwingfield*, 1 *B. & Ad.* 912. Whether such a contract is divisible and good for so much as is legal, and void for the residue, quære.

indenture be good in law. The question was, whether the pauper, being twenty-one years of age, was a poor child within the 56 Geo. III. c. 139, s. 11. *Denman*, C. J. "It is impossible to say that a person of full age is a poor child within the meaning of the act in question. Although parties may be bound so as to continue apprentices until they are twenty-four years of age, it does not follow that a person of the age of twenty-one may by virtue of this act be bound apprentice. The argument would go to this, that poor persons of seventy years of age might be bound out apprentices. With regard to the 11th section, it is said that no indenture of apprenticeship is valid, where any expense whatever has been incurred by the parish, unless approved of by two justices of the peace, under their hands and seals. Though the enacting words of that section are large, they do not appear to me to extend to this case. The introductory part of the section states what are the mischiefs the legislature intended to remedy. The words of the enacting part of the section ought to have an effect limited to the mischief mentioned in the recital. Besides, the enacting part says that the indenture must be assented to by the justices, according to the provisions of this act, and the act extends to poor infant children only. Nor do I think that the case of *Rex* v. *St. Paul's, Exeter*, p. 669, extends the construction of this act any further." *Littledale*, J., concurred. *Parke*, J. "It is very clear that the apprentice in this case is not a poor child within the meaning of the act of 56 Geo. III. It appears to me that by the 11th section the legislature contemplated a person under the age of twenty-one years. The first ten sections of the statute clearly relate only to children in the ordinary sense of the term—persons under the age of twenty-one years. In the 11th section the mischief intended to be remedied is in the first place recited, then come the words, 'no indenture of apprenticeship shall be valid, by reason of which any expense whatever shall at any time be incurred by the public parochial funds.' But these words must be controlled by the precedent recital. Then these words follow: 'Unless approved of by two justices of the peace, under their hands and seals, according to the provisions of the said act and of this act.' Looking at the former act and at this act, it is clear that they provide only for the apprenticing of poor children under the age of twenty-one years." *Patteson*, J., concurred. Order of sessions confirmed.

A person of full age is not "a poor child."

Rex v. *Halesworth*, 3 *Bar. & Adol.* 717. John Carter was removed from St. Michael at Thorn to Halesworth. Order confirmed. Case:—The appellants relied upon a settlement by apprenticeship in St. Michael. In 1652 John Keble devised certain lands in Holton for the relief of the poor of Halesworth, half the revenue to be employed for the relief of widows, and the other half towards binding out apprentices. The rents of these lands were received by the churchwardens of Halesworth, and were kept in a distinct account, and not mixed with the monies arising from the poor's rates. The father of the pauper, who was a settled inhabitant of Halesworth, but residing at Norwich, and not at that time receiving parish relief, being unable from poverty to bind out his son, and having heard of Keble's charity, applied to the churchwardens of Halesworth to provide him with the means of putting his son apprentice. They agreed to do so, and by indenture of apprenticeship duly stamped, the pauper, with the consent of his father, bound himself apprentice to George Hall, of Norwich, for seven years, at a premium of 10*l.*, which was stated in the indenture to have been paid by the churchwardens of Halesworth. The premium, the costs of the indenture, and the expenses of providing the pauper with proper clothes, were paid by the churchwardens out of the monies of Keble's charity. The indenture was executed by the pauper, his father, and Hall; and the pauper served under it more than forty days in the respondent parish, but none of the directions contained in any section of 56 Geo. III. c. 139, had been complied with, either in the binding of the apprentice or the form or execution of the indenture. The court were of opinion that Keble's charity must be considered as a public parochial fund, and that the indenture ought to have been approved of under the 11th section of the 56 Geo. III. c. 139.

Lands were devised for the relief of the poor of 1l., one half of the revenue to be employed for the relief of widows, the other half towards binding out apprentices. The rents were received by the churchwardens, and not mixed with the poor-rates, but kept in a distinct account. These are not *public parochial funds* within 56 Geo. III. c. 139, s. 11.

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Lands were devised to the churchwardens and overseers of H. and their successors, upon trust to apply the rents towards educating twenty poor children, and a part thereof yearly towards apprenticing eight of such children, to be chosen out and allowed by the said churchwardens and overseers, and the principal inhabitants: This also is not a public parochial fund within the meaning of the act.

There was another appeal against the removal of W. Clarke from Halesworth to Laxfield in Suffolk. The settlement relied upon by the appellants was by apprenticeship under the following circumstances:—John Smith, in 1718, devised to the churchwardens and overseers of the poor of the parish of Laxfield, and to their successors for the time being for ever, certain freehold lands in that parish, upon trust that they should apply the rents for a certain period towards erecting a school-house in the said parish, and afterwards towards the payment of a schoolmaster, and towards the teaching and educating twenty poor boys of the said parish in reading, writing, and accounts, to be chosen and approved of by the churchwardens, overseers, and principal inhabitants for the time being; and further, that 40*l.* of the said rents should be by the said churchwardens and overseers yearly applied towards the putting out to apprentice eight of such twenty poor children to some good handicraft trade, to be computed at 5*l.* per head; and the said eight children to be chosen out and allowed likewise by the churchwardens and overseers and principal inhabitants of the said parish. By indenture of apprenticeship, dated 27th March, 1826, the pauper voluntarily bound himself, with the approbation and consent of his father and the churchwardens of Laxfield, to Henry Tillney, of Halesworth, for three years. The consideration to the master was stated to be 15*l.* 15*s.*, gift of John Smith, of Laxfield, gentleman, deceased, one half to be paid by the churchwardens, or one of them, on the 9th of May next ensuing, the remainder on the 11th of October, 1827; and the churchwardens, one of whom executed the indenture, covenanted to pay him the same accordingly. The indenture was not stamped. The pauper served his time under it in Halesworth. He had been educated at Smith's school, and the premium and costs of the indenture were paid to the master out of the monies received by the parish officers as trustees under Smith's will. None of the directions of 56 Geo. III. c. 139, were complied with, either in the binding, or in the form and execution of the indenture: it appeared that the parish accounts for Laxfield and the trust accounts were kept distinct, and the sessions found that the charity was a public charity. The order was quashed. Lord *Tenterden.* "There is some difference in the facts of the two cases, but it will be best to decide both on general principles. In one sense, according to some decisions, the funds in both these cases are funds of public charities, because the bequest is general, and does not designate the individuals to be benefited. In another sense they are parochial also, because they are left for the benefit of persons belonging to the respective parishes. Still the question is in each case, whether the money be that of a 'public parochial fund' within the meaning of the statute 56 Geo. III. c. 13, s. 11. The mischief recited by that section is, that the provisions of the 43 Eliz. c. 2, are evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of the peace. It is therefore enacted that no indenture, by reason of which any expense shall be incurred by the public parochial funds, shall be valid, unless approved of by two justices, according to the provisions of this act and the statute of Elizabeth. I think the present case is not within the mischief there contemplated. There is no clandestine appropriation of monies of the parish. The funds in question cannot properly be so called in respect of the purpose for which they are collected, or the manner in which they are raised, since they are not contributed by the inhabitants of the parish. I think a public parochial fund must be one so contributed, or which is applicable to the general purpose of the relief of the poor. Estates devised for the relief of the poor generally would come under this description, but in each of these cases there is a fund left by the bounty of an individual for a certain specified purpose; that is, for the benefit of a particular class of persons. It is not meant to go in relief of the general parish fund, or, if so, only to a moderate extent. It does not appear that the intention was to relieve persons actually burdensome to the parish: there might be persons unable to bind out their own children, and therefore objects of this charity, who yet did not require parochial support; and in such cases the

A "public parochial fund" is one applicable to the general purposes of the poor.

fund would be no relief to the parish. It appears to me also that the donors in these cases never intended the objects of their bounty to be under the control of the justices of peace, but that the charity should be in the one case at the disposal of the churchwardens, in the other (as respects apprentices) at that of the parish officers and principal inhabitants. I am therefore of opinion that these are not public parochial funds within the 11th section of 56 Geo. III. c. 139." *Littledale*, J. "I am of the same opinion; I think the term 'public parochial funds' does not apply where particular individuals or a particular class are pointed out as the objects of their application. The 11th section of the act 56 Geo. III. c. 139, was intended to prevent the clandestine appropriation of parish money by the officers of the parish, in evasion of the statute of Elizabeth; it is an enactment for the general regulation of parish funds, not for that of particular charities. And I also think it was not contemplated in these charities that the application of the monies should be interfered with by justices of the peace." *Parke*, J. "The words 'public parochial funds' in the 11th section do not mean the poor-rate merely, or else that probably would have been the term used. Other receipts applicable to the relief of the poor, as penalties or funds expressly given in aid of the poor-rate, may also be included. But the denomination of 'public parochial funds' certainly cannot be applied to lands given for such a special and limited purpose as is pointed out in these cases. One material consideration is, that if this construction were to prevail, it would defeat the intentions of the testators, who did not mean to give the justices a power of overruling the discretion of the parish officers in one case, or of the parish officers and principal inhabitants in the other. And it has been very well pointed out in argument that these are not cases within the mischief of the act 56 Geo. III. c. 139." *Taunton*, J. "This is a question of very great importance, for if revenues like these were held to be public parochial funds, it would be of serious consequence to many excellent institutions established for the purpose of bringing up and apprenticing the children of the poor. Such establishments might be entirely perverted from their proper ends if the children placed out by them were to be considered parish apprentices. But it is not necessary to proceed on grounds of public policy, because, on the strict technical legal application of 56 Geo. III. c. 139, s. 11, it is clear that such a construction cannot prevail. That section speaks of indentures by reason of which expense is incurred by the public parochial funds, and certainly those in question are in one sense public and in another parochial; but on looking to the preamble as well as the enacting part of this section, it is clear that the legislature did not mean every fund, which in some sense was public or parochial. They contemplated such funds as before the passing of the statute were applicable to the binding out of poor children according to the directions of the statute of Elizabeth; but if the churchwardens in one of these cases, and the parish officers and principal inhabitants in the other, had applied these monies to the general purposes of the statute of Elizabeth, it is clear they would have misapplied them. There is great force in the observation, that if it had become necessary the Court of Chancery would, on application, have appointed trustees for the management of this charity, and in that case it could not have been said that these monies came under the denomination in the statute of 'public parochial funds.' Now although that has not been done, the trusts and objects of the devise in each of these cases are still the same, and the churchwardens and overseers are trustees of the same description as private persons would be if appointed by the Court of Chancery. I am therefore of opinion that the proceeds of these charities, though in some sense public funds, must yet, with reference to the enactment in 56 Geo. III. c. 139, s. 11, be considered private." Order of sessions in the first case quashed; that in the second confirmed.

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Intention of the act to provide against clandestine appropriation of parish money.

Rex v. *Quainton*, 1 *Adol. & Ellis*, 133; 3 *Nev. & M.* 289. J. Carter, &c., were removed from St. James's, Clerkenwell, to Quainton. Order confirmed. Case:—21st October, 1820. By indenture of this date the pauper J. F. Carter, being a poor boy and a settled inhabitant of Quainton, was, by the trustees of a charity established under the will of Lady Say and

Where the trustees of a charity bound out a pauper and paid the premium, but the parish officers gave him

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clothes, this is not an expense incurred by the parish within 56 Geo. III. c. 139.

Sele, for placing out poor boys of Swanbourne apprentices, bound as an apprentice with a premium of 20*l.* to Thomas Carter of Swanbourne, Bucks, butcher, for seven years. He served as an apprentice under that indenture so as to gain a settlement in Swanbourne, if the indenture was valid. The whole of the premium was paid out of the charity fund, and no other premium or consideration was paid to the master from any other source. The costs of the indenture were paid by the master out of the premium; but on the 20th October, 1820, the day before the binding, the pauper was provided with a full new suit of clothes by the parish officers of Quainton, which were paid for out of the public parochial funds by one of the churchwardens to the tradesmen from whom the different articles were purchased, which would not have been given to the pauper at that time but in prospect of his being so bound apprentice, though no stipulation to that effect was made by or with the master. The indenture had not the sanction or signature of any justice. The question was whether this transaction was such an incurring of expense by the public parochial funds as was contemplated by the 56 Geo. III. c. 139. The court, without calling on counsel against the order of sessions, quashed it, saying, "It is not an expense incurred within the statute.

Sect. 11 of 56 Geo. III. c. 139, applies only where the binding of a pauper apprentice is directly or indirectly procured by the parish officers. A poor person was bound out by money collected in charity by individuals, and amongst others from the overseers of three parishes, it not appearing that her settlement was in either; the indenture does not require the assent of two justices.

Rex v. *St. Peter's, Hereford*, 1 *Bar. & Ad.* 916. Charlotte Stephens was removed from Kingston to St. Peter's, Hereford. Order confirmed. Case:—The pauper, Charlotte Stephens, was in Hereford gaol, and was tried for felony at the August assizes, 1825. At the recommendation of the judge who tried her, Dr. Lye, the mayor of Hereford, undertook to collect a sum of money to apprentice her. Dr. Lye, conceiving, from something the pauper said, that Kingston was her place of settlement, wrote to Mr. Wall, the vicar of that parish. Mr. Wall wrote in answer, that Kingston would not admit that the pauper was a parishioner there; but he sent Dr. Lye 4*l.* Dr. Lye received 5*l.* from Lord Somers, and 1*l.* each from the parishes of St. John Baptist, All Saints, and St. Nicholas, in the city of Hereford, and other sums from other persons, making in the whole 14*l.*; and he agreed to give one Thomas Trotman, with whom the pauper was placed as apprentice, a premium of 10*l.* and to pay him 4*l.* more to furnish her with clothes, and as a recompense for his having supported her some time before she was bound. Dr. Lye advanced the whole 14*l.* for those purposes in September, 1825, and received no part of the subscription till 1826, and upon the whole was at an expense of 3*l.* more than the money collected by him. The monies contributed by the three parishes in Hereford were paid by the acting overseers, and allowed them in their accounts. The indenture of apprenticeship was not produced; but it was proved by the attorney who prepared it, and by his clerk who attested it, that on the 13th of September, 1825, an indenture of apprenticeship was filled up, binding C. Stephens, the pauper, to Trotman, on a 1*l.* stamp, and was witnessed by the clerk, but they did not go before any magistrate. The premium of 10*l.* was paid, and the pauper served under the indenture nearly three years, residing in the appellant parish. It was admitted by the parties that the 4*l.* remitted by Mr. Wall had been received by him from Samuel Wright of Kingston, and a magistrate residing near that place stated that he believed Samuel Wright was overseer of Kingston in 1825, but he could not speak to a certainty, the parish having been under a select vestry. The question was, whether the indenture was void for want of the consent of two magistrates, part of the premium having been paid out of the parochial funds. Lord *Tenterden*. "This is a case not within the mischief intended to be remedied by the statute. The only question is, whether the enacting words of the eleventh section should not be construed with some restriction. That this binding is not within the general mischief intended to be remedied by the statute appears manifestly from the preamble, which recites, 'that many grievances have arisen from the binding of poor children as apprentices by parish officers to improper persons and to persons residing at a distance.' This was not a binding by parish officers, but by an individual. The statute then directs, that 'before any child be bound apprentice by the overseers of the poor of any parish,

&c., such child shall be carried before two justices, who shall inquire into the propriety of binding such child,' &c. The first ten sections apply to cases where the parish officers are the binding parties; but inasmuch as parish officers intending to bind a child apprenticed to an improper person, or to a person not residing or carrying on business within a reasonable distance, might, without being actual parties to the indenture, in order to evade the provisions contained in those sections, advance the public parochial fund to the parents of such child, in order to bind him out; to remedy that mischief and to prevent the parish officers from doing indirectly that which the other sections prevented them from doing directly, the eleventh section was introduced. That section recites, that 'the salutary provisions enacted by the 43rd of Elizabeth are frequently evaded in the binding out of poor children, and the premium of apprenticeship, or a part thereof, is clandestinely provided by parish officers, who are thus enabled to bind out such poor children without the sanction of justices of peace.' The mischief therefore was, that parish officers, by advancing money, without becoming ostensible parties to the indenture, were enabled to bind out poor children without the proper sanction; and to remedy that mischief it is enacted, that 'no indenture of apprenticeship, by reason of which any expense whatever shall be at any time incurred by the public parochial funds, shall be valid and effectual, unless approved of by two justices of the peace under their hands and seals, according to the provisions of the said act and of this act.' The enacting words are certainly very large, but I think we ought to put on them such a construction as may have the effect of preventing the mischief intended to be remedied, yet of not extending them to a case like the present, where a humane and charitable person has bound out a poor apprentice, part of the sum expended in such binding having been voluntarily contributed by parish officers, and afterwards allowed them in their accounts by the parishes for which they act. I think we must construe the enacting part of this statute as applying to cases where the execution of the indenture is directly or indirectly obtained by parish officers, so as in effect to be a binding by them. Here the binding was not procured either directly or indirectly by the parish officers." *Littledale*, J. "The words of the enacting part of sect. 11 may perhaps be satisfied, if any part of the money expended in binding out the pauper be supplied from public parochial funds. Looking, however, to the object which the legislature had in view by that enactment, I think it does not apply to the present case. First, I think the words 'public parochial funds' mean the funds of some one particular parish which may have an interest in the binding. Here the officers of three parishes contributed, and it does not appear that any one of those parishes was interested in binding out the pauper to another; but, independently of that, this was not a binding, either directly or indirectly, by the parish officers. The great object of the legislature in sect. 11, was to prevent the parish officers from doing indirectly that which they were prohibited from doing directly by the former sections; and that being so, I think the enacting words must be restrained to cases where they are in substance and effect, though not in name, the binding parties, and where the binding takes place at their instance or instigation. The general preamble, as well as the preamble of the eleventh section, shows that the prohibition is intended only to meet those cases where the binding is either formally or substantially by the parish officers." *Taunton*, J. "I think the order of sessions was right on the ground stated in the case, that there was no binding by the parish officers, but only by Dr. Lye; and that the payment by the parishes was voluntary and not made in consequence of any legal obligation, there being no evidence that the pauper belonged to either of the parishes which contributed money, though it was charged and allowed in the respective parish accounts." *Patteson*, J., concurred. Order of sessions confirmed.

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How enacting words of statute to be construed.

Rex v. *Stoke Damarel*, 7 *B. & C.* 563; 1 *M. & R. Mag. Ca.* 155. Jane Coleman removed from Stoke Damarel to Charles, Plymouth. Case:—The pauper, daughter of T. Coleman of Stoke Damarel, was bound apprentice on the 16th October, 1823, to J. Ellis, of Charles. The indenture, which

Where part of the expenses are paid out of the *parochial funds*, the indenture must be

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approved by two justices, "under their hands *and seals*," or it will be void *ab initio.*

was on a one-pound stamp, was executed by the master, the pauper, and her father, and the allowance was written on the margin:—by which the said justices "do consent to, and allow, the putting forth the pauper an apprentice, according to the intent of this indenture." This allowance was signed by two justices, but was not under seal. Upon the binding an expense was incurred by the public parochial funds of Stoke Damarel, *i.e.* 9*l.*, the consideration money mentioned in the indenture; and a further sum, being charges attending the binding, from the date of the indenture until she was discharged from further service under it on the 3d July, 1826, by two magistrates. *Bayley*, J. "I do not know how to get rid of the words of this clause of the act of parliament; and where the legislature, in a very modern act, have used words of a plain and definite import, it is very dangerous to put a construction on them, which would have the effect of deciding that the legislature did not mean that which they have expressed. The earlier clauses apply to bindings by parish officers, but as there might be instances in which they would not ostensibly be the parties binding, although they furnished the means out of the parochial funds by which the binding was effected, it occurred to the legislature that it might be expedient to make some provision for that class of cases, and for this purpose the 11th section was introduced. It begins with a new recital, as if it were altogether a new enactment. Looking at the whole of the clause together, it clearly relates to a subject to which the preceding sections did not apply, and was intended to make provision for other bindings than those to which the parish officers are parties. It mentions indentures by reason of which expense is incurred by the parochial funds; and so far the indenture in question comes within its operation, because the premium was paid by the parish officers. It requires the indenture to be approved by two justices, *under their hands and seals.* The former sections do not require the allowance of the justices to be under seal; but here the word *seals* is added. Why should that addition be made, unless it was intended that the regulation thereby enjoined should be enforced? It is said that signing is enough: but how can we reject the words which require the allowance to be sealed? *Reddendo singula singulis*, and following the ordinary legal rules of construction, it seems to me that the legislature intended by this section to require, that in indentures of apprenticeship of this sort, there should be such an approval as was necessary in cases of parish binding, *and something more*, namely, that the seals of the magistrates should be affixed to their approval. Why such an additional formality should be required, it is impossible for us to know, and would be idle to inquire; but it is required: and we must suppose that in requiring it, the legislature meant that which they have expressed. Then it is said, that even if the sealing was intended to be required, yet the omission will not render the indenture absolutely void, but only voidable; in other words, that the indenture may be valid for some purposes, and not for others. I think the words 'valid and effectual,' were intended to apply to the indenture *ab initio*, and that it was the object of the legislature to make it binding *ab initio*, so that the parties should not be able to avoid it. The adoption of any argument to the contrary would be highly dangerous, for the parties would then be wholly at the mercy of each other during the whole of the apprenticeship; and either might leave the other unjustly shortly before the completion of a period of seven years. For these reasons, I am of opinion that this indenture was void, for want of an allowance by the magistrates under seal, and that no settlement was acquired by service under it." *Holroyd*, J. "I think this was not a binding by the parish officers, within the early sections of this statute, but that it was a binding within the meaning of the 11th section. That enacts not merely that no *parish* indenture, but that no indenture shall be valid, unless it has the approbation of two justices under their hands and seals. It seems to me that the true construction of these words is, that the approval shall be such as is required by the 43 of Eliz.; and by the former sections of the 56 Geo. III. c. 139, it shall also be under the hands and seals of the justices. It has been contended that the indenture is voidable

only; upon that point I have entertained some doubt. But it is admitted that it was competent to either party to avoid such an indenture before the service expired. Here it was avoided, for the pauper was discharged. Assuming that the indentures were voidable, still as they were avoided, no settlement could be gained. As the indenture was avoided by the parties, it was thereby rendered 'not valid and effectual,' and no settlement was gained by the service under it." *Littledale*, J., took the same view as *Bayley*, J., and added, "that if the indenture was void, there was no necessity for a special enactment to prevent the gaining of a settlement."

The order of justices for the binding must be referred to in the indenture by the *date* thereof, and if such date be omitted the indenture is void.

Rex v. *Bawbergh*, 2 *B.* & *C.* 222; 3 *D.* & *R.* 338. Order of removal of W. Pease from St. Andrew, to Bawbergh, confirmed. Case:—W. Pease was an illegitimate child, and by an order of two justices of the 11th May, 1819, and made under 56 Geo. III. c. 139, and an indenture, not stamped, was bound an apprentice. The order of justices was set out at length; and the indenture stated, that the churchwardens and overseers, by and with the consent of two justices, whose names were subscribed, bound W. Pease, a poor child, as an apprentice for the term of seven years, &c.; but *the indenture did not mention the date of the order of justices*, nor did it appear whether they signed the indenture before or after the other parties. The parish officers of Melton paid the master the sum of 10*l.* (the premium stipulated to be paid by the indenture) and the pauper entered upon his apprenticeship, and served his master for a year and a half, when, on his master's failure, he left him. *Bayley*, J. "I am of opinion that this indenture is void, and consequently no settlement gained. The 56 Geo. III. c. 139, has introduced a variety of new regulations as to the mode of binding out parish apprentices. It requires that the child should be carried before two justices, and they are to inquire into the propriety of binding such child apprentice to the person to whom it shall be proposed by the overseers to bind him; and if the justices shall, upon the inquiry, think it proper that the child shall be bound apprentice to such person, the statute then enacts that the justices shall make an order, declaring that such person is a fit person to whom the child may be bound as apprentice, and shall thereupon order that the overseer of the place to which the child shall belong shall be at liberty to bind such child apprentice accordingly; which order shall be delivered to such overseer as the warrant for binding such child, and such order shall be referred to by the date thereof, and the names of the said justices, in the indenture of apprenticeship of such child; and after such order shall have been made, such justices shall sign their allowance of such indenture of apprenticeship, before the name shall be executed by any of the other parties thereto. The statute requires specifically that the order should be referred to by the date; and the object of that might be that the order might be found with facility at any future period. The statute then requires that the justices shall sign the allowance of such indenture. Now, the word 'such' is not immaterial; and the reference to the order by date is either directly only, or it is of the essence of the indenture. I am of opinion that it means such an indenture as was before required, viz., one containing the date of the order of justices. The fifth section then enacts, "That no settlement shall be gained by any child who shall be bound by the officers of any parish, &c., by reason of such apprenticeship, unless such order shall be made, and such allowance of such indenture shall be signed as thereinbefore directed.' There must, therefore, be an allowance, not of such indenture, but of such indenture as was thereinbefore directed, viz., of one referring to the order of justices by the date thereof. I doubt whether the eleventh section applies to such a case as the present, or whether it applies only to such cases where the binding is by the parents, and not by the overseers; but I am clearly of opinion that, construing the first and fifth sections together, this indenture is void, and that no settlement was gained in Bawbergh by the service under it." *Best*, J. "The first and fifth sections are to be taken together, and then there can be no doubt that a settlement was not gained in Bawbergh, because in the indenture the order of the justices was not referred to by

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the date. Such indenture means the indenture before spoken of." Order of sessions quashed.

The notice required by 56 Geo. III. must be given where the binding parish is in the county, and that of the master in a borough of exclusive jurisdiction.

Rex v. *Newark upon Trent*, 3 *B. & C.* 59; 4 *D. & R.* 745. A pauper was, pursuant to an order of two justices of the *county*, bound apprentice by the churchwardens and overseers of that parish to A. B. of another parish, in a *borough* situate in the same county, but having *justices who had exclusive jurisdiction therein.* The indenture was allowed by two county justices, *but no notice was given to the overseers of the poor of the parish in the borough of the intention to bind such apprentice;* nor did they or any of them attend before the county justices who allowed the indenture, and admit such notice. Held by *Bayley, Holroyd,* and *Littledale,* Js. (*Abbott,* C.J. *dissentiente*), that the indentures were void for want of such notice, and that a service under them gained the pauper no settlement.

Notice also must be given where an apprentice is bound from one parish into another, though both be within the same county and jurisdiction.

Rex v. *Threlkeld*, 1 *Nev. & M.* 14; 4 *B. & Ad.* 229. W. Thompson was removed from Keswick to Threlkeld. Order confirmed. Case:—The pauper, a poor boy of and then legally settled in Threlkeld, was in Feb., 1819, pursuant to an order of two justices of the county, bound apprentice by the churchwardens and overseers of the poor of Threlkeld to E. Foster, of and residing at Keswick, by indenture for a term therein mentioned. Keswick is within the parish of Crosthwaite, and is about four miles distant from the township of Threlkeld, which is in the parish of Greystoke. Each township maintains its own poor separately, and both parishes are in the same county, and within the jurisdiction of the peace of the two justices who made the order for the binding, and who afterwards signed their allowance of the indenture. No notice was given to the overseers of Keswick of the intention to bind out such apprentice: nor did any overseer of that township attend the justices who signed their allowance of the indenture, and admit such notice, but the binding as well as the service and residence under it was in all other respects such as would confer a settlement upon the pauper in Keswick. The question was, whether such notice was necessary. *Denman,* C. J. "The pauper gained a settlement in Keswick, unless he was prevented from so doing by the 56 Geo. III. c. 139, s. 5, which enacts, 'That no settlement shall be gained by any child who shall be bound by the officers of any parish, &c. by reason of such apprenticeship, unless such order shall be made and such allowances of such indenture of apprenticeship shall be signed as hereinbefore directed.' It is said here that there have not been such an order and such allowances of the indenture signed as by the act directed, and I am of that opinion. The act of parliament contains a proviso (s. 2), that 'notice shall be given to the overseers of the poor of the parish, or place in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which such parish or place shall be shall allow such indenture, and such notice shall be proved before such justice shall sign such indenture, unless one of such overseers shall attend such justice and admit such notice.' Now here the sessions have found that no notice was given to the overseers of Keswick, nor did the overseers of that parish attend before the justices and admit such notice. But it is contended that notice is not necessary in a case where the binding parish and that in which the apprentice is to be bound are within the same county, and consequently within the jurisdiction of the same magistrates. But the object of the legislature being, as may be collected from the preamble, that every possible precaution should be taken in the binding out of the poor apprentice, it is manifest that the same necessity for notice may exist in either case. It seems to me absurd to say that merely passing the boundary of the county should render that necessary in one case which was not so in another. The provision that 'no settlement shall be gained unless such order shall be made,' &c., is for the advantage of the apprentice, because it then becomes the interest of the officers of the binding parish to take care that the apprentice shall be well bound. With all deference to the opinion of Lord *Tenterden,* in *Rex* v. *Newark upon Trent,* (*supra*), and admitting that the different clauses of this act of parliament are not easily reconcileable with each other, I think that the proviso as to notice, in the second section, is

not confined to cases where the two parishes are situate in different counties, but that it extends to all the cases mentioned in the first section as well as the second. There are no words to control or limit that construction; it is beneficial to the apprentice, and by adopting it we do not violate the grammatical sense of the language used by the legislature." *Parke*, J. "I am of the same opinion. The doctrine that an act of parliament is to be construed so as to favour settlements has been long and justly exploded. There is no rule of law which calls on us to put a strict construction on this act of parliament; we must endeavour, therefore, to discover the intention of the legislature, and carry it into effect if the language used will warrant us in so doing, and the question is, whether putting a proper grammatical construction on the proviso, it is confined to cases where the two parishes are situate in different counties, and consequently within the jurisdiction of different magistrates, or extends to those where the parishes are in same county and jurisdiction. The circumstance of its being printed as the part of the second section can make no difference in the construction, because on the parliament rolls the acts are not divided into sections. Now the terms of the proviso are, 'and notice shall be given to the overseers of the poor of the parish in which such child shall be intended to serve an apprenticeship, before any justice of the peace for the county or district within which such parish shall be shall allow such indenture, and such notice shall be proved before such justice shall sign such indenture.' The language would be more accurate if it had been said 'before he shall allow, and before he shall make the order for the binding;' but the word *allow* is used in the statute as common to both. The language therefore of the proviso is sufficiently large to include cases where the parishes are in the same, as well as where they are in different counties, and the sense and reason of the thing seem to require also that it should extend to each class of cases. I thought, also, that reason required that the first part of the proviso should be general; but as a different opinion was expressed by some of the judges on that point in *Rex* v. *Newark upon Trent*, I do not wish to give any decisive opinion upon it; if, however, the first part of the proviso extends to all cases, the second undoubtedly does; and if the first does not so apply, no reason can be given why the second should not. Upon the whole, I think the opinion delivered by *Holroyd*, J., in *Rex* v. *Newark upon Trent*, is perfectly correct, that notice was necessary to be given in this case, and that for want of such notice no settlement was gained in Keswick." *Taunton*, J. "I frankly acknowledge there are some expressions in the second section which I do not perfectly understand, but they are not material to the question before the court: I see enough to convince me that the order of sessions is right. That part of section 2, which begins with the words 'and notice shall be given,' is a general enactment, applicable to all the cases embraced in the first section. As to the part which begins with 'provided always, that no indenture shall be allowed,' &c., I am by no means satisfied that those are not words of general enactment, but however that may be, the words respecting notice are undoubtedly general, and the sense and reason of the thing require that they should be so. There may be as much reason for requiring notice in a case where the two parishes are in the same county, as where they are in different counties. Two parishes in the same county may be at a great distance from each other, and two parishes in different counties may be adjoining each other, and it is manifest that notice may be as necessary in the one case as the other. Where indeed two parishes are in different counties notice need not be given to the overseers of the master's parish until the parties go before the magistrate having jurisdiction over that parish; but where the two parishes are in the same county, the notice must be given before the indenture be allowed. The order of sessions must be confirmed." *Patteson*, J. "I am of the same opinion. I see that, by sect. 2, notice is required to be given to the overseers in all cases. The early part of sect. 2 requires that the indenture shall be allowed by the magistrates having jurisdiction over the place from which the apprentice is to be bound, as well as by the magistrates of the place into which the apprentice is to be

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bound. If the parishes are within different jurisdictions, two sets of justices are required; if within the same, only one; but in the latter case they are magistrates for each parish. Where there are two allowances notice need not be given to the overseers of the master's parish till the parties go to the second set of justices, because they are the persons who are to make the order; but where there is only one set of justices, notice must be given to the overseers of the master's parish before the indenture be allowed by the justices making the order. I am therefore of opinion that the order of sessions was right." Order of sessions confirmed.

It will be presumed, until the contrary be shown, that notice has been duly given and was proved to the magistrates before allowance.

Rex v. *Whiston*, 6 *N. & M.* 65; 4 *A. & E.* 607. T. May, &c., were removed from St. Mary, Nottingham, to Whiston. Order confirmed. Case:—The pauper, a poor boy of, and legally settled in, the township of Dinnington, in the West Riding, was, in December, 1818, pursuant to an order of two justices of the said Riding, bound apprentice by the overseers of Dinnington, to J. Herring, residing within the township of Whiston, by indenture, duly signed and allowed, for a term, and served Herring under the indenture for more than forty days in Whiston. Dinnington is about five miles from Whiston. Each township maintains its own poor separately, and both townships are within the same county, and within the jurisdiction of the two magistrates who made the order for binding; and who afterwards signed their allowance of the indenture. On the appeal, the respondents refused to call evidence to prove that *notice* had been given by the overseers of Dinnington to the overseers of Whiston, of their intention to bind out such apprentice, no evidence having been offered by the appellants to prove that such notice was *not* given. The question was, whether the respondents were bound to prove that notice had been given. Lord *Denman*. "It appears to me that this is a very clear case, and one which is to be decided on the broad principle, that an order of justices, good upon the face of it, shall be presumed to be so altogether, until such presumption is rebutted by evidence to the contrary. I accede to the proposition that we cannot call for negative evidence until the affirmative is *primâ facie* established. Here, however, the affirmative *is* shown. Here is an order by persons on whom a public duty is cast by act of parliament, and we must presume that they have proceeded rightly until the contrary is shown. There is a strong *primâ facie* case in favour of the respondents, and the appellants have given no answer to it." *Littledale*, J., concurred. *Williams*, J. "The act of parliament says most strongly, that notice shall be given before any justice shall allow the indenture, and that such notice shall be proved before such justice shall sign such indenture. It is *primâ facie* to be taken that the justices who signed this indenture, had due proof of notice before they did so." *Coleridge*, J. "It is a general rule that when a public officer has a duty to perform, it must be presumed, until the contrary appear, that he has performed that duty. It is said that by requiring the appellant to show the absence of notice, we shall be throwing the burthen of proof upon the party with whom the negative lies; but this is not properly so. We call upon them to give counter evidence to rebut a presumption. In *Rex* v. *Haslingfield*, 2 *M. & S.* 558, in which the question was, whether the award of certain commissioners for inclosing lands could be received in evidence, without proof that the notices required by the Inclosure Act to be given previously to making the award, had been given. Lord *Ellenborough* states the general rule certainly to be, 'That where a person is required to do an act, the not doing of which would be a criminal neglect of duty, it must be intended that he has duly performed it, unless the contrary be shown;' but as in that case there was negative evidence, it was held that such presumption was rebutted."

Justices of a county having jurisdiction in a city, may sign an indenture of apprenticeship for a pauper of such city.

Rex v. *Witney*, 6 *N. & M.* 553; 5 *A. & E.* 191. The incorporated guardians of the poor within the city of Oxford, with the consent of two justices for the county of Oxford, bound and put forth James Price, a poor child, maintained by the said guardians, an apprentice to T. Harris of Witney, in the county of Oxford, to serve, from the day of the date of these presents, for and during and until the said apprentice shall attain the full age. The order of the justices for the binding, was annexed to the indenture, and at

the foot of the indenture appeared an allowance of the apprenticeship, by the same two justices, describing themselves as justices acting in and for the county of Oxford. The deed of apprenticeship was not allowed by any other than the said two justices, who were justices of the county of Oxford, and whose jurisdiction overrides the city, but not justices of the city of Oxford." *Littledale*, J. "I think there is no pretence for saying that Witney is in a different jurisdiction from St. Clement's, Oxford. And even if the jurisdiction of the city of Oxford had been *exclusive* for other purposes, yet the third section would operate to make the allowance by the two county justices sufficient. The jurisdiction of the city of Oxford is both different from and the same with that of the county. It is different as regards the city justices, but the same as regards the justices for the county." The other judges concurred.

The assignee of a parish apprentice may assign him to another.

Mistake in the surname of apprentice in the assignment does not vitiate it.

When a parish apprentice is *assigned* to a person resident in another parish, notice to the overseers of the second parish is not requisite.

Rex v. *Exminster*, 1 *N. & P.* 603; 6 *A. & E.* 598. Eliz. Matthews was removed from Dawlish to Exminster. Order confirmed. Case:—The pauper was bound apprentice, in 1826, to Mr. Robert Trood, of Exminster, and assigned in the same year to the Rev. Thomas Melhuish, of the same parish. Another instrument, purporting to be an assignment, bearing date 8th October, 1830, was made by and with the consent of two justices, testified under their hands, which is in the words following: 'Devon to wit: Whereas it appears unto us, two of his Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, that Elizabeth Matthews was bound a parish apprentice by the churchwardens and overseers of the poor of the parish of Exminster, in the said county (reciting the indenture and former assignment): Now be it remembered, that the said Thomas Melhuish, by and with the consent and approbation of two of his Majesty's justices of the peace for the said county, whose names are subscribed to the consent hereunder written, doth hereby assign Elizabeth Matthews, the apprentice above-named, unto Moses Paul, of the parish of Dawlish, to serve him during the residue of the term above mentioned. And that he the said Moses Paul doth hereby agree to accept the said Elizabeth Melhuish as an apprentice for the residue of the said term: and doth hereby acknowledge himself, his executors and administrators, to be bound by the agreements and covenants mentioned in the said indenture, on the part of the said Robert Trood to be done and performed, according to the true intent and meaning of the said indenture, and pursuant to the provisions of an act passed in the 32d year of the reign of King George III., intituled, 'An Act for the further regulation of Parish Apprentices.'" (Signed by the parties and two justices.) Under this instrument the pauper served M. Paul, in Dawlish, where she resided during such service more than forty days. No notice was ever given by the overseers of Dawlish to the overseers of Exminster, of this instrument above stated. The questions were, 1. Whether without such evidence there were any sufficient acceptance of the pauper by M. Paul, as is required by 32 Geo. III. c. 57, s. 7. 2. If not, whether the court ought not to have admitted parol evidence. 3. Whether it was necessary that the overseers of Exminster should have given notice to the overseers of Dawlish, in order that the pauper, by virtue of the instrument above set out, and service thereunder, should gain a settlement in Dawlish. Lord *Denman*. "I am of opinion that this was a sufficient acceptance of E. Matthews, the intention being clearly manifested. On the other point I think we are bound by the words of the 56 Geo. III. c. 139. It might be desirable that notice should be given on a binding into another parish, by means of an assignment: but the statute has only required it in the case of a binding by indenture." The other judges concurred. Order of sessions quashed.

An indenture stated that the overseers and churchwardens of M., in the county of W., with the consent of justices of the *said* county, bound a pauper

Rex v. *Hinckley*, 1 *B. & A.* 273. Removal from the liberties of Monks Kirby, in Warwickshire, to Hinckley, in Leicester. Order confirmed. Case:—The pauper was bound apprentice by the churchwardens and overseers of the liberties of Monks Kirby, to J. Wright of Hinckley, by a parish indenture, of the 3rd of August, 1795, which stated that J. B. and E. B., churchwardens of the liberties of Monks Kirby, in the county of Warwick, and S. C., and J. T., overseers of the poor of the said liberties, *by and with*

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apprentice to T. W., of H., in the county of L., and the justices, in their written consent in the margin, described themselves as justices of the county *aforesaid*: Held, that it sufficiently appeared that they were justices of the county of W.

the consent of the justices of the peace for the said county, had placed W. Sansom, aged eight years, apprentice to J. Wright, of the parish of Hinckley, in the county of Leicester, frame-work knitter, him to serve until the apprentice should be twenty-one. The indenture was executed by all the parties thereto, and in the margin the magistrates stated their consent, but described themselves as justices *for the county aforesaid*. The pauper served under this indenture in Hinckley during the whole of the period. The magistrates who signed the allowance of the indenture were magistrates of Warwick and also of Leicester. After hearing counsel, Lord *Ellenborough*, C. J., said, "It is quite clear that the words 'county aforesaid,' can only refer to the county of Warwick. The justices, we must presume, read the indenture before they allowed it; and indeed their very words of reference prove that it must have been so: then if they did read it, they must have known that they had no authority to act, except as justices of the county of Warwick. The question after all really is, whether *said* county and county *aforesaid*, mean the same thing. If they do, it is evident from the body of the instrument that the words 'said county,' can only apply to the county of Warwick. It will follow, that the words 'county aforesaid,' must have the same application." Order confirmed.

Two justices "for the said county dwelling within the said parish" allowed the indentures; two counties had been named in the indenture: it may be implied from the context that they were justices for the proper county.

Rex v. *Countesthorpe*, 2 *B. & Ad.* 487. T. Watts was removed from Dingley to Countesthorpe. Order confirmed. Case:—The pauper was bound apprentice by the sole churchwarden and the overseers of the parish of Dingley, to John March, of Countesthorpe, by the following indenture: "This indenture, made the 27th day of Feb., 1816, between J. Rhoades, sole churchwarden, W. Clarke and S. Hands, overseers of the parish of Dingley, in the county of Northampton, of the one part, and John March, of Countesthorpe, in the county of Leicester, framework-knitter, of the other part, witnesseth that the said churchwardens and overseers of the poor of the said parish of Dingley, by and with the consent of two of his Majesty's justices of the peace *for the said county*, dwelling in or near the said parish, whereof one is of the quorum, having put and placed, and by these presents do put, place, and bind Thomas Watts, aged fourteen years or thereabouts, a poor child of the said parish, with John March, as an apprentice, to dwell and serve," &c. The indenture duly executed and attested, and in the margin the magistrates stated their consent in these words: "We, whose names are hereunder written, justices of the peace for the county aforesaid (whereof one is of the quorum), do consent to the putting forth Thomas Watts an apprentice, according to the true intent and meaning of this indenture, E. Griffin, James Ord." The magistrates who signed the allowance of the indenture were magistrates of the county of Northampton, and also for the county of Leicester. The pauper served more than forty days in Countesthorpe under the apprenticeship. Lord *Tenterden*, *Rex* v. *Hinckley*, p. 681, would be an authority to show that the words "county aforesaid," in the allowance in the margin of the indenture, are to have the same meaning as the words "said county" in the body of the indenture; but it unfortunately happens in this case, that two counties are mentioned in the body of the indenture before the words "justices of the peace for the said county," and that Leicester is the one last-named; whereas the justices who give the required consent should be justices of the county of Northampton. I think we cannot intend that the county of Northampton was meant merely on the ground that the indenture would otherwise have no effect. It seems to me, however, that it does sufficiently appear here, by the other parts of the instrument, that the words "said county" refer to the county of Northampton. The indenture states, "that it was made" between the churchwardens and overseers of the poor of the parish of Dingley, in the county of Northampton, of the one part, and John March, of Countesthorpe, in the county of Leicester, of the other part; and it then witnesses, "that the said churchwarden and overseers of the poor of the said parish of Dingley," which had before been described to be in the county of Northampton, "with the consent of two justices of the said county dwelling in or near the said parish, have put," &c. Now, reading the instrument as a man wishing to understand it would read

it, I should understand the words justices of the said county as referring to the justices of the peace of that county in which Dingley is situate, and that was the county of Northampton. *Littledale*, *Parke*, and *Taunton*, Js., expressed their opinions to the same effect. Order of sessions confirmed.

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10. Of the Enrolment of the Indentures.

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The 5th Eliz. c. 5, s. 12, required that the indenture of apprenticeship to masters of ships *should be enrolled* in the town where the apprentice was inhabiting at the time it was executed, if it be a town corporate; and if it be not a town corporate, then to be enrolled in the next town incorporate to the habitation of such apprentice; and that the officers of every such town corporate shall take for every such enrolment not above twelve pence, (p. 604). [See also 2 & 3 Anne, c. 6.]

The 6 Geo. IV. c. 107, s. 138, enacts, "That no person shall be deemed an apprentice, for the purposes of 4 Geo. IV. c. 25, as to apprentices on board British merchant vessels, unless the indenture shall have been enrolled with the collector and comptroller of the port from which the apprentice shall first go to sea, or until the same has been enrolled at some port from which the ship shall afterwards go to sea."

Settlement might be gained, though indenture not enrolled.

But one bound apprentice to a mariner was held settled by service under his indenture, although not enrolled in the town where the apprentice was then inhabiting, nor in the next incorporate town to his habitation, pursuant to 5 Eliz. c. 5, s. 12, nor with the collector of customs, pursuant to 2 & 3 Anne, c. 6. See *Gainsborough* v. *Westockwith*, *Burr. S. C.* 588; and per Lord *Mansfield*, "It would be very hard that the apprentice should suffer for the master's neglect. I think the cases have gone too far upon the stamp act. It is *summum jus*, and has been considered *strictly* on account of the preservation of the duties payable to the crown."

No settlement can now be gained by being apprenticed in the sea service; 4 & 5 Will. IV. c. 76, s. 67.

It is, however, important, by custom of London and other places, that the indenture should be enrolled, in order to entitle the apprentice to his freedom, and which may be compelled by *scire facias* or *mandamus* (*a*).

11. Of the Service and Residence.

11. *Of the Service and Residence.*

An apprentice is settled where he resides the last forty days.

An apprentice may serve his master in different parishes and abide a sufficient length of time in each to establish a settlement in each consecutively; but the right is ultimately fixed in that place where he has last completed a forty days' residence under the indenture.

It may be proper here to remark, that as a forty days' residence is sufficient to give a settlement under a valid binding, it is possible that *the apprentice may gain as many settlements as there are spaces of forty days in the term of his apprenticeship; and where he serves the last forty days, there is his last settlement.* It thus appears that he may often gain a settlement long before his master gains one; as where the master's settlement is to arise from executing an annual office, or by residence upon a 10*l.* tenement for a year. He may also gain a settlement whilst his master is unable to gain one; as where his master resides upon a tenement of less annual value than 10*l.*, or does not occupy for the whole year where the renting is sufficient in amount. It follows that the master may be removed, when the apprentice is irremovable, by an order of justices under the poor laws; and in such case the master must of necessity apply to the justices to compel the apprentice to go along with him.

If an apprentice be bound to one, with intent to serve another, his settlement is in the parish where he served, though the master had no settlement there.

Holy Trinity v. *Shoreditch*, 1 *Str.* 10. *Parker*, C. J., delivered the resolution of the court. "Ferrer was removed from the parish of Holy Trinity to Shoreditch. He was bound apprentice to one Truby, of Holy Trinity, in Shoreditch, with intent that he should serve Green: which he did for three years. We are of opinion the justices have done right in

(*a*) See 2 *T. R.* 2; *Peak's Rep.* 159; and *Chitty's Law of Apprentices*, 59 to 61.

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sending him to Shoreditch, where the service actually was. It is the same thing as if Truby had turned him over to Green; in which case there would have been no question but he had gained a settlement in Green's parish."

Though master had no settlement there.

St. Bride's v. *St. Saviour's*, 2 *Salk.* 533. A woman who was settled at St. Saviour's, with her apprentice, by indenture, came and took a lodging in St. Bride's, and there continued above forty days with her apprentice, who served her there. This was held by the court to be a settlement of the apprentice at St. Bride's, though the mistress had no settlement there.

Residence is where the party lodges.

St. John Baptist v. *St. James's, Bishop Cannings*, 2 *Raym.* 1371; 1 *Stra.* 594. Binding and serving will not make a settlement, but the settlement must be by inhabiting, which cannot be but where the party lodges.

An apprentice, working by day in one parish, and sleeping by night in another, obtains a settlement where he slept by night.

Rex v. *Castleton*, *Burr. S. C.* 569; 2 *Bott*, 526. The pauper, John Holroyd, was bound to a master at Castleton for seven years. He worked, dieted, and lodged with his master in Castleton for four years and a half, and then married. After which marriage he worked and dieted with his master in Castleton in the day time; but lodged at nights with his wife's father in Hundersfield, until the expiration of his apprenticeship, which was about two years and a half from the time of his marriage. Lord *Mansfield*, C. J. "Clearly he gained a settlement in Hundersfield."

The contrary had been held in *Rex* v. *St. Olave's Jury*, 1 *Stra.* 51, where the facts were that A. was bound to a cobbler, who kept a stall in D., slept in F., and the boy in E., and it was held that no settlement was gained in either: the stall not being sufficient, the master lying in another parish. The authority of this case is very doubtful.

The apprentice gains a settlement where he inhabits, *i. e.* lodges.

Rex v. *St. Peter's on the Hill*, 2 *Bott*, 524. The pauper was bound an apprentice to a carpenter, and served two years in St. P., during which he lived, ate, and lodged at night with his mother in St. O. *Lee*, C. J. "There is a distinction in this case between apprentices and servants. The statute is, that *apprentices* gain a settlement by *binding and inhabitation*, not by *binding and service;* but servants gain a settlement by *hiring and service*, without regard to inhabiting. *Rex* v. *St. John's, Devizes*, (*T.* 10 Geo. I.) seems to me a very odd determination; all the cases I am acquainted with being to the contrary, as *St. Mary, Colechurch* v. *Radcliffe; Rex* v. *Graveny*." The order of removal to St. O. was confirmed.

Forty days' residence successively not necessary.

Rex v. *Cirencester*, 1 *Stra.* 579. An apprentice bound in the parish, lived there off and on for three quarters of a year. Exception was taken, that he did not inhabit forty days together. But by the court: "That is not necessary."

Residence for forty days, though not within the compass of any one year, is sufficient.

Rex v. *Aldstone*, 2 *B. & Adol.* 207. E. Davison, &c., were removed from Hexham to Aldstone. Order confirmed. Case: The pauper, when about nineteen years of age, bound himself as an apprentice to John Ostle, of North Shields, ship-owner, by indenture of the 26th of August, 1809, for three years; in the first year the vessel in which he served was moored for a month in the township of Middleborough, which township maintains its own poor; in the second year the same ship, in which the pauper still continued to serve, was moored in the same township for five weeks, and during the said month and five weeks he slept on board the ship. The question was, whether he gained a settlement in Middleborough, the forty days of his residence in that township not having been in one and the same year of his apprenticeship. Lord *Tenterden*, "This case falls within the decision of *Rex* v. *Gainsborough* (*Burr. S. C.* 586.) There the pauper, while apprentice, resided forty days in the whole in West Stockwith, at many different times during a term of three years and a quarter, and was resident nowhere else forty days during that period, and he was held to be settled in West Stockwith." *Littledale*, J. "There is a distinction between contracts for service and for apprenticeship. In the former case there must be a year's service under a yearly hiring to confer a settlement: the forty days' residence must therefore be within the year. But the service under a contract of apprenticeship has no reference to the term

Distinction between servants and apprentices.

of a year." *Parke*, J., and *Patteson*, J., concurred. Order of sessions quashed.

An apprentice lived with his master forty days in A., then forty days in B., and then one day in A.; his settlement is in A.

Rex v. *Brighthelmstone*, 5 *T. R.* 188. J. Humphrey was removed from Wivelsfield to Brighthelmstone. Order confirmed. Case:—J. Humphrey was, at the age of fifteen years, bound an apprentice to J. Soper, of Alfriston, weaver, to serve from 3d November, 1774, for seven years; he served and resided with Soper in Alfriston until 9th July, 1781; from that time until the 21st September following he served and resided, by direction of his master, in a shop hired by his master at Brighthelmstone; he then returned to and served and resided with his master in Alfriston until 22d of October following, when he was sent by his master to the master's father, in West Grinstead, to serve out his apprenticeship, where he resided until 3d November following, when his apprenticeship expired. The court said that the decision of this case must be governed by those of former cases, and that the distinction attempted to be made between the cases of servants and apprentices could not be supported; but that they should both fall within the same rule, and that *Rex* v. *Lowess*, *Burr. S. C.* 825, and *Rex* v. *Hulland*, 2 *Doug.* 656, governed this case, where it was determined that when a servant lives with his master forty days in one parish and then forty days in another, and then returns and stays one day in the former parish, his settlement will be there. *Ashurst*, J. "The settlement is shifting until the end of the year, and is at last fixed where the servant sleeps the last night, if there be a residence for forty days in that parish *in the whole*." Both orders quashed.

A residence merely on account of illness, where no service is performed, does not confer a settlement. (*a*) See however *Rex* v. *Linkinhorne*, p. 686.

Rex v. *Barmby in the Marsh*, 7 *East*, 381. The pauper was removed from Barmby to Selby, and order quashed. Case:—The pauper, J. Martindale, was bound apprentice by indenture, 1st April, 1794, for four years, to J. B., of Hunslet, who was the master of a small vessel trading on the Ouse. The pauper slept more than forty nights during his apprenticeship at Selby, at different times, but slept the last night at Barmby, at his grandmother's, in which latter place he had slept more than forty nights, in consequence of his being ill of a fever. He went to B., with the consent of his master, who received him again as his apprentice; and he never slept there except as above stated. The court were of opinion that the residence of the pauper in B. being on account of illness, was not a residence as an apprentice, and that the inhabitation required by 3 Will. III. c. 11, must be referable in some way to the apprenticeship. But that the residence here with the grandmother was no more referable to the apprenticeship than if the pauper had resided in a hospital or a prison. Order of sessions quashed.

An apprentice was turned over to a person in another parish, and returned, a cripple, to his original master, who sent him to board with his grandmother: residence with the grandmother will gain a settlement. (*a*)

Rex v. *Charles*, *Burr. S. C.* 706. J. Hodge was bound apprentice by the parish of Knowstone to John Fisher, of K., for an estate which Fisher rented of Mr. L., who had covenanted with F. to discharge him from any expense that he might incur thereby. On Fisher's application, Mr. L.'s widow and representative (he being then dead) took the boy, received the parish money with him, carried him home with her, and afterwards removed to the parish of Charles, where the boy resided with her about three years, and then became a cripple by losing both his feet. She then returned him to Fisher, who received him, upon her promise to pay him all the expense he should be at in taking care of him, and put him to live with his (the boy's) grandmother in Knowstone, at 8*d.* a week, where he resided above forty days, and then was discharged of his apprenticeship. After which he was removed to Charles, where he served the last part of his apprenticeship before he became disabled. By the Court: "The performance of actual service is not the thing material. It is the *residence*, the *inhabitancy*, of an apprentice in a parish for forty days that gains the settlement. And this residence here stated cannot be deemed a casual residence, and therefore is not to be compared to the cases under that head. The boy was bound to F. at K., resided about three years in C., then became a cripple;

(*a*) In *Rex* v. *Banbury*, (p. 688), Lord *Tenterden* observed, "It is not easy, if possible, to reconcile these cases."

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If the pauper, being ill, is put by the master, and at his expense, in the workhouse, it is a residence under the indentures.

was sent back to F. at K., received by him, and put by him to live with his grandmother at K., and resided there above forty days, during which time he there gained a settlement." (*a*)

Rex v. *Foulness*, 6 *M. & S.* 351. The pauper was bound apprentice as a mariner for three years to James Potter, of Foulness, owner of a barge, in which he made several voyages from London to Foulness. Previous to his last voyage he had slept thirty-five nights in Foulness. On the last voyage, his master quitted the vessel, and was never heard of for the remainder of the three years. The pauper returned to Foulness in the vessel, and continued on board two days. Then being ill, he applied to his master's wife, and was by her direction taken to the poorhouse, because she was unable to afford him accommodation in her own house; but she maintained him at her expense, in expectation of her husband's return, during the three weeks he was in the poorhouse, and only ceased to do so on account of her distressed situation, having nothing for him to do. He was afterwards supported by the parish. Another joint owner took charge of the barge, and another apprentice continued on board, and so would the pauper if he had not been ill. Lord *Ellenborough*. "I consider that the residence of the apprentice in the poorhouse was virtually a residence in the master's house, under a continuance of the contract. The wife maintains him there out of her pittance until it fails, in expectation of her husband's return, and for the purpose of continuing the service until his return." *Bayley*, J. "In *Rex* v. *Barmby* the apprentice was residing at a distance from the master, and with his own friends: here he was maintained at the master's expense. Why was he so maintained, excepting by reason that the master was under a legal obligation, as master, to maintain him in sickness? If the character of an apprentice had ceased, the wife might have abandoned him, and sent him to his own parish."

A parish apprentice, upon the failure of his master, was placed by him with another master, in another parish, and after serving him for nine months, he became ill, and returned to his first master in another parish; the latter having no accommodation for him, told him to go to his mother, who lived in that parish; and he promised to remunerate her. Residence with the mother, without any actual service for his master, is an inhabitation as an apprentice.

Rex v. *Linkinhorne*, 3 *B. & Adol.* 413. W. Wallis and family were removed from Linkinhorne to St. Cleer. Order quashed. Case:—The pauper was duly bound apprentice by the overseers of St. Cleer to John Gadgcombe, of that parish, farmer, and served him in St. Cleer, under the indenture, for about six years, when Gadgcombe having failed in business, agreed to place the pauper with T. Little, of the parish of St. Pinnock, in the said county, farmer. No assignment or transfer of the indenture was made, but the pauper, in March, 1816, went to and served Little in St. Pinnock, with the consent of Gadgcombe, for nine months. The pauper then becoming ill and disabled for service, went back to Gadgcombe, in the parish of St. Cleer, and he having no accommodation for the pauper, told him to go to his mother, who lived in St. Cleer, promising to come and agree with her for his board and maintenance. The pauper went to his mother accordingly, and a few days after, Gadgcombe came and promised the mother to remunerate her for taking care of her son, and took the pauper to a medical man for advice. The pauper continued to reside with his mother in St. Cleer for about eight weeks, Gadgcombe also during that time being resident in St. Cleer, but the pauper did not perform any actual service for Gadgcombe during that period. The sessions were of opinion, that for want of such service the place of settlement was in St. Pinnock. Lord *Tenterden*. "The decisions on this branch of the law run very near to each other, and are hardly reconcileable. I agree that the mere continuance of the contract during the absence of the apprentice from his master is not sufficient; but I do not agree that the performance of some service by the apprentice is absolutely necessary to enable him to gain a settlement in a parish different from that where the master lives. I think less than that will do, and that it will be sufficient if the residence be in pursuance of the contract of apprenticeship, and in a place where but for

(*a*) In *Rex* v. *Stratford-upon-Avon*, (p. 689), *Le Blanc*, J., observed, that "it was not considered in this case that the pauper went to *Knowstone* for the purpose of cure, but that the original master, who lived in the same parish, and was bound to receive him, did receive and place him there."

that contract it would not have been. The word service is not mentioned in the statute 3 Will. & Mary, c. 11, s. 8, but binding and inhabitation. Here I think it is evident that the boy's residence with his mother in St. Cleer was in pursuance of the contract of apprenticeship, for during all that time the master was bound to maintain him, and did so in performance of his part of the contract. The pauper was therefore settled in St. Cleer." *Littledale*, J. "Although no actual service was rendered by the pauper while he resided in St. Cleer the last eight weeks, such residence was in pursuance of the contract of apprenticeship. He returned to his master with the intention to reside with him and to perform service as soon as his health permitted. Illness alone prevented it. He went to his mother's house by desire of his master. His residence there is to be considered as if he had continued in the master's house; and if he had been taken ill while residing there, there could have been no doubt that he would have gained a settlement in St. Cleer, although he performed no service. That the master considered him as residing with his mother in pursuance of the contract of apprenticeship, is shown by the fact of his having agreed to maintain him during that time. *Parke*, J. "I am also of opinion that a settlement was gained in the parish of St. Cleer. The question arises on the 3 Will. & Mary, c. 11, s. 8, which enacts that 'if any person shall be bound an apprentice by indenture, and inhabit in any parish, such binding and inhabitation shall be adjudged a good settlement.' The statute says nothing of actual service. The true construction, as stated by Lord *Tenterden* in *Rex* v. *Ilkeston* is, that the inhabitation must be in the character of an apprentice, and in some way or other in furtherance of the object of the apprenticeship. Now, applying that rule to the present case, the pauper's residence in St. Cleer was not casual, for he came to that parish because the master was bound to receive and maintain him. The residence there consequently was connected with the apprenticeship. The dictum, that service is one of the essential requisites to confer a settlement, cannot be supported. Service may be material as showing that the residence is in the character of apprentice, but that may be shown by other facts. Here the residence appears undoubtedly to have been in the character of apprentice, and was so considered by the master, for he agreed to maintain the pauper during the time of such residence." *Patteson*, J. "Service is a criterion, but not the only one whereby to determine the character of the residence; and the facts stated in this case abundantly show that the pauper resided in St. Cleer as an apprentice. *Rex* v. *Charles* is in point, and has not been overruled." Order of sessions quashed.

Actual service not necessary; residence in pursuance of the contract of apprenticeship is sufficient.

Reg. v. *Burslem*, 3 *P. & D.* 38; 11 *A. & E.* 52. W. Rogers was removed from Burslem to Newport. Order quashed. Case:—The pauper is the illegitimate son of Susannah Rogers, and was born in Newport about the year 1826. Some years after the pauper's birth, his mother married T. Lainton, a bricklayer, residing in Burslem. By indenture of September 13th, 1830, between the pauper and his mother of the first part, T. Lainton of the second part, the Rev. William Sandford, minister of Newport, Thomas Blakeman and Thomas Collier, churchwardens of Newport, of the third part, it was witnessed that the pauper, as well by the consent of his mother as of the minister, head schoolmaster, and churchwardens of Newport, and of five other persons of the town of Newport, elected for setting forth three boys apprentices with the charity money left for that purpose by Mrs. Hannah Perks, deceased, did bind himself apprentice to Lainton in consideration of 6*l.* 12*s.* 8*d.* paid by Sandford, Blakeman and Collier, and Lainton did covenant to teach, inform, and instruct the pauper, in the art or trade of a bricklayer, and during the whole time to provide and allow the pauper meat, drink, washing, lodging, and apparel, and to provide him with two suits of clothes and other apparel at the end of the term. This indenture was duly executed. From the time of the marriage of the pauper's mother to the date of the indenture, the pauper lived with and was maintained by her and her husband; and after the binding and during the whole term of his apprenticeship the pauper

Where the pauper was bound apprentice to his father-in-law, and resided with him during the indentures, a settlement is gained, although the pauper never served his master at his trade, or was instructed by him.

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continued to live with them. Pauper never served Lainton for a single day during the apprenticeship at the trade of a bricklayer, nor was he ever by any one instructed in, nor did he ever work at such trade, but, both before and after the binding, was in the habit of working at odd jobs about Lainton's house wherever he liked. During the apprenticeship he worked under contracts of hiring, entered into with his master's consent, with various persons in Burslem, at the trade of a potter, paying Lainton a portion of his wages for maintenance, and disposing of the rest as he thought proper. Lord *Denman*. "I am unable to distinguish this case from *Rex* v. *Linkinhorne*," p. 686. *Patteson*, J. "I do not see how there can be a doubt, where there has been a valid binding and a residence with the master." The other judges concurred. Order of sessions confirmed.

Apprentice bound to a cork-cutter in B., for seven years; after seven weeks, owing to weakness of eyes, the master sent him back to his father, and agreed to allow him corks to value of 4*s*. per week for his maintenance: Held, that the apprentice gained a settlement in K., residing and being maintained there as an apprentice. (*a*)

Rex v. *Banbury*, 2 *Nev. & M.* 205; 3 *B. & Adol.* 706. G. Stanton was removed from Banbury to Kingsutton. Order quashed. Case:—The pauper was by indenture of the 7th April, 1825, bound apprentice to W. Kimbury, of Banbury, cork-cutter, for seven years. The consideration money paid to the master was 21*l*., and the master covenanted to teach the apprentice his trade, and find him sufficient meat, drink, clothing, lodging, washing, and all other necessaries, during the term. The pauper, upon the execution of the indenture, entered into the service of his master at Banbury, in which service he remained seven weeks, working at cutting corks, after which, the pauper having a weakness in his eyes, his master told him that he must go back to his father, as he could not see to work at his trade. The pauper accordingly went home to his father's house at Kingsutton on the Saturday following, where he stayed till the next Monday morning. The pauper and his father then went again to the master, who refused to receive the pauper, upon which all the parties went before a magistrate, and the father made a complaint against the master for refusing to receive the pauper. The magistrate informed the master that he must return the premium or maintain the apprentice. The master stated that he could do that; and the pauper, his father, and the master then went to the master's house, where it was agreed that the master should give the pauper two gross of corks per week, to be of the value of 2*s*. per gross, to maintain him. The pauper then went home, and lived with his father (who was a labourer and receiving parish relief) at Kingsutton, for two years, during which time the pauper received the corks from his master, according to the agreement between them. He sold the corks, and did anything he could get to do, working for any one who would employ him. During those two years the pauper did no work for his master, unless hawking the corks so furnished to him could be considered as a service under the indenture. The pauper did not account with his master for the corks so furnished to him, or their proceeds, and the pauper's father sometimes sold the corks. At the expiration of two years, in consequence of the master giving the pauper bad and valueless corks, the pauper was taken back by the father to his master, with whom he (the pauper) lived about ten days, and during that time he went out hawking corks for sale for his master. He slept on the night of the last of those ten days at the master's house in Banbury. At the end of the ten days the master told the pauper that he must go home again, on account of the badness of his sight, and he agreed to let the pauper have a gross of the best corks per week. Accordingly the pauper went back to his father's at Kingsutton, and lived with him again till his indentures were discharged as hereinafter stated, and during such period the master furnished the pauper with the corks according to the last-mentioned agreement, which corks the pauper sold and received the proceeds, doing no work for his master, but getting employment as he could. The pauper during his apprenticeship slept more than forty nights

(*a*) In this case the judges speak of residence only in *another* parish, as if residence in the *same* parish, without reference to the indenture, would be sufficient. But this is not so. See *Rex* v. *Charles*, p. 685; and *Rex* v. *Smarden*, *post*.

at Banbury, and more than forty nights at Kingsutton, but he slept in his father's house at Kingsutton on the night of the 5th July, 1829, and on the 6th July, 1829, he was discharged from his apprenticeship by an order of two justices. Lord *Tenterden.* "I am of opinion that the pauper gained a settlement in the parish of Kingsutton under the circumstances stated in this case. It is not easy, and perhaps not possible, to reconcile all the cases on this subject. But this principle may be collected from them all, that where the residence in a parish different from that of the master is unconnected with the apprenticeship no settlement is gained. The cases where paupers have removed to other parishes on account of illness, or for the purpose of visiting friends, neither receiving maintenance nor performing service, are illustrations of this part of the rule. On the other hand, if during the residence in a parish different from that of the master, the apprentice performs service for his master there, his residence is then considered referable to and connected with the apprenticeship, and he gains a settlement. There is also a third case, where the master assents to the residence of his apprentice in a different parish, and maintains him there, though no service be performed. The master covenants by the indenture to teach the pauper, and also to maintain him. Here he certainly did not teach the apprentice while he resided in Kingsutton, but he did maintain him. That was one of the objects of the apprenticeship, and it was satisfied; and I think it is sufficient to connect the residence of the apprentice in Kingsutton with the indenture, and that the safer course will be to hold that such residence was referable to the apprenticeship, by reason of the maintenance of the pauper in that parish." *Littledale,* J. "I am of the same opinion. The master here, in consequence of what passed before the justice, agreed to allow the pauper, while residing at his father's house, a quantity of corks per week to maintain him. The residence of the apprentice in his father's parish of Kingsutton is therefore accounted for by his master's maintaining him there according to that agreement. The cases upon this subject turn upon very refined distinctions; but I think here the residence in Kingsutton is referable to the apprenticeship by reason of the maintenance." *Parke,* J. "I am of the same opinion. It may be collected from the decisions, that the residence in a parish different from that of the master must be connected with the indenture, or, as it is laid down in *Rex* v. *Ilkeston,* in furtherance of the object of the apprenticeship. Now that object is twofold, maintenance and instruction. The one is as much the object of the indenture as the other. *Rex* v. *Charles* (p. 684), and *Rex* v. *Linkinhorne* (p. 685), show that actual service in the parish where the apprentice resides is not necessary to give a settlement. If the pauper be permanently maintained by the master during the residence, one of the objects of the apprenticeship is attained, and it is immaterial in what parish the maintenance is afforded. The cases run very near to each other. *Rex* v. *Brotton* (*post*) is like this case in some respects; but there an express stipulation was made in the indenture, by which the master dispensed with the services of the apprentice during the winter, the time of the residence upon which the question of settlement arose." *Taunton,* J. "In the cases which have been referred to, and in which the residence was held not to have taken place under the apprenticeship, the pauper was not under the control of the master, and there was no other circumstance from which it could be said that the residence was in pursuance of the contract. But here the relation of master and apprentice clearly continued until the indenture was discharged. The agreement of the master to allow the apprentice corks, by the sale of which he was to maintain himself in Kingsutton, shows that the residence there was in pursuance of the contract of apprenticeship; and, therefore, without breaking in upon any decided case, I think we may hold here that the settlement was in Kingsutton." Order of sessions quashed.

Residence unconnected with the apprenticeship gives no settlement.

Rex v. *Stratford-upon-Avon,* 11 *East,* 176. Removal from Stratford-upon-Avon to Old Stratford quashed. Case:—The pauper, T. Barnett, was bound apprentice by the parish of Old Stratford to H. H., of Stratford-upon-Avon, cordwainer. There was a covenant for the pauper "faithfully

Where an apprentice sleeps in another parish on account of illness, and while there is

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occasionally employed by his master, he gains a settlement by forty days' residence in that parish.

to serve his master in all lawful business." He lived with his master twelve months, and then, his thumb being affected with scrofula, he left his master, and went to his mother's, in the adjoining parish of Old Stratford, where he continued till his master went away from Stratford-upon-Avon, which was about two months afterwards. He slept at his mother's house more than forty days, and he never afterwards slept in Stratford-upon-Avon, nor in any other place, for forty days, during the apprenticeship. During the time he so slept at his mother's he went almost every day to his master's, and was on some days employed for three or four hours in each day by his master in errands, and was always ready at his master's house whenever wanted by him, but was unable to work at his trade in consequence of the complaint in his thumb. Lord *Ellenborough*. "The facts stated leave no doubt that there was a service of the master by the apprentice while he lodged at his mother's in the adjoining parish. He went to lodge there, indeed, in order to get cured, in consequence of an arrangement between the master and the mother; but he continued to serve his master every day; and though he could not work at the trade himself, yet he performed other service, and he might attend the work and learn the trade of his master; he must, therefore, be considered as still in the service of his master as an apprentice while he lodged with his mother. If the mother had lived more remote from the master's house, so that he could not have served his master while he resided at his mother's for the purpose of cure, that would have altered the case, and likened it to *Rex* v. *Barmby in the Marsh* (*ante*); there was no service of the master; but here, the service to the master continued, and therefore the apprentice gained a settlement by the last forty days' residence in the parish where he lodged with his mother." *Le Blanc*, J. "The question is whether he was resident at his mother's as an *apprentice*. The facts put an end to the argument, for during all the time he was serving his master, not to the extent required by the indenture, but to the extent of his ability. In the case where the apprentice gained no settlement, whilst resident in a different parish from his master for the purpose of cure, he was not serving his master during such residence. While an apprentice continues serving, all the cases agree his settlement is in the parish where he lodges, and not where the service is performed."

Residence with a father during illness, and at the request of the master, is an inhabitation as an apprentice. The service may be connected with the apprenticeship, by selling lottery tickets, though such an employment may be illegal. Inhabitation by indulgence is not sufficient.

Reg. v. *Somerby*, 1 *P. & D.* 180; 9 *A. & E.* 310. John Dixon was removed from Melton Mowbray to Somerby. Order confirmed. Case:—The pauper was, by indenture of September 21, 1805, bound apprentice to W. Lane, of Somerby, carpenter and joiner, from the 5th day of the same month, for seven years. The indenture contained covenants that the pauper should do all lawful commands of his master, and that his master should find him board, lodging, and washing during the term. The pauper served six years and two months in Somerby under his indenture, when he met with an accident and became unable to work; he was in consequence taken by his master, on the morning following the accident, to his father's house in Melton Mowbray (which is six miles from Somerby), for the benefit of a surgeon's attendance, and he slept at his father's house in Melton Mowbray from that time until the cancellation after mentioned, being a period of more than 70 days. His master called upon him at his father's house from time to time to see how he was, and during that time and whilst he was incapacitated from his ordinary employment under the indenture, his master asked him to carry out and sell, in the villages round about Melton Mowbray, lottery tickets, by which the holders would be entitled to draw in a lottery, where the prizes were the articles manufactured by the master in his trade; which the pauper consented to do, and did, up to the cancellation after mentioned. As a compensation for this service the pauper was to receive and did receive one shilling on the sale of each ticket, which his master observed would help to maintain him. The master also, on first taking the pauper to Melton Mowbray, promised to pay the surgeon his bill, but failing to do so, the pauper paid it himself. On the 1st of February, 1812, the pauper's father bought out his (the pauper's) time for

two guineas, which he paid to the master, and the indenture was cancelled on that day, and the master received such tickets as remained unsold. Lord *Denman.* "In this case I think there is no doubt that the relation of master and apprentice did continue during the time of the pauper's residence in Somerby. I do not mean to say that if a master and his servant conspired to do an illegal act, a service in furtherance of their object could be relied upon as conferring legal rights; but it would be very hard upon an apprentice, who innocently complies with the commands of his master, to be afterwards told that he ought to have disobeyed the orders, as they were contrary to law. This case is not to be distinguished in principle from *Rex* v. *Banbury*, and *Rex* v. *Stratford-upon-Avon.*" The other judges concurred. Order of sessions quashed.

Inhabitation by indulgence is not sufficient.

Rex v. *Ilkestone*, 4 *B. & C.* 64; 6 *D. & R.* 64. Ann Whingates was removed from Radford to Ilkestone. Order confirmed. Case:—John W., the pauper's husband, was bound apprentice by indenture 22d December, 1818, for seven years, to B. Roberts, a boat-builder, of Ilkestone. He lodged and worked with his master in Ilkestone, but regularly and with the consent of his master went to his father's at Radford on the Saturday night, slept there on the Saturday and Sunday nights, and returned to his master on the Monday morning. On the Saturday before the Nottingham fair, in October, 1822, the pauper's husband went to his father's as usual, slept there on the Saturday and Sunday nights, and returned to his master on the Monday, and worked for him that day, and in the evening asked and obtained his master's permission to go home again, for the purpose of being at the fair at Nottingham on the two following days. He left his master's that evening accordingly, and never returned, having enlisted for a soldier a few days afterwards. The pauper's husband did no work for his master on Saturday nights or Sundays, or at any other time while he was at his father's. The indenture was retained by the master till applied for some days after the pauper's husband had enlisted, when he gave it up. *Abbott*, C. J. "I am of opinion that the husband of the pauper did not gain a settlement in Radford, the place of his father's residence, but at Ilkestone, the place of his master's residence. The true construction of 3 Will. & Mary, c. 11, s. 8, appears to be, that the inhabitation must be in the character of an apprentice, and in some way or other in furtherance of the object of the apprenticeship. An inhabitation by indulgence is not then within the statute. Here the residence in Radford was by indulgence only. There may be cases, and some such have arisen, where an inhabitation in a parish, different from that in which the master resides, may be in furtherance of the service; as where a master cannot take an apprentice into his own house, and appoints and allows him to choose a residence in another parish, so that he may return to his work every morning. But here the sleeping in Radford was merely for recreation, and had no connection with the service." *Bayley*, J. "Where the master appoints no place for the pauper to sleep, or appoints a place out of the parish where the service is performed, I agree that a settlement is gained where the apprentice sleeps, and this was the ground on which *Rex* v. *Castleton* (*ante*), and *Rex* v. *Stratford-upon-Avon* (p. 689), proceeded. *Le Blanc*, J., expressly puts it on the ground that the pauper slept in Old Stratford as an apprentice. But if he in general resides with his master, and is allowed once a week as an indulgence to visit his parents, he does not lodge there as an apprentice; and the case is not varied if the indulgence is for days or months."

An apprentice not being wanted went back to school, and resided there: Held, that this was not a residence under the indenture.

Rex v. *Saint Mary Breding, Canterbury*, 2 *B. & Ald.* 382. A master mariner, having no immediate occasion for his apprentice's service, the vessel being then in dock, offered either to turn him over to another master for a time, or to let him go back to school, and the apprentice said he would go back to school and learn navigation; he did so, and resided above forty days there; the master paid no part of the expense of the school, nor gave him any wages. He never returned to the ship or his master. *Bayley*, J. "This is a case new in its circumstances, and we are called upon now to lay down a rule which is to govern in future. It has been truly stated

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that the words of the statute are only 'such *binding and inhabitation*.' But I apprehend that the service of the apprentice is one of the essential requisites to confer a settlement of this sort. This service must either actually or constructively be going on during the absence of the apprentice from his master; and the cases say, that where the absence is occasioned by illness, which negatives the existence of such service, no settlement is gained by such a residence, nor had the master any control over the apprentice during this period. This case is like that of a master who allows his apprentice to return to his friends, having no occasion for his service. That is a suspension of the apprenticeship for the time, and no settlement can be gained by such residence. Here the service did not continue while the apprentice was at school."

An apprentice, working with his master during the week in one parish, and sleeping on Saturday and Sunday nights at his master's house in another, may gain a settlement in the latter parish by inhabitancy under his indenture.

A verbal agreement by a master "upon being paid 3*l.* to set his apprentice at liberty, and to give him up his indenture," does not discharge the indenture so as to fix the settlement of the apprentice in the parish where he slept last before the making of such agreement.

Rex v. *Warden*, 1 *M. & R. Mag. Ca.* 277. Order of removal of Susanna, wife of George Kirsopp, from Warden to Whickham quashed. Case:—George was bound apprentice to his uncle, G. Elliott, a stone-mason, about the 25th December, 1803, for seven years, to learn the art of a stone-mason; and John, the father of the apprentice, was a party to the indenture. The apprentice went on May-day, 1809, with his master to reside in Whickham. The master worked as a journeyman-mason at Ravensworth Castle, Lamesly, and the apprentice worked there with him, sleeping at a lodging in Lamesly five nights in each week, and Saturday and Sunday nights in his master's house at Whickham, to which he went every Saturday, and returned to his work every Monday. The apprentice slept above forty nights in Lamesly, and also above forty nights at Whickham, during his service under the indenture, previous to the 25th March, 1810. On the 24th March, 1810, on a Saturday afternoon, as the apprentice and his master were returning from their work at Ravensworth Castle at Whickham, they mutually agreed that the master, upon being paid 3*l.*, should set the apprentice at liberty, and give him up his indenture of apprenticeship. After this agreement the apprentice went home with his master to Whickham, and slept there that night. He had slept the previous night at Lamesly. The next morning the apprentice went to his father, and his father gave him 3*l.* to pay to his master for giving up his indenture of apprenticeship, and setting him at liberty. The apprentice returned in the evening to Whickham, and paid his master the 3*l.* This agreement on unstamped paper was then drawn up: "This is to certify that a mutual agreement has taken place between G. E. and G. K. as to delivering up to the apprentice his indenture, this 26th day of March, 1810, his seven years being expired at 25th December, 1810; for which time he, at this period, pays to his master 3*l.* for the *time* unexpired. Signed, George Elliott." The indenture was not then delivered up, it having from the time it was executed remained in the possession of Mr. L., who prepared it. G. K. was nearly, but not quite, twenty-one years of age. He slept in Whickham that Sunday night, and the following day began to work, entirely on his own account, at Ravensworth Castle, where he continued to work about a month, unconnected with his master, and receiving the whole of his own wages; and during that time he slept at Lamesly, not in the lodging which he had previously occupied with his master, but in a distinct lodging taken by himself. The master also continued to work at Ravensworth during the same month that the apprentice remained working there. G. K., after leaving Ravensworth, went to Newcastle, where he worked on his own account, and soon after he delivered the before-mentioned agreement to his father, who giving it to Mr. L., received the indenture from him, and sent it to his son. Lord *Tenterden*. "*Rex* v. *Ilkestone* (p. 690) is very distinguishable from the present. There the apprentice was allowed by his master, as a matter of indulgence, to go to his father's every Saturday, and to sleep there every Saturday and Sunday night; and it was expressly found there that the apprentice during those periods of absence did no work for his master. Here the apprentice returns with his master from their work and goes to his master's house, where he passes the Saturday and Sunday nights, and on the Monday again accompanies his master to

work, having been in the interval under the eye and control of his master, and, for aught that appears, performing all his biddings. He therefore slept at Whickham in his character of apprentice, and was an inhabitant of that parish under his indentures. The verbal agreement made on the Saturday between the apprentice and his master certainly could not operate as a discharge of the indentures, so as to transfer the settlement to Lamesly; therefore the settlement was rightly decided in the first instance by the justices who ordered the pauper to be removed to Whickham." The other judges concurred. Order of sessions quashed.

Where an apprentice, who worked and slept at his masters' in C., at weekly wages, went, with their knowledge, on Saturdays and Sundays to R., and slept there, and returned to his work on Mondays, and was received by them; and on the Saturday before Shrove Tuesday (having the night before slept at C.) received his pay, and never returned again to the service, and slept that and the following evening at R., but on quitting the works on Saturday had not formed any intention not to return: Held, that his settlement was at C., his service having ended on his quitting.

Rex v. *Ribchester*, 2 *M. & Sel.* 135. Removal from Ribchester to Church. Order quashed. Case:—The pauper, R. Salthouse, when about the age of seventeen, was bound apprentice by indenture, dated the 2nd of November, 1790, to Messrs. Peel and Co., calico print-cutters, for six years; P. and Co. covenanted to pay the pauper 6*s.* weekly during the term. The indenture was executed by the pauper and his mother, but no evidence was given of their having been executed by P. and Co. The pauper during the first two years served P. and Co., and slept in Ribchester. After that period he was sent by his masters to work for them in Church, and he worked in the works of his masters in Church, and slept there, except on Saturday and Sunday nights, when he went to sleep at his mother's in Ribchester, and returned on the Monday. Eleven other apprentices left the works at Church on Saturday, and returned on Monday, which the masters knew, and it was the usual custom for the apprentices to do so. The pauper continued to work and sleep in this manner for two years longer, when he entered into an agreement with Walmley, of Ribchester, for five meals in each week; and he accordingly went every Saturday night to Walmley's house in Ribchester, and returned to the works in Church, and slept there, except upon the Saturday and Sunday nights as before. The pauper continued to reside and sleep in the manner last mentioned for a quarter of a year, until the Saturday before Shrove Tuesday, 1795, when he received his pay, and never returned again to the service of his masters, having on the night before this Saturday slept in the works at Church. The pauper, when asked whether when he quitted the works on the Saturday he had determined not to return again, said, that he could not say that he did determine not to return, but that it seemed he did not return. When asked whether on quitting Messrs. Peel's works in Church for the last time on the Saturday afternoon he had formed any intention not to return, he answered that he had not; being asked the question as to Sunday, he made the same answer; and further said, that he could not fix upon any particular point of time when he determined not to return. The pauper slept at Walmley's in Ribchester on the Saturday night, and for the whole of the succeeding week, and then hired himself into another employment. Lord *Ellenborough.* "This is a case in which there was not any express leave of absence given by the masters, but they had been in the habit of receiving back their apprentices after they had gone home and returned, and by so receiving them they showed that it was not their purpose to renounce them on that account. In pursuance of this indulgence the pauper went as usual on the Saturday night, and it does not appear what his intention was at that time, or that he had formed any upon the subject either of returning or staying away. He did not, however, return on the Monday; the end and conclusion, therefore, gives a character and denomination to the original act of departure, *finis nomen operi imponit.* From what was finally done we must collect what was his determination when he first went away on the Saturday. We find that he did not return, and that he did not on this occasion, as formerly, avail himself of the absence from Saturday to Monday as an indulgence. In *Rex* v. *Stratford-upon-Avon* (p. 689), the apprentice continued to perform a species of service with his master while he lodged with his mother, which was a circumstance to cover what might otherwise have been an interruption of the service; it was therefore held that he gained a settlement where he lodged. But here it appears that the apprentice by not returning to his service on the

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Monday, had not left it on the Saturday under the usual indulgence; and therefore he must be considered as having broken the contract on the Saturday when he quitted his masters' works; and consequently Friday night was the last night of his residence as an apprentice. The settlement therefore was at Church, where he slept on that night, and not at Ribchester." *Bayley*, J. "It is almost impossible to say that this apprentice was serving underthe indenture of apprenticeship after the afternoon of the Saturday, when he received his pay and never afterwards returned. The court cannot look to what was passing in the mind of the apprentice, but to his acts. From the nature of the service he was only employed locally at the manufactory during the ordinary working days; but from Saturday to Monday he was free from his master. If then he was to have that interval entirely to himself, and never returned after its expiration, at what time did he leave his master's service? It must be taken that he left it at the time that interval commenced, for he was not in a condition to do any act of service for his master after the Saturday afternoon." *Dampier*, J. "*Rex* v. *Undermilbeck* (5 *T. R.* 387) is the only case like the present; but in that case the master recognised the departure of the servant, for he paid him his wages for the time of his absence. That, therefore, affords a distinction. Here the apprentice was at weekly wages, and was paid on the Saturday; and the Friday night was the last night of his being in the actual service of his masters under the indenture."

A parish apprentice and his master were both on the permanent staff of the local militia, in consequence of which they resided together in the parish of B. for forty days, where the apprentice also served his master.
This residence is sufficient to give a settlement, notwithstanding they were both under the control of their superior officers during the whole time.

Rex v. *Chelmsford*, 3 *B. & A.* 411. Removal from Braintree to Chelmsford. Order confirmed. Case:—The pauper was bound a parish apprentice to S. Spurgeon, of Halstead, to learn the art of a cordwainer, and to serve him until the pauper should attain the age of twenty-one. The pauper served the first four years in Halstead, when the master and the pauper went to Chelmsford, and the pauper served his master there for nearly a year. When about two years of the apprenticeship were unexpired, the master and apprentice having been appointed on the permanent staff of the Essex local militia, of which the head-quarters were at Braintree, went from Chelmsford to reside there. The master had been appointed a serjeant; and the apprentice, a drummer, served the master, and inhabited forty days in Braintree. The pauper received his soldier's pay whilst working for his master at Braintree, but not full wages; and the master refused to give up the indentures till the expiration of the term expressed therein. *Abbott*, C. J. "I am of opinion that the pauper gained a settlement by his residence in Braintree. It is not necessary for the court to consider what would have been the effect, if the residence had been separate from that of his master, in consequence of his being in the local militia. Here he continued to reside in the same place with his master, and continued to serve him during the whole period. That is expressly stated as a fact by the sessions; and it is not impossible that, during a great part of the time, he might be actually serving his master. It is not necessary that the party should reside in a place because he is an apprentice, so as to give him a settlement there; for *Rex* v. *Stratford-upon-Avon* is a distinct authority to the contrary." *Bayley*, J. "The best rule is to abide by the words of the statute. Those are, 'If any person shall be bound an apprentice and inhabit, such binding and inhabitation shall give a settlement.' Now here was a valid binding, and the pauper resided where his master was at the time, and continued to do acts of service whilst so resident. His residence was, therefore, not wholly foreign to the purposes of the indenture, and sufficient to confer a settlement." *Holroyd*, J. "I see nothing to show that the obligation to serve under the indenture was put an end to. His service might lawfully continue, and, in fact, did continue during all this time. It is said that the ground of his residence was because he was a soldier; and so in Stratford-upon-Avon the residence was in order that he might be cured of sickness. Yet as he continued to do service for his master, notwithstanding his sickness, the residence conferred a settlement. That case governs the present." Order of sessions quashed.

Residence of sea-faring persons.

St. Mary, Colechurch, v. *Radcliffe*, 1 *Stra.* 60. Removal to St. Mary, and order quashed. A boy was bound apprentice to a sea-faring man, and served him for a quarter of a year in the day time on land in St. Mary, Colechurch, but lay every night on shipboard in Radcliffe. This was likened to the case of the cobbler. *Parker*, C. J. "A man properly inhabits where he lies; as where the house is in two leets, he is to be summoned to that in which his bed is."

Rex v. *Burton Bradstock*, *Burr. S. C.* 531. Removal from Bothenhampton to Burton Bradstock. The pauper was bound in March 28, 1754, to J. Miller, of Bridport, owner of a ship, an apprentice, and *to learn navigation, and the art of a sailor*, and immediately he entered on board the ship, and did *there* serve John Miller for seven years as an apprentice. The ship was during that time employed in a coasting trade from Bridport harbour to other ports, and that harbour was considered by the captain and sailors as *the ship's proper home.* During that time the ship was often in the harbour, but never for more than a month at a time. On December 7, 1760, she arrived, and *continued there* till January 22, 1761, *being more than forty days;* the apprentice, during those forty days, lodging, boarding, and serving his master on board the ship: and the ship was never in any other port forty days after that. On March 11, 1761, the ship returned to Bridport, and there remained till after the 28th of that month, on which day the apprenticeship expired; and during that time the pauper lodged, boarded, and served on board the ship as before. Bridport harbour is a basin within the parish of Burton Bradstock, and communicates with the sea by a cut made from it to the sea, and through this cut ships enter. Lord *Mansfield*, C. J. "*Lying in a parish* is the same whether it be on board a ship or on land. *Casual* residences, or *accidental* inhabitances, are out of the present case. The harbour is stated to be within Burton Bradstock, and the service was *bonâ fide* performed there." *Yates*, J. "This was not like the case of a vagabond strolling from parish to parish." *Aston*, J. said, he "thought *mere watching* on board a ship was not a residence within 3 & 4 Will. & Mary, c. 11. Nor would a vessel *in transitu*, accidentally stopping at a port to repair a leak, or any such *casual* occasion, gain a settlement to the sailors on board; but this was the proper home of the ship." [See, however, the following case.]

If an apprentice to a ship-owner resides in a port more than forty days in the course of his trade, he gains a settlement there, though his master in the meantime absconds from home.

Rex v. *Topsham*, 7 *East*, 466. The pauper, when twelve years of age, was bound apprentice as a mariner to D. S., of Topsham, ship-owner and coal-merchant. He served his master for three years, during which he made several voyages, and returned to Topsham, residing there in the intervals between the voyages, sometimes for two months. His last voyage was in the *Reward* of Topsham, which sailed to Shields, and from thence to Poole, with a cargo of coals. The pauper remained at P. upwards of forty days, and slept every night during that time on board the vessel, alongside the quay. He knew whilst there that his master was become a bankrupt, and gone from Topsham; in consequence of which he applied to Mr. Penny, the agent and consignee of the vessel, for money, to enable him to return to Topsham, who supplied him with half a guinea for that purpose. On his arrival at Topsham he resided with his uncle, not being able to find his master, whom he had never seen or served since. It was contended that the residence at Poole was accidental; that in *Rex* v. *Burton Bradstock* (*supra*), the fact relied on was that Bridport harbour was the home of the ship; that the pauper's return to Topsham, by the assistance of his master's agent, and his subsequent continuance there, fixed his settlement in that parish. But the court agreed, that the residence at P. was not casual, but that he was there in the actual employ of his master in his trade, which in its nature required a shifting residence. That the principal doubt in *Rex* v. *Burton Bradstock* was, whether the residence of an apprentice on ship-board were equivalent to a residence on shore in the same parish, and what was thrown out there in respect of Bridport harbour being the home of the ship was principally in answer to that objection. And that the doctrine of casual residence, as applied to places of public resort,

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which had been thrown out in the Scarborough case, had been pretty much shaken in *Rex* v. *Bath Easton*, (p. 596). That at any rate, however, the doctrine did not apply to a case like the present, where the apprentice was in the actual service of his master at the time. And that it was clear an apprentice might gain a settlement by serving his master in another parish, where his master's business called him. That it appeared also by the case that the apprentice never returned to his master's service in Topsham, for his master had absconded before his return, and he went to his uncle ; and it is expressly found that he never saw or served his master afterwards. Order of sessions quashed. See *Rex* v. *Aldstone*, (*ante*).

The indenture stipulated that the master should provide meat, &c., during the term, except in the winter, when the ship to which the apprentice belonged should be laid by unrigged ; at which time the apprentice was maintained by himself or friends, the master paying a compensation. The apprentice accordingly during the winter resided with his parents for more than forty days, doing no work for his master. This is not a residence as an apprentice.

Rex v. *Brotton*, 4 *B. & Ald.* 84. Removal from Whitby to Brotton. Order confirmed. Case :—The pauper, S. Marshall, was bound apprentice for four years, by indenture of 11th of March, 1813, made between S. Marshall, the elder, and S. Marshall, the younger, of the one part, and Addison Brown, ship-owner, of the other part. The master was to provide for his apprentice meat, washing, and lodging during the term, *except in the winter seasons, when the ship to which he should belong should be laid by unrigged, during which time it was agreed that the apprentice should maintain himself, or be maintained by his friends*, and in lieu thereof, the master should pay the apprentice 6*s.* a week, during such time as the apprentice should not be maintained by his master, and the master should pay the apprentice for wages 75*l.*, in certain yearly proportions. The pauper, while the ship was laid up at Whitby, in which he served his master as an apprentice, resided occasionally during the winter with his parents in Brotton, and in the whole for more than forty days, and he slept the last night of the apprenticeship at Brotton. Brotton is twenty miles from Whitby ; and the pauper did not do any work for his master while he resided there, but was liable to have been recalled by his master at any time, if he had been wanted at the ship. *Abbott*, C. J. " This appears to me to be a stronger case than the one which has been cited (*Rex* v. *St. Mary, Breding*), and that on the very ground on which it has been attempted to be distinguished from it. Here there was a distinct stipulation in the indenture, by which the master dispensed with the service of his apprentice during the winter season, the period when this residence at Brotton took place. The residence, therefore, is not at all connected with a service ; but is by the very words of the indenture disconnected from it. Then the case cited is an express authority to show that an apprentice, by such a residence, does not acquire a settlement."

Where an apprentice, at his master's desire, left the parish in which his master lived, but returned and slept in that parish without his master's knowledge, it is not a residence under the indenture.

Rex v. *Smarden*, 13 *East*, 453. Removal of R. Gilbert, from Great Chart to Smarden, confirmed. Case :—On the 28th November, 1795, the pauper was bound to J. Gurr, of Smarden, shoemaker, as an apprentice for seven years ; only one deed was executed, which, by consent, was deposited with Mr. Large, for the benefit of both parties. The pauper served and lived with his master in Smarden till within four months of the end of his term, when his master agreed with one Olloway, of Hedcom, shoemaker, that the pauper should go to work for him during the remainder of his apprenticeship. O. was to board and lodge the pauper, and to pay Gurr 3*s.* weekly for his services. This agreement was made by Gurr without consulting the pauper. No part of the 3*s.* was reserved for the benefit of the apprentice. The pauper worked with O. in H. till within three weeks of the end of his apprenticeship, boarding and sleeping at O.'s house in H. during the whole time. At this period, as the pauper was told by O., the parish officer of H. called on O., and in consequence of a conversation between the officer and O., which was not heard by the pauper, O. told the pauper that he did not wish to affront the parish, and that he, the pauper, must therefore leave him and seek work elsewhere. The pauper left O. on that day, and went to Smarden, where he slept, but did not return to Gurr, nor had he any intention of doing so, as Gurr had not used him well, and he knew Gurr had no work to employ him upon. Gurr did not see the pauper on the night of his sleeping at Smarden, nor did it appear that he was acquainted with the pauper's being there. The pauper went the

following day to Great Chart, where he continued to work for his own maintenance until the expiration of his apprenticeship; when that day arrived, he returned to Smarden, and his master and he went to the person who had the indenture. Lord *Ellenborough.* "Upon dismissal, in consequence of the interference of the parish officers, the apprentice returned to Smarden for one night, but not to his master, nor into his service, not having any intention so to do, but merely to get a bed there, as he would have done anywhere else. Then can this be called a returning into the service of the first master, who was even ignorant of the fact of the pauper's being there? But it is said that the master afterwards recognised the continuance of the relation between them at that time, by going with the pauper, when the term of apprenticeship expired, to take up the indenture; but how can that vary the question whether the pauper returned into his services on the night when he slept in Smarden, against the conclusion to be drawn from all the other facts of the case? There being then no residence of the pauper in Smarden under the indenture for any part of the last forty days of the apprenticeship, except by coupling the night when he slept there on his return from Hedcom with his previous residence in Smarden, and that having been a mere *casual* residence, and not under the indenture, the settlement acquired in H. continued there."

A pauper slept the last three nights of his apprenticeship in the parish of his original master, with the knowledge of the second master, but unknown to his original master. He gained a settlement.

Rex v. *Iddesleigh*, 4 *D. & R.* 332; 2 *D. & R. Mag. Ca.* 245. The pauper's indenture as a parish apprentice expired 24th June, 1813. He resided in Iddesleigh with his master till Lady-day, 1813, when he left him, and agreed with Thomas Weeks, of Dowland, to serve him for a month, at 2*s.* 6*d.* per week. After this agreement, and before the pauper went into Weeks's service, Arnold saw Weeks, and consented to the pauper's service with him; and the pauper then went for the first time to reside with Weeks. At the expiration of the first month, the pauper agreed for a second month, at 3*s.* 6*d.* a week, and continued to work with Weeks at the same wages, and to reside at Dowland till the 7th June, when he left Weeks in consequence of being called out to serve in the local militia in a third parish. Having served a fortnight in the militia, he returned, on the 21st June, to Weeks, and agreed to serve him in the same capacity as before at 6*d* a-day; and while in Weeks's service, *from the 21st June including that day* the pauper slept continually for two or three months at his mother's in Iddesleigh. It was urged that this was like *Rex* v. *Smarden* (*ante*). [*Abbott*, C. J. "That case is distinguishable from the present in two particulars; first, the second service was entered upon with the consent of the first master; and second, the fact of the apprentice sleeping one night in the parish of the first master was unknown to him, and was a casual act, not done with the intention of resuming the service under the indenture."] It was then said, "there is a general consent of the first master here to the pauper's entering into the second service, and that is sufficient." [*Abbott*, C. J. "Still the pauper sleeping the last three nights of his term in Iddesleigh removes the settlement to that parish, because he was then serving under the indenture."] After further argument, *Abbott*, C. J., said, "The pauper had agreed to serve Weeks in Dowland for a month, at 2*s.* 6*d.* per week. The latter communicated this circumstance to the former master, who consents to the service, and for that purpose the pauper goes into and resides in the appellant parish under that contract. At the expiration of that month, the pauper was at liberty to quit, and Weeks was at liberty to part with him. Then they agreed for another month, at 3*s.* 6*d.* per week, and the pauper remains in Dowland parish until he goes into the militia. At the end of a fortnight he returns to Weeks, and enters into a third agreement at 6*d.* a-day; but it does not appear that the agreement was for any specific length of time. The sessions seem to have been of opinion that there was either a consent of the former master, specially or generally, for the pauper to serve Weeks. If it was a special consent, then it must be a consent to the terms of service for which the parties had agreed previously to the return of the pauper to Weeks' service; and if it be so considered, then there would be only one service, with the assent of the

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original master. But, on the other hand, if it was a general assent that the pauper should serve Weeks during the remainder of the term, then, though the service during the last three days was in Dowland, still that would not confer a settlement, for during the nights of those three days he slept in Iddesleigh, and therefore whatever view is taken of the case, whether we consider it as a special or general assent, it seems to me that no settlement was gained in Dowland." *Bayley*, J. "I think the sessions did right in forming the conclusion to which they came. It was for them to decide whether the first consent was general or definite. On whatever ground they decided, their decision is correct, the pauper having slept during the last three nights in Iddesleigh. It is said that the sleeping must be connected with the service. To that I accede; but it must be a sleeping in the parish in which the service is. It has been decided over and over again in the case of a hired servant, that sleeping the last night in the parish in which the pauper is hired will determine the settlement, though there is no work done in that parish. Though the pauper in this case slept the last three nights in Iddesleigh without the first master's knowledge, that will make no difference." *Holroyd* and *Littledale*, Js., concurred.

12. *Of Serving different Masters.*

12. Of Serving different Masters.

It is not necessary that the apprentice should serve out the term with the same master to whom he was bound. He may gain a settlement under the indenture, although the master relinquishes his right over his service for a time, to be resumed at a future day, or permanently for the whole remaining period of the apprenticeship.

It has been observed, that much subtlety and refinement has been introduced into this particular branch of settlement law: and Lord *Tenterden* said, in *Rex* v. *Whitchurch*, that it was time that some plain and broad rule should be adopted; and he added, "there *must be an express* consent on *the part of the first* master, to which the second must be privy, and an employment by the *latter of the servant* in the same *capacity*." 1 *B. & C.* 574.

It will be found that several of the following cases cannot be reconciled with this principle, and particularly that of *Rex* v. *Banbury*, where it was observed that the rule, that the second master must be privy to the facts of the apprenticeship, is much shaken, if not altogether denied.

It is also to be observed that the original master cannot give his consent, unless the indentures *continue in force*, therefore it is important to see what amounts to a dissolution of the apprenticeship. In parish apprenticeships there must be an assignment by consent of justices. The cases may be arranged according to the following divisions:—

1. *There must be an express Consent to the transfer of the Service; mere knowledge is not sufficient.*
2. *By whom the Consent to the Change of Master may be given.*
3. *The Consent may be given either by Parol, or by Assignment of the Indenture.*
4. *Cases in which it has been held that the Second Master must be privy to the Consent.*
5. *The Apprentice must be employed in furtherance of his Indenture.*

1. *There must be an express Consent to the Transfer of the Service; mere Knowledge is not sufficient.*

An apprentice, who, by a verbal consent of his original master, serves another,

1. *There must be an express Consent to the Transfer of the Service; mere Knowledge is not sufficient.*

St. Olave's v. *All Hallows, Sett. & Rem.* 153; 1 *Stra.* 554. A person is bound apprentice to a master who lives in St. Olave's. Afterwards, the apprentice, by his master's verbal consent, lived with and served another person in All Hallows. By the Court: "He gains a settlement in the last place; for a person may serve his master in another parish or place: and although he serves another man, yet it is by consent of his master, and the benefit accrues to his master."

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Rex v. *St. George's, Hanover Square,* 2 *Sess. Ca.* 138; 2 *Stra.* 1001. A. Wheeler was bound a parish apprentice to G. Leicester in St. George's, where she lived about forty days. Afterwards she was by parol agreement hired out by her master to Hall in St. Mary-le-bone, and there lived for one year and upwards, the apprenticeship continuing; Leicester received her wages, and found her clothes. By the Court: "The apprentice is well settled in St. Mary-le-bone.'

gains a settlement by such service.

Rex v. *Fremington, Burr. S. C.* 416; 2 *Bott,* 560. M. Bevans, the pauper, was bound a parish apprentice to one Richards, in Fremington, who, after some time, declared that he had no business for her, and gave her permission to go and work elsewhere, where she could, for her own benefit: and on his recommendation she was hired to one Mr. Nott, at Sherwell, from the first day of June till Lady-day, and served him there for the wages of 32*s.*; and then went back to her master, with whom she stayed eight days, and then her apprenticeship expired. This was held to be a good settlement at Sherwell, for she was not discharged from her apprenticeship, nor intended to be so. Her master only gave her leave to go elsewhere and serve another person for her own benefit. She did so, and afterwards she returned to her master, and was received by him, and stayed with him to the end of her term. And, consequently, the service with Nott was a continuation of the apprenticeship, and performed under it.

An apprentice hired by a second, at the recommendation of her first master, serves under the apprenticeship.

Rex v. *Ideford, Burr. S. C.* 821; 2 *Bott,* 413. Mary Street, the pauper, was bound apprentice by the parish of Chudleigh to P. Matthews, of that place, till twenty-one, or day of marriage, and lived with him there four years, when he assigned her by parol to J. Stelliford of Ideford, with whom she lived seven months, when she ran away from Stelliford and returned to Chudleigh, and resided there for nine months as a servant to John Hayes, at a public-house, with the knowledge, but without any express consent, of Matthews or Stelliford; and Hayes did not know that the pauper was an apprentice. Matthews resided in Chudleigh during the time that the pauper lived with Hayes, and frequently saw her there, and applied to Stelliford to take her back to Ideford, and threatened to put him to trouble if he did not. During the time she was at Chudleigh, she was taken ill, and part of the time so ill in the workhouse, that she could not be removed, and was there relieved by Stelliford. She never returned to Ideford; continued for the last two years of her apprenticeship in Chudleigh in good health, where the apprenticeship expired. It was argued, that the pauper's service at Chudleigh, after her return from Ideford, was a service under the apprenticeship, being by consent of her master, Stelliford, who manifestly considered her as his apprentice whilst she resided there. Lord *Mansfield,* C. J. "Here is no consent of the master, either express or implied; his mere knowledge of it doth not imply his consent." And the whole court were unanimous that the pauper obtained no settlement at Chudleigh, after her return from Ideford.

After a parol assignment of a parish apprentice, and part service under that assignment, the apprentice ran away from her second master, and lived with a third nine months in the original parish, without the consent of her former master, and remained afterwards two years in that parish in good health, and the indentures then expired: Held that no settlement was gained by service in original parish after her return.

Rex v. *Inman,* 4 *B. & Ald.* 55. *Quo warranto* for exercising the franchise of a burgess in Colchester. The custom was, that every person who served an apprenticeship by indenture for seven years to a burgess was entitled to the franchise. The boy was regularly bound, and served his master five or six years, living in his house. His master's business falling off, he then went to reside with his mother, during which time his master permitted him to work for whom he chose, he having agreed to pay his master 2*s.* a-week. His master occasionally gave him work to do, for which he was not paid. During all this time the indentures remained with the master. *Abbott,* C. J. "It is quite clear that to entitle this party to his freedom, there must not only be a continuance of the binding under the indentures to a free burgess, but also a continuance of the service under the indentures to a free burgess during the whole period of seven years. I am of opinion that the service under the indentures to the first master did not continue so long, and the consequence is, that the party is not entitled to his freedom."

Apprentice to a freeman in Colchester worked for whom he chose, and sometimes for his master: Held, not a service under the indentures.

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n apprentice offered his master a guinea to "let him off;" to which the master agreed, and also to give him a suit of clothes when the guinea was paid; but the indentures were not given up or cancelled. The guinea not being paid, the indentures still subsisted in law, and a settlement was gained by serving another master with the consent of the first.

Rex v. *Shebbear*, 1 *East*, 13. John Bassett was removed from Shebbear to Bradford. Order quashed. Case:—The pauper was bound at seven years of age, by a parish indenture, to Trick of Bradford, till the age of twenty-four. Trick assigned the apprentice to J. Sleeman, with whom he lived till Lady-day, 1780, within two months of the expiration of the apprenticeship. He then proposed to Sleeman to let him off the remainder, which he at first refused to do. The pauper then offered to give Sleeman a guinea if he would let him off, which Sleeman agreed to do, and to give him a new suit of clothes when the guinea was paid; the guinea was not paid to Sleeman, nor did Sleeman give the pauper the clothes: nor were the indentures given up or cancelled. On the Lady-day the pauper offered to serve Brent, who refused to employ him, conceiving him to be an apprentice. The same day he went to Battishill, a blacksmith in Shebbear, who said he would not take him without Sleeman's consent. The pauper went to Sleeman and told him what Battishill said; Sleeman replied, "*You may go with all my heart. I think it will be a good thing for you to learn the trade.*" On his telling Battishill what Sleeman had said, Battishill agreed with him; and he lived with him in Shebbear for the last forty days before he attained the age of twenty-four. Lord *Kenyon*. "This case is very distinguishable from *Rex* v. *Crediton* (p. 701), which we decided a few days ago: and upon the same ground on which we there held that no settlement had been gained as an apprentice by subsequent service, I think it as clear that the sessions have drawn the right conclusion in this case, in adjudging that a settlement was gained by the service with the second master. There is no doubt but that the indentures still subsisted in point of law, not having been delivered up or cancelled, nor any consideration paid for doing so. In the former case we were satisfied that the master did not really mean to give a particular assent to the second service; he had there told the apprentice to go where he pleased, having no further occasion for him, and when the apprentice told him where he was going, he answered that he might go there or anywhere else. But here the master was applied to for his consent to the particular person named; and he expressed his approbation of the apprentice going there, telling him that it would be advantageous to him to learn the trade. This, then, was not an indiscriminate leave to serve any person, but a particular consent to a particular service; and this is the plain line of distinction between all the cases, which it is to be hoped will make an end of all such questions in future. Perhaps it would have been more correct for the sessions to have found the fact of such particular consent, instead of only finding the evidence of it, as they have done; and if anything were likely to turn upon it in this case, it should be sent down to them again to find that fact. But I do not know what advantage could accrue from thence to the respondents, for in effect the sessions have drawn that conclusion, and upon these premises I do not see how they could have drawn any other."

Rex v. *Gwinnear*, *post*.

Indiscriminate leave not sufficient.

Express consent given to the second master with a general leave to the apprentice, is sufficient, though the consent were not given till the apprentice had been in his second service for some time, but more than forty days before he quitted it.

Rex v. *Bradstone*, 2 *Bott*, 573. Removal of the pauper from Llandulph to Bradstone. Order confirmed. Case:—The pauper was bound apprentice by the parish of Petherwynn to Mr. Lawrence of Launceston. Lawrence duly assigned him by indenture to W. Weeks, of Bradstone, with whom he continued till he was twenty years of age. At this period, Weeks and the pauper, having some dispute, agreed to part, and W. gave the pauper a permission in writing, signifying that he was at liberty and had his consent to serve any other master. The pauper then left Weeks, and hired himself to R. T. of Beerferris for one year. He served the year and received his wages, and then married, and went to live in Llandulph, where he has since resided. During the time that he lived in Beerferris with R. T., he frequently saw W., who knew that he was in the service of T.; but W. had never given any particular consent to this service with T., or to his serving any particular person, but he told him at parting he would think no more of him. It also appeared on the examination of T. that the pauper had hired himself to him for one year for 6*l*. 10*s*. per year, and served out his year; that he was then twenty-one years of age, and the

time of his apprenticeship not expired; that when the pauper had been in his service eight months, he (T.) met W. by accident, who said, "*I find you have an apprentice of mine;*" to which T. answered, "*I do not know I have;*" and that Weeks then said, "*J. Dingle is my apprentice, but you are welcome to keep him as long as you please, for I shall think no more of him.*" The pauper continued in his service with T. four months after this conversation had passed, and at the expiration of his year he received the full year's wages. The court, without argument, were of opinion that this conversation was a sufficient consent on the part of W. to the service of his apprentice with T. under the indentures.

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Giving a character to an apprentice is a constructive assent to his service with the party applying for it.

Rex v. *St. Mary, Lambeth, Cald.* 533; 2 *Bott*, 419. The pauper was bound apprentice by indenture for five years to J. Cooke, of St. Botolph, with whom she continued a year and a half, when, having stayed out all night, on her return, Cooke and his wife told her she was no longer their apprentice, and might go and look for another place, and gave her money to go to a register-office to look for a place. After this she continued a week with her master, when, hearing of a place, she agreed to hire herself as a servant to Mr. Harvey, of St. Saviour's, at 40*s.* a-year. Mr. H. came to Cooke and inquired her character, which turning out satisfactory, he hired her on the above terms: in this service she continued to live nine months in St. Saviour's. The pauper at this time was under twenty-one years of age; but when she left Mr. C. the indentures were not delivered up nor cancelled, but Mrs. C. told her the indentures were destroyed: this was not true as to both parts, one of them having been read in evidence. The pauper went afterwards to a friend's house at Lambeth, where she lived on charity; from thence she hired herself as a yearly servant to Mr. L., of Walbrook, without the knowledge of Cooke, where she lived three months. During this service she visited Mrs. C., her first mistress, and acquainted her where she was, who said she was glad of it. The removal was to St. Saviour's, Southwark. Lord *Mansfield*, C. J. "The indentures still subsist, and the power over the servant continues: then the question is whether the master consented? The character was *as servant.*" *Buller*, J. (*a*) "*Rex* v. *Ideford* (*ante*, 699) is directly in point." Order of sessions quashed.

General leave is not sufficient, though the master knows in whose service the pauper is.

Rex v. *Crediton*, 1 *East*, 59. W. Milton was removed from North Tawton to Crediton. Order confirmed. Case:—The pauper was bound apprentice to A. Matthews, whom he served above forty days in Crediton. Matthews failing in business, *told the pauper* that *he had no further employment for him*, and *he might go where he pleased.* Afterwards, and before leaving his master, Haydon came to inform the pauper that Underhill, who wanted a boy, was in the neighbourhood, and that he should go to him. As the pauper was going out of the house, his master asked him where he was going? The pauper told him he was going down to Underhill. Matthews said, "*he might go there or where he pleased.*" Thereupon the pauper left Matthews's house, and went and hired himself and lived with Underhill above forty days in Sampford Courtenay, but no communication appeared to have taken place between Matthews and Underhill. Lord *Kenyon.* "The service with Underhill was not a prosecution of the service of the original master. Some of the cases upon this subject have been carried to a greater degree of refinement than might be desirable, if they were to be decided again *de novo;* but we are to be governed by the general principle resulting from them, and not by particular expressions, which vary in every case: it would have been better perhaps to have confined the power of gaining a settlement to a service with the original master. *Rex* v. *St. George's, Hanover-square* (*ante*), first broke in upon that line, and determined that an apprentice serving another by the consent of the original master might thereby gain a settlement: from thence has issued such a train of decisions as it is difficult to follow; however, the general principle of them all is to be found in *Rex* v. *Austrey* (*post*), where Lord

"Go there, or where he pleased, is general leave.

(*a*) In that case the court held there was no consent.

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Mansfield said, 'that in order to gain a settlement by the apprentice serving another master, there must be an express and implicit leave and consent given by the master to the particular service, so as to be considered as a service of his master under the indenture,' and not, as he observed in that case, 'a leave intended to be quite general;' or, as here, a general quitting of the service, and leave to go where the pauper pleased. Here the master first tells the pauper he had no longer any employment for him, and he might go where he pleased; and then, somebody having sent for the pauper, he tells his master, on being asked where he is going, that he is going to Underhill; on which the master repeats in effect what he had before said, that he might go there or where he pleased, meaning that he no longer looked for his service, or took any concern how he disposed of himself." *Grose*, J. "There must be a particular consent of the original master to the service with another, in order to give a settlement. In *Rex* v. *The Holy Trinity in the Minories* (*post*), there was a particular recommendation to a particular service, which the court held sufficient for that purpose. Whether there be such a particular assent of the original master to the subsequent service is more a question of fact than of law; and here the sessions have in effect negatived that fact, by finding that the pauper gained no settlement by the service with the second master." Order of sessions confirmed.

Where the master tells the apprentice he may do the best he can for himself, and afterwards, upon hearing from the second master that the apprentice had procured a place, expressed his satisfaction at it, it is not such a consent as will give a settlement.

Rex v. *St. Helen, Stonegate*, 1 *East*, 285. Removal from All Saints, Peaseholme, to St. Helen, Stonegate, confirmed. The pauper, on the 1st of January, 1786, was bound for seven years to T. Mawman, of Thirsk, bricklayer, with the consent of his brother, W. Chapman, his father and mother being then both dead. At the end of three years and a half the pauper ran away, and afterwards his master assigned him by parol to W. C., with whom he afterwards lodged for about three years, and during the last two years of that time he slept in St. Helen, Stonegate. About March, 1792, the pauper being about to marry, applied to W. C. and told him he wished to work and provide for himself; to which C. consented, and said *he might do the best he could for himself;* he did not afterwards consider him as his apprentice, but the indentures were neither given up nor cancelled, nor anything said about them. In the same month the pauper applied to T. Penneystone (with whom the pauper and C. had worked together before) for work, who employed him and paid him weekly wages. About a month after, T. P. met W. C., and told him he had got his brother at work; to which W. C. replied, "*I am glad of it; he was a bad lad, and I could make nothing of him.*" The pauper continued to work for five months after this with T. P., and during the last three months of that time slept in St. John Delpike, in York. The indenture was not given up by W. C. to the pauper till after the time expired. The Court said that *Rex* v. *Crediton* was expressly in point, and they confirmed the order of sessions.

A. is apprenticed to B. and C., partners. The partnership being dissolved, B. removes, and A. serves C. and C.'s new partner D. After the death of C., A. continues to serve D. It not being found by the sessions that the service under D. was with the consent of B., this court will not refer the service to the apprenticeship. No settlement is therefore gained by A. in the parish in

Rex v. *St. Martin's, Exeter*, 4 *Nev. & M.* 388; 1 *Har. & W.* 69. J. Snell was removed from Puddington to St. Martin's, Exeter. Order confirmed. Case:—On the 8th February, 1807, Snell was bound apprentice for seven years to J. and W. Mildrum, linen-drapers, in St. Martin's. He resided in their house in that parish in service under his indenture fifteen months, when the partnership being dissolved, W. Mildrum left Exeter and set up business at Totness. Snell continued to serve and reside with J. Mildrum, who soon after entered into a new partnership with Procter. Some time after this, J. Mildrum and Procter having opened a linen-draper's shop at Tiverton also, J. Mildrum went to reside there with his family, but continued to carry on business with Procter in St. Martin's. Snell's usual place of residence and employment was still in St. Martin's, but he was frequently sent over to assist in the shop at Tiverton, where he sometimes remained one, two, or several nights in succession, and he slept more than forty nights in Tiverton before the death of J. Mildrum. When the shop at Tiverton had been opened nine months, J. Mildrum being taken ill, removed to Exeter and died. At the

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which he served and resided with D.

time of his death Snell was at Tiverton, having gone there a few days before. He remained there till the Sunday following, and then returned to Exeter, where having attended his master's funeral, he served in the shop as usual and slept on the premises. Shortly after the funeral, Snell entered into an engagement with Procter, and he never afterwards resided with or had any communication with W. Mildrum. The question was whether Snell was settled in Tiverton or St. Martin's. Lord *Denman.* "I think that we cannot say that Snell is settled in the parish of St. Martin's, Exeter. It is quite clear that, in order to make a residence by an apprentice with a second master a residence under the apprenticeship, it must be shown that the party to whom the apprentice was bound consented to the particular service of the apprentice with the second master. No consent is stated, and from the case submitted to us we cannot infer that fact. The sessions were at liberty to draw such an inference from the facts stated, but we cannot do so." *Littledale,* J. "I also am of opinion that no settlement was gained in St. Martin's. It is not necessary to consider the effect of the death of the master. Undoubtedly the cases have established that the executor of the master stands in his place, and it is competent to the executor to create a new contract by actual assignment, or by word of mouth. But I do not think that the question as to the death of the master arises at all. The binding being to both, the apprentice continued, after the death of J. Mildrum, bound to W. Mildrum. The executor, therefore, of J. Mildrum had no right to interfere, and had no power to transfer the apprentice. If the apprentice had continued with Procter with the assent of W. Mildrum, that would have been a different thing. But W. Mildrum has in no way interfered, and appears not to have known anything about the apprentice from the period of the dissolution of the partnership with his brother; it is the same thing as if the binding had originally been to W. Mildrum (*vide Co. Litt.* 185. *a*), and nothing had been said by him as to the service of the apprentice under the second master." *Williams,* J. "I am of the same opinion. The case does not warrant our inferring that the residence in St. Martin's subsequent to the death of the master was a residence under the indenture; and unless that fact appear the residence can confer no settlement. The cases which have been referred to do not apply. Order of sessions quashed.

2. *By whom the Consent to the Change of Master may be given.*

2. *By whom the Consent to the Change of Master may be given.*

The consent of the widow of the master is sufficient, though she had not administered to her husband. (*a*)

Rex v. *East Bridgeford, Burr. S. C.* 133; 2 *Bott,* 557. Thomas Alt was bound apprentice to William Henston, of Orston, webster, for nine years, and served him the first four years at O. H. then dying intestate and insolvent, his widow, without administration, assigned him over to E. George, of Staunton, webster, a certificate man, for the remainder of the term, in consideration of 3*l.* He served Stanton about a year and a half at S.; and then he, in consideration of 40*s.*, did, with the consent of Alt, assign him over, by verbal agreement, to Baggaley, webster, for the remainder of the term; and he served the remainder of the term with B. at East Bridgeford. The removal was from O. to East B. The objection was, that the widow had not taken out letters of administration, and had no authority to make such assignment. The court were unanimous that this was a settlement in E. B.; since to this assignment, though only a verbal one, there was the consent of all the parties concerned, and he lived and inhabited at E. B. under the terms of the apprenticeship, as an apprentice bound according to the act of parliament. And they observed that an assignment of an apprentice is not considered a strictly legal transaction (because the person of a man is not strictly and legally assignable); but it has been an equitable construction, that where an apprentice has lived forty days under an assignment, he shall thereby gain a settlement, because of the *consent.*

An apprentice cannot legally be assigned.

The assignment is evidence of consent.

(*a*) This case is recognised as an authority in *Rex* v. *Barleston* (*post,* 705).

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The pauper was bound for three years, and served forty days in W., when his master died, and being dismissed by the widow, who had not taken out administration, went and served his father in C. two or three years: His settlement was held to be in W.

Rex v. *Chirk, Burr. S. C.* 782; 2 *Bott*, 782. An apprentice, bound for three years, without any consideration, to a slater at Wrexham, served under the indenture for nine months: then his master died, and he continued a fortnight with the widow, to complete the work unfinished by his master. Then his mistress, having no employment for him, told him that he must not stay with her, and that he was at liberty to go where he thought proper. On his going away, he told his mistress that he was going to his father, who was a slater. There was no particular agreement between his father and his mistress, nor were the indentures delivered up. His father then lived in Chirk, and he continued with him there two or three years. The court held the settlement to be in Wrexham, for "it sufficiently appears that the pauper served forty days as an apprentice in W., and that his settlement remained there. The widow doth not appear to have had any interest; and no administration appears to have been taken out."

An apprentice may continue to serve under an indenture by leave of the executor, and will gain a settlement thereby. (*a*)

Rex v. *Stockland, Doug.* 70. The pauper was bound apprentice by the parish of Stockland to John Davis till twenty-four years of age. He lived with him four years under the indenture, when his master died. He continued with his master's son, who was his executor, and had proved the will, for about seven years, when, being desirous of living with his uncle in Otterton, to learn the trade of a miller, his uncle and he applied to the executor for his consent, who gave it. The pauper went to his uncle in Otterton, and continued there with him two years and a half, at the end of the first four months of which time the pauper attained his age of twenty-four. *Rex* v. *East Bridgford* (*ante*) was relied on because there the assignment was by a person who had only the right to the administration, but had not administered. Lord *Mansfield*. "Though an apprentice is not strictly assignable, nor transmissible, yet if he continue with the consent of all parties and his own, it is a continuation of the apprenticeship. *Rex* v. *East Bridgeford* is much stronger than this."

A settlement is gained by a service with a third master, under the express consent of the second, to whom the first had assigned the apprentice.

Rex v. *Tavistock, Burr. S. C.* 578; 2 *Bott*, 412. The pauper was bound an apprentice by the parish of Lamerton to R. Rundle, with whom he lived several years; Rundle transferred him by assignment to J. Prout of Milton Abbot, with whom he lived till he was twenty years and a half old, at which time he offered his service to T. M. of Kelly. M. apprehending that he was an apprentice to P., sent his sons to P. to know whether it was with his consent that the pauper should live with him. To which P. answered, "With all my heart; he may live with M. or anybody else provided he performs his agreement with me." Accordingly he lived with M. in K. for a year and upwards. Lord *Mansfield*, C. J. "The only question is, whether Prout consented? It is clear that he did consent, and his consent included that of the first master." *Aston*, J., said, that "a second assignment was good."

The consent of the second master was held to be sufficient in *Rex* v. *Clapham*. The same may be inferred from *Rex* v. *St. Martin's, Exeter*, and *Rex* v. *Ideford*.

3. *The Consent may be by Parol, or by Assignment of the Indenture.*

Apprentice assigne

3. *The Consent may be by Parol, or by Assignment of the Indenture.*

St. Olave's v. *All Hallows*, 2 *Sess. Ca.* 215. If a master assign over his apprentice, and the apprentice serve in pursuance of that assignment, he thereby gains a settlement; and it differs not whether he serve with one master or another, for he still serves by virtue of the first indenture.

In *Rex* v. *Langham* (*post*), the consent was given by delivering up the indentures, but promising not to reclaim the apprentice.

(*a*) But an apprenticeship is a personal trust, and is determined by the death of either master or apprentice, and therefore no assignee of an apprentice, after the death of the first master, can give consent, unless he is an appointee within the meaning of 32 Geo. III. c. 57. (See *Rex* v. *Eakring* and *Rex* v. *Sheepshead*, *post*).

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If an apprentice be delivered to a second master, and by him placed with a third master, he gains a settlement.

Rex v. *Clapham, Burr. S. C.* 266; *Bott*, 559. Michael Wilson, the pauper, was bound a parish apprentice to T. J., of Austwick, tenant to Mr. Jackson of Clapham, who had covenanted to indemnify his tenant against all parish charges. T. J. carried him to his landlord, together with the indenture, who accepted, received, and provided for him. He desired the mother to provide for the boy, who did so for three years in Austwick, and Jackson paid her 20*s.* a year. Then he lived with him in Clapham eight weeks, and then ran away to his mother, and remained a quarter of a year with her in Austwick, and Jackson consented to his being there. Then the pauper was placed with his brother, a mason in Austwick, as an apprentice, by Jackson, who gave him a new suit of clothes. And he served his brother as an apprentice, a twelvemonth or two in Austwick, who took him as an apprentice and quitted Jackson of him. But the representatives of the first master (who was then dead) knew nothing of this, or even assented to it, nor anything of his living with his mother. By *Lee*, C. J., and the court: "The statute only requires a binding by indenture, and gives a settlement where the last forty days are served. Here is a binding by indenture; and the first master delivers over the apprentice and indenture to his landlord, who receives him. This therefore must be looked upon as receiving him under the terms of the indenture. If there had been no inhabitancy elsewhere, after the boy's living eight weeks with Jackson at Clapham, the settlement had been there. But a settlement is fixed at Austwick by the boy's living there a quarter of a year, with the consent of his master, and, after that, by his service to the mason. There is no ground for the distinction, that a second master cannot assign to a third, that is, so far as to gain a settlement by the service under it. This was not a new binding to the mason, for a new contract could not be made whilst the former subsisted; but the service with the mason was a service under the first binding."

An invalid assignment under 32 Geo. III. c. 57, s. 7, is sufficient to show the consent of the first master, and to render such service good as a service under the original indenture.

Rex v. *Barleston*, 5 *B. & Ald.* 780; 1 *D. & R. Mag. Ca.* 103. Removal from Heather to Barleston. Order confirmed. Case:—A settlement by apprenticeship under a parish indenture to J. Greasley, in the appellant parish, was proved. To show a subsequent settlement, a paper was proved purporting to be an assignment of the pauper, in February, 1812, by Greasley to T. Dalby. The pauper resided more than forty days in Leicester under that assignment; a premium of 5*l.* was paid by Greasley to the new master; it was the sum which Greasley had received with the pauper on the original binding. The assignment was executed by Greasley, Dalby, and the pauper, and, after reciting that the apprentice had about eight years of his term unexpired, stated that Greasley did absolutely give, grant, assign, and set over unto Dalby, all term of years to come and service which Greasley had in pauper. Greasley covenanted with Dalby that the pauper should truly serve Dalby as his master, &c. Provided that Dalby should well entreat him, and learn him the craft of a frame-work knitter, and should allow him meat, &c., which Dalby agreed to do. *Abbott*, C. J. "We are of opinion that the pauper gained a settlement in Leicester. The assignment of the apprentice, and the service to his new master, were prior to the prohibitory stat. 56 Geo. III. c. 139, and therefore are not affected by it. The 32 Geo. III. c. 57, s. 7 (*ante*), is not a prohibitory but an enabling statute. Before that statute a master could not discharge himself from the obligation to maintain a parish apprentice by assigning him to another person, nor were the apprentice and the new master subject to the ordinary jurisdiction of the justices with respect to masters and parish apprentices. This appears by the preamble to the section, and then the act proceeds with certain enactments, whereby, if the terms are complied with, these inconveniences are remedied. If the terms are not complied with, (and in the present instance they were not), the case is not within that statute; but it is to be considered with regard to the law as it stood before that act was passed. And so considered, although the assignment may be for many purposes inoperative, yet it manifests consent of the first master to a service with the second, and renders that service a service under the original binding. This is established by *Rex* v.

56 Geo. III. c. 139, a prohibiting statute. 32 Geo. III. c. 57, is an enabling statute.

The consent of the master implied from an assignment.

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East Bridgeford (p. 703) and *St. Petrox* v. *Stoke Fleming* (p. 716). In the first, the widow of the first master, without taking out administration to her husband, assigned the apprentice to George at Staunton, and George afterwards by parol assigned him to Baggaley at East Bridgeford; and it was held, that he gained a settlement by the service at East Bridgeford *by reason of the consent*. In the last of those cases the service under the original binding was in St. Petrox; and the first mistress indorsed the indenture, and delivered it up together with the interest in the apprentice to Foale, of Stoke Fleming, and the apprentice, by a new indenture, to which the mistress was not a party, voluntarily bound herself to Foale, and served him at Stoke Fleming, and the court held, that though an assignment of an apprentice (except by custom in London) cannot strictly be made; yet as this assignment was with the assent of the mistress the service under it would be good, for the purpose of conferring a settlement; *for the servitude continued under the first binding*. And these cases and some others determined upon the same principle appear to have been recognized by the court in *Rex* v. *Christowe* (p. 716), in which case the first master had not assigned the apprentice, but had taken upon himself to bind her out anew, with her consent, to another person, by a new indenture of apprenticeship; and the court on that account thought that the service to the second master could not be considered as a service under the original indenture." Order of sessions quashed.

Forty days' service under an unstamped assignment by a widow, not stated to be the executrix or administratrix of her husband, confers a settlement.

Rex v. *Barnsley*, 1 *M. & S.* 377. Order of removal of Robert Gill from Barnsley to Killinghall, discharged. Case:—John Gill, the father of the pauper, was bound apprentice on 1st December, 1764, to Thomas Harrison, in Clint, for seven years, and served five years, until his master died, when in consideration of three guineas paid by William Bradfield, he was assigned by Elizabeth (widow of Thomas Harrison), by an unstamped indorsement on the indenture, for the remainder of his term, in words to this effect: "April 14th, 1769. I, E. H., do assign over my apprentice, J. G., for the remainder of his apprenticeship, unto W. B. (Signed) E. H., W. B." No evidence was offered to show that E. H. was either the executrix or the administratrix of Thomas Harrison. J. G. served Bradfield as his apprentice in Killinghall, till the expiration of his indenture. Lord *Ellenborough*, after adverting to the effect of the relief given (for which see S. C. *post*), said, "The assignment (which, it is admitted, was not at the time required to be stamped) is in its form an assignment by the widow, 'as my apprentice,' and at this distance of time we will presume, if necessary, that she was lawful executrix: or even if she were executrix of her own wrong, still according to *Rex* v. *East Bridgeford* (p. 703), if the pauper lived forty days under that assignment, we should hold him settled in the parish: and one case is enough on such a subject." *Bayley*, J. said, "*St. Petrox* v. *Fleming* (p. 716) shows that similar assignments need not be by deed."

An agreement for service of apprentice requires no stamp, if the value is under 20*l*.

Where the master agreed in writing that the apprentice should serve his father for the residue of the term in consideration of 8*s*., this requires no stamp, as it is under the value of 20*l*. (*Rex* v. *Enderby*, 2 *B. & Ad.* 205.)

4. *The Second Master may be privy to the Consent.*

Consent to a particular service is not sufficient where the pauper is hired as a servant, and the second master did not know that the pauper was an apprentice.

Rex v. *Ashby-de-la-Zouch*, 1 *B. & Ald.* 116. Removal of Anne Sutton from Burton-upon-Trent to Ashby-de-la-Zouch. Order confirmed. Case:—By indenture, (June 16, 1804,) the pauper, being ten years of age, was bound apprentice by the parish of Stretton-in-the-Fields until she was twenty-one, to Messrs. Pilkington and Webster, of Ashby-de-la-Zouch, cotton manufacturers, and continued to work with them in that parish until November, 1813, when they relinquished the manufactory, and gave up business, having at that time a considerable number of female parish apprentices, who wore a particular dress in their manufactory. Previously to their relinquishing the business, Webster went over to Peel, one of the partners in a cotton manufactory at Burton-upon-Trent, and proposed assigning to him the apprentices, but did not mention the names or number. Peel having agreed to take them, an application was made to two magis-

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trates to get the assignment completed, but they objected that it could not be done without the consent of the parish officers. Webster then told Peel that he was willing to execute as far as he had promised, but nothing further could be done than the verbal agreement before made, which was, that he (Peel) should have all their apprentices. The pauper was at that time with Pilkington and Webster. About eighteen of these apprentices were sent in the care of a servant to Peel at different times; with some their indentures were sent over, with some they were not. Many did not go to Peel's, but went where they pleased, and procured places for themselves. After it was found that the parish apprentices could not be formally transferred, the mother of the pauper applied to Webster to have her discharged, as she wished to get her a place elsewhere, and she went home to her mother with Webster's consent, and with his permission to get a place where she pleased. When she had been at her mother's about five weeks, Webster called at her mother's house, and finding that she had not got into service, he recommended to the mother that she should take her to Peel's, where she could get employment. After she had been at home about two months, the pauper went over to Peel's with another girl; no other person accompanied them, and they were not in the dress of P. and W.'s manufactory, and their indentures were not taken with them. They were both hired *as servants* for fifty-one weeks by the clerk of Peel's works, who did not know that they were apprentices, and who told them at the time that they might come into the service; but if they did, they should be hired for only fifty-one weeks. Shortly afterwards Webster met the mother and asked if the pauper was gone to Peel's, and was pleased at hearing she was; and afterwards meeting the pauper, he asked her where she was, and on being told that she was at Peel's, he said that it was the best thing she could do. In October last, Webster being applied to by one of his apprentice girls, who was at Peel's, for her indentures, gave them to her, and at the same time sent to the pauper at Peel's her indentures, which were then expired, saying, "take them to Ann Sutton, for they are of no use to me." He also sent over at the same time the indentures of another girl who had been his apprentice. The pauper continued in the service of Peel until she was removed, in consequence of being then with child. The court were of opinion that the facts proved did not amount to any particular assent on the part of the original masters to the second service, and consequently that the relation of master and apprentice between Peel and the pauper never existed. Lord *Ellenborough*, C. J. said, during the argument, "If we do not take all jurisdiction from the sessions, their finding on this point must be conclusive. The new service was for fifty-one weeks, a different period from that for which the old service was to endure. It cannot therefore be considered as a continuance of the old service. It is a discrepant service in all its particulars." He afterwards added, "it has been expressly found by the sessions that this pauper was not an apprentice, and it appears to us most clearly that the prior service was not continued; for when the apprentice applied to come into the service, she was told that she should be hired only for fifty-one weeks, which shows that this was not a continuance of the old service. I think the facts of the case warrant the sessions in the conclusion at which they have arrived." *Bayley*, J. "It was for the sessions to draw the conclusion. They have concluded that the relation of master and apprentice did not exist, and I think they have drawn a right conclusion. The master to whom the pauper went to be hired *was never apprised of the relation of master and apprentice having subsisted;* he *hired her as a servant*, which constituted a new and different relation: it seems to me, therefore, that the sessions were well warranted in drawing the conclusion, that the relation between these parties was not that of master and apprentice; and if it were not, then the service of the pauper could not confer a settlement." *Abbott*, J. "The sessions have drawn the only conclusion which persons of a sound understanding could have drawn from the facts stated." *Holroyd*, J. concurred.

Effect of the binding of the sessions.

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The apprentice asked leave to go into another service, without mentioning where. The mistress said that she was not against it. The apprentice then hired himself to A. B. for a year, and returned to his mistress and told her what he had done, and she said that she was not against it. This is not a particular assent to that service, and the service is not as an apprentice, but as a servant.

Rex v. *Whitchurch*, 1 *B. & C.* 574; 2 *D. & R.* 845. Joseph Pierce was removed from Drayton in Hales to Whitchurch. Order confirmed. Case:—The pauper, by indenture (7th April, 1798), was bound a parish apprentice, till twenty-one years of age, to Margaret Dutton, under which he served her, in Whitchurch, for six years, when the indenture having still three years to run, and the pauper not agreeing with Mrs. Dutton's foreman, asked his mistress leave to go into another service, to which she consented, saying, "she was not against it if he could better himself." He did not mention where he was going. The pauper went to Jenkinson's, and hired himself to him for a year at 3*l.* 16*s.* wages. He returned and told his mistress, who said, "Very well: she was not against it." In a few days he went to his new place, and in about a fortnight returned to his old mistress for his clothes, who said, "she hoped he liked his new place;" and he said "he did." Under these circumstances he lived with Jenkinson, in Rees, three months. *Rex* v. *Crediton* (p. 701) was cited, and *Rex* v. *Shebbear*, (p. 699). *Abbott*, C. J. "There the new master took the pauper *as the apprentice* of the former master." *Per curiam:* "The question in this case is, whether the service with Jenkinson was a service under the indenture. It is clear that the justices have thought that it was not; because they have confirmed the order. They have not said so in express terms, for then there could be no argument upon the subject before us; but they have left it to us to say whether the conclusion they have come to was right or wrong. We are clearly of opinion that their decision was right. Much subtlety has been introduced into this branch of the law, of which some of the cases cited furnish examples. Of late the courts have inclined to decide these questions upon plain principles. In this case it is impossible to say that the pauper served Jenkinson as an apprentice under the indenture. It does not appear that Jenkinson *even knew that the pauper was an apprentice.* It appears that Mrs. Dutton had consented to the pauper's going into another service generally; but then he had not mentioned to her where he was going. Afterwards, when he had hired himself to Jenkinson, he returned and told his mistress: *but Jenkinson's name was not even then mentioned.* She did not dissent from it; but there was no express consent to that particular service. It has been urged, that the subsequent assent of the first master is sufficient to make the second service a service under the indenture; but the contrary is established by *Rex* v. *St. Helen's, Stonegate* (p. 701). Besides, under these circumstances, the service to Jenkinson was under a contract of yearly hiring. The pauper served under that contract as a servant, and not under the indenture as an apprentice; and very different duties result on both sides from these different descriptions of service. *Rex* v. *Ashby-de-la-Zouch* (*ante*) is strongly in point with the present. The want of knowledge in the second master, and the hiring of the pauper as a servant, are common to both cases; and those facts distinguish this from most of the cases cited in argument. For these reasons, we are of opinion that the service with the second master was not a service under the indenture, and consequently that the order of sessions is right."

A., a parish apprentice, having a general permission from B. his master to seek employment in trade elsewhere, serves C., in the parish of Dale, and resides there forty days (before the 56 Geo. III. c. 139,) without the knowledge of B. Subsequent assent to service does not relate back to the commencement of it.

Rex v. *Maidstone*, 6 *M. & N.* 545; 5 *A. & E.* 326. B. Drywood, &c. were removed from St. Mary, Canterbury, to Maidstone. Order confirmed. Case:—The pauper, Drywood, was, in June, 1814, bound as a parish apprentice to one Pollard, of Milton, basket-maker, with whom he lived under the indenture at Milton until August, 1816, when Pollard failing, and having no means of employing him, Drywood expressed a wish to go and endeavour to procure work in the basket-making business, and mentioned Maidstone as a place where it was likely to be procured. There were at that time several basket-makers in Maidstone, but no mention was made of the name of any of them. Pollard consented to the pauper's going, but said that if he got work, he (Pollard) should expect to be allowed a trifle out of his wages. To this the pauper assented, and he thereupon left Milton. Pollard heard no more from Drywood, nor did he make any inquiry about him; but having occasion to go to Maidstone in November

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The assent and service, it seems, must have been complete before 56 Geo. III. c. 139.

or December in the same year, he casually heard from a traveller that Drywood was then working with a basket-maker named Peters, in that town; and he called on Peters, and found him there; and it appeared that he had worked and resided there upwards of forty days before the 1st of October, 1816, on which day the 56th Geo. III. c. 139, came into operation. Pollard then asked for a portion of Drywood's wages, but being told by Peters that the wages were barely sufficient for Drywood's support, he went away. The pauper continued after this to work for Peters, and to reside in Maidstone several months, when he left that place, but he never returned into Pollard's service, or paid him anything on account of what he earned. Lord *Denman*, C. J. "*Rex* v. *Banbury* (p.711) was not intended to interfere with the former decisions. We intended to bear out what was said by the Court in *Rex* v. *Whitchurch* (p.707). It is clear that in this case the apprentice was in the service of another master without the express assent of the original master, unless we can import into this matter the notion of a *ratification* by subsequent assent. It appears to me that we cannot do that. At all events there was no assent before the passing of the act of 56 Geo. III.; and no assignment since that time is valid unless made with the assent of justices. It appears to me, therefore, that no settlement was gained in Maidstone." *Littledale*, J. "I am of the same opinion. Before the 56 Geo. III. c. 139, it was considered that when there was an express assent of the original master to the service of the apprentice with a particular second master, there was something in the nature of an assignment; and on that ground it was that a service with the second master was in such cases held to be referable to the indenture. Now here the first master knows nothing as to whom the apprentice is to go to. He merely consents to the pauper's going to seek employment in Maidstone, and says that if he succeeds in getting work, he (the master) shall expect to be allowed a trifle out of his wages. There is nothing at all approaching to an assignment in this case. As to the ratihabitio, that took place in November or December, 1816, after the act of 56 Geo. III. had come into operation, and had put an end to informal assignments of parish apprentices. The settlement should have been completely gained before the passing of the act." *Patteson*, J. "The question is, whether there was an assent of the first master to the particular service. In *Rex* v. *Banbury* no such question arose. Here, the question is in fact whether the assent of the first master, in November or December, 1816, is to have relation back, and to have effect from the beginning of the service with the second master. I find no case that goes that length. In *Rex* v. *Bradninch* there was a service and residence for more than forty days subsequent to the assent. Here, there was no subsequent service and residence which could possibly confer a settlement. Unless we can say that the assent in November or December has relation back, no settlement was gained in this case; for in the first instance the master permitted the apprentice to go where he pleased. I think that we cannot so hold; and therefore I am of opinion that there is no sufficient assent to the particular service." *Williams*, J. "The principle upon which settlements have been held to be gained by service with a second master is, that the service was a service under the original indenture. It is reasonable therefore to require that the master should know with whom his apprentice was serving, and should assent to that service. In *Rex* v. *Banbury* the master pointed out a person, and advised the apprentice to go to him. That is wanting here. The original assent is not sufficient; and with regard to the subsequent assent, I decline giving any opinion as to whether, if the act had not passed, that would have been sufficient; but I think it clear that the assent subsequent to the act could not affect the service previous to it." Order of sessions quashed.

If service by an apprentice with a second master can in other respects be construed to be a good service

Rex v. *Sandhurst*, 1 *N. & P.* 296; 6 *A. & E.* 130. B. Roberson was removed from Battle to Sandhurst. Order confirmed. Case:—The pauper was born on the 10th November, 1805, and being settled in Sandhurst, was in 1816 put apprentice by his father, to his brother George, in Sandhurst, to learn the trade of a cordwainer. No indentures were then executed;

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under the indentures with the first master, it is immaterial whether the second master know the fact of the apprenticeship or not.

but by indentures of apprenticeship bearing date the 22d December, 1818, to which the father, the pauper, and George his brother, were parties, the pauper was, with the consent of his father, bound apprentice to George, who resided at Sandhurst, to learn his art, and with him after the manner of an apprentice to serve until the end of seven years, to be computed from the 10th November, 1816, (when the pauper first entered into the service of George, and from whence he had faithfully served him). George covenanted with the father to teach and instruct his apprentice in the art of a cordwainer, and to find him meat, drink, and lodging during his apprenticeship. And the father covenanted to provide proper clothes and medical aid for him during the same period. When the pauper had been with his master almost five years in the whole, the master being short of work, it was agreed between the father, master, and pauper, that the latter should endeavour to get work at Mr. Thorpe's at Battle, as they had heard that he took apprentices; but it was agreed that the indentures should not be given up. In consequence of this arrangement, the pauper's brother, Richard, who was also a cordwainer and resided at Sandhurst, accompanied the pauper to Battle, and applied to Mr. Thorpe to know if he could take him into his employ. Richard told Thorpe that the pauper had worked at the trade of a shoemaker for some considerable time, and that his brother, for whom he had been at work, had not sufficient employment for him; *but he did not tell him that the pauper was an apprentice.* Thorpe told Richard that his brother might come for a month on trial, and if he suited he would take him for two years. Thorpe was to have 5*l.* with him, and to board and lodge him, and teach him his trade. Richard Roberson, the younger, returned to Sandhurst and informed his father and brother George what had taken place, and his father agreed to pay the 5*l.* if the pauper suited, and George, the master, agreed that the pauper should go to Thorpe's. The pauper went accordingly to Thorpe's, at Battle, and having stayed the month, took a note from Mr. Thorpe to his father, to say he might remain on the terms agreed on; and the father thereupon sent the 5*l.* by the pauper, who continued with him at Battle, receiving board, lodging, and instruction from him in the art of a shoemaker, according to his agreement, until the expiration of two years, which took place in July, 1823. The indentures were retained by George, until a few months before the expiration of the two years, when George met the pauper at their father's house, and George then told the pauper he was his apprentice, and that he could claim him after he had left Mr. Thorpe's, for that he would leave Thorpe's in July, and his time would not be up till November. The pauper said he did not think it would be right for him to do so; and George then agreed to give the pauper out of his time. The following memorandum was indorsed on the indentures of apprenticeship, which were then given up: "George Roberson, the master of Benjamin Roberson, his apprentice, do, by consent of his father, give him out of his time, this 5th day of April, 1823, on account of not having employment for him." This memorandum was signed by George Roberson the master, Richard Roberson the father, and the pauper. "The sessions were of opinion that the service in Battle was not in pursuance of the indenture of apprenticeship entered into by the pauper with his brother." Lord *Denman*, "We will take time to consider of our judgment, but I cannot help saying, that the facts in *Rex* v. *Banbury* were quite sufficient to warrant the sessions in finding that both of the masters with whom the pauper lived knew of the former apprenticeship." Lord *Denman* afterwards delivered the judgment:—"The question in this case is, whether the pauper, having been regularly bound apprentice to his brother in the parish of Sandhurst, and having served him there, has gained a settlement by subsequently serving a second master in the parish of Battle during the period of apprenticeship. In this case the first master expressly consented to the particular service with the second; and that service was on the express oral contract that the second master was to board and lodge the pauper and to teach him his trade, being the same trade as the first master carried on. It was, there-

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fore, so far in furtherance of the indenture of apprenticeship, as that the two objects of that indenture, namely, the maintenance and teaching of the apprentice, were provided for. It was also expressly agreed between the first master, the pauper, and his father, that the indenture should not be given up; neither was it, in point of fact, given up, until long after the pauper had served the second master for forty days. It is, therefore, perfectly clear, according to the decided cases, that *as between the first master and the pauper*, the service to the second master was under the indenture, the relation of master and apprentice still subsisting between them, and the covenants in the indenture being performed on both sides by the teaching and maintaining by, and the service with, the second master. But it is found in terms, that the second master did not at any time during the service know that the pauper was an apprentice, and the only point in the case is, whether it is material that the second master should know that fact. Upon examination of the older cases upon this subject it will be found, that in some of them the second master did know the fact; in others it may be doubtful whether he did or did not; but in none of them is such knowledge expressly negatived. No point is however made in any of them upon the knowledge or ignorance of the second master, until the *Rex* v. *Ashby-de-la-Zouch* (p. 706), followed up by *Rex* v. *Whitchurch* (p. 707), but neither of those cases turns upon that point, inasmuch as in the former case the sessions negative the consent of the first master to the particular service, which is clearly necessary; and in the latter such consent was plainly never given. In the subsequent case of *Rex* v. *Banbury*, it seemed doubtful whether the second master knew the fact, and the Court differed in opinion, both as to the fact of knowledge and its materiality. It can hardly be said upon these authorities that there is any clear and express decision upon this point. The question arises on the stat. 3 Will. & Mary, c. 11, s. 8, which enacts, 'That if any person shall be bound an apprentice by indenture, and inhabit in any parish, such binding and inhabitation shall be adjudged a good settlement.' The word *service* is not mentioned in the statute; but binding and inhabitation, as was observed in *Rex* v. *Linkinhorne* and other cases. The true construction to be collected from the cases appears to be, that it will be sufficient if the residence be in pursuance of the contract of apprenticeship, and in some way or other in furtherance of the object of the apprenticeship. Here the residence was in furtherance of the object of the apprenticeship, viz., maintenance and teaching; it was in pursuance of the contract, for the first master having no employment consented to the service with the second, that by these means he might perform his covenant; for, having been in part taught by the first master, he is permitted to go to the second to have his education completed under the indenture. Of what consequence then can it be whether the second master knew that the pauper was an apprentice or not? What difference would such knowledge have made in the situation or relation of the parties? None whatever: it would not have created the relation of master and apprentice between the second master and the pauper: such relation could only be created by a regular assignment of the indenture (even supposing, for the purpose of the argument, that such would be the effect of an assignment of any other than a parish apprentice), or by cancellation of it and a new binding by another: it never subsisted, nor was intended to subsist, between the second master and the pauper, but continued uninterrupted between the latter and the first master. The dicta, indeed, of the learned judges in *Rex* v. *Ashby-de-la-Zouch*, and *Rex* v. *Whitchurch*, seem to lead to the conclusion that they thought that the relation of master and apprentice must subsist between the second master and the pauper; for they say, how could he be serving as an apprentice, when it was not even known that he was an apprentice? But if the point had been necessary to the determination of those cases, we cannot doubt but that they would have seen, that in the absence of a regular assignment, the actual relation of master and apprentice could not be created, and that knowledge of the fact of the binding would in no way constitute

The residence must be in pursuance of the contract of apprenticeship.

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Meaning of the words, "*serve as an apprentice,*"

such relation. The expression, 'serving as an apprentice,' if it be understood with reference to the object of apprenticeship, namely, the being taught, and as distinguished from serving generally without such object, is quite correct; and it is obvious that in such sense the pauper in this case, under the oral contract for teaching, was 'serving as an apprentice:' but it is equally obvious, that this did not in any respect depend on his master's knowing that he was an apprentice, but upon the nature of the contract which he made. The second master is in some measure substituted for the first; inasmuch as the first consents that the apprentice shall learn from the second that which he has himself covenanted to teach: yet the second master need not be bound by the same engagements as the first, for if he need, then no service to a second master could be sufficient, except by a regular transfer of the contract, that is, the indenture, to hold which would be contrary to all the decisions as to service with a second master by consent of the first. It may be observed, that in *Rex* v. *Banbury*, my brother *Parke* gave only this effect to the decisions in *Rex* v. *Ashby-de-la-Zouch* and *Rex* v. *Whitchurch*, that the second master's ignorance of the apprenticeship furnished strong evidence that the second service was unconnected with any apprenticeship. Possibly what is said in those two cases as to the knowledge of the second master, may be supported on that ground; we think it cannot, as establishing the doctrine now brought into question: as to which doctrine this further remark is to be made, that my brother *Littledale*, considering the precise question on principle in *Rex* v. *Banbury*, declared a distinct opinion, that the second master's knowledge of the apprenticeship is not necessary. Upon the whole, we are of opinion that the true question in all such cases is, whether the service to the second master is a constructive service to the first master under the indenture, as between him and the apprentice; and that to the solution of that question it is wholly immaterial whether the second master knew of the apprenticeship or not." The order of sessions must be quashed.

What is sufficient connection of the service with the apprenticeship.

Rex v. *Banbury*, 5 *B. & Ad.* 176; 2 *N. & M.* 105. R. Carpenter, &c. was removed from Banbury to Witney. Order quashed. Case:—By indenture of apprenticeship of the 10th of September, 1801, the pauper, R. Carpenter, was bound apprentice by the trustees of a charity in Charlbury, to J. Hobbs, of Witney, tailor and breeches-maker, to serve for seven years. The master's covenants were, to teach the trades, and to find the apprentice meat, drink, washing, lodging, clothing, and all other necessaries, during the term. The pauper entered into his service on the 5th of September, 1801, at which time he was about twenty years of age, and served his master in Witney about half-a-year. Hobbs, the master, then failed in business, but did not become bankrupt; and having little or no work for the pauper to do, said, "Richard, it is of no use your stopping here; I have nothing for you to do; you had better go, if you can get a place; Barry of Bloxham wants hands, and he is a Witney man; you may go and work for him if you like; and, if you do not become troublesome to me or to Witney parish till the end of your time, you shall have my watch," which he then showed him. The pauper went to Barry at Bloxham, which is about twenty miles from Witney; he paid his own conveyance. The pauper agreed with Barry to work for him, and to receive 2*s.* 6*d.* a pair for making breeches, which was the regular price. Barry used often to go to Witney, and several times carried friendly messages between the pauper and Hobbs. The pauper worked for Barry, in Bloxham parish, a year, maintaining himself by the wages he received; he then heard that one Baker, of Banbury, wanted hands, and that he gave better wages than Barry. He therefore sent by letter to Hobbs for his leave to work for Baker, and received a verbal assent from Hobbs, and a promise to come and see him. The pauper went to Baker, and agreed to work for him to make breeches at 2*s.* 9*d.* a pair. After the pauper had been with Baker about three months, Hobbs came to Banbury to buy leather of Baker, and told the pauper he was glad to see him doing so well for himself, and going on so comfortably; he gave the pauper 1*s.*, and again promised him

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his watch when his time was out. He afterwards came again to buy leather, and again saw the pauper at Baker's at work, and repeated his promise of the watch. The pauper worked for Baker two years, living the whole time in Banbury, and then left. Hobbs then sent the pauper his watch; the same he promised and showed him when he left his house at Witney. The pauper maintained himself by the wages he received from Barry and Baker, and Hobbs had nothing to do with his earnings. The question was, whether the residence at Bloxham and Banbury was a residence under the indenture. *Denman*, C. J. "I am of opinion that a settlement was gained in Banbury. I am unwilling to introduce into the construction of an act of parliament terms or definitions which are not to be found in it. By the statute there must be a binding, as well as an inhabitation in a parish to give a settlement. But the authorities show, that where a party has been bound apprentice in one parish, and expressly permitted by his first master to work for another in a different parish, the service to the second master is, constructively, a service under the indenture, and that the original binding continues in force during the whole period of such service. That being so, the facts of this case show that the binding continued in force during the whole time of the pauper's service with the second and third master. It appears that the first master having failed in business, and having no work for the pauper to do, told him to get a place, and said that one Barry, of Bloxham, a breeches-maker, wanted hands, and that the pauper might go and work for him if he liked. The pauper accordingly agreed to work for Barry, and was to be paid by the piece. Barry carried messages to and from the first master and the pauper, and therefore must be taken to have known that the relation of master and apprentice existed between them. The pauper (having first applied for and obtained the consent of his first master) went afterwards to work in Banbury with one Baker, another breeches-maker; so that, during the whole time, he worked at his original trade; and both he and his first master considered the apprenticeship as continuing; for the pauper applied for leave to work for Baker, and the first master, on that occasion, promised, as he had done before, to give him his watch at the end of his time, and he afterwards gave it him. I agree that the binding must not only continue during the *whole* of the service, but that the *inhabitation* of the pauper, to give him a settlement, must, in some way or other, be connected with the apprenticeship. But as the pauper here not only continued to work at his original trade, but he and Hobbs both considered the relation of master and apprentice to continue between them, I think the inhabitation in Bloxham and Banbury was referable to the binding, and one of the consequences of the apprenticeship. Hobbs and the pauper may have thought that the best way for the latter to learn the trade was by serving other persons in the same business. The third master, as well as the second, must be taken to have known that the relation of master and apprentice subsisted between Hobbs and the pauper, and he and the pauper considered the indenture still in force. I think, therefore, there was in this case a sufficient binding and inhabitation in the parish of Banbury, within the statute and decided cases, to confer a settlement." *Littledale*, J. "I am entirely of the same opinion. The indenture was not cancelled, nor intended so to be. The master gave an express assent to the apprentice working with Barry, and promised to give him his watch; he afterwards, on the application of the apprentice, assented to his working with Baker; and when he had been in the service of the latter some time, again promised him the watch. By the deed, the master was bound to provide the apprentice with board and lodging, but the apprentice went to a place where these were found for him, worked at the same occupation, and was paid by the piece. I think it sufficiently appears that he continued to work under the indentures; indeed, I hardly know how that could appear more strongly, unless there had been an *actual assignment* of the indenture. I consider the indentures to have continued in force during the whole term of the apprenticeship. The next question is, did the pauper

Where there is consent, the service is constructively under the indenture.

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It is not requisite that the second master should know that the pauper was an apprentice.

serve the second and third master as an apprentice? The leave given by Hobbs must be taken to be for the pauper to work for Barry and Baker, as he did for him (Hobbs), viz., as an apprentice. It is not found expressly that Barry or Baker knew the pauper was an apprentice to Hobbs; and if that fact be necessary, it appears to me not sufficiently proved. But I do not see why it should be requisite that the second master should have that knowledge. In some of the cases on this subject there was want of notice to the second master, and in others not; and in some of them there are expressions which tend to shew that such knowledge is necessary. I think, however, that it is not so, and that the assent of the first master is sufficient. The pauper, then, in this case, must be considered to have served the second and third master under a contract of apprenticeship and not of hiring. *Parke*, J. "I am of opinion that no settlement was gained in Banbury." In order to gain a settlement by apprenticeship, the statute requires a binding and inhabitation; and according to the construction put upon that provision in *Rex* v. *Ilkeston* (p. 690), and *Rex* v. *Linkinhorne*, the inhabitation must be in the character of an apprentice, and in furtherance, or in pursuance of the object of apprenticeship. The statute does not, in terms, require a service in the parish; it is sufficient if there be an inhabitation, which is, in some way or other, connected with the apprenticeship. The question then is, whether the pauper, during the time he worked for Barry or Baker, worked for them in the character of an apprentice. It seems to me that he did not, but that he was employed as a servant. If the first master had assigned over the apprentice to the second, and thereby obliged the apprentice to serve in that character, the service would then be clearly referable to a contract of apprenticeship; or, if the first master had communicated to the second that the pauper was his apprentice, and the second master had received him in that character, the inhabitation would have been connected with the apprenticeship. But there is no authority to shew that if the apprentice, having leave from his original master to work for another, goes and hires himself to, and works for, that other as a journeyman, such service is, in any way, connected with the indenture. In *Rex* v. *The Holy Trinity, Minories* (p. 721), the pauper lived with the second master in the character of apprentice; for by the very terms of agreement between them, he was to instruct the pauper in his business. The modern authorities are very strong on this subject. In *Rex* v. *Ashby-de-la-Zouch* (p. 706), the master of several apprentices, upon quitting business, proposed to assign all his apprentices, without mentioning either their names or number, to one Peel, but no assignment was made. The pauper, one of the apprentices, was afterwards hired as a servant by Peel for fifty-one weeks; and her former master, on meeting her, expressed his approbation of her having gone into Peel's service. The sessions having found that there was no particular assent of the original master to the second service, and therefore that the relation of master and apprentice never subsisted between Peel and the pauper, the court thought them well warranted in that conclusion; and *Bayley*, J. observed that the master to whom the pauper went to be hired was never apprised of the relation of master and apprentice having subsisted; he hired her as a servant, which constituted a new and different relation. So in *Rex* v. *Whitchurch* (p. 707), it is said by the court, "In this case it is impossible to say that the pauper served Jenkinson (the second master) *as an apprentice* under the indenture: it does not appear that Jenkinson even knew that the pauper was an apprentice." In *Rex* v. *Shipton* (p. 715), where the master, not having sufficient work for his apprentice, proposed to him to go to a farm in a different parish, occupied by the master's sister: and the pauper agreed with her to work there for a twelvemonth for his meat and drink; and worked for her for four years and four months, receiving from her during the first two years meat and drink, and during the third and fourth, wages: Lord *Tenterden* said, "It appeared from the facts stated, that the pauper hired himself to Mrs. Corser, the master's sister; the service, therefore, was not under the indentures, but under a contract of hiring." The

See *Rex* v. *Sandhurst*, p. 709.

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authorities shew that an apprentice who, with the assent of his first master, serves a second, must, in order to gain a settlement in the place where he serves the second master, be inhabiting there in the character of an apprentice, and not in that of a hired servant. Now, here, the pauper did not live with Barry and Baker in that character, because *non constat* that they ever knew he was an apprentice. If they had been privy to the relation of master and apprentice having subsisted between Hobbs and the pauper, they might be taken to have contracted the same relation, and to have received him into their service as an apprentice, and his inhabitation would in their parishes be considered as having been in that character. But in this case it seems to me that there was no obligation on the part of the second or third master to teach the pauper, or, on the part of the pauper, to perform the duties of an apprentice to either of them. Upon the whole, therefore, I have come to the conclusion, that there was no sufficient inhabitation in Bloxham or Banbury to give the pauper a settlement in either of those places. *Patteson*, J. "The cases on this subject are exceedingly difficult to reconcile with each other. On the whole, I think a settlement was gained in Banbury. I agree in the rule laid down by Lord *Tenterden* in *Rex* v. *Ilkeston*, that the inhabitation must be in the character of an apprentice, and in some way or other in furtherance of the object of apprenticeship. The pauper, in this case, was bound apprentice to Hobbs, a tailor, who failed in his business, and could not maintain him. The apprentice, therefore, went to Barry, and bound himself to work, not as servant, but as journeyman, by the piece; and while there, hearing he might do better for himself, applied again to his first master, and the latter consented to his working with Baker; and on that occasion, for the second time, promised to give his watch to his apprentice *at the end of his time*. Both master and apprentice, therefore, considered the contract of apprenticeship as still subsisting. The pauper did not bind himself to the third master for any specific time, but agreed to work by the piece. I think an action of covenant might have been maintained by either party (Hobbs or the pauper) against the other. In *Rex* v. *Whitchurch*, there was no assent on the part of the first mistress to the particular service. In the first instance she did not know to whom the apprentice was going; and when he had hired himself, and returned and told the mistress of his having so done, he did not mention the name of the second master. In these cases small circumstances are laid hold of in each particular instance: but I should say, in general, that whenever the original contract continues, and the apprentice, with the consent of the first master, works at a trade with the view to be taught that trade, he must be considered as living with the person under whom he works in the character of an apprentice (*a*). Order of sessions confirmed.

5. *The Apprentice must be employed in furtherance of his Indenture.*

Rex v. *Shipton*, 8 *B. & C.* 88; 1 *M. & R.* 394. William Partridge was removed from Dudley to Shipton. Order confirmed. Case:—The pauper, at the age of thirteen, was, by indentures of 3rd September, 1816, put out an apprentice until twenty-one, by the parish of Stanton Long, to John Taylor. After the pauper had been some months at his master's farm, Taylor not having sufficient work for him, asked him if he would go over to a farm, called the Moorhouse, in Shipton, to drive the plough. The pauper said he had no objection, and immediately packed up his clothes and went. The Moorhouse was in the occupation of a Mrs. Corser, the sister of Taylor. Taylor occasionally went over from his residence, and

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A parish apprentice, at the suggestion of his master B., goes to work for C., and without the knowledge of his master agrees to work with C. by the year, and serve C. a year under that agree-

(*a*) In *Rex* v. *Maidstone*, 5 *A. & E.* 328, in allusion to this case, J. *Patteson* said, "Two or three words are left out there which would have been better added. The language must be viewed with reference to the subject-matter of the case. I meant to speak of the consent of the master to a service with a particular person."

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ment. He gains no settlement by apprenticeship, because the service is not referable to the indenture.

gave his advice to his sister respecting the management of her farm. He gave orders to her servants, but does not know that he ever gave orders to the pauper after he had been sent to Moorhouse. Taylor never told the pauper that he might hire himself or make any engagement with Mrs. Corser, but retained possession of the indentures. No agreement was made between Taylor and his sister respecting the pauper. On the pauper's arrival at the Moorhouse, Mrs. Corser asked if he would stay and drive the plough for his meat and drink for a twelvemonth. He replied that he would, and she sent him to drive the plough. For his services at the Moorhouse for the first and second year the pauper was not paid any money, but was found in clothing (except a pair of shoes and some stockings) and in meat and drink by Mrs. Corser. At the end of the second year, he hired himself for a year to Mrs. Corser for 5*l.*, and served that year, and received his wages. When that had expired, he hired himself for a year for 6*l.*, and received that sum on the completion of the year. During the time that the pauper was in the service of Mrs. Corser, which was four years and four months, he never received any orders from Taylor, nor did he ever return to Taylor's farm after he first quitted it. No assignment of the indentures was made, nor was the consent of any magistrate obtained for placing the pauper with Mrs. Corser. When he had been two years at Mrs. Corser's, Taylor became insolvent, and quitted his farm, after which he ceased to have anything to do with the Moorhouse, and saw no more of the pauper. Before Taylor's insolvency, and whilst the pauper worked at the Moorhouse, Taylor, on the application of the pauper's mother, furnished him with some shoes, and on another occasion supplied him with some wool to make stockings for him. He also employed a surgeon to attend him whilst labouring under a complaint, and paid his bill. When the pauper left the Moorhouse, his apprenticeship had not expired. Lord *Tenterden*. "Upon both (*a*) grounds I think the justices were wrong in their conclusion. In order to gain a settlement by apprenticeship, there must be a continued service under the indenture. If, during the term of apprenticeship, the apprentice hires himself to a stranger to the indenture, the service is not referable to the indenture, but to the contract of hiring; and, consequently, no settlement is gained by apprenticeship. Here the pauper hired himself to Mrs. C.; he might, therefore, have gained a settlement by hiring, if he had not been an apprentice. The service was not under the indenture, but under the contract of hiring." *Bayley* J. "*Rex* v. *Whitchurch* (p. 707) is expressly in point to show that no settlement was gained by apprenticeship, upon the ground that the service in Shipton was not referable to the indenture, but to the contract of hiring."

Service under a second indenture made by the first master is not referable to the original binding.

Rex v. *Christowe*, 11 *East*, 95. Elizabeth Pain was removed from Moretonhamstead to Christowe. At the age of seven years the pauper was bound an apprentice by the parish of Christowe to William Ponsford, with whom she lived till she was eleven years old. During the apprenticeship, by a written paper legally stamped and called an indenture, Pain, with her consent, was bound by Ponsford to Smith, as an apprentice, till she attained the age of twenty-one. Smith covenanted with Ponsford to teach and feed Pain. The consideration was 5*l.* 5*s.*, and the indenture was signed and sealed by all three. Lord *Ellenborough*. "This instrument purports to be a new and original binding of an apprentice by indenture by Ponsford to Smith; it does not recognise or refer to the original indenture of apprenticeship as being an assignment of the apprentice under that indenture; nor does Ponsford thereby assume to have any right to assent to the apprentice serving another master under any former indenture, but only to bind her *de novo*. How then can I say that this was a consent on his part that she should serve *Smith as a continuation* of the relation of apprenticeship which she had contracted before with him, Ponsford? This would be to intend a consent contrary to what appears upon the face of

(*a*) As to the other point, namely, whether this was a putting away of the apprentice within the 56 Geo. III. c. 139, s. 9, see p. 717.

the instrument to have been the intention of the contracting parties. I should be sorry to overturn the decided cases, but it appears to me that this is distinguishable from them: and that there is no case where the first master affected to bind his apprentice to another *de novo* by an original indenture, in which his consent to a service as under the former binding has been inferred; and, therefore, without disturbing those cases, but leaving them as we find them, I do not think that this instrument proved the consent of Ponsford to the service with Smith under the original binding." *Le Blanc*, J. "The leaning of the former decisions was to support every case of settlement, by implying the assent of the first master to the service with the subsequent master; but then it must be a consent to the service with the new master under a recognition of the original binding; and there is *no case* (*a*) where the settlement has been held to be gained under an entirely new binding by an indenture of apprenticeship: and if we were to hold this to be sufficient, we should be carrying the doctrine of constructive assent to a service under the original binding farther than any of the former cases." *Bayley*, J. "In this case the apprentice never undertook to serve the second master upon the terms of the original indenture of apprenticeship to the first master, nor did the first master consent to any such service." See also *Rex* v. *St. Mary, Kalendar*, (p. 731).

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But an apprentice was assigned by her master to a second master by indorsement on the indenture; she then bound herself by a new indenture to the second master, and gained a settlement, as the service continued under the first binding.

St. Petrox v. *Stoke Fleming, Burr. S. C.* 248; 2 *Bott*, 558. Anne Giles, the pauper, was bound a parish apprentice to Rebecca Gregory, of St. Petrox, till her age of twenty-one. She served five years; when Gregory, by indorsement on the indenture, delivered it up, together with all her right, interest, and term of years then to come of the apprentice, to Philip Foale, of Stoke Fleming; and on the same day Anne Giles, being then fourteen years old, did voluntarily bind herself apprentice by indenture to Foale, and served him under the said indenture at Stoke Fleming for several years. The question was, whether a settlement hereby was gained at Stoke Fleming? It was objected that here was no regular assignment of the first indenture to Foale, it being only delivered up, but not assigned, and the term was not expired when she bound herself to Foale. By the Court: "Though an assignment of an apprentice (except in London, by custom) cannot strictly be made, yet as this assignment was with the assent of the mistress, the service under it will be good for the purpose of gaining a settlement, for the service continued under the first binding."

Service under a second indenture is not sufficient, though the pauper had been previously serving under express consent.

Rex v. *Ecclesfield*, 6 *M. & Sel.* 174. Order of removal of J. Wostenholm, &c., from Brightside, Bierlow, to Ecclesfield, confirmed. Case:—The pauper, at nine years of age, was bound in May, 1803, as a parish apprentice to S. Carr. He served him eight years, when, in consequence of some disagreement, it was agreed that he should serve P. Cadman for the remainder of the term. Cadman agreed to pay Carr 1*s.* 6*d.* per week during that period. The pauper went to Cadman on trial, and then served him with Carr's express consent. After three weeks the original indenture was given up, and another executed; to which the pauper, his father-in-law, Carr, and Cadman were parties. The pauper of his own liking bound himself to Cadman for seven years, to learn the trade of a scissors-maker, and Cadman agreed to take him; there were the usual covenants, and the master agreed to pay the pauper 2*s.* a week during the last year and a half of the term. No premium was paid to Cadman, but he continued to pay Carr the 1*s.* 6*d.* under the agreement. The pauper continued to serve Cadman during the greater part of the remainder of the original term. It was urged that this case was distinguishable from *Rex* v. *Christowe* (p. 715), where, if the second indenture failed, there was nothing to show consent: but that here there was a previous agreement, which continued after the second indenture was made, and if it was void it could not affect the original binding. Lord *Ellenborough*. "The second indenture is not to be rejected as an entire nullity: although it be not capable of the legal effect

(*a*) See the next case, of *St. Petrox* v. *Stoke Fleming*.

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intended, that is, to constitute an apprenticeship, it may serve to indicate an intention that the service should not be continued under the original indenture, but should begin *de novo*. I think this case is concluded by *Rex* v. *Christowe*, which was decided on a review of all the cases." *Bayley*, J. "In *Rex* v. *Christowe*, it was settled, that unless there be a consent to the second service under a recognition of the original binding, an instrument purporting to be a new binding is not a consent. Is it possible, in this case, to say that the second service was a service of the nature above stated, when the time and manner of service are different from those under the original binding? The second master had not the same rights with respect to service as the first, neither had the apprentice the same rights with respect to his employment. In truth, the second indenture was made with another view, and shows that it was never intended that the service should be continued under the first on the same terms as *ejusdem generis*." *Abbott*, J. "He considered the parol agreement as entirely done away with by the subsequent instrument." *Holroyd*, J. "The second service being inconsistent with and in a different character from the first, must be referable to the engagement with the second, and not with the first master."

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13. *Of Service by Parish Apprentices with another Master.*

13. Of the Service by Parish Apprentices with another Master.

The only statute which has created a distinction between parish and other apprentices is the 56 Geo. III. c. 139. Prior to that, the master of a parish apprentice had been enabled, by the consent of two justices, to assign a parish apprentice, 32 Geo. III. c. 57; but this was an enabling, and not a prohibitory statute, an informal assignment under that statute was held to be evidence of consent, *Rex* v. *Barleston*, *ante*. The 56 Geo. III. c. 139 (p. 617), however, enacts that no settlement shall be gained by the putting away or transfer of a parish apprentice, without the consent required by that statute.

A parish apprentice sent to work on another farm belonging to the master's sister, and superintended by the master, is *placed* out within 56 Geo. III. c. 139, and gains no settlement.

Rex v. *Shipton*, 8 *B. & C.* 88. The facts of this case are stated p. 715. Lord *Tenterden* said, "I also think that no settlement was gained, because there was in this case a putting away of the apprentice within the 56 Geo. III. c. 139. The 32 Geo. III. c. 57, s. 7, recites, 'that it frequently happened that persons were compellable, under the 9 & 10 Will. III. to take a greater number of parish apprentices than it was convenient for them to maintain or employ in their own families, and they were therefore forced to *place out* or assign over such apprentices to other persons, and that it was proper that such assignment should be legally made under the inspection and control of two magistrates, as well for the benefit of the apprentice as that the original master might be discharged from his covenant in respect of such apprentice, and that it was fit that the person to whom such assignment should be made, and also the apprentice, should be subject to the ordinary jurisdiction of two justices with respect to master and apprentices;' and it then enacts, 'that it shall be lawful for the master of any such parish apprentice, by indorsement on the indenture, &c. with the consent of two justices, to assign such apprentice to any person willing to take such apprentice for the residue of the term mentioned in such indenture.' Notwithstanding this statute, it was discovered that many grievances had arisen from the binding of poor children as apprentices by parish officers to improper persons, whereby the parish officers and the parents of such children were deprived of the opportunity of knowing the manner in which such children were treated; and also from the permission given to the apprentices by the persons to whom such apprentices had been bound, to serve others without a formal assignment, whereby the discretion required by the statute to be exercised by magistrates in placing out apprentices to suitable persons was frequently rendered of no avail. Those mischiefs are provided for by the 56 Geo. III. c. 139. His lordship then read the recital of s. 9, and the enactment (p. 618), and added, "Here Taylor, the first master, not having sufficient work for the apprentice, proposed to him to

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go and work at a farm in the occupation of Mrs. Corser, where he worked for her four years and four months with the assent of Taylor. I think this was a putting away of the apprentice without the consent of the justices within the 9th sect., consequently that no settlement was gained after the putting away of the pauper to Mrs. Corser." *Bayley*, J. "I think that the pauper gained no settlement in Shipton, because there was a putting away of the apprentice within the 56 Geo. III. c. 139, s. 9. The object of the legislature was to protect parish apprentices, who are unable to protect themselves, and to place them under the protection of the magistrates. We ought, therefore, to adopt such a construction as will best effectuate the intention of the legislature. The 32 Geo. III. prohibited masters from assigning parish apprentices without the consent of two justices. In the recital of the 7th sect., the words '*place out or assign*' occur; in the enacting part the assignment alone is prohibited; but the 56 Geo. III. c. 139, s. 9, recites, 'that it is expedient that the *placing out* and assignment of parish apprentices should, in all instances, be under the inspection of the magistrates,' and enacts, 'that it shall not be lawful for any master to put away or transfer any parish apprentice without such consent.' An *assignment* imports a transfer of the services of the apprentice for the residue of the term. But an apprentice may be said to be *placed out* when the master consents to an apprentice serving another individual, so as to become subject to the control of that other. Here it is evident that the legislature intended to prohibit the placing out, without the consent of the justices, as well as the assignment. I think that, in this case, the master placed out the apprentice to Mrs. Corser, or put him away, and, consequently, that the service, after such putting away without consent, gave no settlement." Order of sessions quashed.

The master of a parish apprentice being abroad, his steward assigned the apprentice by writing signed A. (the master), by J. P. his steward. J. P. had no special authority for this purpose; but the expense of this and of former similar assignments had been allowed in J. P.'s accounts with A.: Held, that the assignment was bad, as the master ought to exercise a discretion as to making an assignment, and, at all events, to execute a special authority for the making of it by another person. But *quære*, whether the assignment must not be by the master himself. *Quære*, also, whether a parish apprentice can be bound to persons residing abroad, though occupying land in the parish.

Rex v. *Spreyton*, 3 *B. & Ad.* 818. J. Lee was removed from Spreyton to Powderham. Order quashed. Case:—On the 2d of Oct. 1818, an order was made by two justices, under the 56 Geo. III. c. 139, for binding the pauper, a poor child of the parish of Powderham, apprentice to Lord Viscount Courtenay, described in the order as of Powderham, and on the following day the pauper was bound accordingly, in the usual form, by indenture referring to the above order, with the allowance of the two justices, to be instructed in husbandry work. The indenture was executed by the churchwardens and overseers of Powderham, but not by Lord Courtenay. At the time of the binding, Lord Courtenay was in a foreign country, where he had been residing some years, and has continued to reside ever since; but during all that time he kept in his own hands the mansion called Powderham Castle, and an estate of between 200 and 300 acres, all within the parish of Powderham. This property was under the care of Mr. John Pidsley, Lord Courtenay's steward, who, as the general agent of Lord Courtenay, conducted all his affairs at Powderham, but acted under no power of attorney or written instructions. When the pauper was bound, the steward accepted him as Lord Courtenay's apprentice, and, intending to assign him to a new master, agreed with his mother to take care of him in the parish of Powderham till he could get a place for him, and allowed her a weekly sum for his maintenance. Some time afterwards Mr. Pidsley agreed with one Richard Paddon, living in the parish of Spreyton, that Paddon, in consideration of 5*l.*, should take an assignment of the apprentice; and accordingly, in January, 1820, a written instrument bearing a stamp of 1*l.* was drawn up, by which, after reciting the execution of the indenture, it was stated that Lord Viscount Courtenay, with the consent and approbation of two justices, did thereby assign the apprentice to Paddon, to serve him during the residue of the term; and Paddon, in consideration of the said sum of 5*l.*, agreed to accept and take the apprentice during the residue of the term, and acknowledged himself, his executors, &c. bound by the covenants of the indenture on the part of Lord Courtenay to be performed. The instrument was signed "Lord Viscount Courtenay, by John Pidsley his steward. Richard Paddon." The consent of the two justices was added, and subscribed with their names. Mr. Pidsley had no

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special authority, either written or verbal, to assign apprentices in general, or to sign this instrument for Lord Courtenay, but did it only by virtue of his general agency. He had on several occasions received parish apprentices on behalf of Lord Courtenay, had expended sums for their maintenance, and had paid money on the assignment of them to other masters (which assignments were executed in the same manner as the present), and these sums were always allowed him on the annual settlement of his accounts with Lord Courtenay. The 5*l.* which he paid to Paddon on this occasion was in like manner allowed. The pauper served the remainder of his term with Paddon in Spreyton. The questions were, whether the original binding was valid; secondly, whether the assignment was valid. Lord *Tenterden* delivered the judgment. After stating the facts, his lordship said, "Two objections were relied upon by the respondents; first, that the original binding of the apprentice to Lord Courtenay, then residing abroad, was invalid; and, secondly, that the assignment was also invalid. It is unnecessary to decide the first point, as we are all of opinion that the assignment was bad. The statute 32 Geo. III. c. 57, s. 7, enacts, 'that it shall and may be lawful for any master or mistress of any such parish apprentice as aforesaid, by indorsement on the indenture of apprenticeship, or by other instrument in writing, by and with the consent of two justices of the peace of the county, &c. where such master or mistress shall dwell, testified by such justices under their hands, to assign such apprentice to any person who is willing to take such apprentice for the residue of the term mentioned in such indenture of apprenticeship:' provided that the person to whom the apprentice is to be assigned, shall at the same time, 'by indorsement on the counterpart of such indenture, or by writing under his or her hand, stating the said indenture of apprenticeship, and the indorsement and consent aforesaid, declare his or her acceptance of such apprentice,' and acknowledge himself, herself, &c. bound by the covenants on the part of the master or mistress to be performed. It is not expressly said, that the master assigning the apprentice shall himself sign the instrument; but I do not see how it could be valid unless he did, and the form given in schedule (D.) purports to be so signed. But assuming that a person duly authorised by the master might execute the assignment, we think that in this case no sufficient authority is shown. The master ought, at all events, to exercise his own discretion as to the making of the assignment. Here no discretion was exercised on his part. There is no proof of any direction given by him: it only appears, that after the assignment was made, he allowed the expenses of it in his steward's account. We think that is not equivalent to a distinct authority from Lord Courtenay to the steward to execute this instrument for him. No settlement, therefore, was gained by the service in Spreyton; and whether the original binding was valid or not, the pauper's settlement is in the parish of Powderham, to which he belonged before the binding, and in which he was bound." Order of sessions quashed.

A master not having sufficient employment for a parish apprentice, agreed with another person in the same trade with himself, but in a different parish, that the apprentice should work for him, he paying to the first master 5*s.* a week. This is a *putting away of* the apprentice, within 56 Geo. III. c. 139, s. 9, and no settlement was gained thereby.

Rex v. *Wainfleet*, 3 *P.& D.* 72; 11 *A.& E.* 656. M. Houlden was removed from Wainfleet All Saints to Alford. Order quashed. Case:—By indenture dated the 14th June, 1819, the pauper, then above the age of nine years, was duly bound as a parish apprentice for seven years to one Smith, of the parish of Alford, tailor. He served his master in Alford under the same for about four years, when the master, not having employment for the pauper, agreed with one Brooks, of Wainfleet All Saints, a draper, and employing tailors in his business, that the pauper should do tailor's work for Brooks, upon the terms that Brooks should pay Smith five shillings a week out of the pauper's earnings. Wainfleet All Saints is distant from Alford fifteen miles. The apprentice went accordingly to work for Brooks in Wainfleet All Saints, where he continued to work and inhabit, except for an interval of ten days (which occurred nine months after he first went to Brooks's) up to the time of removal. Previous to those ten days Smith became ill, and sent to the pauper to assist him; the pauper went and did assist him during his illness, which lasted ten days. When Smith had

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recovered, the pauper returned to Brooks. The 5*s.* a week were duly paid by Brooks to Smith to the end of the apprenticeship, except during the aforesaid period of ten days, for which an allowance was made. The indenture expired while the pauper was working for Brooks and inhabiting at Wainfleet All Saints, where he continued to reside to the time of removal. No assignment of the indenture was made, nor was the consent of any justices obtained for such service at Wainfleet All Saints. Lord *Denman.* "The statute would be constantly evaded if a case like the present were not taken to be within it. The argument urged to-day is certainly very forcible, but a similar argument seems to have been used in *Rex* v. *Shipton* (p. 717), and the tenth section, imposing the penalty, was also pressed, and yet the court was not prevented from saying that the sanction of the justices was necessary to the transfer of an apprentice, although only for a limited period. The object of the legislature was to prohibit the putting apprentices under the control of a new master without the interference of the magistrates. I think it would be better if the sessions were to take upon themselves to say in these cases whether there has been a putting away of the apprentice." *Littledale*, J. "There are three things mentioned in the act, viz., the assignment, placing out, and putting away of an apprentice, which all appear to me to mean the same sort of thing. The apprentice here, though not dismissed, was placed out; that amounts to a putting away with another master, and was intended to be under the superintendence of magistrates." *Williams*, J. "Although we should not travel out of the words of a statute, for the purpose of reaching a mischief, which we may conceive to be within its spirit, yet, when there are sufficient words, it is right we should consider its policy, and promote it by our construction. The object of the legislature was, undoubtedly, to prevent an indiscriminate placing out as well as assignment of apprentices. For the same reason that the magistrates are to take care that an apprentice is assigned to a proper person, they are to take care that the apprentice is not placed out with any but a proper person for any minor period. I think this apprentice was put away with another master, though not absolutely transferred to him; but the enacting part of the clause uses both expressions, 'put away or transfer.'" *Coleridge*, J. "I have doubts on the question, but they are not strong enough to lead me to differ from the rest of the court." Order of sessions quashed.

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14. Of Vacating the Apprenticeship.

14. *Of Vacating the Apprenticeship.*

Of discharging the indenture or vacating the apprenticeship.

If the apprenticeship be prematurely determined, the apprentice is then in a capacity to enter into a new contract, either as a servant or as an apprentice to some one else, by which he may gain a settlement, although a small portion only of the term for which he was bound in the first instance has actually expired. Of course, when he is legally discharged from his indenture, the assent of his original master to his entering upon any other service is immaterial and nugatory; it is important, therefore, to see what amounts to a *discharge* of the original indenture, and what is insufficient for that purpose. And it will appear that, however the parties may intend to relinquish the connection of master and apprentice, and that intention is followed by an actual separation, the indenture will be still considered as in force, as far as the question of settlement is concerned, unless it be formally cancelled, or determined by one of those events which the law has said shall have that effect. There are exceptions to this rule in favour of infants, as will be seen in some of the subsequent cases.

The consent must be given before the indentures are given up.

Rex v. *Holy Trinity in the Minories*, 3 *T. R.* 605. F. Whitfield, wife of Joshua W. (a patient in Guy's Hospital), removed from Bermondsey to Holy Trinity in the Minories. Order confirmed. Case:—Joshua was bound apprentice to J. Grimes, of Tower Hill, London, tailor, for seven years. He served his master about six years, when his master declined

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business, and informed the pauper that he wished him to get another master for his good. He then went home to his father who lived in Southwark, with whom he stayed three or four weeks, and if he could have got a service in that time he would have taken it; but not meeting with any, he returned to Grimes, who thereupon told him that he heard Mr. Edwards (who was a tailor, and lived in Holy Trinity) wanted a man: and told him to go to Edwards, and make an agreement with him for his good; and that he understood Edwards would take him for twelve months. He accordingly went to Edwards and entered into an agreement under seal, covenanting to serve him for twelve months in his business as a tailor: and Edwards covenanted to instruct him, and find him in victuals and lodging, and at the end of the term to pay him 12*l.* for his service. The agreement was not stamped. He was nineteen years of age when he left Grimes; and the indentures were not assigned or cancelled; but *after he had served Edwards two months, Grimes gave him up his indentures,* and he continued to serve Edwards to the end of the year, and then received his wages and applied them to his own use. Lord *Kenyon.* "It is extremely clear, that while the indentures of apprenticeship continue in force, the apprentice is not *sui juris*, and cannot gain a settlement as a servant. But it has been settled in *Rex* v. *St. George, Hanover Square* (p. 698), that the apprentice need not continue in the actual service of the first master during the whole term, but that if he be assigned over by the first master, or continue with his privity and consent in the service of another person, he may gain a settlement by serving the second master forty days. The cases which have been decided upon this subject have been determined upon nice distinctions; but still these distinctions ought to be adhered to, as they have settled the boundaries on this point. The one is *Rex* v. *Fremington* (p. 698), where it was held that the apprentice gained a settlement by serving the second master with the consent of the first. The case on the other side is *Rex* v. *St. Luke's, Middlesex* (p. 726), where a general licence given by the master to the apprentice to serve whom he would, without any consent to serve any person in particular, was held not sufficient to gain a settlement. Now this case falls within the principle of the former of these; for the apprentice went not only with the consent, but with the express recommendation, of the first master to serve the second, and he went there to follow the same trade which his first master had exercised. It has been said that this case must be governed by *Rex* v. *Sandford* (p. 727); but there is a solid distinction between them. There the master gave up the indentures previous to the pauper's entering into the second service; but here the indentures were not given up till more than forty days had elapsed after the apprentice had served the second master: and that is sufficient to give him a settlement in that parish." *Buller*, J. "The pauper could gain no settlement by living as a hired servant with Edwards, because the indentures of apprenticeship still existed; and the only question is, whether the master did expressly consent to that service or not? For all the cases show that mere knowledge is not sufficient; knowledge does not imply consent. Now here was an express consent and recommendation of the first master to serve the second; and then the case comes precisely within *Rex* v. *Fremington*. If, indeed, the apprentice had not gone into Edwards's service, he would not have gained a settlement by serving any other person, because a general licence to serve whom the apprentice chooses is not sufficient. By going into the service of any other person, the apprentice would have gone without the express consent of the first master, and therefore might have been recalled by such master; but he could not have been recalled by the first master from the service of Edwards, because of the express consent to serve Edwards. This is distinguishable from *Rex* v. *Sandford;* for there the master had given up the indentures, and he had no longer any power over the servant; but here the indentures were in force during the first two months of the pauper's service with Edwards." The other judges concurred.

A general licence to serve whom the apprentice chooses is not sufficient.

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Giving up the indenture does not cancel it, but is evidence of consent.

Rex v. *Langham, Cald.* 120; 2 *Bott*, 569. Removal of William Ellingworth from Deansfield to Langham confirmed. Case:—The pauper was bound an apprentice by the parish of Deanshold to Benjamin Stimson, of Langham, weaver, to serve till the age of twenty-four years; under which indenture he served four years, when his master failed, and having no longer employment for him, told his apprentice he might go to his father at Oakham. Upon the apprentice's coming home, his father applied to one Beecroft, of Deanshold, weaver, to take the apprentice for the remainder of the term: the father of the apprentice then went to Stimson, who was at home under confinement, and told his wife that he had got a new master for his son: whereupon Stimson's wife went up to her husband's chamber, and informed him that the father of the apprentice was come, and said he had got a new master for his son, and desired the indentures might be given up; upon which Stimson gave the indenture to his wife, who delivered it up to the apprentice's father, Stimson having first made crosses upon it, as a token that he had resigned up the indenture and apprentice: the apprentice was under age. Soon after, Beecroft went to Stimson, to ask him whether he was willing to resign up his apprentice and to turn him over, as he was going to take him, if Stimson was willing, and his father would clothe him: Beecroft further said (if things came about) he hoped Stimson would not fetch him again; to which Stimson replied he never would. Beecroft then said there was no occasion for a deal of trouble in *turning him over*, if Stimson would be honest; and upon this, Stimson assured him he would never fetch his apprentice away; and Beecroft then declared, that if we have an agreement drawn to our satisfaction, it will be better than having so much trouble about it, and immediately went away satisfied that he might keep the apprentice *as a turn-over*. The apprentice stayed with Beecroft three years and a half by virtue of the above transaction, and an agreement was entered into between the father of the apprentice and Beecroft, in the presence of the apprentice, but he was no party to it, and the parish officers of Deanshold were perfect strangers to it. Beecroft kept the agreement and the original indenture. Lord *Mansfield*. "There is no difficulty in this case; the indenture continues in force; and the only question is, whether the service of the second was with the consent of the first master? for if so, it is a service under the indenture; of this there can be no doubt, for he consents expressly; he cancels the indenture, and directs it to be delivered to the father of the infant apprentice, who came to him for the purpose of this assignment, and he undertakes to the second master that he would not reclaim him." Both orders quashed.

The master agreed that the apprentice should work for his own benefit, but did not give up the indenture; he provided him a loom, and knew for whom he worked: Held, service under the indenture.

Rex v. *Offerton, Burr. S. C.* 802; 2 *Bott*, 566. The pauper, when twelve years of age, was by indenture bound an apprentice by the overseers for seven years. The pauper was a party to the indenture. Nearly six years after, the pauper and his master entered into an agreement, that the pauper, upon paying his master 12*d.* a-week and providing for himself, should be at liberty to work for his own benefit during the remainder of his term; and the master should find him a loom for the remainder of his apprenticeship; and the master to receive 12*d.* a-week as a satisfaction for his service. The indenture was not cancelled or delivered up. The pauper married and removed to Offerton, and there worked during the last forty days before the justices removed him from thence, with the same tradesman who employed his master; and the master provided him a loom, and knew with whom he was working; but did not give any particular direction or consent. The pauper received the profits to his own use. The master demanded of him the 12*d.* a-week; but the pauper was not able to pay him. The Court held, "that the apprenticeship continued; there was no dissolution or intention to dissolve it as between the original master and apprentice. The master knew that the apprentice worked in Offerton, and demanded the 12*d.* a-week for it. An apprentice may work in any parish with the consent of his master; and it is probable that the tradesman knew that he was an apprentice."

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The continuance of indenture inferred from payments made by apprentice to his first master.

Rex v. *Bradninch, Cald.* 461; 2 *Bott,* 570. The pauper was bound apprentice by the parish to C. Hill, till twenty-four years of age; he continued to live with his master till twenty-two, when his master agreed that if he would give him one guinea in hand, and two guineas more, (being one guinea a year during the residue of his apprenticeship,) the pauper should go and serve where he pleased; but the master said that he would not deliver the indenture, nor discharge him from his apprenticeship, for he considered him as his apprentice still: the pauper agreed to this, and paid his master a guinea in hand, and went into Gittisham and lived with his father, and paid him 6*d.* a week for his lodging. He hired himself as a labourer to Miss S. by the day, and continued to lodge with his father at Gittisham, and serve Miss S. till the expiration of his apprenticeship. At the end of the first year of his serving Miss S. he went to his master, Hill, and paid him one guinea for that year, according to the agreement; his master said, "*You continue to work for Miss S.; I think it a very good place, and hope you will continue in it.*" At the end of the second year he went and paid his master the other guinea, who said, you still continue to work with Miss S.; he replied he did; when his master said, he would look out for the indenture and give it him. The pauper did not know there was any conversation between the master and Miss S. respecting the apprentice, but Miss S. knew the pauper was an apprentice. The sessions held that the pauper gained no settlement in Gittisham. Lord *Mansfield.* "There can be no doubt in this case. The pauper was certainly not *sui juris;* for, if he had been, he would not have paid a guinea a-year." Order of sessions quashed.

In the report of this case in *Cald.* it is stated that the court were clearly of opinion that there was, in this case, with knowledge of the particular service, a consent; and more, a very strong approbation of it.

Where an apprentice agrees with his master for his discharge, and quits his service, but leaves the indentures till the money agreed for is paid, the indentures are not thereby discharged; and service under a second master, by the express consent of the first master, is a service under the indentures.

Rex v. *Chipping Warden,* 8 *T. R.* 108. R. Lymath was removed from Chipping Warden to Great Robright. Order quashed. Case:—R. Lymath, in 1776, was bound apprentice by indenture to W. Goodwin, blacksmith, for five years: he served G. for two and a half years under the indentures, when his master left off business, and went to reside in Marston. At that time the pauper agreed verbally with his master to give him 7*l.* for the rest of his time, his master not wishing to turn him over to any one, and it was agreed that the master should keep the indentures till the 7*l.* was paid, which was to be from time to time as the pauper could earn it, and was convenient to him to pay it. The pauper considered himself at liberty to work with any master he pleased, and did work with different masters till the harvest of 1779, when, at the request of Goodwin, he came to serve him as a labourer for about a month, and received his wages according to the rate usually given to labourers in harvest, the amount being deducted from the 7*l.* which the pauper had agreed to pay G. Goodwin afterwards *recommended* the pauper to serve one Cherry, a blacksmith at Marston, into whose service he went with the knowledge of G., and continued there about twelve months. The indentures were not delivered up till five or six years after the apprenticeship had expired. Lord *Kenyon.* "It is clear that in general an apprentice is not capable of contracting the relation of servant to any other master until the end of the term for which he was bound; but it is equally clear, that if the master and apprentice put an end to the apprenticeship by mutual consent, it is the same as if the indentures had never been executed, and the latter may gain a settlement by hiring and service with any other master before the expiration of the term for which he was bound; then there is a third case, that where the apprentice leaves his master, and enters into the service of another. If the indentures still subsist, he is not *sui juris,* but is incapable of gaining a settlement by serving another master, unless he serve with the consent of his former master, and in such case he gains a settlement, not as a hired servant, but as an apprentice. These are axioms in this branch of settlement law, and cannot now be called in question. Now what are the facts of this case? The pauper was bound an apprentice to a master residing

in Great Robright, who two years afterwards discontinued business: at this time the parties did not put an end to the apprenticeship: but, on the contrary, the apprentice agreed to pay 7*l.* to the master, who was to keep the indentures until that sum was paid, *the master all this time keeping a control over the apprentice;* the pauper then went into different situations, and among the rest he served a person of the name of Cherry, into whose service he went at the recommendation and with the knowledge of his first master, the indentures still continuing in force: then, according to all the authorities, this must be deemed a service under the indentures. My opinion, in this case, does not proceed on the ground that the pauper served Cherry a year as a hired servant, but that he served him under the indentures of apprenticeship with the consent of his original master." Order of sessions affirmed.

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A mere agreement to discharge the indentures on payment of a sum of money does not operate in discharge before *actual payment*, and a residence of forty days before payment gives a settlement. See *Rex* v. *Warden*, p. 691.

Rex v. *Gwinear*, 3 *Nev. & M.* 297; 1 *Adol. & El.* 152. P. Rule, jun., was removed from Gwinear to Camborne. Order quashed. Case:—P. Rule the elder, the father of the pauper, was on 1st June, 1789, bound by the parish officers of St. Erth to Richard Tredinnick, of the same parish, farmer, till twenty-one, as an apprentice in husbandry. The apprentice lived with his master some years in St. Erth, and served him in husbandry until he became reduced in circumstances and worked at the mines, employing his apprentice in the same work. The master then removed to the parish of Phillack, taking the apprentice with him. Whilst there, and about two years before the expiration of the apprenticeship, a dispute having arisen between the mistress and the apprentice, the latter left his place without the consent of his master, and never returned, but went to live with his parents in Camborne, his father working as a labouring miner in Hirland mine. While the apprentice lived in Phillack, his master worked at this mine, and the apprentice with him; after he had left his master he continued to work at the same mine under his father. Tredinnick, a few days after the apprentice had left him, found him working for his father in Hirland mine, and told his father that if he kept the apprentice, he (Tredinnick) would take up his wages. The father replied that he did not wish to keep the boy, but that he would not go back. It was then agreed that the boy should be given up to the father in consideration of four guineas, to be paid on the next mine pay-day, for the ores on which the father and son were then working. The agreement was made in May, and the money was accordingly paid on the next mine pay-day, the 16th of August following, when the indenture was delivered up by Tredinnick to the father. From the time when the apprentice left Tredinnick, he, with his master's knowledge, lived in Camborne with his father, who received his wages, supplying him with meat and clothes and other necessaries. After the apprentice became of age his father delivered up the indenture to him. The question was whether the pauper was settled in Camborne. *Littledale*, J. "There was no dissolution of the contract of apprenticeship, at all events, before the month of August. All that occurred before is merely agreement. If the four pounds had not been paid, it was not the intention that the indenture should be given up. *Rex* v. *Chipping Warden* (p. 723) is in point. It is not very material to consider whether there was a dissolution afterwards. I have no doubt that in May the pauper was working with his father under the apprenticeship. He was originally bound to work in husbandry; but afterwards, the master's circumstances being reduced, he worked as a miner, and the apprentice worked with his master as such. His father worked at the same business. It appears to me, therefore, that up to the 16th August the son was working with the father under the indenture." *Parke*, J. "I doubt very much whether the parties ever contemplated any dissolution, and whether it was not intended that there should be a mere transfer. Supposing a dissolution to have been intended, I question very much whether it was *competent* to the son and father to put an end to the indenture. It rather appears to me that it was not competent to them; and if that be so, the indenture could not have been put an end to. But, supposing that it was

A father and son cannot determine a parish indenture with consent of the master.

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competent to them to do so, I am quite clear that the indenture was not put an end to till the money was paid according to the agreement. Until then I think the agreement was only executory. It was clearly not considered as operating on the indenture till the money was paid. Upon the first supposition, it is perfectly clear there was a residence up to August under the indenture; and supposing that there was a dissolution in August, there was sufficient residence to gain a settlement before that time. The pauper had worked at the mine for his master, and then proceeded to work there for his father. It seems to be implied in the agreement that he is to continue to work in the same way as he had done for his master. A settlement, I therefore think, was gained." *Patteson*, J. "I am of opinion that there was a service between May and August under the indenture, whilst the boy was living with his father. If the money had not been paid, the master might have compelled the boy to return. I do not think it was the intention to put an end to the indentures. *Rex* v. *Harberton* (p. 731) would appear at first sight to favour the supposition that an infant parish apprentice *may* put an end to the apprenticeship; but upon looking into the case, it appears that the apprentice left his master within a month of twenty-one, and returned seven months after, and *then* procured the receipt; so that he was of age when the agreement was made. In this case, when the agreement was made the apprentice was not of age." Order of sessions quashed.

A parish apprentice, bound till twenty-four, served till, twenty-one, when his master, being about to leave the parish, told him that he might leave him and shift for himself, but, if he could not provide for himself, he might return to him: he quitted, and when about four months past twenty-one, bound himself by indenture as apprentice to another master for three years, and served with him the full term: He acquires no settlement by service under the second indenture.

Rex v. *Bow*, 4 *M. & Sel.* 383. Order of removal of John Hawkins from Bow to Okehampton quashed. Case:—The pauper, on the 24th of January, 1767, when he was nearly eight years old, was bound as a parish apprentice to Sillifant of Norththawton, to serve till he attained the age of twenty-four. He served until within a short time of his attaining the age of twenty-one, when his master being about to leave Norththawton, and no longer wanting the pauper's service, told him he might leave him and go where he liked, and shift for himself, but that if he could not provide for himself he might return to him. Upon this the pauper quitted Sillifant, but his indentures were not given up to him, nor cancelled, nor was anything said about them. Upon quitting Sillifant he hired himself to another person in Norththawton, and served until nearly four months after his being of age, when, without any communication with Sillifant, he bound himself as an apprentice by indenture to Webber at Okehampton, for three years, to learn the business of a tanner, to which indenture his father was a party as a security for his service. Under this indenture he served Webber for the three years. Lord *Ellenborough*. "If the pauper was not in a condition to convey to Webber a present right to his service at the time when he bound himself by indenture to him, I am at a loss to discover how it could enure as a valid binding afterwards. Now, at the time when the second indenture was made, the first master had not parted absolutely with the apprentice, though I agree that he had done that which might be an answer to any action by him on the indenture, or for harbouring his apprentice. Still this being but a parol agreement on his part that the apprentice might go whither he would, the master might by parol resume what he had granted by parol, the relation which had been created by deed not being capable of being dissolved by parol. The original indenture therefore still subsisted both as to master and apprentice: as to the master, because he might revoke his licence, and resume his authority; and as to the apprentice, because if he was unable to provide for himself, he was at liberty to return." *Le Blanc*, J. "The difficulty of maintaining that here was a good binding to Webber is, that there does not appear to have been any dissolution of the first contract; on the contrary, both parties contemplated that it still subsisted; for the licence given to the apprentice was to go and see if he could shift for himself, and if he could not, he was to return under the indenture. There was a sufficient reason for not giving up the indenture, in order that the parties might have the benefit of it." *Bayley*, J. "Unless the first indenture was at an end when the pauper entered into the second, he was not at that time *sui juris*

to contract, which I take to be the question, and that to say the second indenture was only voidable is no answer to it." Order of sessions confirmed.

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Telling an apprentice to go about his business and work for himself, where the indenture was not given up, is not a dissolution of the apprenticeship. S. P. *Rex* v. *Offerton, ante.*

Rex v. *St. Luke's, Middlesex*, 1 *Bla. Rep.* 553. W. Hutchins was bound a parish apprentice to Frost, a shoemaker in Southwark, till his age of twenty-four, and served him there three years. The master then removed to St. Luke's, taking the apprentice with him, where he served four years. The master then told him to go about his business, and work for himself; but the indentures were not cancelled, nor given up. The pauper hired himself as a journeyman to several masters of the same trade in different parishes: and F. did not know what master he worked with after he left him, nor ever called upon him to account for what money he earned, nor ever made any provision for him. He worked and lodged the last forty days of his apprenticeship in St. Leonard, Shoreditch. Lord *Mansfield.* "The whole turns upon the indenture of apprenticeship continuing. It is agreed that it did continue. In 1 *Mod.* 190, there is a strong case: A father, to whom the son was apprenticed, gives up the indenture: Held, not to destroy the apprenticeship, because the indentures were not cancelled. This case is not so strong as that. This is no service to the master, nor an assignment of the apprentice. The indenture continues and disables him from gaining another settlement." *Wilmot*, J. "I think the pauper continued an apprentice, and was incapable of gaining a fresh settlement by service, as not being *sui juris.* The only question that could be made is, whether such a general consent can operate as an assignment of the apprentice to another particular master? But this general dismission is a total dissolution of the apprenticeship, so far as it entitles the master to any future service. It is not carrying on the business of the master." *Yates*, J. "The master might have revoked his consent, and called him back at any time. There is no privity between the first and second master." *Aston*, J. "The difficulty has arisen from the apprentice happening to have hired himself to one of the same trade. Had it been another trade, no man could have entertained a doubt."

If an apprentice enters the king's service with the consent of his master it does not avoid the indentures

Rex v. *Hindringham*, 6 *T. R.* 557. H. Beck removed from Hindringham to Blakeney. Order quashed. Case:—The pauper, in March, 1780, aged seventeen, bound himself an apprentice to F. Wells, of Blakeney, mariner, for four years, and resided there under his indentures above forty days. When he had been an apprentice about thirteen or fourteen months, he went on shore at Burlington Bay, and meeting with a press-gang, entered as a sailor with the consent of his master, but the indentures were neither delivered up nor cancelled during the apprenticeship. He continued in the king's service about two years, and was then discharged, when he went to his father's house at Bale in Norfolk, and continued there for some weeks. At Whitsuntide, 1783, he hired himself to A. Wilson, of Hindringham, till the Michaelmas following, when he hired himself again to Wilson for a year, which he also served in Hindringham, and on the 2d of March in that year the apprenticeship expired. Lord *Kenyon.* "There is no ground for saying that the apprentice did any act to put an end to the indentures when he entered into the king's service. But I desire it may not be taken for granted, that an infant who binds himself apprentice,—a contract so notoriously for his own benefit,—may put an end to that contract at any time during his minority. I enter my protest against discussing that question now: it will be sufficient to determine it when it necessarily arises. In this case the pauper bound himself to Wells by indenture, under which he served in Blakeney more than forty days; afterwards, when he was pressed into the king's service, he agreed to go as a volunteer with the consent of his master, evidently implying that he did not then put an end to the indentures. It appears to me that the indentures still continued in force, and consequently that the pauper could not enter into a legal contract of hiring with Wilson at the time he engaged with him, he not being at that time *sui juris.*" Order of sessions quashed.

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Delivering up the indentures to a parish apprentice, when he is under age, does not discharge the apprenticeship.

Rex v. *Sandford*, 2 *Bott*, 572. William Webber was removed from Sandford to Bishopstawton. Order quashed. Case:—The pauper was bound an apprentice by the parish of Bishopstawton, at the age of eleven, to Edmund Sage, till twenty-four: he lived with Sage for five years, when his *master gave him up his indenture, and recommended him to live with William Verney, of Chittlehampton, thatcher*, with whom the apprentice *made an agreement as a servant* for three years: while he was with Verney, Sage had a conversation with Verney, and desired him to keep back some of the pauper's wages to provide him with clothes, apprehending that otherwise he would come upon him: about the expiration of that time he returned to Bishopstawton (where Sage then resided), and lived with one Toyte there, *with his master's knowledge*, who frequently conversed with Toyte while the pauper lived with him, but not upon the subject of his apprenticeship: after the pauper had lived with Toyte three months, *he came back to Sage's house, and lived with him for a month, paying his master 6d. a-week for his lodging.* Lord *Mansfield*, C. J. "It seems to me clear that the pauper could not gain a settlement after the first five years under the indenture *as an apprentice*, because neither party in fact considered the service as such: they considered the indenture as given up and put an end to for ever, so that the service was not, nor was intended to be, in the capacity of an apprentice; neither did the pauper gain a settlement as a *servant*, because there could not be such a service in point of law during the existence of the indenture: so that though in reality there was a service in point of fact, yet it cannot be applied to the purpose of gaining a settlement, because, in point of law, the indenture still subsisted." The other judges concurred.

The master gave up his farm and apprentice to his son. That son cannot cancel the indentures.

Rex v. *Notton*, *Burr. S. C.* 629; 1 *Bott*, 712. In this case Benjamin Watson, the pauper, when an infant, was bound out a parish apprentice to Hannah Cuttle, of South Hundley, widow, until he should attain the age of twenty-four years. After he had served about six years she quitted her farm to her son Stephen, and left the apprentice there with him. The apprentice lived with Stephen several years. Afterwards, being desirous to leave the service, he applied to his master, who told him he might go where he pleased. Whereupon he hired himself at several places, and received the wages to his own use. In May, 1766, Stephen gave up his indentures to him. In February, 1767, he hired himself to John Baildon, of Notton; and Stephen being told of it in conversation, said he thought it a good place for him. He served Baildon at Notton above forty days, and then attained his age of twenty-four years. The Court were clearly of opinion, that the service with Baildon in Notton was not a service under the indenture of apprenticeship, consequently his residence in that parish upwards of forty days was not sufficient to gain the apprentice a settlement there.

A parish apprentice, when under age, cannot consent to his discharge.

Rex v. *Austrey*, *Burr. S. C.* 441; 2 *Bott*, 542. F. Orton, at ten years of age, was, in April, 1744, bound a parish apprentice to S. Lythall, of Grendon, till his age of twenty-four. He served with his master there till Michaelmas, 1754, at which time the master, in consideration of 40*s.* then paid to him by the apprentice, agreed to discharge him; which receipt and discharge were indorsed by the master on the indenture, which he then delivered up to the apprentice. The apprentice then hired for a year, and served that year in Higham. At Michaelmas, 1755, he hired for a year, and served that year in Austrey. He was then upwards of twenty-three, but not twenty-four years of age. The removal was to Grendon, and the sessions quashed the order. Lord *Mansfield*. "The whole depends upon the question whether he was of age, or under age, at the time of his consenting to the discharge? And by comparing the dates as above, it appears that he was under age; and then his consent signifies nothing, for the consent of an infant apprentice is as if he had given no consent at all. And if so, his subsequent services can never be considered as performed by the master's leave and consent, and so as being a service of his master under the indenture; because this is no express and explicit leave and consent given by the master to the particular service, but was intended to be alto-

gether general, and is even founded in a mistaken apprehension that the apprentice could consent to his being discharged, which he, being an infant, was not capable of doing." The other judges were of the same opinion.

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But when of full age he may consent to his discharge, and the consent of the parish officers is not necessary.

Rex v. *Ecclesal Bierlow, Burr. S. C.* 562 ; 1 *Bla. Rep.* 592. The pauper, S. Wilshaw, being a parish apprentice, after he had attained the age of twenty-one years, agreed with his master to cancel the indentures, and the same were accordingly cancelled. Afterwards he hired and served a year in Warslow, which was within the term comprehended in the indenture. It was objected, that as the binding was by the parish he could not cancel the indentures without the approbation of the overseers. Lord *Mansfield*, C. J. "There seems to be no necessity of the parish officers joining to the consent to discharge this apprentice. There is no authority for it. And I see no inconvenience to the parish, or to any one else, in its being done without their concurrence. The act empowers them to bind the man-child out apprentice till he comes to the age of twenty-four. And the act was necessary to make valid the binding of the male parish apprentice till his age of twenty-four, for he could not be bound longer than till twenty-one without the aid of the act; and two justices are to assent to this. But the same reason doth not hold as to the discharge of the apprentice ; this concerns the master and the apprentice only. The latter part of the apprentice's time is of most service to the master: therefore the apprentice, being of age, if the master and he agree to it, they two may dissolve the contract; if so, then this person was *sui juris* when he hired himself at Warslow; and consequently he gained a settlement there by a hiring and service for a year."

An apprentice, bound with his father's consent may be discharged, although under age, by agreement of all the parties to the indentures.

Rex v. *Weddington, Burr. S. C.* 766 ; 2 *Bott*, 545. The pauper, T. Lawrence, was born in Chilvers Cotton, where his father then resided under a certificate from Weddington. When the pauper was of the age of eight years and a half, he bound himself apprentice by indenture, with his father's consent, (who was party to the indenture,) to W. Meigh, of Chilvers Cotton, for seven years, and served him there one year and a half, and then the indenture was destroyed, by consent of the master, the father, and the apprentice. The pauper, within half a year afterwards, bound himself apprentice by indenture, with his father's consent, to T. Maydlin, of Bulkington, for seven years, and served him in Bulkington for four years, and then this indenture was destroyed by consent of Maydlin, the father, and the apprentice. The pauper after this bound himself apprentice to Shaw, in Chilvers Cotton, and served him there two years. About three years after, he hired himself for a year to Smith, of Chilvers Cotton, and served him in that said parish for the year. He was removed to Weddington. Lord *Mansfield*. "The single question is, whether the indenture of the apprenticeship in Bulkington was void or not, there having been a former indenture, but such former indenture having been cancelled by agreement between the master and the father, and the apprentice? The case of *Austrey* (p. 727) was determined on particular circumstances. The question was, whether the parish officers who bound out the apprentice under a special authority ought not to have been consulted about discharging him, and to have given their consent to it? The whole policy of the 43 Eliz. might be defeated, if the master and parish infant apprentice could, by their joint consent alone, without the consent of the parish officers, discharge such a contract, and set the apprentice free from it. That case, therefore, is not applicable to the present. Here, the original contract was only between the father, the master, and the apprentice ; and all of them consent to the discharge. An infant may make his condition better, though he cannot make it worse. The reason why an infant may bind himself apprentice is because it is for his benefit. If he was discharged of the former indenture, he was at liberty to execute another."

The mother of an apprentice, before the expiration of

Rex v. *Skeffington*, 3 *B. & Ald.* 382. Removal from Halstead to Skeffington. Order confirmed. Case :—The appellants relied on an indenture of

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his apprenticeship, applied to his master to give him up to her, to which he assented, and the apprentice left him; but the indenture remained in the hands of the overseers, and was never applied for or given up: Held, that the apprenticeship was not put an end to by this agreement, although the master refused to take back the apprentice.

apprenticeship, dated 1805, by which the pauper bound himself apprentice to W. Dudgeon for ten years. A premium of 12*l.* was stated in the indenture to have been paid to Dudgeon with him by the parish of Tugby, which was also stated to have been paid by them out of a charitable donation fund belonging to that parish. No evidence, however, was given of the premium having been paid out of a charitable fund, except the above statement on the face of the deed, and the declaration of the parish officers at the time they paid it, that it was charity money. The deed was objected to as not having any stamp, but the objection was overruled. The pauper served under the indenture for four years in St. Mary, Leicester, when his mother applied to Dudgeon to give him up to her, she saying she had procured another master. The master said she might have him and welcome. They all agreed to part, and the boy went away with his mother. The indenture remained in the hands of the overseers of Tugby, and was never delivered either to the boy or his mother, nor applied for by any of the parties; but the master said he would have given it up if it had been at the time in his possession. The overseers of Tugby afterwards applied to Dudgeon to take the boy again; but he said he would not, adding, unless the magistrates make me take him again, I have done with him; and he never heard anything more on the subject. *Abbott*, C. J. "If it had been shown in the present case that this apprenticeship had ever been well constituted, I should have been of opinion, upon the authority of *Rex* v. *Bow* (*ante*), that the agreement between the parties in this case was not sufficient to put an end to the indenture. I think, also, that the fund out of which the premium is said to have been paid was a public charity within the meaning of the exception in the stamp act. But I think that there is no sufficient evidence in this case to show that the premium was in fact paid out of such a fund. It is stated in the case, as a fact proved by the master, that a premium of 12*l.* was paid with the apprentice. That being so, it would be very dangerous to say that the declaration of the parish officers should be admitted to prove the nature of the fund out of which it was paid, more especially when those persons might have been called to prove the fact. The case is not precisely the same as if a declaration of the parish officers had been offered as the only proof of payment. In that case the whole declaration would have been receivable. But here the fact of payment was itself proved. Upon that ground I am of opinion that the indenture ought not to have been received in evidence; and, therefore, that the sessions had nothing before them to show that the pauper was not *sui juris* at the time when he served for a year in Skeffington. The order of sessions must, however, be confirmed, because their ultimate decision, although founded on wrong grounds, was correct."

Recital in a deed not sufficient proof that the premium was paid out of a charity. See p. 641.

As a general rule, it is for the benefit of an infant not to dissolve an apprenticeship. Some evidence must therefore be given to show that it is for his benefit, for the court will not infer it.

Rex v. *Great Wigston*, 3 *B. & C.* 484; 5 *D. & R.* 339. John Samson was removed from St. Margaret, Leicester, to Great Wigston. Order confirmed. Case:—The pauper, when eleven years old, was bound apprentice to John Humberston for seven years. The indenture was executed by the master, the pauper, and the grandfather of the pauper; the pauper's father being a soldier abroad. The grandfather paid a premium of 7*l.* The pauper served H. under this indenture between three and four years at Great Wigston, when some disagreement taking place between them, H. agreed to sell the pauper the remainder of his time for sixpence. The pauper paid H. the sixpence, and left him the same day. The indenture had never been in the possession of any of the parties, but had been kept for all the parties by the person who prepared it, and no application was made for it to be delivered up. The grandfather was not even privy to the agreement for parting. A few days after the pauper left H. he bound himself apprentice to Thomas Wain, of St. Mary, for seven years, and served him under the indenture for five years, and resided during that time in that parish. *Abbott*, C. J. "I am of opinion that the order of sessions was right. It is a general rule of law that an infant cannot do any act to bind himself, unless it be evidently for his benefit. Binding

himself an apprentice has been considered such an act, and therefore it has been held that an infant may be a party to an indenture of apprenticeship. But if the act of binding himself an apprentice is for the benefit of the infant, it is impossible to say generally that it is for his benefit to dissolve such a connection, for such a proposition involves a contradiction. That being the general rule of law, we must inquire whether the dissolution of the apprenticeship here was for the benefit of the infant. In *Rex* v. *Mountsorrel*, the master had run away and deserted the apprentice; the latter, therefore, could no longer derive instruction or support from him. Upon that ground the court thought that it was for the benefit of the apprentice to be released from the indenture, and in my opinion rightly, because otherwise he must have remained unemployed and unsustained. Here there are no facts stated from which we can infer that the dissolution of the apprenticeship was beneficial to the infant, and therefore this comes within the general rule; and the first binding never having been dissolved, the second is a nullity, and no settlement could have been gained by service under it." *Bayley*, J. "The sessions were clearly right in the decision to which they came upon this case; the only error they have committed is, that they have sent a case for our opinion upon which no reasonable mind could entertain a doubt." *Holroyd*, J., concurred.

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Where an infant was bound apprentice by an indenture, he and his master being the only parties, and after serving some time, the master having run away, he procured the indenture to be given up to him with his master's consent, and afterwards served a year: Held, that it was for his benefit, under the circumstances, that he and his master should be at liberty to put an end to the indenture.

Rex v. *Mountsorrel*, 3 *M. & Sel.* 497. Removal from Burton Lazars to Mountsorrel. Order confirmed. Case:—The pauper, H. Henfrey, in 1807, being under age, bound himself apprentice by indenture for seven years, to a person residing in Mountsorrel, the pauper and the master being the only parties to the indenture. When the pauper had served about a year, the master left his house and ran away for debt; in consequence of which the pauper applied to him by letter to give up the indenture, and with the master's consent the indenture was given up to the pauper by the person who had the custody of it; the term of seven years not having then expired, and the pauper being still under age. The consent of the pauper's mother, who was his only surviving parent, was not asked at the time of making the indenture, or when it was given up. The pauper, after the indenture was given up, and during the term for which the indenture was made, and while he was under age, hired himself as a yearly servant. Lord *Ellenborough*. "Is not this a case in which it was clearly for the benefit of both parties that the indenture should be put an end to? The master had run away, and was no longer in a situation to afford instruction or maintenance to his apprentice; therefore, if the indenture had continued, the consequence must have been that the apprentice would have remained in a state of ignorance and starvation. If that were a state for the benefit of the infant, there would be something in the argument. But as it is, the parties have done that for themselves which the magistrates, upon application to them, would have ordered to be done; they have discharged themselves of the indenture, which was burdensome to both parties. Under these circumstances, I am of opinion that it was competent to them to discharge themselves of each other, since the continuance of the contract would certainly have been of no benefit to the master, and as certainly would have been prejudicial to the apprentice. The benefit of the infant is to be regarded, and, in looking to that, one cannot but see that idleness, and the probability of extreme indigence, were the necessary consequences of continuing the indenture, from which the magistrates would have interposed to relieve him. I therefore think that we do not indulge any mischievous discretion in the infant, when we permit him to redeem himself from such a probable state of indigence and idleness. Then if this be so, the pauper was no longer precluded from entering into another service than while his indenture continued." *Le Blanc*, J. "In *Rex* v. *Hindringham* (p. 726), the master and apprentice did not consent to the indentures being delivered up or cancelled." *Bayley*, J. "I consider *Rex* v. *Hindringham* as having proceeded upon the ground that it was for the infant's benefit that the indenture should continue. Here we are in a case where it was notoriously to the prejudice of the infant that the indenture should continue; there-

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fore I think it was in the power of the master and infant together, by vacating the indenture, to dissolve the contract.

Indentures being exchanged between the master and apprentice, amounts, in law or equity, to a cancelling of them.

Rex v. *St. Mary. Kallendar, Burr. S. C.* 274; 2 *Bott*, 540. J. Miles, the pauper, was bound by indenture an apprentice for seven years to J. Gregory, of St. Michael's, and under that indenture served him in St. Michael's for five years; when he left his master, the indentures were exchanged between the master and the apprentice's father, by consent of the apprentice. About a year afterwards the father of the pauper contracted with W. Stockdale, of Twyford, for binding pauper apprentice to Stockdale for four years; and in consequence of that agreement the pauper went to Stockdale on trial, and lived with him in Twyford for one year and three quarters; but no indenture was executed, nor any other agreement made. While the pauper lived with Stockdale, Gregory knew of his being in the service of Stockdale. But no other proof was made that Gregory consented to the contract made between pauper's father and Stockdale. By *Lee*, C. J. and the court: "There can be no ground to consider this as a settlement at Twyford, but upon supposing the first indentures to have subsisted, and that the service at Twyford was under them. But that could not be; because the exchange of the indentures certainly amounted, either in law or in equity, (and they are the same thing in this case,) to a cancelling of them, and a determination of the apprenticeship under them. Besides, there is no consent of the original master, but the contrary is apparent; his knowledge of the fact doth not at all imply his consent to the transaction. The apprentice's living at Twyford was not under, but contrary to, the first indenture; it was in consequence of a fresh agreement, and for a new term.

Exchanging is virtually a cancelling of indentures.

Rex v. *Titchfield, Burr. S. C.* 511; 2 *Bott*, 630. P. Warfield bound himself apprentice by indenture to W. F., and inhabited with his master above forty days at M., but falling sick, he on account thereof, and with the consent of his master, went to his father in Bewley, and there continued forty days, and was sick all that time, and to the time the order was made. On his going to his father the indentures were mutually given up, but not cancelled. The court held that an inhabitancy by reason of sickness shall not gain a settlement, and also that there is no difference between the indentures being *given up*, and being *cancelled*. They amount to the same thing.

A parish apprentice, being of age, paid money for his discharge, but the indentures were not delivered up, though offered to the apprentice's father, who did not take them because he thought it not material.

The indenture is considered as not existing from the time the money was paid.

Rex v. *Harberton*, 1 *T. R.* 139. Order of removal of J. Egbert from Harberton to Ashpreington quashed. Case:—The pauper was bound by the parish of Harberton as an apprentice to W. Soper, until twenty-four years of age: he continued with his master until he was within one month of twenty-one years of age, when he deserted his service, and was absent seven months, and then he returned to his father at Harberton, where he stayed a few weeks, and then offered himself as a servant to one Edmonds, of Ashpreington, who refused to take him until he showed a receipt from his master, Soper, for buying off his time: the receipt was "Feb. 24th, 1783. Received of J. Egbert 4*l.* 4*s.* for the remainder of his time, by me, W. Soper." The receipt was obtained by the pauper's father, at the request of the pauper. At the time the receipt was signed and the money was paid, Soper offered to give up the indenture, which the father did not take, not thinking it material, and the pauper himself was not present; the master continued to keep the indentures uncancelled until after the pauper was twenty-four years of age, when he delivered them up to him: after signing the receipt, the pauper, being then in his twenty-second year, hired himself for a year to serve Edmonds, and also another year, both of which he served at Ashpreington: at the time of the pauper's hiring himself to Edmonds he showed him the receipt. Lord *Mansfield*, C. J. delivered the judgment: "As I have often said, it is of more consequence in most cases that the law should be certain than what the law is: it is particularly so in questions relative to settlements. And perhaps if this court had never gone farther on the present subject than to inquire whether the indentures were in fact cancelled or delivered up, it would have been

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more convenient than to have decided on the particular circumstances of each case, and to have examined whether they amounted to a relinquishment or cancelling of the indentures or not. But the cases have gone beyond that line; and therefore it might now be attended with more inconvenience to the public to overturn, than to adhere to them; even though we may not perhaps approve of the principles on which they have been determined. Where the facts stated are such that upon an action of covenant brought by the master against the apprentice, the pauper could plead the matter in bar, it seems to be settled that the indentures should be considered as cancelled. And to that extent the rule may be carried without much mischief; but if extended to every possible case in which a court of equity would give relief, it would be productive of great inconvenience and uncertainty: it would increase the litigation of the poor laws, which are already a disgrace to the country, and would leave every case so much upon its own circumstances, that it must necessarily travel through every stage which the law allows, before the parties are to know what they are to expect. If the justices at their sessions, or even out of sessions, are to be erected into chancellors, it cannot but happen, but that on the same facts very different decisions must be made. Honest and good men, when left to decide *secundum discretionem boni viri*, must and will vary in their sentiments. Such a rule, therefore, would be highly inconvenient, and indeed would amount to say there was no rule at all. The question then is, whether the facts stated here are such as put an end to the indentures in law, or could be pleaded in bar to an action of covenant on them? In that light I shall consider it. The master received four guineas as a satisfaction for the remainder of the time: he gave a receipt for the money as such, and offered them to deliver up the indentures: if it was not done in fact, it was owing to the pauper's father not thinking it material; and on the pauper's attaining the age of twenty-four years, the master did in fact deliver up the indentures. After paying the money, if an action had been brought by the master on the indentures, the pauper might have pleaded accord and satisfaction in bar; or if the master had refused to deliver them up upon demand, the apprentice might have brought trover or detinue for them. The indentures must be considered as not existing from the time the money was paid, and then the pauper gained a settlement by hiring and service at Ashpreington." (See *Rex* v. *Gwinear*, p. 724.)

See *Rex* v. *Foulness*, (*ante*).

The bankruptcy of the master of an apprentice did not discharge the indentures, but 6 Geo. IV. c. 16, enacts that it shall.

By 6 Geo. IV. c. 16, s. 49, (p. 619,) it was enacted, that where any person shall be an apprentice to a bankrupt at the time of issuing the commission, the issuing of such commission shall be and enure as a complete discharge of the indenture or indentures, whereby such apprentice was bound to such bankrupt. A contrary doctrine has been held before this statute (which took effect from 1st September, 1825). Thus in *Rex* v. *Buckington* (2 *Bott*, 630), Richard Allen was bound apprentice at twelve years of age to John Cary, whom he served for two years, when J. C. became a bankrupt, upon which Allen, without the consent of Cary, hired himself as a servant for a year to Joshua Glover, of Shepton Bechamp, and served him accordingly for two years. During this service his apprenticeship expired, and Cary delivered up the indenture to Glover. The court were of opinion that Allen gained no settlement in Shepton Bechamp, for that the bankruptcy of the master did not discharge the apprentice from his indentures.

An apprenticeship is determined by the death of either master or apprentice. See however 32 Geo. III. c. 57, s. 2, p. 609.

Rex v. *Eakring*, *Burr. S. C.* 320; 2 *Bott*, 541. Order of removal of G. Witworth from Eakring to Selson discharged. Case:—Witworth was put out a parish apprentice to R. Tomlinson, of Eakring, till his age of twenty-one years. He served his master under this indenture for several years at Eakring. About three years before he attained twenty years of age he ran away from his master, and loitered for some time about the country. In the mean time his master died. And at Martinmas after, Witworth hired himself as a servant to W. Flint, of Selson, for a year, and served him that year at Selson, and received all his wages to his own use, the executors of Tomlinson taking no notice of him. But he had not

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Apprenticeship a personal trust.

A parish apprentice, not living, at the time of his mistress's death, with her appointee, under the provisions of 32 Geo. III. c. 57, cannot gain a settlement by service with another during the three months, though with the express consent of such appointee.

at the expiration of the said service attained his age of twenty years. It was contended that after the master's death the apprentice was at liberty to hire himself. Apprenticeship is a personal trust between the master and servant, and is determined by the death of either master or apprentice. The counsel on the other side owned that it was not defensible. And the court was of the same opinion. (See *Baxter* v. *Burfield*, 2 *Str.* 1267.)

Rex v. *Sheepshead*, 15 *East*, 59. Removal of T. Lees from Sheepshead, in Leicestershire, to Uttoxeter, quashed. Case:—The pauper was put out apprentice by a parish indenture, dated 19th of April, 1788, by the parish of Uttoxeter, to Mary Rawlins, of Uttoxeter, and served her there from that time for three or four years, till March, 1791, when she gave up the farm to her son, who agreed to take the apprentice into his service and keep him, and Mrs. Rawlins was to have nothing more to do with him. This was previous to the 32 Geo. III. c. 57. During the time he lived with the son, Mrs. Rawlins died; the pauper continued some time longer with the son in Uttoxeter, serving him, when John Rawlins told the pauper he might do what he could for himself, and if he could not get a good place he would get one for him. The pauper then went and hired himself for fifty-one weeks to Mrs. Phillips, in the parish of Field. John Rawlins, on being informed by the pauper that he had so hired himself, asked the pauper what sort of a place it was that he had got; and on the pauper's describing it as a good place, John Rawlins said he was glad it was a good place, and he might go thither. The pauper went into Mrs. Phillips's service, stayed above forty days with her, and Rawlins gave him a suit of clothes at that time. When the pauper left Mrs. Phillips, he sent his wife to Rawlins for his indentures, and they were delivered to her. Lord *Ellenborough*, C. J. said, "That there was no need to cite cases to show that after one assignment of the apprentice, every assignee may go on assigning *ad infinitum;* that there were cases enough to that effect. But the question here was, how far the statute had altered the law?" His lordship asked if there were any cases since the statute. To which it was answered that there were none; but that the provisions of that statute did not affect the present case. It enacts, "that upon the death of any master or mistress of a parish apprentice during the apprenticeship, the covenant in the indenture for maintenance of the apprentice shall not continue in force longer than three months after the death of the master or mistress." (See Vol. I. tit. Apprentice.) But by sect. 5 there is a proviso that the act shall not extend to any parish apprentice, but to such only as shall be living with and make part of the family, or be in the actual employment of such original master or mistress, or of any subsequent master or mistress appointed under that act, at the time of the death of such masters or mistresses respectively. That here the pauper was neither living with nor with part of the family of Mrs. R. at the time of her death, nor of any subsequent master or mistress appointed under that act. Lord *Ellenborough*, C. J. "The words 'subsequent master or mistress' mean such as become so by the provision of the statute; it is the service under the authorised substitution that the act applies to. But how is the substitution by the party a substitution under the act? If it had not been for the act, I should have been with the appellants."

The manner in which apprenticeships are affected by certificates will be explained under the head *Certificates.*

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15. Evidence in Settlements by Apprenticeship.

As an apprenticeship can only be constituted by *deed*, the deed must be proved, or if it is lost or destroyed, *secondary* evidence of its contents may be given.

The register secondary evidence.

By 42 Geo. III. c. 46 (p. 612), overseers of the poor are directed to keep a book for entering the name of every apprentice bound out by them, and each entry is to be signed by two justices, according to a form given in

a schedule; and by section 3, it is enacted, "that every such book shall be deemed to be sufficient evidence in all courts of law whatsoever in proof of the existence of such indentures, and also of the several particulars specified in the said register respecting such indentures, in case it shall be proved to the satisfaction of the court that the said indentures have been lost or destroyed.

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By sect. 2 a penalty is attached to the not providing such books.

By sect. 5 a like entry shall be made when an apprentice is assigned, under 32 Geo. III. c. 57.

If an indenture be lost, other evidence may be received of its contents and existence.

Rex v. *East Knoyle, Burr. S. C.* 151; 2 *Bott*, 644. The special case from the sessions in the part relating to this point, was as follows: "And *it appears* to this court, upon the evidence now given, that J. B. was bound apprentice to W. W., of East Knoyle, cordwainer, and that he served," &c. &c. "But the indentures were not produced, neither did it appear to this court whether the duty of 6*d.* in the pound, directed to be paid by the 8 Anne, c. 9, was paid, or whether the indentures were stamped." It was objected that evidence not legal had been received, for parol evidence of an indenture had been received which they state not to have been produced, and they give no reason for not producing it. And also that it did not appear that the duty was paid or the indentures duly stamped. But the court overruled the objection, for it is stated "that it *appeared to them* that he was bound, and that it is not necessary that this evidence should appear to *us*. Perhaps the indenture was *lost*, and in that case could the justices receive no other evidence of the binding? And as to the duty and the stamp, they do not say the duty was *not* paid, or that the indenture was not stamped."

In 1806, a question arose on an indenture made in 1774 or 1775, which was lost. The presumption that all was rightly done after the lapse of so many years is right, notwithstanding negative evidence of stamp officers that such indenture had not been stamped, &c. during the above period.

Rex v. *Long Buckby*, 7 *East*, 45. Removal of the pauper from Long Buckby to Newport Pagnell quashed. Case:—The pauper, in 1774 or 1775, was bound apprentice to J. D., of Long Buckby, shoemaker, for seven years, for a premium of 12*l.*, which was paid, and the indenture executed by the pauper, his mother, and Dickens, the master, with whom the pauper served his full time, in Long Buckby. Only one indenture was executed, which after seven years was given to the pauper, and was proved to have been lost. For twelve years past the pauper had resided at Long Buckby, during which time he had often been relieved by that parish, and had received *town's money* from it, which *town's money* is given away at Christmas to parishioners. No further evidence was given by the appellants: but the respondents proved, by the deputy registrar and comptroller of the apprentice duties, that it did not appear that any such indenture had been stamped with the premium stamp or enrolled, from 1773 to 1805. But the sessions presumed that all had been rightly done. Lord *Ellenborough*. "The question before the justices was, whether the presumption that all was rightly done, after the lapse of so many years, were sufficiently rebutted by the negative evidence of the officer; they thought not, and we cannot say they have done wrong, for the presumption of law is to be favoured; and against the negative evidence they may have set the possibility of an irregularity in the returns made to the office." Order of sessions confirmed.

The loss of the indenture must be proved. Stamp not always presumed.

Rex v. *St. Helen's, Abingdon, Burr. S. C.* 292, 735; 2 *Bott*, 600. The evidence relating to the indenture was, J. Hudson, the mother of Joseph Hutt, the father of the children removed (who had absconded), gave in evidence that Joseph, her son, in 1733, "was bound apprentice to his grandfather for seven years; and that the indenture was delivered into the custody of W. H., his grandfather, as she had been informed by Joseph; she never saw the indenture, and knew nothing of it, but from the information of Joseph; it was reputed in the family that Joseph was his apprentice; and he was so described in the grandfather's will." Joseph served the grandfather five years in St. Helen's under the indenture. The grandfather provided for Joseph during those five years in clothes and necessaries; the grandfather died in 1738, leaving M. H. his widow, and John H. his son; application was made by the parish of St. Saviour, in December, 1748, to John, who then lived with his mother in the house where the grand-

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father died, and where his goods and effects were, to know whether he had in his custody any indenture of apprenticeship between William and Joseph, and Joseph said he could not find it. And here the inquiry stopped as to him and all other persons. And this was the only evidence that the indenture of apprenticeship was lost. John Hutt gave in evidence that he was employed by his father, William Hutt, to draw an indenture between his father and Joseph, which he did, but not on stamped paper; and that after the death of William Hutt, Joseph refused to serve his widow, because the paper writing was not stamped. The removal was of Joseph's wife from St. Saviour's to St. Helen's, and was confirmed by the sessions. And *per curiam:* "There is not stated enough to show that this is a binding within the act." Both orders quashed.

The loss of the indenture and counterpart must be proved.

Rex v. *Castleton*, 6 *T. R.* 236. Martha Pedley was removed from Castleton to Bomford. Order quashed. Case:—The pauper was alleged to have been bound an apprentice to N. Timms, of Castleton, by indentures, about 1780. There were two parts of the indenture, one of which remained with the parish of Castleton, and was destroyed; the other was given to Timms, who delivered the same to Miss Taylor, of Bomford, at the time of the assignment hereafter mentioned. Application was made to Miss Taylor, not then nor now residing at Bomford, for that part of the indenture so delivered to her, who said she could not find the same, nor did she know where it was. Miss Taylor is living, but was not subpœnaed to the sessions. Timms afterwards, by parol, assigned the pauper to Miss Taylor, in Bomford, and the pauper, with his consent, served her in Bomford upwards of forty days. The sessions were of opinion that the above was not sufficient evidence of the indenture. The only question is, whether that part of the indenture which was delivered to Miss Taylor is properly accounted for? The court thought the case too clear for argument; that if the indenture could not be produced, evidence must be adduced to show that it was lost or destroyed. Here it was traced to the hands of Miss Taylor, and no further evidence was given to show what was become of it. Order of sessions confirmed.

Proof by an apprentice, that when his apprenticeship expired he asked his master for the indenture, who said it was with the overseers; and that their successors had searched for the indenture, but could not find it; is not sufficient, the master being alive, and not subpœnaed.

Rex v. *Denio*, 7 *B. & C.* 620; 1 *M. & R. Mag. Ca.* 91. The pauper was bound by the overseers of Llanbeblig apprentice to John Connell, a hatter, residing at Pwllhely, in Denio, about twenty-three years ago, by an indenture for seven years, in which the pauper said he believed there was a stamp, that it was signed and sealed, but that there were no justices present at the time of the signing and sealing of the indenture, nor did the pauper recollect being at any other time before any justice respecting it; there was no evidence that the assent of two justices had been given, or that the parish officers were parties to the indenture; the indenture was kept by Connell, and the pauper never saw it afterwards: the pauper served in Denio, under the indenture, for the seven years; when the apprenticeship expired, the pauper asked Connell, who was then a rated inhabitant of Denio, but did not reside or pay taxes there when the appeal was tried, for the indenture, who said that he had not got it, but that it was with the overseers of Llanbeblig. No other witnesses were called, nor any further evidence given respecting it, except that the present parish officers of Llanbeblig proved at the trial that they had searched among the papers belonging to that parish for the indenture, and that it could not be found; and that all the parish books and papers of about that time were missing. *Bayley*, J. "The decision in that case (*Rex* v. *Morton*) did not proceed on the ground that the declaration of the executrix was admissible, but that of the declaration of the pauper was admissible, so as to show a possession of the indentures by him; it showed also that further search or inquiry was necessary, because he stated that it had been given up to him, and that he had burnt it. In this case the master was living, and might have been called as a witness to prove either that he had delivered his copy of the indenture to the parish officer, or had destroyed it. His declarations were clearly not admissible in evidence. There was not sufficient evidence to show that a *boná fide* and diligent

search was made for the instrument, where it was likely to be found, so as to let in parol evidence of its contents. *Rex* v. *Castleton* (p. 736) is precisely in point.

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Declaration of deceased apprentice respecting loss of indentures and their contents inadmissible, where it did not appear they had ever been in his possession, and the court refused to send the case back to be restated.

Rex v. *Rawden*, 4 *Nev. & M.* 97 ; 2 *Ad. & Ell.* 156. On appeal against an order for the removal of Mary Oldfield, the widow of Thomas Oldfield, from Golcar to Rawden. Order confirmed. Case :—The respondents relied upon a settlement by apprenticeship alleged to have been gained by Thomas Oldfield in the appellant township. The indentures were not produced, but it was proved that they had been executed by Thomas Oldfield and his father and the master ; and to prove the loss of the indentures, so as to let in parol evidence of the contents, the pauper, Mary Oldfield, was called by the respondents. The pauper stated, that a short time before her husband died, and during the illness which terminated in his death, she had some conversation with him about the indenture. She was then asked by the respondent's counsel what that conversation was. This was objected to on behalf of the appellants, but after argument the court decided that the evidence was admissible. She then stated that she had asked her husband what had become of his indentures, and he said that he had got them away from his master after the end of his apprenticeship, and had worn them in his pocket till they were all to pieces. Parol evidence was afterwards admitted of the contents. The question for the opinion of the court was, whether the above conversation was admissible in evidence or not. Lord *Denman*, C. J. " If the statement of the case was incorrect, it should have been set right before. This is at any rate a dangerous kind of evidence, and to be received with caution ; and unless the requisite proof had been first given as to the possession of this indenture, the pauper's conversation on the subject was clearly not admissible. In *Rex* v. *Morton* (p. 738), inquiry had been made of the master's executrix for the indenture in question ; here no such fact appears." The other judges concurred. Order of sessions quashed.

To prove that an indenture of apprenticeship had been signed only by one overseer, and that only one had been appointed, the overseer of that year must be subpœnaed.

Rex v. *Stoke Golding*, 1 *B. & Ald.* 173. On an appeal against an order, the question was, whether one person only, or more than one, had been appointed overseer in a particular year ? The respondents, who in order to vacate an indenture of apprenticeship, had to prove that only one overseer had been appointed in that year, had given notice to the appellants to produce all books and writings in their custody and power relating to the appointments of overseers ; the appellants being called upon to produce under this notice, produced one parish book, which was the only one in existence, and the parish officer who produced it, proved that no appointments were kept by the parish : the respondents then proceeded to inquire of a witness as to there having been in the particular year one or more overseers ; but on an objection being taken, the sessions held, and K. B. confirmed their opinion, that as the appointments had been in writing, parol evidence could not be admitted. " The question," said Lord *Ellenborough*, " is, whether the justices below have done wrong in rejecting the parol evidence ? This is clear that the parol evidence could not be admitted until the case was ripe for the admission of secondary evidence ; now it could not be considered as ripe for that purpose until the respondent parish had exhausted all the proper means of procuring the primary evidence. Have they done this ? First, as to the appointment itself, they gave a notice to the parish ; and supposing the parish had the actual custody, that notice would have been sufficient, but this does not appear. Have they then the legal custody ? Certainly not, for the legal custody is in the officer who is the person most interested in the instrument, and who requires its production as a sanction for those acts which he may be called upon to do under its authority. Now here there has not been any notice to the overseer himself. I think, therefore, that as in this case there has been omission of the means of exhausting the primary evidence, recourse could not be had to that of a secondary nature." *Holroyd*, J. " The law presumes the appointment to be in the custody of some of the overseers, who are responsible for the acts done under it. Notice, therefore, should have been given to him."

The overseer is the proper custos of his appointment.

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Proof of loss of indenture.

Rex v. *Morton*, 4 *M. & Sel.* 48. It appeared that only one part of an indenture had been executed, that the pauper and master were both dead at the time of the trial, and that an inquiry for it had been made of the pauper shortly before his death, who said that the indenture had been given up to him after the expiration of the apprenticeship, and that he had burnt it, and an inquiry had also been made of the daughter and sole executrix of the master, who said she knew nothing about it; no evidence was given of any search made by any one, either amongst the papers of the master, or of the pauper. The Court of K. B. were of opinion, that a sufficient inquiry had been made to render parol evidence of the contents admissible; and the distinction made between this case and *Rex* v. *Castleton* (p. 736) was, that in that case there was evidence of a fact which made a further search necessary; but that in this case the same information which traced the instrument into the pauper's possession, plainly showed that any further search would have been nugatory. Here there was no proof that the instrument ever existed in the possession of the pauper, unless his declaration could be taken as evidence; and if it could, he declared in the same breath that it existed no longer. When therefore the pauper, by whose information alone the parties were acquainted with the fact of his having had the instrument in his possession, at the very same time declared that it was destroyed, it became unnecessary to search among his papers. See also *Rex* v. *Piddlehinton*, (*post*).

It has been observed, that parol evidence of an indenture ought to be admitted with great caution, and not without sufficient proof that the original could not be come at. And in case of parol evidence, it seemeth that all those circumstances, without which the indenture would not be good if produced, ought to be proved satisfactorily to the court; as that the indenture was written upon stamped paper or parchment; that it was executed by the parties; what sum (if any) was given with the apprentice; and that an additional stamp upon the account of such sum of money or other valuable thing was also impressed. Otherwise, where the indenture upon the face of it would be bad, it may possibly be secreted by those whose interest it is that it should not appear.

If it appear by cross-examination, or otherwise, that the lost or destroyed indenture was never legally stamped, then, although the fault was attributable to the party making the objections, it cannot be received in evidence (*Rex* v. *Castle Morton*, 3 *B. & Ald.* 588; *Rippiner* v. *Wright*, 2 *Bar. & Ald.* 478), unless the loss or destruction was within the time allowed for stamping; (*Bousfield* v. *Godfrey*, 5 *Bing.* 418).

Execution of an indenture must be proved by the party calling for it, though it come out of the hands of the adverse party.

In *Gordon* v. *Secretan*, 8 *East*, 548, *Ellenborough*, C. J., said, "That *Rex* v. *Middlezoy* (*a*), which was much questioned at the time, had been since overruled; and that it was not enough to give notice to the opposite party in a cause to produce an instrument in his hands, in order to dispense with any further proof of it by the party giving the notice; but that the production of it at the trial, in pursuance of such notice, did not supersede the necessity of proving it by one of the subscribing witnesses, if any, as in ordinary cases." And *Lawrence*, J., said, "That it had been so decided by Lord *Kenyon* in case of a will, which the adverse party, in whose hands it was, had notice to produce and did produce, that the party calling for it was bound to prove it by calling one of the subscribing witnesses."

See also *Pearce* v. *Hooper and others*, 3 *Taunt.* 62; and *Orr* v. *Morice*, 3 *Br. & B.* 139.

Where it appeared that an indenture of apprenticeship, twenty-four years old, the expenses of which the overseers had paid, was sent to those

Rex v. *Stourbridge*, 8 *B. & C.* 26; 1 *M. & R. Mag. Ca.* 297. George Layton was removed from Bromsgrove to Stourbridge. Order confirmed. Case:—The mother of the pauper proved that about twenty-four years ago she received some money from the overseers of Stourbridge to put her son out apprentice, and that she accordingly put the pauper, at the age of about seven years, apprentice to William Clay, of Bromsgrove, who was her brother-in-law; that the indenture was signed by her, the pauper, and the

(*a*) Where a contrary doctrine had been held.

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master, who had filled it up; that she gave the indenture to Nanny Badger, to take to Stourbridge to the overseers who had given her the money to pay for the stamp for it; that it was directed to the overseers of Stourbridge; that N. B.'s husband was a market-gardener, and used to attend Stourbridge market; that sometimes he and sometimes his wife went to the market; and the indenture was to be carried to the overseers either by the husband or the wife, when they went to the market: that both N. B. and her husband were since dead, but that she had survived her husband; that she did not know whether N. B. had left any will, but she had heard that she had. The overseer of Stourbridge stated, that he had searched diligently in the chest where the papers of the township are kept for the indenture, but had not been able to find it; and he had applied to the executor of the husband of N. B., who had informed him that the indenture had never come to his hands, and that he was certain that no such paper was in the husband's possession when he died. Secondary evidence was then offered of the due execution and contents of the indenture; but the evidence was disallowed. Lord *Tenterden*. "The question is, whether there was such reasonable evidence of the indenture having been lost as entitled the appellants to give parol evidence of its contents? Considering the nature of the instrument, and the circumstances of the case, I am of opinion that there was. It seems to me, that if care had been taken to preserve the indenture, it would have been deposited in the parish chest, and there found; and that not being found there, the fair presumption is that it was lost. If we were to hold otherwise, and were to require the sort of proof which it has been contended ought to have been adduced, it would be necessary, in such a case, to produce not only the parish officers themselves for the year in which the binding took place, if living, or their representatives if dead, but the parish officers or their representatives for every year, no matter how many, between the date of the indenture and that of the inquiry. Such evidence would be endless and impracticable, and it would be unjust and absurd to require it. Upon this short ground, I am of opinion that the order of sessions is wrong." *Bayley*, J. "I am entirely of the same opinion. The parish chest was the natural and probable place for this indenture to be found in. Search has been made for it there, and it cannot be found. The only reasonable inference is that it is lost. Then parol evidence of its contents ought to be received. The case must be re-heard."

overseers, and was not to be found in the parish chest: Held, that it might be presumed to be lost, and that secondary evidence of its contents was admissible.

Rex v. *St. Mary-le-Bone*, 4 *D. & R.* 475; 2 *D. & R. Mag. Ca.* 325. John Pearce was removed from St. Paul, in Norwich, to St. Mary-le-Bone, Middlesex. Order confirmed. Case:—Pearce, when a boy, lived with one Benson, a shoemaker, in St. Mary-le-Bone, three years, and then ran away from him. To prove that the pauper resided as an apprentice, and to account for the non-production of the indentures, it was proved that a fire happened about twenty years ago in the apartment in which the pauper then resided, and burnt everything he had; that the father and mother of the pauper were dead; that Benson and his wife are also dead; that Benson left no property at his decease; and that no relatives of his are to be found. T. Nash proved that he was apprentice to Benson at the same time with the pauper and another apprentice, and that he saw in his master's hand an indenture, which he understood to be the indenture of apprenticeship of the pauper; that the pauper, as well as the witness and the other apprentice, boarded and lodged in the master's house in St. Mary-le-Bone. Another witness stated, that he knew Benson at the time the pauper lived with him; that Benson had then two other apprentices, and called his apprentices lazy rascals. It further appeared that the pauper afterwards married, and that while living in St. Mary-le-Bone his wife was admitted into the workhouse of St. Mary-le-Bone, in a state of illness, and there died. *Rex* v. *St. Michael, Bath* (2 *Bott*, 459), was quoted, where, upon a question of the settlement of the family of a militia-man, it appeared by his examination, taken under the mutiny act, that he served J. M. as an apprentice five years and a half. His wife proved that he had run away, and she knew nothing of him. J. M. was dead. This was

After twenty years, an apprenticeship may be presumed from the treatment of the pauper as an apprentice like the others, aided by the fact that his wife died in the parish workhouse.

The loss of indenture presumed from circumstances.

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held reasonable evidence of a binding, and this *point* was not overruled in *Rex* v. *Clayton-le-Moors* (*post*). *Bayley*, J. "I am of opinion, that the parol testimony admitted in this case was properly received, and that it was sufficient to found the presumption that an indenture was executed, and that the pauper's husband served and acquired a settlement under it. The general rule applicable to the doctrine of presumption is, that we are to presume that which reasonably accounts for the actual existing state of things, and I think that the presumption drawn by the sessions satisfies that rule. The facts in this case, unrefuted, appear to me conclusive. The pauper's husband lived with his master in the character of an apprentice, doing the same work, and receiving the same treatment, as his other apprentices did; and surely, after an interval of twenty years, it is not too much to presume that he really was an apprentice. With respect to proof of the destruction of the indenture, I think enough was given to let in the secondary evidence, and that the search at the Stamp-office was quite unnecessary. It must not be forgotten, that the fact of the first wife of the pauper having been received into the workhouse of St. Mary-le-Bone, shows that that parish believed her husband to have been their parishioner, and that fact, coupled with the others I have alluded to, is, I think, decisive to show that he had acquired a settlement as an apprentice in that parish." *Holroyd*, J., concurred.

What is a diligent search for an indenture executed forty years since.

Rex v. *East Farleigh*, 6 *D. & R.* 147; 2 *D. & R. Mag. Ca.* 71. The facts of this case are fully stated in the judgment delivered by *Bayley*, J. "In this case there had been two parts to the indentures, which were executed so long since as 1788. The first part has been satisfactorily accounted for by Mrs. Buckley, the widow of Buckley, with whom the apprentice's father left it to be enrolled. She proved that after diligent search it was not to be found. The other part was originally in the possession of the second master, who said he had either delivered it to Buckley, or to his solicitors, Messrs. R. and T. Mrs. B.'s evidence satisfactorily shows that it was not amongst her husband's papers. The question then arises, whether, supposing it had been left with Messrs. R. and T., it has been satisfactorily accounted for. Messrs. R. and T. were in partnership until 1803, and if it was delivered to them, it must have been shortly after Tanner, the second master, received it from Standen (the first master), which would be in 1793. The indenture would expire in 1795; and supposing it to remain in R. and T.'s possession after that, it would be no more than waste parchment. No beneficial object, either to the master or the apprentice, could be gained by preserving it. However, there is a possibility that it was preserved, though it is not easy to divine for what purpose. At the dissolution of the partnership between R. and T., the presumption is, that being an useless instrument, it would be destroyed, for no sensible reason can be suggested for its preservation. But assuming it to have been preserved by Mr. T., the question is, whether there has been any essential defect in the search made afterwards? Upon the death of Mr. T., Mr. Cutts, at that time clerk to Mr. H., the executor of Mr. T., received two boxes of papers belonging to the latter, amongst which this indenture was not to be found. It is suggested, that these were not all the papers of which he died possessed. There is certainly a possibility that there were others, but no question was put to Cutts upon the subject. If, however, there were none others, and the probability is that the fact was so, then it would have been useless to call Mr. H. to prove the same fact, which was established by Cutts. It seems to me, therefore, that considering the lapse of time which has occurred since the indentures were executed, and that every person has been called in whose possession they might reasonably be expected to be found, such due diligence had been used to obtain the primary evidence without success, as ought to have let in the secondary evidence." *Littledale*, J., concurred. Order of sessions quashed.

An assignment by indorsement on the indenture

Rex v. *St. Paul's, Bedford*, 6 *T. R.* 452. C. Page removed from St. Paul's to Kempston. Order quashed. Case:—The pauper was bound an

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must be stamped, or cannot be received in evidence, nor can parol evidence be received if the agreement was reduced to writing.

apprentice for seven year to W. Robinson, of Kempston, cordwainer; he served Robinson in Kempston near five years, when they removed together to Biddenham, where the apprentice continued with his master near a year, when his master died. About six weeks after, an agreement was entered into between S. Negus, executrix of W. Robinson, with J. Robinson, which was indorsed on the indenture, by which Negus assigned over the apprentice to J. Robinson for the remainder of the term, and J. Robinson agreed to teach the apprentice the same trade, and to provide for him to the end of the term. This agreement was signed by Negus and J. Robinson, but not stamped. Immediately after the assignment the pauper went into the service of J. Robinson, in Kempston, and continued there near a year. Lord *Kenyon*, C. J. "It has been settled ever since *Rex* v. *St. George, Hanover Square* (p. 699), that if an apprentice serve a second master forty days with the express consent of the first, he gains a settlement in the parish where that service is performed; the first master has not indeed the absolute control over the apprentice, so as to compel him to go to any part of the kingdom, and serve another master, but if he do serve a second with the consent of the first, it is sufficient; it must be with the consent of the first master, for it has been decided that his mere *knowledge* of such service will not answer the purpose. The question here is a question on evidence, whether the executrix of the master did or did not consent to the service with the second master? The sessions were of opinion, that the instrument which was produced to prove that consent could not be received in evidence, because it was not stamped, and therefore it becomes necessary to consider how far the 23 Geo. III. c. 58, affects this case. By that act all agreements are to be stamped, except they fall within the exceptions in the 4th clause. It is said that this person comes within some of them; but he was not a *servant;* he had acquired another specific denomination, well known in the law, an *apprentice.* The exception clearly refers to cases where there is a *hiring;* but that was not the present case: 'hiring' is not applicable with any propriety to the case of an apprentice. Apprentices and servants are characters perfectly distinct; the one receives instruction, the other a stipulated price for his labour. I think therefore that we should be doing violence to this act to determine that an apprentice comes within the terms in this clause of exception, and consequently the sessions did right to reject this instrument. And when an attempt was made to give parol evidence of the agreement, they also did right in refusing to receive it, because the agreement was reduced to writing. Without canvassing the other point, I am satisfied that the sessions were warranted in rejecting the agreement, and if so, there was no evidence to show any consent that the apprentice served the second master with the consent of the executrix of the first." *Grose* and *Lawrence*, Js., of the same opinion. Order of sessions confirmed.

Hiring, in the stamp act, not applicable to an apprentice.

Recital in indenture is no evidence that the premium was paid out of charity money; the fact of payment being proved *aliunde.*

Rex v. *Skeffington*, 3 *B. & A.* 382. In this case it was stated in the indenture that a premium had been paid out of a charitable donation to the parish: at the time of payment, the parish officers said it was charity-money. *Abbott*, C. J. "I think that the fund out of which the premium is said to have been paid was a public charity within the exception in the stamp act. But I think there is no sufficient evidence to show that the premium was in fact paid out of such a fund. It is stated, as a fact proved by the master, that a premium of 12*l.* was paid with the apprentice. That being so, it would be very dangerous to say that the declaration of the parish officers should be admitted to prove the nature of the fund out of which it was paid, more especially when those persons might have been called to prove the fact. The case is not precisely the same as if a declaration of the parish officers had been offered as the only proof of payment. In that case the whole declaration would have been receivable. But here the fact of payment was itself proved. Upon that ground, I am of opinion that the indenture ought not to have been received in evidence." *Bayley*, J. "The respondents having proved a case of hiring and service, it became the duty of the appellants to show that there was at the time a subsisting

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valid apprenticeship. To do that, they produce an indenture which on the face of it purports that a premium has been paid, and which is not stamped. If that premium was paid out of a public charity, it was the duty of the appellants to prove that fact, which was within their knowledge, and of which the respondents could know nothing. An indenture of apprenticeship is no evidence of the facts recited in it; if it were, the party might always recite that a premium was paid out of a public charity, whether it were the fact or not. But it is said, that if the payment of the premium be proved by the indenture, the recital also becomes evidence. This answer is not sufficient, for independently of the indenture, there is direct evidence of the fact of payment." *Holroyd*, J. "If the recital and the declaration of the officers had been the only evidence of the fact of payment, I should have been of the opinion that there was sufficient evidence also that it was paid out of a public charity; but on looking at this case, it is clear to me that the fact was proved substantially by the master."

The other matters which may require to be proved under particular circumstances, will be found in the cases collected under this class of settlements.

An indenture not duly stamped is inadmissible unless in some cases, as where it was lost before the time for stamping had expired. *Bousfield* v. *Godfrey*, (p. 738).

Treatment by a party of a person as an apprentice, may be presumptive evidence of apprenticeship (p. 739).

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7. Of Settlement by Renting a Tenement.

Introductory observations, and division of the subject.

7. Of Settlement by Renting a Tenement.

The legislature considered that a person who was able *bonâ fide* to contract to pay 10*l.* a year as rent for an interest in real property, and resided in the parish for upwards of forty days, was a fit person to acquire a settlement in that parish, and that he ought not to be removable therefrom; this was the foundation of this description of settlement. (*a*)

The law relating to this branch of settlements has within these few years undergone some very material alterations, as to the nature of the tenement, the contract of renting, and the performance of that contract by the party in respect of whose renting the settlement is claimed.

The law on this subject may be properly arranged under the following heads:—

1. *The Statutes relating to Settlement by Renting a Tenement.*
2. *What is a Tenement under* 13 & 14 *Car. II. c.* 12.
3. *What is a Tenement under* 59 *Geo. III. c.* 50, 6 *Geo. IV. c.* 57, *and* 1 *Will. IV. c.* 18.
4. *The Tenement need not be entire.*
5. *The Nature and Necessity of a Tenancy.*
6. *As to joint Tenants.*
7. *Permissive Occupation is a "Coming to Settle."*
8. *As to the Time for which the Contract must be made under* 13 & 14 *Car. II.*
9. *The Tenement must be hired* for a year *under* 59 *Geo. III. c.* 50, 6 *Geo. IV. c.* 57, *and* 1 *Will. IV. c.* 18.
10. *The Hiring must be* bonâ fide *by the* Pauper, *under the same statutes.*
11. *The Value under* 13 & 14 *Car. II. c.* 12.
12. *The Value under* 59 *Geo. III. c.* 50, 6 *Geo. IV. c.* 57, *and* 1 *Will. IV. c.* 18.
13. *The Rent must be paid under the same statutes.*
14. *Occupation under* 13 & 14 *Car. II. c.* 12.
15. *Occupation under* 59 *Geo. III. c.* 50, 6 *Geo. IV. c.* 57, *and* 1 *Will. IV. c.* 18.

(*a*) *Kinver* v. *Stone*, (p. 748); *Rex* v. *Butley*, *Burr. S. C.* 167, (p. 749).

16. *The Parish in which the Tenement must be situate under* 13 & 14 *Car. II. c.* 12.
17. *The Parish in which the Tenement must be situate under* 59 *Geo. III. c.* 50, 6 *Geo. IV. c.* 57, *and* 1 *Will. IV. c.* 18.
18. *Who may acquire this Settlement.*
19. *Residence under* 13 & 14 *Car. II. c.* 12.
20. *Residence under* 59 *Geo. III. c.* 50, 6 *Geo. IV. c.* 57, *and* 1 *Will. IV. c.* 18.
21. *The Occupier must have been rated to and paid the Poor Rate, under* 4 & 5 *Will. IV. c.* 76, *s.* 66.
22. *Evidence relating to this Settlement.*
23. *Fraud.*

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1. The Statutes relating to Settlement by Renting a Tenement.

1. The Statutes relating to Settlement by Renting a Tenement.

13 & 14 Car. II. c. 12.	3 Geo. IV. c. 126.
9 & 10 Will. III. c. 11.	4 Geo. IV. c. 95.
23 Geo. III. c. 23.	6 Geo. IV. c. 57.
52 Geo. III. c. 78.	1 Will. IV. c. 18, s. 1 & 2.
54 Geo. III. c. 170.	4 & 5 Will. IV. c. 76, s. 66.
59 Geo. III. c. 50.	

13 & 14 Car. II. c. 12. Persons coming to settle in tenements under ten pounds a year, are removable to place of legal settlement.

The 13 & 14 Car. II. c. 12, s. 1, enabled the overseers of the poor, within forty days after any person coming to settle in any tenement under the yearly value of ten pounds, and likely to be chargeable to the parish, to obtain an order to remove such person to such parish where he was last legally settled, either as a native, householder, sojourner, apprentice or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices. See the statute, (*post, Removal*).

Persons going to work in harvest, &c. with a certificate.

Sect. 3 enabled any person to go into any parish to work in time of harvest, or at any time to work at any other work, so that he carried with him a *certificate* from the minister of the parish and one of the overseers for the year, that he had a dwelling-house in which he did inhabit, and had left wife and children, or some or them there (or otherwise, as the condition of the persons shall require), and is declared an inhabitant or inhabitants there. See statute, (*post, Removal*).

9 & 10 Will. III. c. 11. No certificated person to gain a settlement unless by *bonâ fide* taking a lease of a tenement of value of ten pounds, or execute an annual office in the parish.

The 9 & 10 Will. III. c. 11, after reciting the above section, and that doubts had arisen upon the construction of the act, by what acts any person coming to inhabit or reside within any parish, by virtue of such certificate, may procure a legal settlement in such parish, and whether such certificate did amount to a notice in writing, in order to gain a settlement; enacted, "that no person or persons whatsoever, who shall come into any parish by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bonâ fide* take a lease of a tenement of the value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office."

23 Geo. III. c. 23. Prisoners in K. B. gain no settlement by renting a tenement or payment of rates; nor their servants by residence.

The 23 Geo. III. c. 23, s. 1, enacts, "That no person or persons whomsoever, now a prisoner or prisoners, or who shall hereafter become a prisoner or prisoners in the King's Bench prison, or the rules thereof, shall gain or be adjudged or deemed to gain a settlement in the said parish of St. George the Martyr, in the borough of Southwark, in the county of Surrey, by renting a house, part of a house, lodging, furnished or unfurnished, or any other premises whatsoever within the said parish, or by being rated to and paying any rates or taxes for the same, whilst he, she, or they shall be such prisoner or prisoners: nor shall any person or persons gain, or be adjudged or deemed to gain, a settlement within the said parish, by, or by reason or on account of living, or having lived or resided with any prisoner or prisoners within the said prison or the rules thereof, as or in the capacity of a hired servant; any law, statute, usage, or custom to the contrary notwithstanding."

52 Geo. III. c. 72. Residence in forest of Alice

The 52 Geo. III. c. 72, s. 8, enacts, "That no person or persons shall, by residence in any house, lodge, or other building erected or to be erected

1. *Statutes relating to Settlement by Renting a Tenement.*

within the said forest of Alice Holt, in the county of Southampton, or by hiring and service, either for the preservation of the said woods or plantations, or the game in the said forest, gain thereby any settlement in the parish of Binstead, in the said county in which the said forest is situated."

Holt not to gain a settlement in Binstead.

The 54 Geo. III. c. 170, s. 5, enacts, "That no gate-keeper, or toll-keeper of any turnpike road or navigation, or persons renting the tolls and residing in any toll-house of any turnpike road or navigation, shall thereby gain any settlement in any district, parish, township, or hamlet."

54 Geo. III. c. 170. Tolls and gate-keeper of navigation.

The 59 Geo. III. c. 50, which received the royal assent on the 2nd of July, 1819, recites, "Whereas many disputes and controversies have arisen respecting the settling of poor people in parishes in England by the renting of tenements," and enacts, "That no person shall acquire a settlement in any parish or township maintaining its own poor in England, by or by reason of his or her dwelling for forty days in any tenement rented by such person, unless such tenement shall consist of a house or building within such parish or township, being a separate and distinct dwelling-house or building, or of land within such parish or township, or of both, *bonâ fide* hired by such person at and for the sum of ten pounds a year at the least, for the term of one whole year; nor unless such house or building shall be held, and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same; nor unless the whole of such land shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell and inhabit; anything in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary in anywise notwithstanding."

59 Geo. III. c. 50. Settlement shall not be acquired by renting any tenement, except a house or land in the parish, of the actual annual value of ten pounds, held, and rent paid for a year.

3 Geo. IV. c. 126. No person to gain a settlement by renting tolls, or by residence in toll houses.

The 3 Geo. IV. c. 126, s. 51 (the General Turnpike Act), enacts, "That no collector or person renting such tolls, or residing in such toll-house as aforesaid, and no apprentice or servant of any such collector or person shall thereby gain a settlement in any parish or place whatsoever."

4 Geo. IV. c. 95. Receiver of tolls for overweight.

The 4 Geo. IV. c. 95, s. 31, enacts, "That no collector or receiver of any tolls or penalties for overweight, residing in any house or building erected or used by the trustees of any turnpike road for the residence or accommodation of persons appointed for weighing any waggons or other carriages, shall thereby gain a settlement in any parish or place."

6 Geo. IV. c. 57. repeals 59 Geo. III. c. 50, as relates to settlement by renting tenements.

The 6 Geo. IV. c. 57, s. 1, which received the royal assent on 22nd June, 1825, recites, "Whereas the settlement of the poor has been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they have paid parochial rates: and whereas the ascertaining such value in such respective cases has given rise to very expensive litigation: and whereas doubts have been entertained whether an act made in the fifty-ninth year of King George the Third, intituled, 'An Act to amend the Laws respecting the Settlement of the Poor, as far as regards renting Tenements,' has been effectual for the purpose of altering the law in respect of the necessity of proving the annual value of tenements so rented: and it is expedient that further provision be made relating thereto; be it therefore enacted, That from and after the passing of this act, the said recited act of the fifty-ninth year of the reign of King George the Third, intituled, 'An Act to amend the Laws respecting the Settlement of the Poor, so far as regards renting Tenements,' shall be and the same is hereby repealed."

Requires a renting of building or land for a year, at 10*l.* per annum, actually paid, &c.: not to be necessary to prove value.

Sect. 2. "That no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person, in such parish or township, at and for the sum of ten pounds a year at the least, for the term of one whole year; nor unless such house or building, or land, shall be occupied under such yearly hiring, and the rent for the same, to the amount of ten pounds, actually paid, for the term

of one whole year at the least: provided always, that it shall not be necessary to prove the actual value of such tenement; anything in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary notwithstanding."

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The 1 Will. IV. c. 18, which received the royal assent on the 30th March, 1831, recites, "Whereas by an act passed in the sixth year of the reign of his late Majesty George the Fourth, intituled, 'An Act for the amendment of the Law respecting the Settlement of the Poor, as far as regards renting Tenements and paying Parochial Taxes,' it was among other things enacted, 'That no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish or township, at and for the sum of ten pounds a year at the least, for the term of one whole year; nor unless such house or building, or land, shall be occupied under such yearly hiring, and the rent for the same to the amount of ten pounds actually paid for the term of one whole year at the least: provided always, that it shall not be necessary to prove the actual values of such tenements; anything in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary notwithstanding: and whereas doubts have arisen with respect to the intentions of the legislature concerning the occupation of such house, building, or land by the person hiring the same, and concerning the amount of the rent to be paid and the person paying the same: and whereas it is expedient that such doubts should be removed; be it therefore enacted, that from and after the passing of this act, no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of such yearly hiring of a dwelling-house or building, or of land, or of both, as in the said act expressed, unless such house or building, or land, shall be actually occupied under such yearly hiring, in the same parish or township, by the person hiring the same, for the term of one whole year at the least, and unless the rent for the same, to the amount of ten pounds at the least, shall be paid by the person hiring the same."

1 Will. IV. c. 18, amends 6 Geo. IV. c. 57.

No person shall acquire a settlement by reason of a yearly hiring of a tenement, or of land, unless he shall actually occupy the same.

Sect. 2. "That where the yearly rent shall exceed ten pounds, payment to the amount of ten pounds shall be deemed sufficient for the purpose of gaining a settlement under the said recited act."

Payment to the amount of 10*l.* shall gain a settlement.

4 & 5 Will. IV. c. 76, s. 66. "That from and after the passing of this act no settlement shall be acquired or completed by occupying a tenement, unless the person occupying the same shall have been assessed to the poor rate, and shall have paid the same in respect of such tenement for one year."

The 4 & 5 Will. IV. c. 76, s. 66, requires *a renting to and payment of poor rate* by pauper.

By s. 68 of the same statute, "no person can retain a settlement gained by possession of any estate or interest in any parish longer than he inhabits within ten miles thereof." (See *post*, *Reg.* v. *St. Giles*; *Reg.* v. *Hendon*.)

Rex v. *Streatham*, 2 *M. & Sel.* 468. By an act for regulating the parish of Clapham, a clause was introduced which Lord *Ellenborough* characterised as being a fraud upon all other parishes, viz. that no settlement could be gained in any house of *less yearly value than* 20*l.*, let for any shorter period than quarterly, where the landlord compounded for, or refused to compound for his rate. It was held, on the construction of this statute, that this must be strictly confined to the cases mentioned, and did not apply to all houses under 20*l.*

Construction of the acts.

Construction of local act, as to tenements of twenty pounds a year.

There are some cases which explain the general effect of these statutes upon each other.

Rex v. *St. Mary-le-Bone*, 4 *B. & Ald.* 681. Removal from St. Mary-le-Bone to St. Pancras. Order discharged. Case:—The pauper hired an unfurnished shop in St. Pancras, of the yearly value of 10*l.*, and lived therein eight months. He afterwards hired an unfurnished shop and parlour, part of a house in St. Mary-le-Bone, at 26*l.* a-year, which he took possession of on the 25th May, 1819, and resided in and occupied the last

To gain a settlement under 13 & 14 Car. II. the residence must be complete before July 2, 1819, the date of 59 Geo. III.

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mentioned premises upwards of forty days, but only thirty-eight days of such residence and occupancy had elapsed on the 2nd July, 1819. *Bayley*, J. "The question in this case turns entirely upon the construction of the 59 Geo. III. c. 50, which took effect from the 2nd July, 1819. The pauper had on that day resided in and occupied, for a period of thirty-eight days, part of a dwelling-house in Mary-le-Bone parish, at 26*l.* a-year; so that, if the statute had not been passed, he would undoubtedly have acquired a settlement in Mary-le-Bone by his subsequent residence and occupation, which in the whole considerably exceeded forty days. But he had not on the 2nd of July acquired such settlement. It was contended, that the statute, being wholly expressed in the future tense, did not apply to such a case, but must be considered as wholly and absolutely prospective, and confined to tenements hired after the day on which the statute took effect. If this be the true construction, then a residence of one day prior to the statute, connected with a continued residence in pursuance of the original hiring for thirty-nine days after the statute, will confer a settlement. The statute, however, had in view, as appears by the preamble, the preventing of the disputes and controversies which had arisen respecting the settlement of poor people by the renting of tenements. And we think this object will be best attained by giving to the words of the enacting part their full and absolute effect, and by considering the statute as applicable to every case within its scope, wherein a previous settlement had not been completely gained and established before the statute was passed. A contrary construction might open the door to many disputes and controversies as to the nature and effect of inchoate titles. Whereas, according to the construction which we adopt, the only inquiry hereafter will be, whether a settlement had been acquired *before* the 2nd July, and the case will be considered as if the pauper had died or removed from the tenement on the first day of that month, and as if he had resided *on*, but not *after* that first day of July." Order of sessions quashed.

The taking, if consistent with 6 Geo. IV., may be made before it.

Rex v. *Ditcheat*, 9 *B. & C.* 981; 4 *M. & R.* 151. *Bayley*, J., said, "As to the question whether the holding before the 6 Geo. IV. c. 57, and the holding subsequent to that period, can be connected, I am of opinion they may, provided the occupation before be such as will satisfy the 6 Geo. IV.; and therefore if a party, before 6 Geo. IV. began to operate, was in possession of a yearly tenement, and held it under such circumstances as that statute says shall be requisite to gain a settlement, a settlement will be gained. There are no words in 6 Geo. IV. which import that the taking shall be subsequent to the time at which that statute came into operation."

But the provisions of 59 Geo. III. must be complied with, therefore during part of the time the land is in the occupation of another person, no settlement will be acquired.

Rex v. *Ockley*, 1 *B. & Ad.* 818. Case:—In 1824 the pauper rented a dwelling-house, garden, and meadow, in the parish of Dorking, at 7*l.* per annum, and continued to occupy the premises till Michaelmas, 1826. At Michaelmas, 1824, the pauper took four fields of meadow or pasture land, situate in the same parish, of Mr. Arthur Dendy, under an agreement, whereby Dendy covenanted, &c. with Wonham, to let him have the grass growing on ten acres of meadow land situate at Coldharbour, Surrey, from Michaelmas, 1824, to Michaelmas, 1825, in consideration of the sum of 8*l.* 10*s.* payable by Wonham to Dendy on or before Lady-day, 1825, and a further sum of 8*l.* 10*s.* payable in like manner on or before Michaelmas-day, 1825. In pursuance of this agreement, the pauper entered into possession of the fields at Michaelmas, 1824, dressed them, and turned his cattle upon them; but in April, 1825, having been compelled to sell his stock, and having none from that time to put in the fields, he agreed with his brother-in-law, Hills, to let him take the grass for the remainder of the term, upon payment of the rent from that time by Hills to Dendy; but Dendy was not aware of this agreement. In pursuance of such agreement, Hills stocked the fields, cut and carried away the crops, and enjoyed them until Michaelmas, 1825, when he went to Dendy and offered to pay him the rent; but Dendy refused to take it unless the pauper was present, and accordingly the pauper and Hills afterwards went together to Dendy, and Hills paid the rent in the presence of the pauper, and Denby gave the

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pauper a receipt for the same. The whole rent stipulated for by the agreement in August, 1825, was paid. The question for the opinion of this court was, whether, under the above circumstances, the pauper gained a settlement in the parish of Dorking, by renting a tenement under the 59 Geo. III. c. 50, and the 6 Geo. IV. c. 57. Lord *Tenterden*, C. J. "We are not called upon to say what would be the effect of the 6 Geo. IV. c. 57, as connected with the 59 Geo. III. c. 50, if the pauper had continued until the repeal of the last-mentioned statute, doing all the things thereby required. Here, the pauper had not only not gained a settlement by complying with the provisions of that act, when the new statute passed, but he was not in progress of gaining one, for he had ceased to occupy before the expiration of the year's tenancy. Unless therefore the 6 Geo. IV. c. 57, had passed, he never could have gained any settlement. Now that statute cannot have the effect of making that a good settlement which would not have been good within the 59 Geo. III. c. 50, if that act had continued in force. Besides, I must say, I do not think the statute 6 Geo. IV. c. 57, can be retrospective in part, but not so for all purposes. The order of sessions must be confirmed." *Littledale*, J. "We are not called upon to say whether the pauper would have gained a settlement if he had continued until the 6 Geo. IV. c. 57, to do everything which the 59 Geo. III. c. 50, required to be done; because, here, the pauper was not in progress towards gaining a settlement at the time when the last statute passed. That being so, I think that that which would not have been a good settlement if the 59 Geo. III. c. 50, had continued in force, is not rendered good by the subsequent statute." *Taunton*, J. "It is conceded that the pauper in this case did not comply with the provisions of the 59 Geo. III. c. 50, so as to gain a settlement under that statute. The provisions of that statute continued to be the law till the passing of 6 Geo. IV. c. 57. If no settlement therefore could be gained within that statute, I cannot understand how the 6 Geo. IV. c. 57, can govern the gaining of a settlement under hiring and renting which began at Michaelmas, 1824. To say that a settlement was gained by virtue of a statute which had not begun to operate, would extend the 6 Geo. IV. c. 57, over a period governed by another statute, and would give it not only a retrospective, but a suspending operation. But as there had ceased to be even an inchoate settlement, before the 59 Geo. III. c. 50, was repealed, I think it is impossible to maintain that a settlement was gained by virtue of the provisions of the 6 Geo. IV. c. 57, which did not begin to operate till the pauper's occupation had been discontinued." *Patteson*, J. "There was an interval between Michaelmas, 1824, and June, 1825, when there was not an occupation by the pauper sufficient to satisfy the existing law; and that defect cannot be supplied by a subsequent statute. The order of sessions, therefore, must be confirmed." Order of sessions confirmed.

The repeal of 59 Geo. III. does not operate as a reviver of 13 & 14 Car. II.

In *Rex* v. *Carshalton*, 6 *B. & C.* 93; 9 *D. & R.* 132; it was urged, that as the 6 Geo. IV. c. 57, recited the 59 Geo. III. c. 50, and then repealed that statute, without making any provision for such cases as might arise in the interval between the passing of the two acts, the 59 Geo. III. operated *pro tanto* as a repeal of the 13 & 14 Car. II., which conferred a settlement by a residence of forty days on a 10*l.* tenement. Then, as the pauper resided for forty days on a 10*l.* tenement in the interval between the two statutes alluded to, he gained a settlement under the 12 & 13 Car. II. which thus became revived. *Bayley*, J. "See the extent to which that argument might be pushed. Suppose, by a statute of Elizabeth, it was made felony without benefit of clergy to steal to the value of 40*s.* in a shop; that by the 10th Geo. III. the same offence was made clergyable, and that by the 20th Geo. III. the 10th Geo. III. was repealed; then, according to your argument, an offence of that description, which was committed between the passing of the two latter acts, but not brought to trial till after the repealing act passed, would be an offence not clergyable."

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2. What is a Tenement under 13 & 14 Car. II. c. 12.

It is necessary to retain the old cases relating to this act, because the 59 Geo. III. c. 50 did not affect the acquisition of settlements by the *payment of parochial taxes* in respect of a tenement of the value of 10*l.*

Incorporeal hereditaments.

An *incorporeal* hereditament is a tenement within the meaning of the statute, *Rex* v. *Piddletrenthide*, 3 *T. R.* 772; *Rex* v. *Hollington*, 3 *East*, 113; *Rex* v. *Chipping Norton*, (p. 750).

A coney warren is a tenement.

Kinver v. *Stone*, 1 *Stra.* 678. A special order of sessions stated, that the pauper rented a *coney warren* and a cottage upon it at 10*l.* a year. By the court: "A *mill* hath been held to be a tenement within the statute, and why not this? It is his ability to pay 10*l.* a year, that is the foundation of the settlement; and whether he pay it for a house of habitation, or for a warren which brings him in a profit, is not material." [See also *S. P. Rex* v. *Piddletrenthide*, (*post.*)]

A fishery is a tenement, and will confer a settlement.

Rex v. *Old Alresford*, 1 *T. R.* 358. Removal from Old Alresford to Chilton Candover quashed. Case:—The pauper and his father resided in Old Alresford, under a certificate from Chilton Candover; the father rented a house and piece of land for several years at 3*l.* a year in Old Alresford, and during two years he held under a parol agreement *the fishery of Alresford pond, with the grates*, &c., containing about sixty acres, *and* also the *spearsedge, flags, and rushes* growing in and *about the said pond, and the right of cutting the sedge* growing *on a piece* of rough *meadow*, containing seven acres, not part of the pond, for which the father paid Mr. Edwards 10*l.* a year, and supplied his house with fish. During the time the father held the premises of E. he rented under a parol demise *the fishery of Causeway river in New Alresford, with* the grates to a fish-house there, at 3*l.* a year. The house and piece of land first mentioned, and the right of cutting sedge, &c. on the seven acres of rough meadow ground, and the fishery, &c. last mentioned, were together of the annual value of 10*l.*, without taking the pond, or anything thereto belonging, into the account. Evidence was offered at the sessions, to show that Edwards could only have a liberty to take sedge, as his lessor had granted no more to him. The sessions rejected it. Lord *Mansfield*. "Upon this state of the case, the court will consider that the fishery and the soil passed together; therefore, the pauper took a tenement within the statute." *Ashhurst*, J. "There is no doubt but a fishery is a tenement. Trespass will lie for an injury to it, and it may be recovered in ejectment." *Buller*, J. "The court go upon this ground, that the sessions have no occasion to go into the title of the lessor at all. The fact of letting a fishery is sufficient, and we must presume that the soil passed along with it; though I am by no means ready to allow that if it had been any other kind of fishery, it would not have given a settlement. The sessions, however, ought only to admit evidence to controvert the fact of the parties taking the tenement."

Liberty granted by a corporation to take sand and gravel from the bed of a river, was held a tenement, and a settlement conferred.

Rex v. *All Saints, Derby*, 5 *M. & Sel.* 90. A pauper, by order of a corporation, made at a common hall, was allowed the liberty to take sand and gravel from the bed of a river (of which the corporation were entitled to the soil), with a condition that he sold the sand to the inhabitants of the town at a certain rate; for which liberty he paid to the corporation at the rate of 10*l. per annum.* Lord *Ellenborough*. "This is a tenement as it subsisted in the corporation, and the pauper is, by their permission, let into the enjoyment of it. I do not know that we are obliged to go into the title; certainly a corporation cannot demise, except by deed; but we find the pauper in the occupation of the land by their permission, and this occupation must, by fair intendment, be taken to have been an *exclusive* one, for otherwise it would have been reduced to a thing of no value; the corporation could not have used the land without interfering with the pauper's right. (*a*) The pauper seems to have been in the pernancy of the whole

(*a*) Upon this point see *Rex* v. *Trent and Mersey Navigation Co.* (*ante*, 196).

profits of the land; he took all which covered the surface of the land. It is, therefore, as much a tenement as *prima tonsura*. If the question turned upon the demise, I should feel difficulty; but I think, that, in point of pernancy and enjoyment, this must be considered as a tenement."

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A cattle-gate is a tenement.

Rex v. *Whixley*, 1 *T. R.* 137. Removal from Whixley to Healough quashed. Case:—The pauper served an apprenticeship to R. P. in Whixley, residing there under a certificate. In the two last years of his apprenticeship his master rented a dwelling-house, &c., of the value of 1*l.* 11*s.* 6*d.* a year, and a meadow of 7*l.* 10*s.* a year; and at the same time (viz. for those two years) he occupied two cattle-gates of the value of 1*l.* 4*s.* a year, in a stinted pasture, on consideration that he should keep in repair the common highway-gates, which the persons having a right to the cattle-gates were bound to sustain. It was urged that these cattle-gates are not like commons. They are conveyed by lease and release. The owners of them are tenants in common, they have a joint possession and several inheritance, and are as much demisable as any several tenement whatsoever. It was answered, that he occupied those cattle-gates on condition of keeping the highway-gates in repair, and that this was only a licence to depasture his cattle, in consideration of his keeping the said gates in repair. Lord *Mansfield*, C. J., said, "These cattle-gates pass by lease and release, and cannot be devised but according to the statute of frauds, they are therefore to be considered as a tenement within the statute."

A right of common in gross is a tenement.

Rex v. *Dersingham*, 7 *T. R.* 671. Removal from Ingoldesthorpe to Dersingham confirmed. Case:—The pauper, in June, 1795, went to reside at Dersingham, in a house with half an acre of land, and the going of two cattle on D. common, which he hired of one Pretty, at the rent of 6*l.*, till the Michaelmas following: he continued to occupy the same till the succeeding Michaelmas, at 8*l.* a year. In June, 1795, he hired of one Smith the going for three other cattle upon the same common till the Candlemas following, at the rent of 1*l.* 11*s.* 6*d.*, and of one Chadwick the going for one other cattle on the said common for the same time, at the rent of 10*s.* 6*d.* The common rights in question were rights of common in gross. The whole rent paid was 10*l.* 2*s.* for the year. Lord *Kenyon*, C. J. "It appears that the rights of common were rights of common in gross, and that puts an end to the question. A common in gross is a matter of tenure. Lord *Coke* says that a *præcipe* will lie for it. And there is no doubt but that the pauper rented those rights of common." Order of sessions confirmed.

A water-mill is a tenement.

Evelyn v. *Rentcombe*, 2 *Salk.* 536. Case was drawn up for the opinion of the court, whether renting of a water-mill of 10*l.* a year would make a settlement? And by the whole Court, "Clearly a mill is a *tenement*, and the renting therefore must gain a settlement within the statute; that is, if the party live therein, or within the parish."

So also a wind-mill.

Rex v. *Butley*, 1 *Sess. Ca.* 320; *Burr. S. C.* 107; 2 *Bott*, 128. The question was, whether renting a *wind-mill* at 14*l.* a year gained a settlement, it having been determined that a water-mill did. By the Court: "It is the same as if he had rented land of that value."

But not the pasture of a piece of land.

Rex v. *Minchin-Hampton*, 2 *Sess. Ca.* 320; 2 *Stra.* 874; *Burr. S. C.* 316. The pauper rented, in the parish of Bisley, lands of the yearly value of 8*l.*, from his father; a house, of the yearly rent of 1*l.* 10*s.*, from his uncle; and the same year *took the pasture* of a piece of land, in the said parish, from All Saints day to Candlemas, and paid 12*s.* for the same, which piece of land was worth 6*l.* a year. The court held, that *taking the pasture of a piece of land* was not more than taking the herbage, or than taking the common, which could not be esteemed part of a *tenement* within the meaning of the statute; but seemed to think, that if the words had been, that he had *taken a pasture ground* for three months, that would have made a good settlement. But the case went off upon another point, viz. for want of an adjudication.

Renting hay-grass and aftermath for ten months gains a settlement.

Rex v. *Stoke*, 2 *T. R.* 451. Case:—The pauper, in addition to a house and land in Barlaston, took the hay-grass and aftermath of a meadow for 2*l.* 5*s.* 6*d.* for ten months, in the same parish. He paid no taxes, but he

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fenced the meadow and spread the hillocks. It was said, that the agreement for the hay-grass and aftermath conveyed no interest in the soil, so as to give the pauper a settlement; that he derived from the contract a mere personal right to take the hay-grass and aftermath; that he was to take, not the general, but only the particular profits of the land; that *Co. Litt.* 4. *b.* took the distinction between *pasturam* and *pascuum;* by the former the ground itself passes, but the latter conveys no interest in the soil. *Ashhurst*, J. "It is clear, from the stating of the case, that the land was intended to pass; it states, 'that for ten months the pauper took the hay-grass and aftermath of the meadow.' Now why should he have taken it for ten months if the soil was not intended to be conveyed? *there could be no other profits of this ground but the hay-grass and aftermath;* and *if a man grant all the profits of* the ground, *he grants the land* itself." *Buller*, J. "This is like the case put in *Co. Litt.* where *pastura* carries the land itself. The pauper was to have the hay and aftermath, which was all the produce of the soil. This is not like taking hay-grass after severance, for that is only a chattel; but here the contract was, that the pauper should take all the grass which should grow; he was to cut it, and make it into hay himself; and after that he was to have everything that grew on the land for ten months."

Rent for the rushes and flags growing therein, with the exclusive right of cutting at pleasure, is a tenement.

Rex v. *All Saints, Cambridge*, 1 *B. & C.* 23; 2 *D. & R.* 47. Removal of Lydia Fowler from Holy Trinity to All Saints, Cambridge. Order confirmed. Case:—The pauper, in 1793, married William Fowler, a maker of chair-bottoms and mats. In 1807 Fowler hired a house in St. Peter's, Cambridge, of the value of 9*l.* 10*s. per annum*, and resided there above a year: during the same time he had two separate parol contracts for two ponds, or for the rushes and flags growing therein; one of the ponds was of the extent of three acres, in which he was to have the exclusive right of cutting the rushes and flags at his pleasure, but not of draining off the water; the owner had the right to use the water, or to drain it off, as he thought proper. For this W. F. was to pay 5*s.* a year to the occupier of the farm in which it was situated. The pond was not fenced off from the rest of the field, and the occupier's cattle, when depasturing there, used the pond for drinking at; but the rushes and flags were not such herbs as the cattle would eat. The other pond was only about a quarter of an acre, and was occupied under similar circumstances, at the yearly rent of 5*s.* and two door-mats of the value of 2*s.* The next year W. F. agreed to pay 10*s.* for the same, but died before the rushes were all gathered. The contracts for the ponds subsisted during all the time that W. F. occupied the house in St. Peter's. *Per Curiam.* "There is no valid distinction between a lease of grass and one of rushes growing upon the land. This case is, therefore, similar to *Rex* v. *Stoke* (*ante*). If this had been a bargain for anything in a state to be severed, as in *Warwick* v. *Bruce* (2 *M. & Scl.* 205), it would have been a personal contract: but here, the pauper's husband had a right to all the rushes which might grow in the ponds during the year. That gave him a continuing interest in the soil for the whole year: and by renting those ponds, together with the house in St. Peter's, he held a tenement of greater value than 10*l. per annum.* It is found as a fact, that he resided in that house for more than a year; he therefore gained a settlement in that parish. The consequence is, that the pauper was improperly removed to All Saints." Both orders quashed.

Renting fogg or after-grass, confers a settlement. So taking land for a particular purpose.

Rex v. *Brampton*, 4 *T. R.* 348. The pauper, T. Caile, rented premises in Brampton, in Cumberland, of the yearly value of 9*l.*, and during part of the time took the fogg or after-grass of two fields, the one for 30*s.*, the other for a guinea a year; the whole of which he occupied for more than forty days. The court were clearly of opinion that the pauper gained a settlement in Brampton; and that this could not be distinguished from *Rex* v. *Stoke* (*ante*). They added, that taking land for a particular purpose, such as that of setting potatoes, was sufficient to confer a settlement.

The tolls of a market are a tenement.

Rex v. *Chipping Norton*, 5 *East*, 239. Removal from Chipping Norton to Over Norton. Order quashed. Case:—The pauper went to live at

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Chipping Norton, where he rented a house at 8*l.* 10*s.* per annum. The corporation of Chipping Norton *is possessed of* the *fairs and markets* within the borough, and *of the toll for all cattle actually sold at the same.* The pauper at a court-leet took the said toll by a verbal agreement of the corporation at 12*l.* a year, and continued to collect it under that agreement for two years, when it was agreed that he should have it for ten guineas, under which last agreement he collected it for several years more. *Co. Litt.* 19. *b.*, 20. *c.* 2, was quoted in favour of the settlement. "The word *tenements* includes not only all inheritances which are or may be holden, but also all inheritances issuing out of any of those inheritances, or concerning or annexed to, or exerciseable within the same, though they lie not in tenure; therefore these may, without question, be entailed as rents, estovers, commons, or other profits whatsoever, granted out of land; or uses, offices, dignities, which concern lands or certain places, &c., because all these savour of the realty." And it was added, that the renting of tolls had been so much considered as the taking of a tenement, that by sect. 56 of the general turnpike act, 13 Geo. III. c. 84, it is provided, that no toll-gate keeper shall gain a settlement by renting the tolls. On the other side it was said, that this was a mere *personal contract;* and it was objected that a corporation could only demise under *seal,* and here the tolls were stated to have been taken by a *verbal* agreement. And Lord *Ellenborough*, C. J. said, "That as no interest passed to the pauper by such parol demise, the question could not be raised. It was a mere licence to him to collect the tolls, the right to which still remained in the corporation; though it might be a ground on which to apply to a court of equity. But if this difficulty (as to the mode of agreement) could be got rid of, the other point, as to the taking of the tolls being a taking of a tenement within the construction which had been put upon that statute, might be disposed of in favour of the settlement, upon the authority of Lord *Coke*, in his comment upon the statutes of *Westminster* 2; and on *Webb's case*, 8 *Rep.*; and on the opinion of Lord *Kenyon* in the case referred to, that a taking of an incorporeal tenement will confer a settlement." The court directed inquiry to be made if any interest in the tolls had passed from the corporation to the pauper, or any person under whom he claimed. But it was found that no other instrument had been executed, except a bond given by the pauper to the corporation, with sureties, for the rent, and the court said that could convey nothing *from* the corporation; and the order of sessions was quashed.

Lord Coke's definition of "tenement."

A parol demise of tolls by a corporation passes no interest.

Rex v. *North Duffield*, 3 *M. & Sel.* 247. Removal from Spaldington to North Duffield confirmed. Case:—By 33 Geo. III. "for building a bridge over the river Derwent," the Company of Proprietors of the Derwent Bridge are incorporated, and empowered to have a common seal. In pursuance of this act a bridge was built over the Derwent called Bubwith Bridge, and a house erected where the tolls are collected. In February, 1811, the pauper entered into the occupation of this toll-house, and the tolls there received, in pursuance of an instrument, by which five persons therein described as five members of a committee appointed for managing the affairs of the company of proprietors of Derwent Bridge, demised to the pauper the toll-house and toll-bar, together with the pontage and tolls, to hold for one year, at the rent of 126*l.* by monthly payments: and the pauper, together with one Holtby his surety, covenanted with the five persons to pay to the company the yearly rent; and in default thereof, it should be lawful for the company to enter upon the toll-house, &c. and receive the tolls, &c. This instrument was signed and sealed by the respective parties, but the seals of the five persons were only their private seals, and the corporation seal was not affixed to this instrument. The pauper continued in the occupation of the toll-house and the tolls above forty days, and paid rent for the same. The toll-house is situate, and the tolls receivable, in North Duffield. The annual value of the toll-house did not exceed 5*l.*, but the annual value of the tolls greatly exceeded 10*l.*, and they were let for 70*l.* Lord *Ellenborough*. "The residence in the toll-house, if it had been of

Demise of a toll-house and tolls of a bridge by members of a corporation, but not under the corporate seal, confers no settlement: the annual value of the toll-house alone not exceeding five pounds.

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sufficient value, might have answered the purpose of a settlement, but there the value fails; and the tolls are not things which lie in tenure, but only in grant; therefore, without a deed, an interest in them could not pass." (*a*) *Le Blanc*, J. "In *Wood* v. *Tate* the plaintiff in replevin was the party distrained on, and paid rent to the party by whom the distress was made; he was, therefore, stopped from denying that he held under them. He had acknowledged a holding by the payment of rent." *Bayley*, J. "That case shows the distinction between land and an incorporeal hereditament." Orders quashed.

The toll-keeper may gain a settlement by renting a distinct tenement in the parish in which he keeps the toll.

Rex v. *Denbigh*, 5 *East*, 333. R. Hughes agreed with the toll-keeper in H. to go and receive the tolls in the turnpike house in H. as the servant, and for the use of the toll-taker, for which he (Hughes) was to be paid 3*s.* 6*d.* per week. Hughes went, and whilst there he took a field in H. of the value of 12*l.* a year. During this time he, his wife, and family, continued residing in the toll-house. The 13 Geo. III. c. 84, s. 56, (*b*) enacts, "that no gate-keeper residing in a toll-house shall thereby gain a settlement in any parish," &c. It was argued that the word *thereby* included the "*residence in the toll-house;*" and that such residence should not be contributable to the settlement. Lord *Ellenborough*, C. J. "The act only meant that a settlement should not be gained by keeping the gate *or renting the tolls*, and residing in the toll-house. But that does not prevent him from gaining a settlement *aliunde* in the same parish where the toll-house is situated; that here a close worth above 10*l.* was rented in the parish, and there was residence in the parish. He did not even rent the tolls: he was merely the servant of another." Order of sessions quashed.

A person renting the tolls and residing in a turnpike house erected under a statute for paving, lighting, and regulating the streets of Durham, gains no settlement.

Rex v. *Elvet*, 11 *East*, 93. Removal of Frances, the widow of John Taylor, from West Rainton to Elvet. Order confirmed. By 30 Geo. III. c. 67, intituled "An Act for paving, lighting, watching, and regulating the streets, &c. of Durham," authorising the commissioners to take tolls and appoint persons to collect them in the streets of Durham; it is provided that if instead of collecting the tolls in this manner, it should appear to the commissioners more expedient to collect the same at toll-houses or turnpikes, it should be lawful for them to erect two turnpikes for the purpose of collecting the tolls, and the property of all such turnpikes and toll-houses should be vested in the commissioners: the commissioners might lease the tolls: the commissioners erected a turnpike-gate and house for collecting the tolls within Elvet, and in 1796 demised the same, with the tolls, to one Reather for three years, who on the 23rd August, 1796, leased the same by indenture to Elizabeth and John Taylor for three years, at the yearly rent of 202*l.*: under this lease John Taylor alone entered into the toll-gate and house, and continued to reside there with his family, collecting the tolls for the said term. The tolls were collected and appropriated to the general purposes of the act; neither the tolls nor the gate-houses, nor the respective leases, were assessed to the poor's rates. *Per Curiam:* "There is no difference in effect, though the appellation of turnpike-road

(*a*) In *Rex* v. *Chipping Norton* (p. 750), Lord *Ellenborough* said, "that as no interest passed in the tolls by the parol demise to the pauper, no question of settlement could arise. This parol demise was a mere licence to him to collect the tolls, the right to which still remained in the corporation."

In *Rex* v. *Old Alresford* (p. 747), it was urged, that the right to the fishery was a right to an incorporeal hereditament, and could only pass by deed, and then it was stated to be by parol. *Buller*, J. "The court go upon this ground, that the sessions have no occasion to go into the title of the lessor at all. The fact of letting the fishery is sufficient, and we must presume the soil passed with it."

Rex v. *All Saints, Derby* (p. 748). There was a demise by a corporation, but not by deed; and the court held, that as the pauper was let into the enjoyment by permission of the corporation, it was sufficient, and that they were not obliged to go into the title.

See also several cases where the owner of tithes was held to be rateable as occupier, not having derived them by deed (*ante*, p. 227).

(*b*) And see the corresponding acts, (*ante*, p. 744).

does not occur in the local act; the one is a stone road and the other a gravel road, and every character belonging to a turnpike-road belongs as well to this: the commissioners are trustees for the repair of the roads, and this case is within the prohibition of the 56th clause in the general turnpike act." Order of sessions quashed.

Renting the tolls of a bridge, confers a settlement, although the tolls are personal estate.

Rex v. *Bibworth*, 1 *M. & Sel.* 514. An order for the removal of John Massey, &c. from Bubwith to Foggathorpe, discharged. Case:—Massey rented for one year the tolls and toll-house of Bubwith bridge in Duffield. These tolls were collected by virtue of 33 Geo. III. intituled "An Act for building a Bridge over the River Derwent at Bubwith Ferry, and making proper Approaches thereto." The tolls and toll-house were of the annual value of 70*l.* The value of the toll-house alone was less than 10*l.* per annum. Lord *Ellenborough*. "It is true the words 'turnpike-road,' did not occur in the act upon which *Rex* v. *Elvet* (p. 752) was decided. But the commissioners under that act were trustees of the road; and it was to all intents considered as a turnpike-road. As to the renting, it is enough for us to decide on the doubts which the sessions actually entertained; and they have not stated any doubts upon that subject; for they have stated simply that the pauper rented the tolls, which must be understood a legal renting. Then the only question remaining is, whether tolls are a tenement. There is no doubt that they are so generally; but it is said that here they cannot be so, because the act has made the shares of the proprietors personal estate. That however does not make them less a tenement in the hands of the persons to whom demised: suppose the act had vested the shares in the proprietors for a term of years, they would still have been a tenement." *Le Blanc*, J. "In *Rex* v. *Elvet* the court deemed it a turnpike-road; the act enabled the commissioners to erect turnpikes on the high-road." Order of sessions confirmed.

If the sessions state that the pauper rented the tolls a legal renting will be presumed.

The renting of a toll-house used also as a public-house, will not confer a settlement.

Rex v. *St. Andrew, Cambridge*, 10 *Bar. & C.* 742. Where the lessee of tolls and a toll-house of a navigation underlet the same for the remainder of a term of three years at the annual value of 42*l.*, and the under-lessee occupied them for upwards of a year, and paid a year's rent, and it was found as a fact that the toll-house had always been used as a public-house as well as for the collection of tolls, and was worth 25*l.* a year if let as a public-house without the tolls, and 4*l.* a year if not so let, it was held that the under-lessee did not gain any settlement by the renting of a tenement, inasmuch as he was a person within the very words of 54 Geo. III. c. 170, s. 5, and probably within the mischief contemplated.

A dairy or a rabbit warren, is a tenement.

Rex v. *Piddletrenthide*, 3 *T. R.* 772. J. Belly was removed from Chaldon Herring to Piddletrenthide. Order confirmed. Case:—For two or three years, while the pauper lived in Chaldon Herring, he rented in that parish a dairy of thirty cows, some at 5*l.* 10*s.* and others at 5*l.* per cow, with liberty to cut furze on Grange Warren, and on other parts of the farm, for the use of the dairy only; and a warren to kill rabbits for his profit, called Grange Warren, with a small house on it to keep nets, in the same parish, of the same man, at 30*l.* per annum; and also another rabbit warren in the neighbourhood, for the same purpose, at 15*l.* per annum. The cows were to feed in particular grounds at particular seasons of the year, as is usual in the letting of dairies. The pauper and his man sometimes slept in the house in Grange Warren. The pauper had no right in the soil of either of the said warrens, except that of entering upon and killing rabbits there; the persons of whom he rented the warrens constantly depasturing the same and ploughing some part thereof. Lord *Kenyon*, C. J. "If we were now called upon for the first time to make a decision on this statute, perhaps I should have some difficulty on the subject; but the courts have put a liberal construction on it. I cannot quite agree with *Rex* v. *Lockerly*, 754, *n.*; because after it had been decided in so many cases that an incorporeal hereditament would give a settlement, I should have thought that that case would have received a different determination. But without considering that case, I think that the pauper took a tenement in Chaldon Herring both by renting the dairy and the warren. Lord *Coke*

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So also is renting a warren to kill rabbits, though the soil be not taken, but merely a right to enter and take the rabbits.

says that *prima tonsura* is a tenement; then the dairy was a tenement. The other taking was also sufficient; for it was, if I may use the expression, a pernancy of the profits of the land by the mouths of the rabbits. A free warren is the subject of a family settlement; a *præcipe* will lie for it; and the renting of it is sufficient to give a settlement. If this case had been precisely similar to *Rex* v. *Lockerly* (*a*) perhaps I should have hesitated before I agreed to overturn that decision; but as this is distinguishable from that case (though the distinction is nice), I think that the pauper gained a settlement in Chaldon Herring." *Ashhurst*, J. "It seems difficult to reconcile all the cases on this subject. If *Rex* v. *Lockerly* be law, I do not see how this pauper can have gained a settlement in Chaldon Herring; but as there are authorities both ways I am inclined to think that a settlement was gained in Chaldon Herring; the *criterion*, by which the question is to be decided, being the ability of the person taking the tenement." *Buller*, J. "In all doubtful cases one leading ground is, the ability of the pauper to pay the 10*l.* per annum. But on the facts here stated, I think this person rented a tenement within the statute of Car. II. I cannot agree with the determination of *Rex* v. *Lockerly*. That was considered as a personal contract; but all contracts are in some respects personal. The question in such cases really ought to be, whether or not it be *a contract to receive the profits out of land*? The present I consider as such; and so was that in *Rex* v. *Lockerly*. I am therefore of opinion that the conclusion drawn in that case was wrong. As to the other point I do not consider this merely as a privilege to kill rabbits when the pauper could find them, and that the landlord might take them all if he chose it; but the warren was to be kept in the same state as it was when it was let; otherwise the contract between the landlord and the tenant would be destroyed. In that respect then the pauper had an interest in the land. Besides, he took a house with the warren." *Grose*, J. "It is impossible to reconcile all the cases on the subject; and I do not understand the ground on which *Rex* v. *Lockerly* was decided. In these cases, I think, that if the pauper had credit to rent 10*l.* per annum, he gained a settlement. *Kinver* v. *Stone* (p. 748) decides the present." Both orders quashed.

(*a*) The case of *Rex* v. *Lockerly*, which by *Rex* v. *Tolpuddle* (p. 755), is now overruled, was as follows: (*Burr. S. C.* 315; *Bott*, 137 *n.*) Removal from Lockerly to Shirefield English quashed. The pauper went to Lockerly, and there entered into articles of agreement with one J. M. as follows:—M. covenanted with the pauper to demise to him a dairy of sixteen cows, with a messuage and dwelling-house, and feeding for the cows on twenty-one acres of clover ground, and thirteen of meadow land, with the after-lease of a meadow, all in Lockerly; "also the run of the yard and the arches of the farm (of which the dairy, &c. were part) for pigs; and the run of one horse with the cows for one year; M. to allow E. all the sherl wheat arising from the corn growing on the farm; and also provide for the use of the cattle, when wanted, five tons of hay; and for the feed of the cattle, cause the above-mentioned lands to be laid up at certain times; and fetch the necessaries and fuel of E. home to the messuage. And if the cows shall not be delivered of their calves by the 1st of May, M. shall deduct out of the rent 2*s.* per week for every cow until she shall be delivered, and also what may be reasonable for every calf wanting to each cow. E. to pay to M. 3*l.* 5*s.* for every cow, payable quarterly." E. entered and occupied; the cows were fed on the lands mentioned; and during some time sheep belonging to M. were fed with them on a part of them; but the thirteen acres of meadow were never fed but by the said cows. After argument, *Wright*, J., said, "that the *land* seemed to have *remained to* M., for *he* was to lay it up at such a time. That a tenement must lie in tenure, and must relate to land, whereas this contract related to cows. The *pasture* of the ground *generally* is not *let*, but only the feeding of sixteen cows. That the value of the meadow was not stated. That it was *only an agreement for the use of the cows*, and the feeding of them; and was merely personal. That no interest in land passed or was intended to pass." (And he said, "that if in the case of *Minchin Hampton*, it were an agreement 'for the pasture only of the land,' he should doubt of it.")—To this the other judges assented, and quashed the order of sessions.

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Renting cows by the year, to be fed in particular grounds belonging to the owner, exclusively of any other cattle, is a tenement.

Rex v. *Tolpuddle*, 4 *T. R.* 671. G. Hill removed from Puddletown to Tolpuddle, in Dorsetshire. Order confirmed. Case:—J. Chapman was the tenant and occupier of a farm in Tolpuddle, part of the stock of which farm consisted of cows, which, according to the usual course of husbandry in that county, had been constantly let to some dairy-man. The pauper rented, under a verbal agreement, those cows of Chapman, at 3*l.* 10*s.* per cow per annum; it was also agreed between them (as is usual there), that the owner of the cows should feed and support them, and that they should depasture in the Cow-leaze Grounds from May-day till the 18th September, and afterwards in certain meadow grounds, which are kept for that purpose, from the time the same are mowed; both which grounds were part of the farm then in the occupation of Chapman; and when the pasture of the meadow grounds was consumed, that the cows should be kept by Chapman in some other of the farm grounds with his other cattle, or be foddered in the farm-yard with hay by him. The Cow-leaze was not to be fed upon by any cattle from Lady-day till May-day, nor was he to feed any other cattle either in the Cow-leaze or meadow-ground whilst the same were fed by the cows so rented. But the hay of the meadow-ground was cut and taken away by Chapman, and the Cow-leaze was fed by him after the cows had quitted it, and he was to repair the fences. In case any cow did not calve before May-day, or afterwards if any of them died or became barren, an allowance was to be made to the pauper; and in case of sickness amongst the cattle Chapman was to defray all expenses. The pauper was also to have a dwelling-house, and a right of feeding a mare on the farm, and keeping his pigs in the yard, and of cutting fuel for the use of his dairy; but he had no other right whatever. This contract continued for five years, and the pauper resided during the whole time in the house in Tolpuddle. The above are the usual terms of letting such farms in that county, and is called a letting of a dairy (*a*). Lord *Kenyon*. "It is certainly very much to be wished that the decisions of the magistrates below should, on examination here, be found to be consonant to the laws of the land. And I am happy to find that we are relieved from the supposed inconvenience of sending down a new code of laws to the county where this question arose; because our opinion concurs with that formed by the justices in their sessions, as well as that of the justices who made the original order. From the passing of the statute of Car. II. to the present time, the construction put on it has been (what is called) a liberal construction, in order to confer a settlement on those persons who have the ability to take a tenement which the statute has established as the criterion. I confess it seems to me impossible to reconcile the decision of *Rex* v. *Lockerly* with our determination in this case, that the pauper gained a settlement in Tolpuddle; but if we are of opinion that that case cannot be supported, it will be more manly to say so in express terms, than by endeavouring to make nice distinctions, to induce the magistrates below to consider it as an authority hereafter. When the *Rex* v. *Piddletrenthide* (p. 753), came before us we all doubted of the decision of *Rex* v. *Lockerly*; but there being other distinct ground upon which we were warranted in supporting the settlement, we were not directly called upon to overrule that case. But now it being impossible to distinguish between this case and that, I think we are bound to deny the authority of that case, and to substitute in its room a better exposition of the statute of Car. II. It has been argued, that if we decide this to be a tenement, we shall depart from the words of the statute, but in this case the pauper took a tenement, emphatically a tenement. Anything is a tenement which is a profit out of land. In order to make a tenement it is not necessary the party should have the fee-simple or fee-tail, any minute interest in land is parcel of a tenement; such minute interest indeed cannot be entailed, but all the parcels when consolidated together may. A beast-gate has been held to be

(*a*) It was admitted that the annual value of the land was more than 10*l.* See 2 *East*, 199, *n.* (*c*).

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a tenement, and yet that is not the whole land, but the profits of the land to a certain amount. So here the profits of those lands are to be taken exclusively by the cows which the pauper rented. If the cattle had been his own, and he had rented the feeding of them, that would have been unquestionably a tenement, like the taking of a pasture, the hay and aftermath. And I think that these cows were the pauper's for a certain period; they were not so far his own that he could have sold them, but they were his that he might use them under the contract for a limited time. And this was not the less the taking of a tenement, because the pauper could only enjoy the land in a particular mode, for in many farms the tenant stipulates that he will not depasture sheep or horses on particular grounds. I do not see, therefore, why this is not strictly speaking a tenement, for the pauper had for a certain part of the year the exclusive right to the pasturage of these grounds, to be taken by the mouths of the cattle." The other judges delivered opinions to the same effect. Both orders confirmed. (*a*)

But the land on which the cows are depastured must be of the annual value of ten pounds.

Rex v. *Minworth*, 2 *East*, 198. Removal from Minworth to Worley Wigorne quashed. Case:—The pauper, by a verbal contract, rented from Lady-day till six weeks after Michaelmas two cows, at 5*s*. a cow per week, of J. G., the tenant of certain lands in Minworth. It was agreed that the owner of the cows should feed and support them: they were to be fed on certain lands specified, but which lands were not of the annual value of 10*l*. G. was not to feed any other cattle in any of the lands whilst they were depastured by the cows rented by the pauper. It was contended, that it was enough if the annual value of 10*l*. had arisen from something connected with the realty, though no part thereof. *Grose*, J. "This case is very plain. Unless the pauper occupied a tenement of 10*l*. a year value, he could gain no settlement. And that fact is expressly negatived; for it is stated that he rented two cows, which were to be fed on particular lands, and that those lands were not of the annual value of 10*l*. That makes an end of the question. The principle on which the renting of dairies has been holden to confer a settlement is, that in truth it is a contract for a certain interest in the land, to be enjoyed in a particular manner, that alone constitutes it the taking of a tenement; and in each of these cases which have been decided on that ground, it was understood that the land itself was of the requisite value. The pauper, then, did not gain a settlement by the renting and occupation in question." *Lawrence*, J. "In *Rex* v. *Tolpuddle* (p. 755), the value of the cows was never taken into consideration as forming part of the value of the tenement. The produce of a warren is the rabbits, as much as the produce of the fishery is the fish."

The value of the cows can form no part of the value of the *tenement*.

Although the pauper has not an exclusive right to the pasture where the cows are fed, and the cows be his own, it is a tenement.

Rex v. *Hollington*, 3 *East*, 113. Removal from Breadsall to Hollington confirmed. Case:—The pauper went to reside in St. Werburgh, in Derby, and occupied a house there of the annual value of 5*l*. During the time he occupied this house he rented the ley of two (of his own) cows from May-day to Michaelmas, at six guineas, in a large pasture containing 100 acres, and of the annual value of 250*l*., belonging to Mr. Mundy. Mundy was under no restriction as to what number of cows he kept in it. It was insisted that the circumstance of the pauper's having no exclusive right to the pasturage differed this from the preceding cases. The sessions thought that this ley was not a tenement, and therefore no settlement was acquired in St. Werburgh. Lord *Ellenborough*. "This is nothing more than a common in gross, which has been holden to be a tenement within the statute. If Mr. M. overstocked the land, the tenant might recover in damages." *Lawrence*, J. "Mr. J. *Buller* states (p. 754), that the question in cases like the present is this, *Whether or not it be a contract to receive profits out of land?* If that be so, it determines this case, for here the cows were the pauper's own, and the contract, which was for the pasturage of them, was, to use the words of Lord *Kenyon* in the same case, a contract *for the pernancy of the profits of the land by the mouths of the cattle.*" Both orders quashed.

(*a*) See also *Burt* v. *Moore*, 5 *T. R.* 329, where it was held that under such a demise the tenant might distrain cattle trespassing there.

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A contract by which the cattle might be fed on green tares is not sufficient.

If the cows be not the pauper's own, and the contract be only for the privilege of milking them, they being to be depastured on a certain farm, that will confer a settlement.

Rex v. *Tisbury*, 2 *Nol. P. L.* 19. Per *Lawrence*, J. "A contract to feed cows generally, under which they might be fed with green tares bought in the market, would not be a tenement within the act."

Rex v. *Stoke-upon-Trent*, 10 *East*, 496. Removal from Stoke-upon-Trent to Norton-on-the-Moors quashed. Case:—The pauper, under a verbal agreement, rented and paid for the hire and privilege of milking two cows, belonging to a Mr. Repton, 5*s.* 6*d.* per week each cow for forty successive weeks. The cows were by the agreement to be depastured by Repton on his farm in common with his other cows: and were in fact depastured on such lands of the farm as Repton thought proper: the pauper never went to fetch them, but they were brought up with Repton's other cows to the fold-yard, and there milked by the pauper. During the time the pauper rented the cows he resided in a cottage in the parish, for which he paid 50*s.* a year. The depasturing of the two cows, together with the cottage, was worth more than 10*l.* a year. Lord *Ellenborough*, C. J. "There is no solid distinction between *Rex* v. *Hollington* (p. 756) and this. There the pauper had only hired the depasturing of his own cows in common with the cattle of the owner in certain land; here he hired the cows themselves, which for this purpose are the same as his own, together with their depasturing in common with the owner's other cattle upon a certain farm; all included in one contract. If the cows had been the pauper's own, this case would have been identically the same as the former; but that fact was no material ingredient in the former case; for the cows are his own for the time he hires them, and in some of the cases where a settlement was gained the cows were hired as well as their feeding." *Grose*, J. "This is a contract to take the milk of cows to be depastured on a certain farm; which is purchasing *pro tanto* the interest in those pastures in which the cows were to be fed." *Le Blanc*, J. "The only difference between this case and *Rex* v. *Piddletrenthide* (p. 753), is, that there it was stated to be the renting of a *dairy*, which is only a contract for the hire and privilege of milking cows, which during the time are to be depastured on the owner's lands. But there the cows were to feed in particular grounds at particular seasons of the year; and here they were to be depastured on the farm in common with the owner's other cattle. In *Rex* v. *Tolpuddle* (p. 755), the agreement was as here, for the owner's cows at so much a-head, and though they were to have the exclusive pasturage of certain grounds during part of the year, yet that has since been held to make no difference. The reasoning of Lord *Kenyon* in that case will apply to this case. In *Rex* v. *Minworth* (p. 756), there was no doubt but that the contract was for the taking of a tenement; but the value of the land on which the two cows were to be depastured did not amount to 10*l.* a year, and therefore no settlement was gained. Now here the pauper contracted for the milking of two *specific* cows (not any cows) which were to be depastured on the farm of the owner, together with his other cattle, the value of which pasturage, together with the cottage rented by the pauper during the same time, amounted to more than 10*l.* a year. Then it was decided in *Rex* v. *Hollington*, that hiring the feeding of cows for a certain time, in common with the cattle of the owner of the pasture in which they are to be fed, is a taking of a tenement. This then is the same as if the pauper had hired the cows at so much, and the pasture for feeding them at so much more, though the two sums are compounded in one. *Bayley*, J. "The agreement here is that the owner should *depasture* the cows upon his farm in the parish, which must mean that they were to be fed on the pasture grown on the land; if, therefore, he had fed them in any other way it would have been a breach of his contract." Order of sessions quashed.

A contract for a pasture-fed cow for the season is a sufficient tenement to confer a settlement.

Rex v. *Darley Abbey*, 14 *East*, 280. Removal of W. Bainbridge from Duffield to Darley Abbey, in Derbyshire. Order confirmed. Case:—The pauper for two years resided in a house and occupied a garden in Darley Abbey, of the annual value of 8*l.* 18*s.*, and during the whole of that time he and one John Meyer jointly hired the milking of a cow in the following manner. The pauper applied to Mr. Evans, at whose factory he and Meyer worked, for the milking of a cow betwixt them; Evans referred the pauper

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to his agent, Mr. Harvey, to agree for the cow; Harvey agreed they should have a cow *for the season* for 9*l.* The particular cow was pointed out; the cow was at that time upon a farm of Evans's, which he occupied. Nothing was said as to how or where the cow should be fed, more than that Harvey said that Jerom, Evans's farming man, would inform the pauper in what pasture the cow would be first milked, and he did inform him, and so from time to time when the pasture was changed, that he might know where to go to milk her. The cow was grazed in Evans's pastures in the same farm for the whole of the two seasons with other cows, which were let in the same way to other workmen of Evans's, and with other cattle belonging to Evans. The pauper and his partner always milked the cow during the whole time. They hired the same cow four successive seasons, and the cow was always grazed in the same way on Evans's farm. The summer pasturage of the cow alone was admitted to be of the value of 5*l.* each season. Lord *Ellenborough.* "It has been too long ago decided to be now shaken, that the hiring of the feeding of cows is a sufficient taking of a tenement to confer a settlement within the statute, if the tenement be of sufficient value; and here the necessary value is made up by the contract which the pauper entered into for hiring the milking of a cow in the manner stated in the case. A contract for the mere milking of a cow is indeed no more than a contract for a personal thing; and, therefore, unless through the medium of the cow, he contracted for the pernancy of the profit of land, there could be no settlement gained. But the question is whether by this contract, explained as it is by the subject-matter and the circumstances, the owner was not to furnish the pauper with a cow to be fed upon the land. Where parties understand the subject of their contract a few words are sufficient for the terms of it, and sometimes it may be collected from their acts, without words. Here the contract was made by the pauper with a man who had a farm, and cows then feeding on it; to him the pauper applied for the milking of a cow, and Harvey agreed that the pauper should have a cow *for the season* for 9*l.*, and the particular cow was pointed out. The term *season* would import, according to the subject-matter, during the time that the grass grew on the land to feed the cow. [During the argument, Lord *Ellenborough* said, "Does not '*season*' mean *pasture* season? Can the word season be construed without reference to pasture?"] The cow was then fed upon the owner's farm, but nothing was *said* how or where the cow should be fed, that is, the particular land on which the cow was to be fed was not mentioned; but the pauper was told in *what* pasture the cow should be first milked; and whenever the pasture was changed he was informed of it. Then is it not to be fairly understood that when the cow was to be milked on pasture ground, she was also to be fed there? What could be meant by changing the pasture, but for the purpose of her being fed on fresh pasture? If, then, the owner had fed the cow on dry food, as grains, instead of pasture, it would have been a breach of the contract. The parties meant to contract for a pasture-fed cow for the purpose of milking. The principle established by the former cases cannot now be questioned, and this case is governed by it." *Grose*, J. "The pernancy of profits of land must be established, in order to confer a settlement by this kind of contract; here I think it was established." In answer to the observation, that the pasture was pointed out, that the pauper might know where the cow was to be milked, *Grose*, J., said, "Then, must it not be understood that the cow was to be fed on the pasture where she was to be milked?" *Le Blanc*, J. "Nobody who reads this case can doubt that this was a hiring by the pauper of a cow to be fed on the pasture of him who let it. The facts are, that the pauper applied to Mr. Evans, the owner of the farm on which there were cows, for the milking of a cow; the owner referred him to his agent Harvey, with whom the pauper agreed for a cow for the season at 9*l.*, and a particular cow was pointed out; and though nothing was said as to how or where the cow was to be fed, yet Harvey told him then that the owner's farming man would inform him in what pasture the cow was

A contract for the mere milking of a cow is insufficient.

to be first milked; that is, on what particular pasture she was then fed: is it not evident from this that it was a contract for the hire of a pasture-fed cow? It is objected, that no specific land was pointed out on which the cow was to be fed; but that need not be agreed upon, nor need it have been fed upon the *same* land on which the owner was residing. It is clear, however, that this cow was to be fed upon the farm in the occupation of Evans, or upon land that he was to provide for her, and in fact she was depastured upon the farm all the season." *Bayley*, J. "Here there can be no doubt that the contract was for the milking of a cow which should be pasture-fed during the season, either upon land of the farm in the parish where the parties contracted, and were residing, or at least within a reasonable distance of it, in order that the pauper might have a convenient opportunity of coming to milk the cow. And if the owner had fed the cow otherwise than upon pasture, an action by the pauper would have lain for a breach of the contract." (*a*) Order of sessions confirmed.

The contract must be to feed the cattle with the growing produce of the land.

Rex v. *Sutton St. Edmunds*, 1 *B. & C.* 536; 2 *D. & R.* 800. Removal of T. Watson from Leverington to Sutton St. Edmunds. Order confirmed. Case:—The pauper, at Lady-day, 1793, agreed with J. Ulyatt, a farmer in Leverington, to serve him as a confined labourer in husbandry (that is, to work for him and no other person) for a year. The agreement was, the pauper to have 18*l.* a year wages. His master either to find him two cows, or the pauper was to be at liberty to provide himself with two and feed them on his master's farm during the same year. The pauper went into the service of Ulyatt, under the agreement, at Lady-day, 1793, and continued therein till Lady-day, 1797, under contracts to the same effect. During the first three years of such servitude, the pauper lived in a house on his master's farm in Wisbeach High Fen, and the last year of such service in a cottage at Leverington. The occupation of the cottage was incidental to the service of the pauper, who was discharged from it at the same time that he left his service. The pauper bought one cow, and his master found him another, both of which were fed during the summer in the pasture of his master, and in the winter were kept in the straw yard of his master, and fed with hay grown upon the master's lands. The pauper had the exclusive use and advantage of such cows. If the pauper had not had such cows kept for him on his master's farm, he would have had more wages; and at the time he left Ulyatt's service in 1797, he took his cow with him. Evidence was given that the keep of the two cows during the summer months would require two acres and a half of land, on which they were fed, and that such acres were worth together annually 5*l.* 5*s.*; and that to cut hay sufficient for the winter keep would require two acres and a half more of such land of the annual value of 5*l.* 5*s.*; and that the summer feed and winter keep with hay for the two cows on such farm were of the annual value of 10*l.* 10*s.* The sessions were of opinion that this did not constitute a tenement. During the argument, *Bayley*, J., said, in *Rex* v. *Oswald Twissell*, *M. T.* 1818, this very point was decided. There the pauper rented, *inter alia*, the milk of a cow to be kept by the owner; her keep made up the necessary value 10*l.*, and she was in fact pasture-fed; but it was held, that as it did not appear to have been made matter of bargain that she should be pasture-fed, hiring her milk was not necessarily taking a tenement, and the order of sessions allowing the settlement was quashed. *Holroyd*, J. "The sessions have not found that the right of feeding the two cows on the land was of the annual value of 10*l.*" After the argument, *Abbott*, C. J., said, "It has been settled in several cases that the liberty to take the profits of land by the mouths of cattle is a tenement within the 13 & 14 Car. II.; but *Rex* v. *Oswald Twissell* is an authority to show that the contract must apply to *growing produce*, and that a contract partly for growing produce and partly for hay is insufficient to give a settlement. The contract in this case is not very distinguishable from that in *Rex* v. *Minster*, although it is to be observed, however, that no question was raised in that

(*a*) So also in *Rex* v. *Minster* (*post*), the liberty to feed two cows on his master's farm was held a tenement.

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case as to the manner in which the cattle were to be fed. The question was treated both by the bar and the bench as if they were to feed upon the growing produce, and that the pauper acquired a right to the profits of the land itself. *Le Blanc*, J., says 'the liberty of taking the profits out of land is found to be of greater value than 10*l.*' It was a point conceded in that case that the mode of feeding was sufficient to give a settlement. Here the distinction is pointed out, and according to *Rex* v. *Oswald Twissell* the contract must be to feed the cattle with the growing produce of the land. Now in this case the master was only bound by the contract to feed the cattle during the year upon the farm, according to the usual mode, that is, to feed them during the summer upon the pasture, and during the winter in the straw-yard. The summer keep upon the pasture is found to be of no greater value than five guineas, and the winter keep, for the reasons already given, cannot be taken into consideration; and that being so, I am of opinion that the pauper did not gain any settlement in Leverington." *Bayley*, J. "The party, in order to gain a settlement, must come to settle upon a tenement of the yearly value of 10*l.* The right to take the herbage and produce of the soil is a right to the profits of the land, and constitutes a tenement. But the contract must be for taking the growing produce of the land. Now here it is stated that by the contract the pauper was to be at liberty to feed the cows on his master's farm during the year. By that contract the master would be bound to feed the cows during the whole year in the usual mode, viz., to feed them on the pastures during the summer, and in the straw-yard during the winter. The right to feed cattle for a period of the year when they are usually pasture-fed, by eating the growing produce of the land, is a tenement; but the right to feed cattle by dry food, not necessarily a part of the produce of any particular land, is not a tenement. That point was not taken in *Rex* v. *Minster* (p. 776). *Rex* v. *Oswald Twissell* is an authority expressly to show that the value of the pasturage can alone be taken into consideration in estimating the value of the tenement occupied by a pauper under such a contract as this. Here the value of the pasturage alone amounted only to 5*l.* 5*s.*, and consequently the pauper had not a tenement of the annual value of 10*l.*" *Holroyd*, J. "I am of opinion that the pauper gained no settlement by this contract. Agreements for liberty to take the growing produce of land by the mouths of cattle, have been considered as equivalent to a demise of the land at a rent equal to the profits of the land, and to constitute an incorporeal tenement. The party entitled to the privilege is considered for this purpose as the occupier of land of that value. The authorities establish that where such a contract confers a right of pasturage of the annual value of 10*l.*, a settlement is gained. But a contract to feed cattle with hay in a straw-yard gives no right to the occupation of land from which the hay is cut. It is rather a personal contract for the sale of so much hay as shall be necessary for the sustenance of the cattle. Here then the pauper had an interest in that land alone on which his cows were depastured during the summer, and the annual value of that was only 5*l.* 5*s.*, and insufficient." Order affirmed.

The "going" of sheep on the master's farm without an agreement that they should be pasture-fed, is not a tenement.

Rex v. *Bardwell*, 2 *B. & C.* 161; 3 *D. & R.* 369. Peter Firman was removed from Bardwell to Ixworth. Order quashed. Case:—About twenty-four years ago the pauper, a married man, was hired for a year by S., of Ixworth, as his shepherd; he was to have a house and garden rent free, 7*s.* a week, and the going of thirty sheep with his master's flock as wages. The pauper lived for two years with S. in Ixworth at these wages, during all which time the thirty sheep went with his master's flock on the farm, the whole of which was situated in that parish. The feed of the thirty sheep was worth 16*l.* a year, exclusive of the house and garden. If the pauper had not been allowed to keep the sheep, he must have had more wages. During the argument, *Bayley*, J., asked, "Is there any case, except *Rex* v. *Minster* (*post*), where the pauper gained a settlement by renting a tenement without (*a*) residing upon any part of it?" He added, "This

(*a*) As to this point see tit. *Residence*; and *Rex* v. *Houghton-le-Spring*, *post*.

case certainly comes very near to *Rex* v. *Minster*, but that is open to much observation. It was there conceded that the right to have the cows fed upon the master's farm was a tenement, and the only question discussed and decided was, the nature of the consideration given for that tenement. In *Rex* v. *Oswald Twissell* (p. 759), it was held that, unless it was stipulated in the original bargain that the cows should be pasture-fed, a settlement would not be gained, and that decision was recognised and acted upon in *Rex* v. *Sutton St. Edmunds* (*post*). In the present case it is probable that the sheep were fed upon the growing produce to the value of 10*l.* per annum, but as it was not any part of the original bargain that they should be so fed, it falls expressly within those two cases, and is not sufficient to confer a settlement." *Best*, J. "As there was not any agreement here that the sheep should be fed on growing produce, the case fell within *Rex* v. *Sutton St. Edmunds*" (*a*).

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Rex v. *Thornham*, 9 *D. & R.* 752; 6 *B. & C.* 733. Case:—The pauper was hired as shepherd, at 12*s.* a week, &c. *and to have twenty-one ewes going.* The pauper lived under this agreement, and brought with him his ewes and lambs. The "going" of the ewes was worth 10*l.* a year. During a part of the first year the ewes were fed off the master's farm on the turnips of a neighbouring farmer, and during a part of the second winter they were fed on straw. *Bayley*, J. "I think the fair meaning of the expression is, that his twenty-one ewes were to be with and to go with his master's flock, and were to be fed from time to time upon growing produce, or on hay, as his master's flock was. If the term 'going' in that country has acquired a peculiar meaning, the sessions should have found that fact; but without such explanation we must understand the word in its usual sense; and so construing it, the meaning of the bargain is, that the servant was to have the ewes fed either on growing produce or on hay and straw, as his master's flock was, and then it is quite clear that no settlement was gained. For the authorities establish that in order to confer a settlement it must be part of the bargain itself that the cattle should be *pasture fed*, and that it is not sufficient that they are in fact so fed." His lordship then referred to *Rex* v. *Darley Abbey* (p. 757), and *Rex* v. *Oswald Twissell*, as authorities for that position, and said, "In all the cases cited in argument there was a right of turning the cattle on a particular piece of land. A *cattle-gate* imports a right of pasture on particular ground. Considering, therefore, the terms of the contract, and believing that neither of them had any very accurate idea of the meaning of the term 'going,' I think they must be taken to have used it in its ordinary sense. Consequently no settlement was gained." *Holroyd*, J. "The word 'going' has no technical meaning. I think that in its ordinary sense, and when used in relation to the subject-matter of such a contract as this, it imports that which was explained by the other words used in the contract in *Rex* v. *Bardwell* (p. 760), to be its meaning there, viz., that the servant's cattle should go with his master's flock. The contract, therefore, in this case gave the servant no right to have his ewes pasture-fed; and that being so, the authorities referred to establish that no settlement was gained in Thornham." *Littledale*, J. "This case depends entirely upon the meaning of the term 'going.' I am not aware that that word is used in the country in the sense attributed to it in the course of the argument. If the court of quarter sessions had found that the word 'going' had that particular meaning in the part of the country where the bargain was made, we should have been bound by it. But there being no such finding, we ought to understand that word in its ordinary sense, and so understanding it, I think the meaning of the contract was, that the twenty-one ewes were to go as the other ewes went, viz., to be fed on growing produce or on dry food as his master's cattle were; and if that be so, then it is quite clear that the going of twenty-one ewes did not constitute a tenement, and therefore no settlement was gained in the parish of Thornham." Order of sessions quashed.

Twenty-one ewes "going" does not imply pasture fed.

(*a*) See the other point upon which the judges gave an opinion, p. 778.

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Renting the going of 105 sheep with the master's flock, the term "going" meaning that the sheep should be pasture-fed, is a tenement.
It may be inferred from the facts that the feeding of the cattle was to be in the parish.

Rex v. *Nacton*, 3 *B. & Adol.* 543. Mary Gibson was removed from Nacton to Croxton. Order quashed. Case:—The settlement of the deceased husband of the pauper was in Croxton till Midsummer, 1804; he then went under a yearly hiring into the service of R. Stubbings, at Barnham, as shepherd's page, where he lived one whole year. Stubbings had been hired by J. Chambers, a farmer at Barnham, as his shepherd, to go into his service at that same Midsummer, and brought with him to Barnham a certificate dated 1st of June, 1804, acknowledging him, his wife and children, to belong to St. Peter, Thetford, without which certificate Chambers would not hire him. Stubbings' agreement with Chambers was, that he should have a cottage in Barnham to live in rent free, the going of 105 sheep with his master's flock, ten coombs of barley, ten coombs of rye, and firing, in lieu of wages. The occupation of the cottages was necessary for the due performance of the shepherd's service, and out of his allowance he had to lodge and maintain his pages. The sessions found that the term "going" meant, in the county where the contract was made, that the sheep should be pasture-fed, but that in bad weather the sheep were to be fed on turnips or hay with the master's; and that the actual feeding of the sheep in pasture in Barnham was worth more than 10*l.* a year. Lord *Tenterden.* "It is now too late to contend that if the remuneration of a person hired to serve in husbandry be by the pasture of cattle on his master's land, that that is not the taking of a tenement sufficient to confer a settlement, if it be of the value of 10*l.* Here the sessions have found that the term 'going' meant in the county where the contract was made, pasture feeding; and that although in bad weather the sheep were to be fed on hay or turnips, the actual feeding on pasture in Barnham was worth more than 10*l.* a year. It is said that this 'going' does not constitute a tenement, because there is no locality. There is none certainly expressed in the words of the contract between Stubbings and Chambers; but it may be abundantly collected from the other parts of the case, that the feeding of the sheep was to be in Barnham; for first, Stubbings was to have a cottage in Barnham, the occupation of which was necessary to the performance of his duty as shepherd, and the 'actual feeding of the sheep in pasture in Barnham' is found to be worth more than 10*l.* a year. The only doubt on my mind is as to the effect of the certificate. Upon that point we will take time to consider." *Littledale*, J. "It is perfectly well established, that if a party takes a tenement of 10*l.* a year value, whether he pays for it by money or services, he gains a settlement. Here the sessions have found that Stubbings was to have the going of 105 sheep with his master's flock, but it is not to be inferred from thence that the sheep were to be fed out of the parish. The meaning of the term 'going' is, that they should be pasture-fed. I think from the facts found in this case, it may be inferred that the feeding of the sheep was to be in Barnham; and that being so, then according to *Rex* v. *Benneworth*, (p. 763), the husband of the pauper would gain a settlement in Barnham, unless he was prevented by the certificate. That question deserves further consideration." *Parke*, J. "I am of opinion that in this case there was a taking of a tenement within the statute 13 & 14 Car. II. c. 12, and that Stubbings, by having made an agreement with his master for the 'going' of the 105 sheep, and residing in the parish forty days, gained a settlement. It is too late now to question the propriety of the rules, that the perception of the profits of land by the mouths of cattle is a tenement within the statute 13 & 14 Car. II. c. 12, and that the occupation of a tenement of the value of 10*l.* will give a settlement, whether the rent be paid in money or in labour. The law upon that subject was finally settled in *Rex* v. *Benneworth*. That being so, the question is then, whether it sufficiently appears that the pasture feeding was to be in Barnham? and the case resolves itself into the question, what was the meaning of the contract between the parties? I take it to be clear that the feeding on pasture was to be in the parish of Barnham, for the cottage which was necessary for the due performance of Stubbings' duty as shepherd was in that parish, and the actual feeding of the sheep on pasture in Barnham is found to be worth

more than 10*l.* a year. The pauper's husband therefore came to settle on a tenement of 10*l.* per annum in Barnham. On the other question, as to the effect of the certificate, I agree that it should be further considered." *Patteson*, J. "I think that in this case there was a taking of a tenement by Stubbings; the only difficulty is as to its locality. *Rex* v. *Darley Abbey* (p. 757), shows that the meaning of the parties as to the place where cattle are to be pasture-fed, may be collected from the subject-matter of the contract, and the other circumstances of the case. That being so, I infer from the facts found by the sessions, that the going was to be in the parish of Barnham, for the cottage was in that parish, and the value of the pasture feeding there is found to be of the value of 10*l.* As to the question on the certificate, that may admit of some doubt." *Cur. adv. vult.* Lord *Tenterden*, C. J., now delivered the judgment of the court: "We have already decided that the agreement between Chambers and Stubbings, that the latter should have the going of 105 sheep with his master's flock, was a taking of a tenement in Barnham parish within the meaning of the statute 13 & 14 Car. II. c. 12. The point reserved for consideration was, whether Stubbings was to be looked upon as having resided in that parish under a certificate, so as to prevent the husband of the pauper from gaining a settlement by hiring and service with him. It was urged that as Stubbings could not acquire a settlement by the taking of a tenement until he had resided forty days in the parish, he must at all events be considered as having resided for those forty days under the certificate, and consequently that the pauper had not served him for a year after the certificate was discharged. It appears to us, however, that Stubbings is not to be considered as having resided in Barnham under the certificate during any part of the year; for he came to settle on a tenement of the value of 10*l.*, and was therefore irremovable as soon as he came into the parish. He never resided there under the certificate. The pauper's husband, therefore, was not serving a person residing under a certificate. If there had been no certificate whatever, the case would have been just the same. Stubbings was irremovable as soon as he came to settle on the tenement, and gained a settlement when he had resided forty days." Order of sessions confirmed.

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Service with a certificated person, who came to reside on tenement of 10*l.* value, will confer a settlement.

Rex v. *Benneworth*, 4 *D. & R.* 355; 2 *B. & C.* 775. Removal of James Fletcher, from Benneworth to Calcethorpe. Order quashed. Case:—In 1803, the pauper (a married man) was hired by yearly hiring as a confined labourer in husbandry, with Day, of Calcethorpe, farmer. The pauper had, according to agreement, a house and garden, and a rood of potato land, and the keep of a cow on his master's land. The cow was instead of so much money for wages. The pauper remained in Day's service eleven years, during which time, namely, in 1813, the pauper's cow failed in milk, on which account, through the kindness of his master, and not in consequence of *any bargain*, the pauper had in the place of the former cow two heifers kept for him by his master on his master's land for about eleven months. The potato land and keep of the two heifers were together of the value of 10*l. per annum*. But the potato land and keep of one cow were below that value. On leaving Day, the pauper went to live as a confined labourer with Briggs at Scamblesby, with whom he remained five years. For the last three years of the pauper's service with Briggs, the pauper was relieved in Scamblesby by the parish of Donnington. At the expiration of the pauper's service with Briggs, Donnington took him and his family to their parish, and put them into a cottage in Benneworth, where they continued to relieve them till 1822. *Cur. adv. vult.* *Abbott*, C. J., delivered the judgment. "We are all strongly impressed with the inconvenience of considering a settlement to be gained under circumstances like the present; and under that impression, we thought it right to consider the subject before we delivered our judgment. We have done so; but we find the law so firmly established,—that a perception of the profits of land by the mouths of cattle, is a tenement within the meaning of stat. 13 & 14 Car. II. c. 12, and that an occupation of a tenement of the yearly value of 10*l.* will give a settlement, whether the rent be paid in

A pauper was hired for a year, and had by agreement a house and garden, a rood of potato land, and the keep of a cow on his master's land. After the pauper had served ten years, his cow failing in milk, the pauper had in lieu of the cow two heifers kept for him, through the kindness of his master, and not in consequence of any bargain. The potato land, and the keep of two heifers, were of the annual value of ten pounds: but the potato land, and the keep of the one cow, were of less annual value than ten pounds: Held, that the keep of the two heifers was a tenement.

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money or in labour, and even if the occupation be gratuitous and no rent paid,—that we do not think ourselves at liberty to unsettle this doctrine; and consequently we are of opinion that a settlement was gained in Calcethorpe. The inconvenience is retrospective only: the law, so far as it regards a case of this kind being altered by the 59 Geo. III. c. 50. So that no person need now abstain from such an act as is disclosed in this case, through the fear of bringing a burthen upon his parish." Order of sessions quashed.

In this case it was found by the sessions, that "the keep of the heifers was not in consequence of any bargain," and the judgment therefore was supposed to be inconsistent with the previous doctrine, that the perception of the profits of the land by cattle would not be a tenement, unless it was a part of the contract that they should be pasture-fed. This is explained in the next case.

No settlement will be gained by the having the milk and feed of a cow, unless the person having it has an interest as tenant or occupier therein, and not by mere licence, nor unless it is part of the contract that the cow should be pasture-fed.

Rex v. *Langriville*, 10 *B.* & *C.* 899. E. Ewerby was removed from Langriville to Stickney. Order quashed. Case:—In 1800, the pauper became a confined labourer to a Mr. Dickenson, in the parish of Langriville. He was to have thirty guineas a year, a house, two gardens, and a rood of potatoes. After the bargain was made, his master said he might have the milk of a cow, and shortly after going into the service he had a cow, which was fed upon a close of his master's during that season of the year when cattle are pasture-fed. The value of the house, gardens, and the rood of potatoes, was under 10*l.* a year, but with the addition of the keep of the cow upon the land amounted to more than that sum. Lord *Tenterden* delivered the judgment. "The question is, whether a settlement was gained by the occupation of a tenement of the yearly value of 10*l.* in the parish of Langriville. In order to constitute this species of settlement under the 13 & 14 Car. II. c. 12, it is necessary that the pauper should have an interest in the subject of the occupation (such subject being of the requisite yearly value) as tenant or occupier, though it is not necessary that he should be under an obligation to pay rent, or that he should have more than an estate at will, (*Rex* v. *Fillongley*, *post*.) It has also been established by a series of cases, which were considered and confirmed in *Rex* v. *Benneworth*, that it was a sufficient occupation of a tenement, if a pauper had an interest in a part of the profits of the land by perception by the mouths of his cattle. But it is essential, whether the subject of occupation be the land itself or a part of its profits, that the pauper should have an interest as tenant or occupier; a possession by mere license without that interest is not enough. If a person were permitted by the owner of a pasture to feed his cow or sheep upon it for a time without any valuable consideration, and without any reference to any contract between them, but by a mere act of charity or favour, no settlement would be gained by such a permissive enjoyment of the produce of the land. But if there had been a contract with the owner for a sufficient consideration, by which the pauper had a right to part of the profits of the soil to be taken by his cattle, he would have an interest, and his occupation with that interest (if those profits were of the requisite annual value) would confer a settlement after a residence of forty days. In *Rex* v. *Benneworth*, which was so much relied upon in the argument of this case by the counsel for the appellants, as an authority that a gratuitous occupation was sufficient, it appeared that two heifers were substituted by the consent of the master for the cow which the pauper had a right by his contract to feed on the master's land. The pauper therefore may be considered as having had, by the act of the owner of the soil, as much interest in the land by the feeding of the heifers, as he had before by the feeding of the cow. The perception of the larger portion of the profits by the former was equally referrible to an interest in the land, as that of the smaller portion by the latter. In the present case, however, the sessions find that the master gave permission to the pauper to have the milk of a cow after the bargain was completed; and though it be taken that the cow was fed on the land, and that he meant at the time that the cow should be fed on the land, (which however does not distinctly appear, nor is there anything to show that he would not have kept his promise,

and even performed his contract, if the milk formed part of the bargain, by allowing the milk of a cow fed otherwise than on the land,) we think this must be considered as having been done in consequence of a mere act of kindness or favour of the master, not referrible to any contract, and that no interest was thereby acquired by the pauper in the profits of the land, consequently no settlement was gained by him in Langriville." Order of sessions quashed.

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Renting pointing places in a mill, not fixed in the floor, is not a tenement.

Rex v. *Dodderhill*, 8 *T. R.* 449. Removal from Ipsley to Dodderhill confirmed. Case:—The pauper Barnet went in 1791 to reside at Dodderhill, where he continued three years: during that time, being by trade a needle-maker, he worked for W. Webb in that trade at six pointing places in his mill, and afterwards W. not having in general use for more than four of them, B. rented of W. two of the said pointing places for more than one year, at the yearly rent of 16*l.*, but Barnet was to do all W.'s work in preference to that of any other person, although to do it it might be necessary to use all the six pointing places; and B. was paid by the piece for all the work he did for Webb. No particular places were let to B., but by his contract with W. he might have the use of any two he pleased; but work or no work, W. was entitled to his rent of 16*l.* a year for the two places. The mill belonged to W. The pointing places are frames of wood, which support the spindles on which grinding stones turn, which are moved by means of leathern straps communicating with the great wheel of the mill, which is turned by water. The pointing places are placed on the floor of the room, and at each end of them a man sits; and the needles are pointed by being pressed against the grinding stones. The court were of opinion that there was no pretence for calling this agreement to work in the mill, the taking of a tenement. (*a*)

Nor runners for scouring needles, though they be screwed to the floor of the mill.

Rex v. *Tardebigg*, 1 *East*, 528. Removal from Tardebigg to Alvechurch quashed. Case:—The pauper's husband took three runners for scouring needles in a mill belonging to Milward in Tardebigg, and a packetting room 1*s.* a packet for every packet scoured thereat. He took afterwards at different times other runners and another packetting room of another person. The runners were a part of the machinery, fixed to the floor of the mill with screws. The pauper's husband and his family slept in the mill for two years. One floor of the mill will contain several runners. He had the exclusive right to the use of these runners and the packetting rooms. He also took a cottage of Milward, and the rent altogether amounted to more than 10*l. per ann.* Lord *Kenyon*, "There is no distinguishing this case from *Rex* v. *Dodderhill*. A runner is no more a tenement than a pointing place is so. It might as well be said to be a taking of a tenement if a man contracted to pound in a certain mortar, or to use a particular grinding-stone in a mill. It is not in effect a taking of a part of the mill as a tenant, but a license to use a particular part of the machinery of it for the purpose of manufacture, and for no other purpose." *Lawrence*, J., said that, "*Rex* v. *Whitechapel* (*post*) did not apply here, for here the particular value of the runner is found, which is necessary to be taken into the account to make up the 10*l.* a year, and that not being a tenement, cannot confer a settlement; besides, it is not even stated that the runner was in the packetting room which was appropriated to the pauper's use."

Nor standing place in a mill

Rex v. *Mellor*, 2 *East*, 189. Removal from Bramhall to Mellor con-

(*a*) *Rex* v. *Hammersmith*, 8 *T. R.* 450, n. The pauper's father, Rogers, covenanted with B., the owner of a corn-mill, that he would with his horses and carts deliver and grind at the corn-mill a certain quantity of corn weekly, and pay B. per load. B. agreed, that during the time, Rogers should have the use and liberty of running and grazing fifteen horses in a named meadow, and the use of the stable and cart-house gratis. B. agreed at the expiration of the time to take the utensils of the corn-mill at an appraisement, and pay Rogers the amount. Rogers ground at the mill for two or three years, and resided in the parish. The court were clearly of opinion that there was no colour for construing this agreement into the taking of a tenement. Order confirmed.

In *Rex* v. *Iken*, p. 781, *Patteson*, J. observed on *Rex* v. *Hammersmith*, that if it was properly decided, the only ground is, that the meadow was ancillary to the grinding, and not a letting of the land.

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for a carding machine.

firmed. The pauper took a house at Stockport, of the value of 5*l.* a year: and he also took from the owner of a mill in S., worked by a steam-engine, *a standing place in a room for a carding machine* of his own, which was worked by the machinery of the engine, and fastened to the floor and the roof of the room. He was to pay his landlord 20*l.* a year, and agreed that each should give the other three months' notice to quit. He had a key to the room (as had other persons using the room in a similar way), and the owner had a master-key. It was urged against the order of sessions, that the only thing let was *the place in the room* where the machine was to be fixed: and that therefore the taking was of that part of the tenement itself, and not of the machinery itself, as in former cases. *Grose*, J. "This was a contract for nothing more than a liberty for the pauper to stand and work his machine in a room of the mill." *Lawrence*, J. said, that "this was only a license to use the machinery of the mill, and not a letting of any part of the mill itself, and that therefore no settlement could be gained by it.

Butcher's stall.

Rex v. *Caversham*, 4 *B. & C.* 683; 7 *D. & R.* 160. The pauper, a butcher, agreed to occupy one of several stalls in Reading market at 2*s.* 6*d.* per week. The stall was a permanent building, furnished with a door capable of being locked, and the key was in pauper's possession; but he had a right of access to the stall only on Wednesdays and Saturdays. *Bayley*, J. "I incline to think that this was a tenement within the statute of Car. II." The case was decided on another point. (See *post*).

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3. *What is a Tenement, &c.*

3. What is a Tenement under 59 Geo. III. c. 50; 6 Geo. IV. c. 57; and 1 Will. IV. c. 18.

By these statutes, which in this respect are the same, the *tenement* must consist of a *separate and distinct dwelling-house* or *building, or of land, or of both.* In *Rex* v. *St. Andrew's, Cambridge* (p. 753), there was a demise of a house *and tolls* at an *entire* rent; and *Bayley*, J., thought that this was not a tenement within the 6 Geo. IV. c. 57. The case was decided on another point.

The pauper took a house consisting of a house-place, a chamber over it, and above that a garret, which extended over the lower rooms in the adjoining house. He afterwards took the adjoining house, in addition to the rest of the premises, from the same landlord, for a year, at 10*l.* rent. The whole was under the same roof, though there was no internal communication. This is a distinct building. The pauper dwelt in the first part, and put a journeyman in the other. This is sufficient occupation under 6 Geo. IV. but not under 1 Will. IV.

Rex v. *Macclesfield*, 2 *Bar. & Adol.* 870. W. Hooley was removed from Adlington to Macclesfield. Order confirmed. Case:—The pauper, who was a silk-weaver, and used to employ journeymen, and had looms of his own, about September, 1826, took a house in Compton-row, Macclesfield, at 2*s.* 6*d.* per week. The house consisted of a house-place, a chamber over the house-place, and over that there was a garret, which extended over the lower rooms in the adjoining house. About six months after the first taking, the pauper took the adjoining house under his garret, and under the same roof, from the same landlady, and paid 4*s.* per week for the whole together. In a week or two the pauper called on his landlady, and agreed with her for the whole premises at the same rate for a year. He occupied the premises for nearly two years, paying the rent sometimes once a fortnight and sometimes once a month, as he found it convenient, and the whole rent was paid. He furnished the new part and put into it a journeyman who worked for him, and who paid the pauper 1*s.* 6*d.* per week for it. At one time pauper's step-son, a married man with a family, slept in the new part, the pauper having put a bed in it. The step-son paid the same rent which the pauper did. This was before the pauper let it to the journeyman. There was a passage under the chamber floor and betwixt the two houses, which went from the public street to other houses, and there was no internal communication betwixt the two houses. Lord *Tenterden*. "I should have been better satisfied if the justices in sessions had themselves found that these premises formed one distinct building. But it seems to me that they have found so in effect, for it is stated that the whole was under the same roof; that being so, it is a distinct building, which satisfies the words of the act." *Parke*, J. "We must take it from the facts stated in the case that this was one distinct building. I am by no means satisfied that the occupation of a dwelling-house and another distinct building in the same parish may not be sufficient to confer a settlement. The object of the act was to exclude all questions about the occupation of

rooms. It appears to me not to be less a tenement within the meaning of the act where one detached house is occupied with another. It is not, however, necessary to decide that point here. That there was a sufficient occupation by the under-tenant is settled by *Rex* v. *Great Bentley*, though that will not be sufficient since the new statute 1 Will. IV. c. 18, which requires an occupation by the person hiring the premises." *Taunton*, J. "To prevent any misconstruction, it must be understood that the court decides on the statement of the facts in this case. It is stated that one garret went over both houses and they were under one roof. It may be too much to say that two dwelling-houses can constitute one distinct dwelling-house, but this is a separate and distinct building. Then there has been an occupation within the words of the act, which does not say by whom the tenement is to be occupied." *Patteson*, J. "It is not necessary now to decide whether the occupation of two distinct dwelling-houses or buildings in different parts of a parish will be sufficient or not. This was one distinct building under one roof." Order of sessions quashed.

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A pauper in November, 1827, took a dwelling house of A. at a rent of 6*l.* 10*s.* In May, 1828, he took of B. a separate shed at a rent of 5*l.* He occupied both until September, 1830: Held, that he gained a settlement under the 6 Geo. IV. c. 57.

Rex v. *Tadcaster*, 4 *Bar. & Adol.* 703; 1 *Nev. & Man.* 466. Appeal against an order of removal from Leeds to Tadcaster. Case:—William Silversides, the late husband of the pauper, being settled by apprenticeship in Tadcaster, went to reside in Leeds, and in November, 1827 (subsequent to 6 Geo. IV. c. 57), took a dwelling-house within Leeds as tenant to W. W., and occupied the same until September, 1830, at the yearly rent of 6*l.* 10*s.*, which rent was duly paid for all that period. In May, 1828, he also took a building used as a shed, where he carried on his business as a bricklayer, situate in Leeds, as tenant to R. M., and occupied the same until September, 1830, at the yearly rent of 5*l.*, which rent was also duly paid for that period. The dwelling-house was wholly separate and distinct from and unconnected with the other building, there being a separate and distinct tenement between them belonging to and occupied by another person. The question was, whether he gained a settlement in Leeds. Lord *Denman*. "It has often been observed, that under the 12 & 13 Car. II., the word 'tenement' has received a wider construction than the legislature intended to give to it; still we must be bound by the cases which have been decided upon the subject, unless it clearly appears by some of the latter acts an alteration has been made in this respect by the legislature. Now it appears to me that the legislature has not, by any of the more recent enactments, hit this precise case. The same construction has been put upon similar words in the 59 Geo. III. In *Rex* v. *Stowe* (*post*), *Abbott*, C. J. says, 'It has been contended that the legislature must have meant the having occupation and payment to be for the same year. If that had been their intention, it would have been easy to say that the occupation and payment should be for *such* term.' *Holroyd*, J., says, 'If it had been intended that the occupation should be for the same term as the hiring, the legislature would probably have introduced the words *for the said term*. It seems to me that the words 'nor unless' have been used in order to divide the sentence, and to elude the construction now contended for on behalf of the appellants. The 6 Geo. IV. makes an alteration, but, as it appears to me, not an alteration which affects this case. That act says, 'unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both.' I think it would be too much to say that the collocation of the words in this sentence will prevent the acquisition of a settlement by the occupation of any two of the three things there enumerated." *Littledale*, J. "I am also of opinion that a settlement was gained by renting the house and shed in this case. There has been a discussion as to the meaning of the word 'tenement.' A *tenement* means that which a man *holds*, and it is immaterial whether he holds it of one man or of two, or more. The object of the statute was that a man, to gain a settlement, should hold premises to a certain amount, whether they were taken jointly or by distinct takings. Suppose three fields are taken by different hirings, this would not be, as is contended, a tenement. Or suppose a man to take half a field of one person, and half a year afterwards hires the

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remainder of another landlord, this would not, according to the argument, be an entire tenement. But I think that the meaning of the word 'tenement' is not confined to what a man takes at one time. Then it is said that under the words 'shall consist of a dwelling-house or building, or of land, or of both,' it is not competent to join a dwelling-house and building. The language of the legislature is incorrect, but I think that a house and building may be connected; and I will even go further, I think that the word 'both' may mean all three put together." *Parke*, J. "I am not sure that by our decision we are giving effect to the intention of the legislature, but that intention is most obscurely expressed. In *Rex* v. *Macclesfield* (p. 766), I inclined to think that the occupation of a dwelling-house and another distinct building might confer a settlement. If they cannot be connected together, then a distinct house and a pigsty, taken at an entire rent of 100*l.* would not confer a settlement. Or suppose a house and detached building of the value of 19*l.* a year, or a house and pigsty of the value of 11*l.*, if they cannot be connected together, then in each case a question as to the apportionment of the rent might arise. I cannot think that the legislature meant that all these questions as to value should be raised. A great deal of litigation will be prevented by the construction which we are putting upon the act. *Rex* v. *North Collingham* (*post*), has decided that a tenement may be held under two distinct hirings. For these reasons I am of opinion that the order of sessions ought to be quashed."

A person rented two houses under one continuous roof, having distinct outer doors and no internal communication: he took the whole at one hiring, but paid distinct rents for them of 6*l.* each per annum; he occupied one house himself, and allowed his son exclusive possession of the other. He acquired a settlement under 6 Geo. IV. c. 57.

Rex v. *Iver*, 3 *Nev. & M.* 28; *Adol. & Ellis*, 228. E. Ewer was removed from Iver to Rickmansworth. Order quashed. Case:—The pauper's father, Henry Ewer, in 1823 took a house in Iver of Mr. Franklin, for which he paid 6*l.* per annum, and also 1*l.* per annum for a piece of land. In the adjoining house, also belonging to Mr. Franklin, lived another tenant of the name of Dean. No other building adjoined either of the two houses; there was no internal communication between them, and there was a separate outer door to each. Each house had a chimney running up back to back in the partition wall between the houses, and there was one continuous roof over the two houses. A few days previous to January, 1830, Dean quitted, and H. Ewer proposed to Mr. Franklin to take Dean's house instead of his own. Mr. Franklin agreed, if H. Ewer could find a tenant for the other. H. Ewer brought his son William to Franklin, who refused to take him as tenant. H. Ewer then agreed with Franklin to become tenant for the whole, and to pay 6*l.* for each house, and 1*l.* for the land; that is, 13*l.* a year; and thereupon H. Ewer went into the occupation of Dean's house, and let his son into the possession of the other, and the son with his family continued in the occupation thereof till Michaelmas, 1831, when he quitted, and H. Ewer thereupon gave up that house to Mr. Franklin, who put in another tenant. H. Ewer paid the 13*l.* rent to Michaelmas, 1831, and Mr. Franklin gave him at each Michaelmas a separate receipt for the rent of each house. From 1823 to Michaelmas, 1831, no alteration was made in the two houses. While the two houses were occupied by Dean and H. Ewer, and subsequently while they were occupied by H. Ewer and his son, the occupier of each house was separately assessed to the poor-rate. H. Ewer did not pay his son's poor-rate, nor did he use any part of his son's house. Lord *Denman*. "It is obvious that in this act the legislature had something in view which it is very doubtful if they have effected. We will take time to look into the statutes." *Cur. adv. vult.* Lord *Denman* afterwards said, "In *Rex* v. *Iver* we are of opinion, on reference to the statutes, that the renting of the two houses did confer a settlement under 6 Geo. IV. c. 57. The order of sessions will, therefore, be confirmed."

A person hiring a house and stable for a year in a parish under different landlords, at rents amounting together to

Rex v. *Gosworth*, 3 *Nev. & M.* 303; 1 *Ad. & El.* 226. Ann Burkett was removed from Whitehaven to Gosforth. Order confirmed. Case:—The pauper's alleged settlement in Whitehaven was derived from her father. The father, while the 59 Geo. III. c. 50, was in force, namely, in 1823, hired for a year, of a Mr. Falcon, a dwelling-house in the township of

Whitehaven, at the yearly rent and of the yearly value of 8*l.* He also hired for the same year a stable in the same township, of a Mr. Grayson, at the yearly rent and of the yearly value of 6*l.* 6*s.* The stable was not under the same roof with the dwelling-house, nor immediately contiguous or appurtenant thereto, but stood in a different street upwards of two hundred yards off. He held and occupied both the dwelling-house and stable, and dwelt in the dwelling-house for the whole year, and paid the whole year's rent for them. It was admitted that this case could not be distinguished from *Rex* v. *Tadcaster*, p. 767. *Patteson*, J. said, "We recognised the authority of that case in *Rex* v. *Banbury*. It was then observed, that the court there said, that *Rex* v. *Tadcaster* had gone to the extreme verge of the law." Lord *Denman*. "That observation strengthens the authority, since the court, notwithstanding the opinion so expressed, felt themselves bound by the decision." The order must be quashed.

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10*l.*, holding such house and stable, and residing in the house for the year, and paying the whole rent, acquired a settlement in such parish under the act 59 Geo. III. c. 50, though the house and stable were entirely separate from each other.

Rex v. *Rickinghall Superior*, 1 *Nev. & M.* 47. T. Churchyard was removed from Rickinghall Superior to Wortham. Order quashed. Case:—At Lady-day, 1828, the pauper, a cordwainer, hired a dwelling-house in the respondent parish at the yearly rent of 9*l.* 9*s.* from the ensuing Michaelmas, but he immediately entered into the occupation, and at the Michaelmas paid half-a-year's rent. He continued to occupy the dwelling-house under such hiring from Michaelmas, 1828, to Michaelmas, 1829, and paid rent for the same at Michaelmas, 1828; he likewise hired of the same landlord and occupied from the same Michaelmas, 1828, to Michaelmas, 1829, at the rent of 1*l.* 5*s.*, a room which he used as a shop, the room being part of another dwelling-house in the same parish, and distant about four yards from the house in which the pauper lived, and he duly paid rent for the same. This room had an internal communication with such dwelling-house by a door, which door was locked on the pauper's going into occupation. It had also an external communication with the street by a door, by which the pauper entered it. The sessions found the room to be a separate and distinct building. The court said, "It is very clear the finding is not warranted by the premises as stated in this special case. We cannot send this case back to the sessions to be re-stated. If the case were sent back and the facts only were stated, we should not find this to be a separate building; and if the finding were the same, namely, that the room is a distinct and separate building, and the facts from which that conclusion is drawn were not stated, injustice would be worked." Order of Sessions confirmed.

A shop was held jointly with a house. The shop had an internal communication with an adjoining house. This is not a distinct and separate building. Where a case stated facts which warrant the judgment of the sessions, but that court has drawn an inference which is not warranted by the statement, the order will be confirmed without sending the case back to be re-stated.

Rex v. *Wootton*, 3 *Nev. & M.* 312; 1 *Ad. & E.* 232. Robert Hall was removed from Wootton to St. Mary in Wallingford. Order quashed. Case:—The pauper, about the year 1800, became tenant of a cottage in the parish of Wootton at the yearly rent of 8*l.*, and resided in it with his wife and family until February, 1832. In April, 1827, a son-in-law of the pauper applied to Hall's landlord, Mr. Harris, and wished to become his tenant of another of his cottages in a different part of the parish of Wootton. Harris declined taking the son-in-law as his tenant, but agreed to let the cottage to the pauper at 5*l.* a year. The pauper never occupied this last-mentioned cottage, but on the same day he let it at the same rent to his son-in-law, who immediately took possession of it and resided in it for about three years and a half, when he quitted it, and the possession thereof was forthwith given to and accepted by Mr. Harris. The rent for the cottage occupied by the son-in-law was paid by him to the pauper, who paid the rent for both the cottages to Mr. Harris, and Harris gave a receipt for the same, amounting to 13*l.*, stating that such sum was paid by the pauper for one year's rent of the two cottages. *Littledale*, J. "I think that in this case a settlement was gained. It is nearly the same in its circumstances as *Rex* v. *Iver* (p. 768), but independently of that decision, I think the sense of the words in question is not confined to a single dwelling-house. The tenement, by renting which a settlement may be gained, is described in nearly the same words in the three statutes 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18; and I take

Two different dwelling-houses, (one of which the tenant underlet, and never occupied), and in different parts of a parish, are separate buildings within 6 Geo. IV.

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the meaning to have been that the tenement should consist of something in the nature of land; not, for instance, tithes, but something capable of a regular occupation. If such a case as this be not included, the language of the act so far fails to operate according to the intention. Looking at the words, 'a separate and distinct dwelling-house, or building, or land, or both,' I think it makes no difference whether two or more of these descriptions of tenement be held, or one distinct and separate, one of either kind. All that is requisite is, that the tenement, in respect of which a settlement is claimed, shall be either one or another of those three, or several of any. The meaning of the word 'tenement' has been narrowed by these acts, but not to the extent contended for." *Patteson*, J. "*Rex* v. *Macclesfield* (p. 766) does not go so far as this case: the decision, if it had gone to that extent, would have been extra-judicial. But I am of opinion that the renting here also was within the act. I have always thought that the words, 'a separate and distinct dwelling-house or building,' in these statutes, meant separate and distinct as to any other person, that the tenant should not hold part of a house. But the renting to give a settlement may be of more than 'a dwelling-house, or building, or land, or both,' in the limited sense contended for." *Williams*, J. "The 59 Geo. III. c. 50, was introduced to avoid those perplexing discussions which had arisen as to the kinds of tenement which had before that time been held to confer a settlement, and which being sometimes made up of small items, as for instance, a cow, tenement, and potatoe land, were very litigious and vexatious. That statute, therefore, was introduced, confining the description of the tenement in question to land and houses and buildings. But then it became necessary to provide against the joining together portions of different houses to make up a tenement, which would still have left great room for dispute, and therefore it was enacted in 59 Geo. III. c. 50 (and the enactment was continued in the subsequent statutes), that the dwelling-house or building must be separate and distinct, and I agree that if they be not so a settlement cannot be gained. But the meaning of the legislature in using the words, 'a separate and distinct dwelling-house and building,' no doubt was, that there should be entire holdings, and that settlements should not be gained by a split or subdivided tenement. In this case two things were held by the tenant, both of which are within the express language of the act, he therefore gained a settlement." Order of sessions confirmed. (*a*)

The house must be "separate and distinct," as to other persons.

The floor of a house, with distinct staircases, is a separate dwelling-house under 6 Geo. IV.

Rex v. *Great and Little Usworth*, 6 *N. & M.* 812; 5 *A. & E.* 261. An order for the removal of Caroline, wife of W. Waddell (who had deserted her), from Great and Little Usworth to Houghton-le-Spring, was quashed. Case:—William Waddell rented and paid rent for, and occupied for a sufficient time, a tenement of sufficient value to confer a settlement in the township of Painshaw in 1829 and 1830; and the only question in dispute was, whether the tenement in Painshaw was a separate and distinct dwelling-house or building within 6 Geo. IV. c. 57. The tenement in question was part of an entire house, which consisted of three floors, viz., the ground-floor, the middle-floor, and the upper-floor. The three floors were rented of the owner by three separate and distinct tenants. Waddell rented and occupied the middle-floor. The entrance to the ground-floor was by a door in front, which was for the separate and exclusive use of the occupier of that floor. There was no internal communication between that floor and any other part of the house. The entrance to the middle-floor was by a flight of steps on the outside in front. The ground behind was elevated, so as to be on a level with the middle-floor, and there was a back door behind entering into the middle-floor. Both these entrances were for the separate and exclusive use of Waddell, the occupier of that floor. Another flight of outer steps in front led to a passage on the middle-floor, which terminated in a stair-case, and

(*a*) See *Reg* v. *Mayor of Eye*, 9 *A. & E.* 679, as to similar questions under the Municipal Corporation Act.

this flight of steps, passage, and staircase, formed the entrance to the upper-floor. By means of internal communications, Waddell could pass from his front to his back door, and from one room to another, into all the rooms of his middle-floor, except one very small room. Waddell had a locked door leading into the above-mentioned passage, immediately opposite the room in question, so that he could get to that room by merely crossing the passage which led to the upper-floor, but he had the right of using the outer steps, and the whole of that passage, to enable him to get access to it, if he thought proper; but without using the passage in one or other of these ways, he could not get access to that room. One roof covered the whole of the three floors. The sessions decided that Waddell's floor was a separate and distinct dwelling-house. The question was, whether this was a right determination. Lord *Denman*. "I profess to follow the words of the statute as closely as possible, and I think I do so when I say that this was a separate and distinct dwelling-house. I do not think it necessary to say more." *Littledale*, J. "I am of the same opinion. I do not think the circumstance that Waddell had no access to one of his rooms except by means of the passage makes any difference." *Patteson*, J. "In *Rex* v. *Wootton*, (p. 769,) I was of the opinion which I now retain, that 'separate and district dwelling-house' means separate and distinct as to other occupiers, and not as to the thing occupied." *Williams*, J. concurred. Order of sessions confirmed.

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But a granary, forming an entire floor, having no internal communication with the rest of the building, and only to be entered by a ladder from the ground, is not a separate and distinct building within the 59 Geo. III. c. 50.

Rex v. *Henley-upon-Thames*, 1 *N. & P.* 445; 6 *A. & E.* 294. M. Chipp was removed from Henley-upon-Thames to Burghfield. Order quashed. Case:—The pauper, in 1821, being in trade a mealman, and resident in Henley-upon-Thames, hired of Paulin a granary at the rent of 4*l.* a year. The granary was an upper one, forming one entire floor, and above a granary, which stood in a yard belonging to a dwelling-house of Paulin, in Henley-upon-Thames, which yard opened by a gateway on the high road. The two granaries adjoined to and were under the same roof with a stable, and were detached from the dwelling-house. There was no internal communication between the lower granary and the upper granary, or between the upper granary and the stable, the only entrance to the upper granary being a separate and distinct entrance from the outside, by means of a movable ladder placed in the yard, and reaching from the ground to a door on the side of the same granary. In 1822, whilst the pauper still held this granary, he hired of one Mayor another granary or loft, in Henley-upon-Thames, at the rent of 7*l.* a year. This last granary was one entire floor, and was over a stable in a yard behind the dwelling-house of Mayor. The stable and granary were detached from the last-mentioned dwelling-house, and there was an approach to them without entering the dwelling-house. There was no internal communication between the stable and granary, the only entrance to the granary being a separate and distinct one from the outside, by means of a movable ladder placed in the yard, and reaching from the ground to a door in the side of the granary. The pauper held both the granaries together for more than a year, and paid the rent for the same, and resided in Henley-upon-Thames. The question was, whether the finding is warranted that the two granaries are separate and distinct buildings within the 59 Geo. III. c. 50. It was urged that the object of that act was to exclude such rooms as these, and that they were not separate and distinct buildings. The court: We all agree that this is the rational construction of the act. The order of sessions must be quashed.

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4. The Tenement need not be entire under any of the Statutes.

4. *The Tenement need not be entire.*

A house of 6*l.* a-year, and land at 5*l.* 10*s.* a-year, sufficient.

North Nibley v. *Wootton-under-Edge*, 1 *Sess. Ca.* 73; 2 *Bott*, 163. A person rented an ale-house from Lady-day to Lady-day for 6*l.* a year; and in May following rented a piece of land, of the yearly value of 8*l.*, to the following Lady-day, at 5*l.* 10*s.*; after holding the same about two months, he ran away. The Chief Justice: "I do not see why this should not gain

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a settlement, for he rented a house of 6*l.* a-year, and land at 5*l.* 10*s.* a-year, which does gain a settlement; and he might have come again if you had not sent away his wife and family. Indeed, had he taken the meadow but for a month, I think he would not have gained a settlement, though he paid a rent proportionable to the whole year; for then it would have appeared that he was not thought of sufficient ability to be trusted with it for a whole year." The other judges said, this was a renting of a tenement of 10*l.* per annum, within the meaning of the statute, and that the settlement arose from *the value* of the lands and tenements that he rented; for by reason of that he was not likely to become chargeable.

A house of 6*l.* a-year, rented of one man, and a stable of 2*l.* 10*s.* a quarter, of another man, is an *entire tenement*, and gains a settlement, although he is not rated for the stable.

Rex v. *St. Margaret, Fish-street-hill, Burr. S. C.* 677; 2 *Bott*, 170. S., residing at Clapham, at his own house, contracted and employed the pauper's father to supply him with a pair of coach-horses for a quarter of a year, at 22*l.*; and the pauper's father contracted with the said S. for a stable belonging to the said S., and was to pay 2*l.* 10*s.* a quarter for it; and the said S. reserved a separate stable for his own use. This contract was performed between the parties for two years and upwards. About the latter end of the fourth or fifth quarter, S. threatened to discharge him, but on the importunity of his friends, he agreed that he should continue to furnish him with a pair of horses; and that S. should pay him only 20*l.* a quarter, and have the like quarterly allowance for the use of his stables as before. Under and in pursuance of *this* contract, they agreed and acted for several years until the pauper's father died, who during the whole of the time rented and lived in a tenement of 6*l.* a year in Clapham, but he was never rated either for his house or the stables. The pauper was removed from Clapham to St. M., and the order confirmed. It was contended, that this was not an independent contract for the stables, but a mere deduction from the price of the job-horses, on account of their standing in S.'s own stables, and that no rent would be payable when the job was at end. But the court, after taking time to consider, thought the agreement, though awkwardly pursued, was a contract for the stable. *Aston*, J. "There can be no doubt but it is a good renting. Suppose the master had paid the servant his whole wages, might not he have brought an action for the occupation and use of the stable?"

After the 59 Geo. III. c. 50, the pauper held *together*, for a year, a house and garden, and paid rent for the same during that period. They were taken of different persons at different times. The rent of the house was six guineas. Although there was a separate taking of the house and land, this is a tenement within the 59 Geo. III. c. 50.

Rex v. *North Collingham*, 1 *B. & C.* 578; 2 *D. & R.* 743. Mary, widow of William Barks, was removed from North Collingham to Fulbeck. Order discharged. Case:—The pauper's husband came to reside at North Collingham in 1812, where he hired a house, (being a separate and distinct dwelling-house,) with a garden for a year, and from year to year, at the annual rent of 6*l.* 6*s.*; and he continued to hold and occupy such house and garden, and paid the rent for the same from 1812, to his death in December, 1821; but during the last four years of his holding the house, he let to a lodger, at thirty shillings a year, one of the rooms on the ground floor. The room communicated with the yard appurtenant to the house by an outer door, and with the adjoining rooms of the house by an inner door, of which doors the lodger kept the keys. As there was another outer door to the house, no alteration was made in the house or doors during any part of the period for which Barks was tenant. The room was let unfurnished, and the lodger occupied nothing but the room, and Barks was assessed and rated for the entire house to the poor, the highways and king's taxes, and paid such assessments during his tenancy. In 1819, (*a*) the pauper, *bonâ fide*, hired a piece of garden ground in North Collingham, for a year, at the rent of 3*l.* 15*s.*, which ground he occupied for a year, and paid the rent, and continued in the occupation thereof up to the time of his death. *Abbott*, C. J. "The question arises on the 59 Geo. III. c. 50, which was made for the purpose of restraining the acquisition of settlements by renting tenements. It is a general rule, that acts in *pari materia* shall receive a similar construction. Before the passing of the act, a party might gain a settlement by taking various tenements at different

(*a*) Admitted to be after 59 Geo. III. c. 50.

times. The question is, whether, since the passing of the act, the tenement must be taken at one rent, and at the same time? [He then read the statute.] Now by this act it is not sufficient that the hiring should be of a tenement of the value of 10*l.* per annum, but the house must be held, and the land occupied, and the rent paid for one whole year; the first question is, whether the pauper held a tenement within the meaning of the statute. Under the former acts a tenement might consist of various parcels taken at different times, and there is nothing in this act to alter the old law in that respect." *Bayley* and *Best*, Js. concurred. *Holroyd*, J. "The word *tenement* in this statute must receive the same construction as it has in former acts, made in *pari materia*. The statute was only intended to alter the law in the particulars distinctly pointed out; and nothing is said to make it necessary that the whole of the tenement should be taken at one time. (See several cases on the same point, *ante*, "*What is a Tenement.*")

4. *The Tenement need not be entire.*

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5. The Nature and Necessity of a Tenancy.

5. *The Nature and Necessity of a Tenancy.*

A curate, licensed according to the 56 Geo. III. c. 99, and residing in the rectory house, (which was above the value of 10*l.* a year), for more than forty days before the 59 Geo. III. c. 50, "*comes to settle*" within the 13 & 14 Car. II. c. 12, and gains a settlement.

Rex v. *St. Mary, Newington*, 1 *Nev. & M.* 357; 5 *B. & Ad.* 540. E. J. Sanders was removed from St. Mary, Newington, to St. Mary, Islington. Order quashed. Case:—In October, 1818, the pauper's father, the Rev. J. B. Sanders, entered into an engagement with the Rev. J. Mitchell, the rector of St. Nicolas Cole Abbey, Old Fish Street, London, to officiate as curate of that parish; and it was agreed that he should have 80*l.* per annum, and the rectory-house to reside in free of rent and taxes; and about that time he commenced his duties as a curate. On the 12th of December following the Rev. J. Mitchell nominated and appointed the pauper's father to be curate of the said parish, but the latter did not go to reside at the rectory-house until a week after Christmas, 1818; and on the 2nd of February, 1819, a licence was granted him by the Bishop of London, pursuant to the 57 Geo. III. c. 99, to perform the office of stipendiary curate in reading the common prayer and performing other ecclesiastical duties belonging to the said office, according to the form prescribed in the book of Common Prayer; and the yearly stipend of 80*l.* was assigned to him, to be paid quarterly, for serving the said cure, with the rectory-house, wherein he was directed to reside, and offices, free of rent, repairs, and taxes. The pauper's father did all the duties of curate from October, 1818, till his death in 1829; and from a week after Christmas, 1818, till his death, he resided at the rectory-house, which was a separate and distinct dwelling-house, worth more than 10*l.* a year, free of rent, repairs, and taxes, and receiving the yearly stipend. The question was, whether the pauper's father gained a settlement in St. Nicolas Cole Abbey. *Denman*, C. J. "The kind of settlement relied upon in this case has grown out of the 13 & 14 Car. II. c. 12, s. 1, which confines the power of removal to cases where persons come to settle on any tenement under the yearly value of 10*l.*, and by implication has been held to confer a settlement on a person who comes to settle on a tenement of that value; and the lawful occupation of a tenement of that annual value by a party in his own right, has been held to satisfy the words *coming to settle*. The word 'renting' is not to be found in the statute. It is true that this settlement is most generally considered to be acquired by renting, because the renting shows the occupation to be independent and for the convenience of the occupier, and not for that of the landlord; and on this principle many of the cases where a distinction has been taken between an occupation as tenant and an occupation as servant proceed: the statute, however, does not require that there should be an occupation as tenant, but a mere coming to settle; and here I think it quite clear that the pauper's father came to settle in the parish of St. Nicolas Cole Abbey." *Parke* J. "It is not clear that the curate is not tenant to the rector; but it is not necessary for the purpose of gaining a settlement that he should be so. It is sufficient if he comes to occupy as having an interest of his own, and not as servant to another."

5. *The Tenancy.*

Taunton, J. "The 9 & 10 Will. III. c. 11, which makes the *taking a lease* of a tenement of the value of 10*l.* per annum confer a settlement, is confined to persons residing under a certificate. To satisfy that statute, there must undoubtedly be a contract for renting; but this is a case within the 13 & 14 Car. II. c. 12, s. 1, which has been held to give a settlement to any person coming to settle on a tenement of the yearly value of 10*l.* The case of occupation is usually founded on the renting of a tenement of 10*l.* a-year, yet it is not necessary that it should be under a renting, or in the character of tenant. Here the pauper's father had a lawful possession of a tenement of the required value, and an interest therein sufficiently permanent to denote a coming to settle; and that is sufficient to satisfy the 13 & 14 Car. II. even though the occupier is exempt from payment of rent, or has not the character of tenant. The case comes within the doctrine of the passage cited in the argument from Mr. *Nolan's Poor Law*, which, though not strictly authority, is entitled to respect." *Patteson*, J. "There was clearly a coming to settle by the pauper's father, unless the occupation of the curate is in all cases to be considered the occupation of the rector, which it clearly is not. I do not see any analogy between this case and the cases of master and servant referred to in this argument." Order of sessions confirmed.

Pauper, in 1813, rented a tenement of the yearly value of 10*l.* The bargain with the owner was, that the pauper should live a month in it for nothing on trial, and that if he liked it he should take it for a year at the rent of 14*l.* He resided on it for a month on trial, and then took it at the rent agreed upon, and without any interruption in the residence continued on it for the following month, and then went away. It was held that he thereby gained a settlement.

Rex v. *Helsham*, 2 *B. & Ad.* 620. An order of removal of R. Wray from Market Weighton to Helsham was confirmed. Case:—On the 1st November, 1813, the pauper came to reside on a tenement in the parish of Sculcoates of more than the yearly value of ten pounds. He entered upon it a fortnight after Michaelmas. The bargain with the owner was, that the pauper should live a month in it for nothing on trial; and that if he liked it he should take it at Martinmas, at the yearly rent of 14*l.* The pauper resided upon it for a month on trial, and then, according to the agreement above mentioned, took it at Martinmas, at the yearly rent of 14*l.*, and without any interruption in the residence continued on it for the following month. He then quitted the parish altogether, and did not subsequently acquire any settlement elsewhere. Lord *Tenterden*, "I am of opinion that the pauper gained a settlement in Sculcoates. It is clear that he actually resided there more than forty days on a tenement of the yearly value of 10*l.* Then it is said that when he first came there he had not an absolute intention to settle for so long a time as forty days, but that it was his intention to try whether the premises would suit him; and if they did, then to stay for a year. There is no authority to show that the original intent of the party must be absolute and unqualified to continue for forty days, and I am unwilling to introduce a new term or condition to the gaining of a settlement by coming to settle on a tenement. Here the intention of the pauper was to stay for one month certain, and perhaps for a year; and it has been properly observed that the recital in the 13 & 14 Car. II. c. 12, does not import a permanent intent, but applies only to persons coming to settle for a short time." *Littledale*, J. "The 13 & 14 Car. II. c. 12, does not require that the party should come to settle permanently, or should make a contract to occupy for a year. The time for which the tenement is taken is unimportant, provided there be an occupation for forty days. Accordingly, taking land from June till Lady-day following, or a house for five months, or a room for a week, has been held sufficient. (*Staunton-under-Barndon* v. *Ulescoft*, *Burr. S. C.* 558; *St. Matthew's, Bethnal Green*, v. *St. Botolph's*, *post*; and *Rex* v. *Whitechapel*, *post.*) The question really is, whether the party, after he came to the tenement, was irremovable, and whether he resided there forty days? Here it depended on himself whether or not he would remove during that time. If he chose to continue after the first month he might do so by the terms of his contract, and he elected to continue and did reside forty days. He therefore gained a settlement, having an interest as tenant during the whole of that term. In *Rex* v. *Netherseal* (*post*), *Ashhurst*, J. says, 'that in order to acquire a settlement by taking a tenement of 10*l.* a year, it is not absolutely necessary that there should be an express contract for the tenement: it is sufficient if the tenant reside forty days on a tenement of such

a value with the permission and consent of the landlord, for in such case the law implies a contract. Here the pauper resided during forty days with the consent of the landlord, and therefore gained a settlement.'" *Parke*, J. "My first impression upon reading this case was that no settlement was gained by the pauper in Sculcoates; that in order to gain a settlement by coming to settle, there must be an intention to reside permanently; but I am now satisfied that I was wrong. The question turns upon the meaning of the words 'coming to settle,' and some light may be thrown on that point by the resolution of the judges of assise in 1633. One of them was 'that the law unsettleth none who are lawfully settled, nor permits it to be done by practice or compulsion; and every one who is settled as a native, householder, sojourner, an apprentice, or servant for a month at the least, without a just complaint made to remove him or her, shall be held to be settled.' It would appear therefore from that resolution, that the word *settle* did not impart any thing permanent. Here it is clear that the pauper's original intention was to reside for a month at least; and in fact he resided for two months, and in the character of tenant. He had an interest during the first month, though no rent was to be paid, and he afterwards had an interest in the premises for a year, and he resided during forty days, having during that time an interest as tenant. A person coming into a parish casually for some temporary purpose will not thereby acquire a settlement; but a person coming to reside in a house with a purpose of making it his home and continuing there for forty days, does by that residence become settled." *Taunton*, J. "The statement in the case, that the pauper was to live in the house a month on trial, created an impression in my mind that he had no interest in the premises during the first month sufficient to confer a settlement, but I am now satisfied that in that respect I was wrong. It appears from the case, that the bargain was that the pauper should live a month in the house for nothing on trial; and if on that trial he liked it, he should take it at Martinmas at the yearly rent of 14*l.* The intention was to ascertain whether the house would suit him, but at all events he was to have it for a month. The occupation during that month was by leave and licence of the owner, who could not lawfully disturb him; he then took it for a year at a certain rent and occupied for a month, and the two occupations may be coupled together so as to make up the forty days. There are many cases to show that a tenant at will or by sufferance, not paying any rent, may gain a settlement by residing on a tenement." Order of sessions quashed.

5. *The Tenancy.*

"Coming to settle;" its meaning.

See *Rex* v. *Woolpit.*

Rex v. *Bowness*, 4 *M. & Sel.* 210. Where a person rented and resided on a tenement of 4*l.* a-year, and in the same year bought at a public auction, on 12th August, four lots of oats growing on the field, for 12*l.* 14*s.*, which oats were of different kinds, that ripened at different periods, and he began to reap them on the 14th September, and continued reaping them as they ripened, and carted them away at intervals between the 14th September and 3rd November, on which day he carted off the last load: the court held that he did not thereby acquire a settlement; and Lord *Ellenborough* said, "It appears to me that it has been uniformly adopted as the rule for construing the statute of Car. II. as much as if the word itself had been inserted in the statute, that the *coming to settle in*, means by *renting* or holding in the character of tenant. It is true this word *renting* is not in the statute, but what is found in the subsequent statute, 9 & 10 Will. III. c. 11, shows pretty well how the statute of Car. II. was understood; for the subsequent statute enacts, 'that no person who shall come into a parish by certificate shall gain a settlement therein, unless he shall take a lease of a tenement of the value of 10*l.*' &c. Therefore, certainly this enactment was framed upon an understanding that the *coming to settle* in the stat. of Car. II. meant a taking under a letting or renting. Upon a subject like this, one is afraid to enlarge, lest what may be said should lay the foundation of future discussions. What has been said already upon the subject has, according to my understanding of it, reached the extreme limits of common sense. It is therefore sufficient to say upon the present occasion,

A purchase of a crop of growing oats at an auction, is not a holding as tenant.

The party must have the character of "*tenant.*"

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that this was a purchase and not a renting, or in any way a holding as tenant, and upon that construction this person did not gain a settlement. I feel no inclination to extend the decisions upon this subject; indeed I hardly go with them to the extent that they have gone already, and think it much better in this case to abide by the statute." *Le Blanc* and *Bayley*, Js. were also of opinion that no settlement was gained, upon the ground that the pauper had not a tenement of the value of 10*l.* by the year for forty days, because his interest diminished in value *de die in diem*, as he cleared the land, and it was consistent with the statement, that before forty days from the 12th August he had cleared so much as would reduce the tenement below the yearly value of 10*l.*

A servant may be a tenant.

Rex v. *Melkridge*, 1 *T. R.* 598. Case:—The pauper's father was appointed herdsman to several persons having a right of common on an extensive waste. He entered on his employment, and removed to a house situate on the common, where he resided several years. As a reward for his services, he was allowed the exclusive enjoyment of the house *and some meadow ground* adjoining. The house and ground were worth 20*l.* It was contended that he did not occupy the tenement as his own, but as servant of the commoners, who had no power to grant such licence. But the court thought no doubt could be entertained on the question: the service of the pauper was equivalent to paying his rent, and that the commoners, instead of giving him wages, had permitted him to occupy this house. The pauper had the exclusive enjoyment of it, and possession could not be stated in stronger terms. See *Reg.* v. *Wall Lynn*, p. 168.

A bailiff, at weekly wages, was allowed the feed of two cows in the pastures of his master. The feeding is a tenement.
The pauper occupied as tenant, not as a servant.

Rex v. *Minster*, 3 *M. & Sel.* 276. (*a*) Removal from Bridge to Minster, confirmed. Case:—The pauper, a few days before Michaelmas, 1808, was hired as bailiff by Parker, who had a farm at Bishopsbourne, and resided great part of the year about three miles distant. The agreement made between the pauper and his master was, the pauper was to have 10*s.* per week for wages; was to be allowed by his master pork at 5*s.* per score, and grist at 4*s.* per bushel, for the use of his family, these prices being lower than the general prices. His master was to find him a house, *and was either to furnish him with two cows, or the pauper was to be at liberty to hire two, and feed them on his master's farm.* The pauper went into the service of Parker under the agreement at Michaelmas, 1808, and continued until Michaelmas, 1811, and he lived in the house of his master at Bishopsbourne, and occupied the kitchen and two rooms up-stairs, and his wife took care of the house. The pauper hired two cows, which fed during the summer in the pastures of his master, and in the winter in his master's straw yard with straw that was grown upon his master's lands. The rooms occupied by the pauper in the house of his master were not of the yearly value of 10*l.*, but the pasturage and keep of the cows upon the lands of his master were above that yearly value. Lord *Ellenborough*. "Here the pauper had a profit issuing out of the land to be taken *in loco certo*, which has been adjudged by the cases to be a tenement. The distinction between the occupation of a servant in the house of his master and this has been adverted to, and the argument, as it seemed to me, has been properly answered, that the apartments of the servant are only as an appendage of the service; they are allotted to him for the more convenient performance of the service, which is the principal thing. Here it is stated that the pauper hired two cows, and that they were kept on the land of the master during the summer months; and it does not appear that this was connected with the service, or that it was necessary, for the convenient performance of it, that he should have the two cows. In this respect, therefore, this case may be distinguished from that of servants having apartments in the houses of their master for the better discharge of their duties to their masters. The case now before the court falls within those which have been decided, particularly *Rex* v. *Melkridge*, the only differ-

(*a*) This case has been doubted, p. 760, but it is conceived not on the point upon which the judgment proceeded.

ence being, that there he was the servant of many persons, here he is the servant of one only; still the compensation for the tenement in both is the same, namely, the service of the pauper, which the court held to be equivalent to his paying rent." *Le Blanc*, J. "If this case depended upon any consideration involving the value of the apartments or lodging which the pauper occupied in the house of the master, I should not think the case of *Rex* v. *Melkridge* an authority that called upon us to decide in favour of the settlement; but it is stated that the yearly value of the pasturage, independently of the house in which the pauper resided, was upwards of 10*l.* That being so, the cases which have been determined have held, that whether the pauper pay in service or in money it shall be a coming to settle on a tenement. In this case, if the pauper's occupation of the tenement was necessarily connected with the service of the master, as in the case of occupying apartments in the house of the master, I should have no hesitation in saying that that would not have conferred a settlement, although of a greater yearly value than 10*l.*, because the occupation would have been necessary for the performance of the service, for which the master might allot what apartments he pleased. In like manner, if the master had allotted to the pauper so much milk a day, I should have thought the pauper would not have gained a settlement. But in the present case the pauper has a distinct interest in the pasturage of the two cows, unconnected with his service to the master's dairy, and this liberty of taking the profits out of land is found to be of greater value than 10*l.* I do not know therefore how to distinguish this from the cases already decided." *Bayley*, J. "A clear and particular distinction enabling us to decide this case has been pointed out. Here something is given to the servant unconnected with the service. It is the same thing as if the servant had stipulated that as he had a family he must have certain land for his own occupation, and that the master should allow him to become a distinct occupier of land to the value of 10*l.* a-year. If that had been so, there are not wanting cases to show that it is not necessary that a rent should be paid in money, or indeed that there should be any rent at all, in order to constitute him the occupier of a tenement, but a service is quite sufficient. The case of the herdsman (*Rex* v. *Melkridge*) is full to that point. If that be so, what is the present case but that of a servant who stipulates for a profit out of land of more than the yearly value of 10*l.* for which he is to pay in service." Orders quashed. (See *Rex* v. *Nacton*, p. 762.)

Rex v. *Cherry Willingham*, 1 *B.* & *C.* 626; 3 *D.* & *R.* 13. Removal of Matthew Bolding from Hougham to Cherry Willingham, confirmed. Case:—The pauper at May-day, 1817, contracted to become the groundkeeper of John Hill, in respect of his farm at Hougham. The master, by one entire contract, agreed to give the pauper 20*l.* a-year, a cottage to live in, and the agistment and whole profits of one cow for his own services; and the sum of 28*l.* and the agistment of and whole profits of another cow in consideration of his lodging and maintaining in the cottage two of his (Hill's) labourers. The pauper resided under these terms in Hougham, during the year, taking the whole profits of the cows, receiving his wages, the allowance of 28*l.*, and maintaining the two servants. The annual value of the lands on which the two cows were depastured exceeded 10*l.*; but the land necessary for one cow only would not be of that value, that is to say, the annual value of the agistment of two cows upon the land in question would be worth 10*l.* a-year; but of one cow would not be 10*l.* a-year. *Abbott*, C. J. delivered the judgment of the court: "We have considered this case, and are of opinion that the pauper acquired a settlement in Hougham. The tenement in question is the pasturage of two cows. It is found that the annual value of the land whereon the two were depastured exceeded 10*l.*; that the annual value of the agistment of the two would be worth 10*l.*; but of one, then not 10*l.* It was therefore contended, in support of the orders, that although the pasturage of one of the cows must be considered as a tenement upon the authority of decided cases, yet that the pasturage of the other was not a tenement, and this

By one entire contract a master agreed to give his servant 20*l* a year, a cottage to live in, and the agistment of one cow for his own services; and 28*l.* and the agistment of another cow in consideration of his lodging and maintaining in the cottage two of the master's labourers. The yearly value of the lands on which the two cows were depastured exceeded 10*l.*, but the yearly value of land sufficient to depasture one cow only would have been less than 10*l.* The right to agist the two cows is a tenement.

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upon a difference in the terms of the contract. It is found that the contract was an entire contract, that the master agreed to give the pauper 20*l.* a-year, a cottage to live in, and the agistment and whole profits of one cow for his own services; and the sum of 28*l.* and the agistment and whole profits of another cow, in consideration of the pauper's lodging and maintaining at the cottage two of the master's labourers. The question arose upon the cow thus last mentioned. Now, by this contract, the pauper does not engage to employ the milk of the latter cow in the maintenance of the labourers: he might, if milk formed a part of their diet, as it may be presumed to have done, have given the milk of the other cow, or he might have procured milk for them elsewhere, and might have sold or otherwise disposed of the milk of both the cows provided by his master. So that we cannot say the milk was given or appropriated for the maintenance of the labourers; but must say that it was given in consideration of the maintenance of the labourers. And the consideration given or paid for a tenement is wholly immaterial on a question of settlement, if the yearly value be 10*l.* Whether the consideration be paid in money, or by services rendered, or by any other matter beneficial to the party receiving, was of no importance at the time in question, which was before the 59 Geo. III. c. 50. We therefore think that the difference, as it was called in this contract, does not lead to any legal distinction which can justify us in saying, that the agistment of the latter cow was not a tenement." Both orders quashed.

House and garden occupied as a *servant* is not sufficient.

Rex v. *Bardwell.* (See case, p. 760.) *Bayley*, J. to his judgment there reported, added, "There is another point also which makes it extremely doubtful whether the pauper could have gained a settlement, had the going of the sheep constituted a tenement of 10*l.* annual value. The house and garden being merely for the more convenient performance of the pauper's service as shepherd, must be laid out of consideration; he did not occupy them as a tenant, but as a servant. The stat. 13 & 14 Car. II. c. 12, requires that the party should come to *settle* on the tenement; now that means to reside. In all the cases determined on this part of the act, the pauper resided upon some part of that which constituted the tenement. There are cases where a party, from kindness, was allowed to reside in a house rent-free, that was held to be a tenement. But here the pauper had no residence but in the character of a servant, the house continued the master's, and the pauper was, with respect to this point, in the same situation as if he had lived in a room in his master's house. The two cases referred to differ from this, for in each of them the pauper had property of his own in the parish, and was on that ground held to be irremovable. *Rex* v. *Denbigh* (p. 752) also is distinguishable, for there the pauper lived in the toll-house as his own residence; and it would have been such a tenement as would confer a settlement, but for an act of parliament, which says, that no gatekeeper shall gain a settlement by renting the tolls and residing in the toll-house. For these reasons I think that the pauper did not gain a settlement in Ixworth." *Best*, J. "In *Rex* v. *Minster* (p. 776) the principal point was given up, viz. whether the feeding of the cows constituted a tenement; but the court there thought that a house occupied by the pauper merely as a servant did not constitute a tenement. The legislature could not have intended mere residence as a servant, but that the party should gain credit and reside as a tenant. If that be so, the pauper, on this ground also, gained no settlement in Ixworth. (See *Rex* v. *Lower Heyford, post;* and *Rex* v. *Kenardington, post.*)

Residence as servant insufficient.

Rex v. *Shipdham*, 3 *D. & R.* 384; 2 *M. & R. Mag. Ca.* 89. Order of removal of John Hall, &c. from Shipdham to Thursford quashed. Case:—In March, 1818, Sir Charles Chadd, leaving his mansion-house and estate at Thursford, agreed with the pauper to take care of his garden; and for his so doing the pauper was allowed to take the profits of part of the garden, and to live in a cottage contiguous, belonging to Sir Charles, of the yearly value of 4*l.*, to which a small common right was attached. The pauper was to continue in the premises for a year before any further agreement

was to take place between him and Sir Charles, unless some other person should before that time occupy the mansion, &c., in which case the gardens, &c. were to be delivered up by the pauper. The pauper continued in the occupation of the garden under the above terms for a year and a quarter. The produce of the garden was worth 70*l.* a year to the pauper, and the expense of keeping up the pleasure grounds, &c., together with the value of the pauper's labour, would amount to as much as the profits which the pauper was allowed to take. *Bayley*, J. "Where did the pauper reside? Not upon a tenement of his own. He resided in a cottage of Sir Charles Chadd's, and we were of opinion yesterday (*a*), that in order to confer a settlement by renting a tenement, the party must have a residence which might be called his own home, as tenant; and that where he resides in the character of servant merely, that would not be sufficient to satisfy the words of the statute, 'coming to settle.' This pauper had the garden merely as servant." *Holroyd* and *Best*, Js. concurred.

(*a*) *Rex* v. *Bardwell*, p. 778.

Reg. v. *Bishopton*, 1 *P. & D.* 598; 9 *A. & E.* 824. G. Winterburn and wife were removed from Ripton to Bishopton. Order confirmed. Case:—Prior to 1813, G. W., his wife and children, resided at Bishop's Thornton, and some of his children worked in a mill there. In that year he removed into a cottage at Bishopton, situated within one-eighth of a mile, belonging to a flax mill, belonging to Mrs. Coates. This cottage and two others adjoining it were rented by Mrs. Coates from Mr. Swinder for the convenience of the families employed at the mill; some of the children of each family living in these cottages being so employed. The pauper had six children who worked at the mill, and were engaged for three years. The pauper made the bargain with Mrs. Coates' manager, since dead, which was, that 2*s.* per week was to be paid for the use of the cottage, and to be deducted from the children's wages. The children continued to work for the three years originally contracted for, and some of them for a longer period. The pauper continued to occupy the cottage until the year 1829, at which time one of his sons, being then twenty-four years of age, still worked there, and continued to do so after the pauper left the cottage and removed to Ripton. During the time he occupied the cottage the pauper worked as a husbandman for various persons, and occasionally for Mrs. Coates, but never was her servant. In 1829 the three cottages were sold by Mr. Swinder to a third party, and the usual notice was given to Mrs. Coates to deliver up possession thereof to the purchaser. The pauper in consequence was required to move, which he accordingly did after a few weeks, without having received any regular notice to quit. During his occupation of this cottage the pauper rented other tenements within the township of Bishopton of a sufficient value, if added to the cottage, to confer a settlement in that township. *Littledale*, J. "I think that the pauper has gained a settlement. In the cases cited, to show that a settlement was not gained, the relation of master and servant existed and the occupation was ancillary to the service, but here the pauper was not a servant at all. He appears to have been employed by several persons as a labourer in husbandry, and then to have made this agreement with Mrs. Coates, by which his children were to work for her in the mills, and he was to pay 2*s.* a week for the cottage. This was clearly a taking of the cottage to rent; but it is urged that, as the cottage was merely let to him as ancillary to the service of his children, it was not an independent occupation. No doubt the pauper would not have been allowed to have the cottage but for that, but still he agrees to pay rent, and that *primâ facie* constitutes the relation of landlord and tenant; therefore, taking it altogether, I think he gained a settlement." *Williams*, J. "It is to be regretted that the sessions did not decide this question on the mere matter of fact. In the cases cited the service and the residence were identified, but that is not so here; and the stipulation as to the 2*s.* to be deducted out of the wages of the children was a mere mode as to the payment of rent." *Coleridge*, J. "I think the sessions ought to have decided the fact whether this cottage was taken for the purposes of the service or not; and whichever way they had decided I should not have

A cottage was rented by the owner of a mill for the convenience of the families employed at the mill. A man, whose children were so employed, took this cottage at a rent to be deducted out of the children's wages: Held, this was a sufficient occupation. The sessions should decide whether the pauper took the cottage as servant or not.

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quarrelled with their decision. I agree with the principle, that the object of the contract is the point to be looked at; and I do not think that the occupation of a tenement need be identified with service under the landlord. If the tenement be taken as merely ancillary to some service or other, I am inclined to think it would not be sufficient. The facts here do not very distinctly show what was the object of taking the cottage, or whether, if the children had ceased to work at the mill, the tenancy would have been put an end to; but on the whole I agree with the rest of the court, that a settlement was gained." Order of sessions confirmed.

A waiter at an hotel had the tap or privilege of selling malt liquors there, and the use of the cellar for holding the liquors, which had a separate entrance, and of which he kept the key; he paid for his situation of waiter and for the tap and cellar the yearly sum of 60*l.*: Held not such an occupation of the cellar as to confer a settlement.

Rex v. *Seacroft*, 2 *M. & Sel.* 472. Removal from Leeds to Seacroft. Order confirmed. Case:—The husband of the pauper while renting and occupying a house in Leeds of the yearly value of 6*l.* engaged himself as waiter at the hotel in Leeds, and at the same time had the tap, that is, the privilege of selling malt liquors there; and for the convenience of holding his liquors, had the use of the cellar belonging to the hotel, which had a distinct and separate entrance, and of which he kept the key. He paid in the whole for his situation as waiter, and for the tap and cellar, the yearly sum of 60*l.* The annual value of the cellar, independently of the privilege of the tap, was upwards of 6*l.* The court said, "That there did not appear to be any taking of the cellar as a tenant, but the use of it was only a privilege allowed him in respect of the principal thing, which was the hiring himself as a waiter. That before a party can be said to come to settle in a tenement there must be something like a taking of it as a tenant." Order confirmed.

The pauper agreed to serve as a labourer for 20*l.* a year, a house and garden, a piece of land for potatoes, the milk of a cow, and feeding of a pig. This is an occupation as servant and not as tenant.

Rex v. *Kelstern*, 5 *M. & Sel.* 136. The pauper, a married man, agreed to serve S. for a year as a labourer, and was to have 20*l.* a year, *a house and garden*, a piece of land for potatoes, the milk of a cow, and feeding of a pig, which were to run on a neighbouring field: the pauper had the exclusive occupation of the house, the house was about 100 yards from the house of S., a house was necessary for the performance of his service, and if he had not had it he would have had more wages. Lord *Ellenborough*, C. J. "I own I have no doubt in this case that the only occupation of this house was the occupation of the master and not of the servant, whom the master placed there for the mutual convenience of both parties. The master's house was about 100 yards distant from it, and the servant had it thrown into the bargain in cumulation of wages. This may be compared to rooms allotted to a coachman over the stables of his master, or to an outhouse, where, being a family-man, it is more convenient that he should be out of the dwelling-house; but that is nothing more than the occupation of the master. So here I cannot see that the occupation goes farther. In *Rex* v. *Melkridge* (p. 776) the question did not turn upon whether it was an occupation by the herdsman or the commoners who employed him, for it did not appear that the commoners ever had an occupation in any way, but the herdsman had it exclusively. At present it seems to me to be incontestably plain that this was nothing more than the occupation of the master by the servant. Therefore the house cannot go to form a part of the tenement so as to make up the value of 10*l.* a-year." *Bayley*, J. "I take the distinction as laid down in *Rex* v. *Minster* (p. 776) to be this, that if the occupation be unconnected with the service it will confer a settlement; but if it be necessarily connected with the service, as if it be necessary for the due performance of the service, it shall not confer a settlement. Now from this case I collect that the occupation of the house was necessary for the performance of the service; therefore it must be taken as the occupation of the master, and not of the servant." *Abbott*, J. "I am glad that the court is not called on to decide that this is a coming to settle on a tenement, for it would tend to deprive labourers in husbandry of many comforts accruing from this species of agreement. If it contained a settlement farmers would be unwilling to grant those advantages, for the loss of which no probable addition of wages would afford an adequate compensation in point of comfort." See *Rex* v. *South-Newton*, *post*.

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A pauper, employed as a labourer by the Board of Ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the board, still continued to reside in part of the premises, at a weekly rent of 2*s.*, which was deducted out of his wages, and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*), and upon his dismissal from his employment, he gave up possession of the house as required: Held, that his last occupation of the house was not as a tenant, but as a servant.

Rex v. *Cheshunt*, 1 *B. & Ald.* 473. A pauper employed as a labourer by the Board of Ordnance, having previously occupied a house at an annual rent of 7*l.*, which was then purchased by the board, still continued to reside in part of the premises at a weekly rent of 2*s.*, which was deducted out of his wages, and during such last occupation he also occupied a shop (the shop and house together being of the annual value of 10*l.*), and upon his dismissal from his employment he gave up possession of the house as required. The board had several other houses for their labourers, which they occupied only as long as they were in the employment of the board. The court held, that his last occupation of the house was not as tenant, but as servant, and that no settlement was thereby gained. Lord *Ellenborough.* "In this case it seems to me that the party occupied this house as a servant only, and not in the character of a tenant. It is like the case of a coachman, who frequently occupies a room over the stables, but such occupation is not within the 13 & 14 Car. II. The pauper here was divested of the tenement as soon as his service terminated. He quitted the possession reluctantly, and was succeeded by the person who succeeded him in his employment under the Board of Ordnance. All this clearly shows that he was only entitled to hold it during and for the more convenient performance of his service. If the court should hold in this and similar cases, that the legal relation of landlord and tenant subsisted, it would become necessary to turn such persons out of possession by the regular proceedings in ejectment, and every gentleman having twenty or thirty cottages in which his labourers resided, would be compelled, on any change of their service, to have recourse to such means. This would be productive of the most serious inconvenience. Upon the whole view of this case, I think it plainly appears that the relation of landlord and tenant never did subsist here, and unless that were so, this was not an occupation within 13 & 14 Car. II." *Bayley*, J. "*Rex* v. *Minster* only decided that the occupation of a tenement which was wholly unconnected with the service would confer a settlement; but that the occupation of one connected with the service would not. In this case the tenement is connected with the pauper's service under the Board of Ordnance."

The pauper went into the service of B., and, by agreement, was to have the use of a pot-kiln, &c., he paying to B. so much for every burning pot: the pauper resided in a cottage, in the same parish, the kiln &c. and the cottage were worth more than 10*l.* a year: This is an occupation as tenant, not as servant.

Rex v. *Iken*, 4 *Nev. & M.* 117; 2 *Ad. & E.* 147. An order of removal from Iken to Frostenden. Case:—In 1813, George Chambers, being at that time a married man, and settled in Frostenden, went into the service of Samuel Barnes, of Iken, as a pot maker. Barnes rented a considerable farm in the parishes of Iken and Sudbourne, including a pot-kiln and sheds in Iken. Chambers was to make and burn pots; to do which he was to have the use of the kiln, sheds, and yards. Barnes was to keep the kiln and sheds in repair; to furnish and cart off all the clay wanted, and supply horses to grind it twice, and to find red lead, with whins and coal for burning the pots. Chambers was to receive 25 per cent. on the sale of the pots, for making and burning them; Barnes was to receive 25 per cent. for the use of the kiln, sheds, and yards, and preparing and carting the clay, and also for carting out the ware when sold; another 25 per cent. for coals, whins, and red lead; and the remaining 25 per cent. was allowed to shopkeepers for selling the goods. Chambers resided in a cottage in Iken, which he rented of Barnes for three guineas a year, and worked the kiln until 1815; when Barnes, being dissatisfied with the ware made by Chambers, put an end to the foregoing agreement without notice; and the parties entered into a new one, as follows:—The average number of kilns burnt, during the year, was about twelve; and, the value of each being about 24*l.*, it was agreed that Chambers should pay Barnes 6*l.* after each burning, for the use of the kiln, sheds, and yards, and for furnishing, carting, and grinding the clay, and carting the ware out when sold. Barnes was to keep the kiln sheds in repair, as before; to provide red lead, coals, and whins for burning the pots; for which Chambers was to allow him in the settlement of accounts; and Chambers was to dig the clay, and do as he pleased with the ware. Chambers continued to reside in the cottage at the same rent, and worked the pot-kiln under this second agreement until

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1828, when he died. The clay furnished by Barnes was dug and carted in the winter time, for the succeeding summer, from lands in Sudbourne occupied by him, except for one season only, when it was taken from other lands in Iken not occupied by Barnes. The cottage, with the kiln and sheds, and land on which they stood, without the clay, were worth more than 10*l.* a year; but the clay itself was worth 15*s.* a year only. Lord *Denman.* "I think a settlement was gained in this case. It is contended that Chambers's occupation under the second agreement was merely a continuation of that under the first; that he had no independent interest, and that his occupation was merely ancillary to a service. But looking at the second agreement, I own I think he had an independent interest, and that he was not liable to be turned out at will. It is true that there are expressions in this case respecting the earlier agreement, which render it doubtful whether a settlement could have been gained by that; and we find that Barnes actually exercised the power of putting an end to it without notice, on being dissatisfied with Chambers. That fact, however, does not go far to interpret the agreement; and, at any rate, we cannot import the first agreement into the second, which appears to me to confer a substantial interest, and one under which Chambers was entitled to remain. Perhaps the best illustration of this case is that of *Rex* v. *Seacroft*, (p. 780), where the alleged occupation was merely ancillary to the service, and consequently conferred no settlement. There, however, the party was engaged expressly as a servant. But here the party had a right to remain as long as he kept his agreement. He therefore had an interest which gave him a settlement." *Taunton*, J. "I am of the same opinion. If we had the first agreement only, it certainly would be a material fact, that the pauper went into Barnes's 'service;' and I should pause before saying that, in that case, I could infer a contract for a tenement. But the second agreement supersedes the first; and whatever my opinion on the first might be, under the second there was clearly a taking. The pauper had the property in the pots manufactured, the landlord finding the clay, red lead, coals and whins necessary for the manufacture, and Chambers paying 6*l.* after each burning. Then it is found, as a fact, that the cottage, with the kiln, sheds, and land, is worth more than 10*l.* a-year. Here the principal object of the contract clearly was, that the pauper should have the use of the kiln, sheds, and yard; and he could not have the use without the occupation. At the same time, if the occupation were merely ancillary to a service, it would not confer a settlement. But here I apprehend that there is no service. Chambers could not be called a servant at all under the second agreement. The use of the building and yards was in the pauper, and the property in the pots, when manufactured, was in the pauper. I agree in the decisions of *Rex* v. *Cheshunt* (p. 781), *Rex* v. *Langriville* (p. 764), *Rex* v. *Bowness* (p. 775), *Rex* v. *Seacroft* (p. 780). *Rex* v. *Hammersmith* (p. 765, n.) is the strongest case; and it is somewhat difficult to distinguish it from the others: but I observe that counsel there gave up the settlement, and the reasons for the judgment are not stated: the only ground on which the décision, if right (and I do not say it was not), can be justified, is, to suppose that the court considered the grazing of the horse in the meadow, and the using of the buildings, to be ancillary to the principal contract. But that is a different case from this. *Rex* v. *Seacroft* is also distinguishable. There the pauper went into service expressly as a waiter: it never was contended that he was a tenant: it was a mere contract of service: he was to have the use of the tap and cellar, which is a profitable privilege often enjoyed by the principal waiter at large inns; it was a privilege, therefore, attached to him in reference to the principal thing; that is, to his contract as a waiter which is inconsistent with the character of a tenant. Here the principal object was to enable the pauper to manufacture the pots, which he could not do without the buildings and yards. It is therefore a case of use and occupation." *Patteson*, J. "I ground my opinion on my construction of the second agreement: we are not called on to construe the first. Under the second agreement the relation of master and servant did not exist: such a

relation is quite inconsistent with the stipulations. The pauper is to pay 6*l.* after every burning, and to burn what he pleases. Barnes, who had been dissatisfied with the old agreement, exercises under the new one no superintendence as master, or even as partner. The 6*l.* is evidently paid by way of rent. As to the cases cited, none of them create any difficulty except *Rex* v. *Hammersmith.* That case is certainly very loosely reported; and I cannot understand the ground of the decision. If the only debated point there related to the grazing in the meadows, and to the use of the buildings, I can understand it; for it may be that the court held that there was merely a licence, or, at any rate, not the relation of landlord and tenant. But as to the stipulation respecting the mill, and the taking back of the utensils at a valuation, that part of the case I cannot explain; there must have been something not reported. Perhaps in the present case the sessions ought to have found the fact of relation of landlord and tenant; but it is clear that relation existed." *Williams*, J. "I am of the same opinion, and that upon the second agreement. Mr. *Follett* makes use of the first part of the case to explain the second; and if that could be done, there might be some foundation for his argument. He has also noticed the difference of language in the case, in speaking of the cottage and of the other buildings; but that I think arises merely from the sessions having doubted whether the circumstances as to the latter took away the quality which creates an occupation. I think that, under the second agreement, there was an occupation. The case has been argued as if this occupation might be referable to something else, like the situation, for instance, of a waiter or a butler, or, which would be stronger still, that of a porter of a lodge, who would occupy exclusively. But as to that point, I agree with the rest of the court, that the service there explains away the occupation. Here it is not so." Order confirmed.

Where the sessions find the pauper occupied as a servant, the Court will not set it aside, unless it appears necessarily wrong.

Rex v. *Snape*, 1 *N.* & *P.* 429; 6 *A.* & *E.* 278. Abigail, widow of William Alexander, was removed from St. Osyth to Snape. Order confirmed. Case:—In 1817 William Alexander, then a servant in the employ of W. K. Dawson, was engaged by him to take care of his stock upon the marshes of St. Osyth. It was agreed that he should receive 12*s.* a week wages, the keep of one cow, of four sheep, and of two pigs, upon the marshes, and for this he was to occupy, rent-free, a certain house situate upon the marshes. This house had been originally built for and had always been appropriated to the use of the person who looked after the stock upon the marshes, and was never let to any other person, and Dawson hired the marshes and the cottage at the same time. Alexander took charge of the stock and possession of the cottage in 1817, and resided in it more than nine years, during which time he had no other employment than taking care of Mr. Dawson's stock. The sessions found that, without the cottage, the keep of a cow, four sheep, and two pigs, given to Alexander under the above agreement, was not a tenement of sufficient value to confer a settlement; and they were also of opinion upon the facts above stated, that the occupation of the cottage by the pauper was an occupation by him in the character of a servant, and connected with the hiring, and not an occupation as a tenant. If the court were of opinion that the sessions arrived at an improper decision with respect to the cottage, the order of sessions was to be quashed; otherwise, to be confirmed. Lord *Denman.* "In my view of this case there would be no holding of this house as a tenement until the service expired, construing the agreement most favourably for the settlement. It does not appear either when the service expired, or that the pauper held the tenement a day after the service expired. It is stated that the pauper is not to be compelled to quit the house until he had notice to quit at Michaelmas. To quit what—the house or the service? It may have been both. If that is so, the sessions, by finding that the holding was always that of a servant, have certainly not apparently come to a wrong conclusion." *Williams*, J. "It is sufficient if there is evidence to support the finding of the sessions, and there certainly is. The utmost that can be urged as to the stipulation in the agreement, that the pauper was to quit at Michael-

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mas, is, that it has a tendency to shew that the agreement was contrary to the finding. But I by no means think it is a fact that has a tendency so conclusive the other way as to induce me to say the sessions were wrong; on the contrary, it seems to me it might very well be explained, on the ground that this was a favour and indulgence which the man asked for; and which was conceded to him without any idea at the time of conferring on him any rights as a tenant." *Coleridge*, J. "The sessions have, in this case, to consider what was the agreement; and they draw a conclusion partly of law and partly of fact. It was incumbent on the appellant to satisfy us that the sessions have necessarily drawn a wrong conclusion. If the evidence as to the agreement will bear the conclusion which the sessions have drawn, I think we ought not to disturb their finding. It seems to me that the sessions have very probably drawn the right conclusion. This was an agreement between a master and servant; it had throughout a reference to wages and service; for that service the wages were to consist partly of money, partly of the keep of these cattle, and partly of the occupation of the cottage, and on that last circumstance the pauper may have said, as part of my remuneration is to be the occupation of the house, it would be very inconvenient to me to be turned out without any notice; as you might in an ordinary case dismiss me from your service without notice, I must ask of you to agree that I am not to be turned out of this house except on notice to quit at Michaelmas. Assuming even according to the argument, that a six months' notice was meant, the agreement may have been that the pauper was not to be turned out of the service except on a six months' notice at Michaelmas. I think, therefore, this finding of the sessions may be well supported." Order of sessions confirmed. (*a*)

A master ropemaker, in a government yard, occupying a house rent-free as part of his remuneration, is a *tenant* within the Reform Bill.

(*a*) *Hughes* v. *Overseers of Chatham*, 7 *Jurist*, 1136; 13 *L. J.* 44, *C. P.* A master ropemaker employed in a government dockyard, and occupying a house there rent-free, but in part remuneration for his services, is a "tenant" of such house within the Reform Act. On an appeal from the decision of a revising barrister for the borough of Chatham, in respect of the vote of James Burton, it appeared that Burton occupied a house in the dockyard of Chatham, of the value of 40*l.* per annum, from July, 1835, to September, 1842, when he removed to a house in Milton's Terrace, Chatham, about a mile from the dockyard, where he now resides. The house in Milton's Terrace he hires of the landlord in the usual manner, and pays a rent of 50*l.* per annum, and is rated for it, and pays such rates in the ordinary way, and no question arises in respect of such house. The house in the dockyard belongs to the Commissioners of the Admiralty. Burton is a master ropemaker in the dockyard, and, as such, he had the house as his residence. He paid no rent in money for it, but had it as part remuneration for his services. He had the exclusive use and occupation of the house for himself and family, and no part of it was used for public purposes, the office in which he performed his public services being away from it. He had the keys of all the doors, and no person but himself had any control over the house. He was rated in his own name as occupier, and the rates paid by the Paymaster-general. They were so paid as part remuneration for his services. If he had not been allowed the house, he would have had an allowance for a house, in addition to his salary; and now that he has not a house in the dockyard, he is allowed one guinea per week by the Admiralty in lieu of rent and rates, under the name of "lodging money." Burton's name was refused upon the list. C. J. *Tindal* said: "With respect to the cases of settlement acquired under 13 & 14 Car. II. c. 12, which have been principally relied upon in argument, no doubt they are important as guides to the question, whether a person occupies as servant or as tenant. A person may occupy as tenant, and yet be a servant: there is no inconsistency between the relations of landlord and tenant and master and servant. A servant may occupy a house of his master, independently of his service, and yet satisfy the rent of that house by a render of service; or, on the other hand, he may occupy the house as a means of performing the service. Upon such a distinction we find that the settlement cases proceeded, and we think it applicable to the present question. And as there is nothing here which shews the occupation was necessary to the performance of the service, but, as the case expressly states, that it was, in fact, allowed him in part remuneration of his services, we cannot say that the decision of the revising barrister was wrong."

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Rex v. *Croft* (*post*), *tit.* "*Certificate.*" *Abbott*, C. J. observed, "No case has been found in which the 9 & 10 Will. III. has received a different construction from the 13 & 14 Car. II. as to the nature of the tenement, or of the taking thereof."

There is no difference between 9 & 10 Will. III. c. 11, and 13 & 14 Car. II. as to the tenement and the taking thereof.

Rex v. *Butley*, *Burr. S. C.* 107 ; 2 *Bott*, 128. The pauper took a lease of a windmill in Benhall for three years, but had a surety who engaged for the payment of the rent. *Page*, J. said, "The parish officers had nothing to do with looking into the fact of giving security. It is the credit of *taking* a tenement of such a value, that is the point ; were it otherwise, a *much greater* rent might be insufficient to gain a settlement, though the act requires no more than 10*l.* a year. The *visible credit* is the grand point."

Parish officers have nothing to do with the fact of a surety being taken for the rent.

Rex v. *Hooe*, 4 *East*, 362. The pauper took a house in Hooe at 11*l. per annum*, of Pococke, then overseer of that parish ; the pauper, previous to this taking, had had his rent paid by Hooe, and after the taking was relieved by them. Previously to this taking, Porter had agreed to take part of the premises at 5*l. per annum*, and the pauper would not have given so much for the premises if Porter had not promised to take part of them under him. Porter guaranteed the rent to Pococke, who would not have let the premises without such guarantee. But when the agreement was made between the pauper and Pococke, the latter said expressly he made the agreement with the pauper only, and considered none but him as his tenant. The pauper paid the whole rent. There was no fraud ; credit was given to the pauper for 6*l.* only, and for the residue credit was given to Porter only. Lord *Ellenborough*, C. J. "The 13 & 14 Car. II. gives authority to two justices, on complaint within forty days after any person 'shall *come to settle* in any tenement under 10*l.*,' to remove him. No doubt this was a *coming to settle* by the pauper. Then it says, 'upon any *tenement* ;' that includes the character of tenant, in which he comes to settle, which is the principal question here : and then the value, which must be 10*l.* a year to confer a settlement : and here the value of the entire premises was 10*l.* a year. Now as to the principal question, the pauper was to all intents and purposes tenant of the legal estates for the whole ; fraud being excluded by the sessions. He was subject to all the liabilities of a tenant. It is stated that the pauper took the premises of Pococke at the rent of 11*l.*, and Pococke said that he demised to the pauper only. Then shall it be said that he had not the whole interest in him, because a surety was required for the rent ? Having such a surety has been holden to make no difference. But it is said that the only inducement to the landlord to let to the pauper was the security, and therefore credit was not given to him. But so a man's inducement to take a bill may be the security of the drawer as well as acceptor ; still he gives the latter credit. Then where there is a tenement of sufficient value, and a tenant not removable, who is liable to all the burthens of a tenant, and all the liabilities of one, and against whom, as such, every proceeding in law may be had, he gains a settlement by forty days' residence on such a tenement." And *Grose*, J. said, "That it was not necessary the pauper should have paid the rent ; it was sufficient he had credit to be trusted with a tenement of the annual value of 10*l.* It was not necessary for the tenant to have paid the whole rent ; for though the rent were paid by others, yet as he had credit for the whole premises, it was sufficient ; and he showed that he deserved that credit in the present instance, for he actually paid the whole rent." *Per Lawrence*, J. "It is argued, that unless credit were given to the pauper for 10*l.* a year in value of the rent, no settlement can be gained by him. But I do not know that that is a necessary conclusion. The 13 & 14 Car. II. c. 12, gives power to the justice to remove, on complaint within forty days, any person 'who shall *come to settle* in any tenement *under* the value of 10*l.*' &c., unless certain things are done which are required by that statute ; but they have no power given to them to remove any person coming to settle in a tenement of that value or upwards. Such a person is not submitted to their jurisdiction at all. The question, therefore, is not a question concerning the

The question is, whether the pauper were *tenant* or not ; and whether he acquired the interest of a tenant to that value.

Credit need not be given to the pauper for the rent, if he be the tenant for the premises.

See *Rex* v. *Great Wakering*, p. 788.

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credit of the party, but whether in point of fact he came to settle, *i. e.* acquired the interest of a tenant in a tenement of that value; for if he did, the justices had no power to remove him. Now, upon the facts stated, it is apparent that the pauper had an interest to that amount in a tenement, as the tenant thereof, which prevented him from being an object of removal." *Le Blanc*, J. "I think sufficient appears to enable us to see what facts and conclusions the sessions meant to submit to our review. And we must, I think, take them to have found, that though the pauper had taken the whole tenement of Pococke, yet that from the guarantee of Porter, who was himself to occupy part under the pauper for 5*l.* a year, the sessions thought that this in effect was an agreement to relieve the pauper from the responsibility of so much of the rent, leaving him only liable for 6*l.* a year, and that that would not confer a settlement on him, but is founded on a mistake in law; for it is immaterial whether credit were given to the pauper for the rent, if he were the tenant of the whole premises."

A tenancy in one parish cannot be coupled with a freehold let to a tenant in another parish.

Rex v. *South Bemfleet*, 1 *M. & Sel.* 154. Removal from Fobbing to South Bemfleet. Order confirmed. Case:—The pauper, Henry Brewitt, went to Fobbing, where he rented and lived forty days in a house of the value of eight guineas *per annum*, having previously to, and at the time of his quitting South Bemfleet, and during his residence in Fobbing, and when the order of removal was made, a freehold estate in South Bemfleet, which he had let at the rent of 2*l.* 10*s.* *per annum*. Lord *Ellenborough*, C. J. "This can never be called an occupation of a freehold interest, where there was no occupation in fact, it being leased out to another, and without some occupation the pauper cannot gain a settlement. The cases have already gone far enough: the mode of reasoning adopted to-day would go to shew that having any interest whatsoever was an occupation, and if pushed a little farther would take in property in the funds." *Le Blanc*, J. "The words of the statute are, '*come to settle in any tenement*;' which have been sufficiently departed from already, when it was decided that if a person take a tenement of the value of 10*l.* a year, and underlet a part, he will thereby gain a settlement; but the ground of that decision was, that he had credit to be trusted with 10*l.* a year. Here, however, the pauper had only credit for a less sum than 10*l.* a year, viz. eight guineas a year. But it is said he had property of his own elsewhere, of that, however, he was not the occupier; but an ingenious argument is raised from what fell from the court in other cases, to shew that the principle of those cases is applicable to this, where he never occupied to the value of 10*l.* a year, because it is said that he was not likely to be chargeable, but it is sufficient to say, that those cases are not like the present, and that there is no case which seems to have gone the length contended for." *Bayley*, J. "According to the argument, if a person having property of his own of 5*l.* a year value in Cornwall, leased it out, and came to occupy a tenement of 5*l.* a year in London, that would be coming to settle in a tenement of 10*l.* a year, and the party would gain a settlement in London. Such a construction of the act would be a violent departure from the words of it." Order of sessions confirmed.

Nor in the same parish, although in the *owner's* occupation.

See *Rex* v. *Fritwell*, p. 795.

Rex v. *St. John's Glastonbury*, 1 *B. & Ald.* 481. The pauper rented a house and potato garden, but not of the annual value of 10*l.* At the same time he occupied freehold land of his own which he had purchased for 10*l.* It was of the yearly value of 1*l.* 10*s.*, making in all more than 10*l.* Before the order was made he sold and gave it up. Lord *Ellenborough*. "The argument in this case has brought back to my mind the decision in *Rex* v. *Bowness* (p. 775). I think that the coming to settle, in the 13 & 14 Car. II., must mean to *settle as tenant*; the act having said, that persons who shall come to settle on a tenement of the value of 10*l.* shall not be removable, must be construed to imply that they shall be removable if the tenement be of less value. Now it is clear that at that time a man was not removable who resided on a tenement of less value than 10*l.*, if that tenement were his own property: the legislature, therefore, could not have contemplated a residence on a man's own property,

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when they used the words 'coming to settle on a tenement.' What is reported to have fallen from me in *Rex* v. *Bowness*, was certainly not to be considered as an *obiter dictum*, but it is confirmed by the authority of Lord *Kenyon* and Mr. J. *Lawrence* in the cases cited." *Bayley*, J. "The legislature must, by the word tenement, have contemplated a description of property from which, if of less than 10*l.* yearly value, a party could be removed: now if the property were his own he could not at that time be removed from it, however small its value, therefore it seems to me this is not a tenement within that statute. This is strongly illustrated by 9 & 10 Will. III. c. 11. One of the means by which a certificate may be put an end to, is by taking a lease of a tenement, from which it may be fairly inferred that the legislature thought the 13 & 14 Car. II. applied to leaseholders and not to freeholders." *Abbott*, J. "was satisfied by the argument against his first opinion, that the pauper must come to settle on all as tenant." *Holroyd*, J. thought that the statute did not apply to a man's own property, and said, "but my doubt arises from this; I consider that the statute meant to enact, that when a man resided forty days on property where he was entitled to reside he should gain a settlement. Now, here, the party did reside forty days, and was irremovable all that time. I am therefore rather inclined to think that in so doing he gained a settlement."

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6. As to Joint Tenants.

6. *As to Joint Tenants.*

Renting jointly a tenement, which, when divided as to value between the tenants, will not produce ten pounds a year for each tenant, will give no settlement to either.

Marden v. *Barham*, *Burr. S. C.* 311; 2 *Bott*, 197. Two persons jointly hired a house and land at Marden for 16*l.* a year, and jointly occupied the house and tilled the land for the year and jointly paid the rent, that is, each the like sum. It was urged that this gained no settlement to either of them. And a case was cited between *Croft* and *Gainford*, at Durham assizes, 1733 (2 *Bott*, 194), which was a joint taking of 14*l.* a year, each paying separately, the landlord not caring to let to either singly. And the two judges (Lord C. J. *Eyre* and *Reeve*) to whom it was referred, held it no settlement, because the statute requires the person's taking a tenement of 10*l.* a year value; whereas this practice of calling in a partner in the taking would, if admitted equivalent to a sole taking, evade and frustrate the statute, and let in an indefinite number of families, all to be settled upon one tenement of 10*l.* a year value. On the contrary it was argued that each was legally tenant of the whole, both being liable to the landlord for the whole rent. By the court: "This was not sufficient to gain a settlement. Whatever remedy the landlord might have against the occupiers of the land for his rent, the act of parliament in the present case considers only the right; which clearly is but to one-half, and that half doth not amount to the value of 10*l.* a year." See *Rex* v. *Hooe*, p. 785.

Where one originally takes a farm of the annual value of fifty-two pounds, and then takes a partner, the latter will also gain a settlement.

Little Tew v. *Duns Tew*, *Burr. S. C.* 398; 2 *Bott*, 168. Richard Guffkyns the pauper, together with John Goodwin his father-in-law, rented a tenement at Duns Tew at 81*l.* a year as partners, and lived there twelve years. And being about to leave Duns Tew, Goodwin alone went to Mr. Keck's agent at little Tew and took a farm of 52*l.* a year for four years. After the said taking, and before the farm was entered upon, Guffkyns inquired of Goodwin whether he depended upon his going with him to Little Tew? To which Goodwin replied, that he did; for he could not go without him. They both removed from Duns Tew to little Tew, with their whole joint stock to the value of more than 100*l.*; and managed the farm together for seven years, both of them residing thereon. Keck gave his receipts for the rent to Goodwin only; and once when Keck distrained for rent the distress was made upon the stock, which Keck supposed to be Goodwin's only; and Goodwin alone gave a bill of sale of the stock; and Guffkyns then stood by without interposing. At the end of seven years, just before the order of removal was made, Guffkyns went off from the farm, and Goodwin took the whole stock, allowing Guffkyns 62*l.* for his moiety thereof. It was adjudged by the justices, that this being not a joint hiring but a taking by Goodwin only, Guffkyns, the pauper, did not hereby

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gain a settlement. By the court: "The words of the statute are, *coming to settle in any tenement under the yearly value of* 10*l.* The agreement between the two farmers was, to occupy jointly with a joint stock: that the case doth not turn only upon the credit given to the tenant by the landlord, but upon the credit given by the legislature to a man able to stock a farm of such a value: a tenant may let the whole, or even subdivide it out to the under-tenants, who may thereby gain a settlement, if the tenement be above 10*l.* a year. And where is the difference between the original tenant's letting out part, and his taking in a partner?" And after having taken time to consider, the resolution of the court was that Guffkyns gained a settlement in Little Tew. For being taken in partner by Goodwin he is to be considered as having an interest in the farm, at least as tenant at will to Goodwin, of the moiety of a farm worth 52*l.* a year for the whole of it, and consequently his moiety above 10*l.* a year. A tenancy at will, even in the case of a certificate person, is sufficient to gain a settlement, as was determined in *Cranley* v. *St. Mary's, Guildford*, (1 *Str.* 502).

Being joint partner with a person of a farm of one hundred and seventy-six pounds a year, gains a settlement.

Rex v. *Seamer*, 6 *T. R.* 554. John Yates was removed from East Haslerton to Seamer. Order confirmed. Case:—T. Yates, brother of the pauper, took a farm of Sykes, Bart., at East Haslerton, at 176*l.* a year. John resided with him upon the farm, they having agreed to be joint partners in the stock and farm previous to Thomas's taking it, but John did not consider himself as tenant to Sykes. John advanced 120*l.* towards the stock and farm. Thomas was the only person rated in the parish rates, though John said he conceived himself answerable for the payment of his part, and to pay interest accordingly. After seven months, they parted: there was no account of receipts and disbursements. Upon parting it was agreed that John was to allow 20*l.* out of what he had advanced, and to be repaid the remainder, which took place. The court, without hearing counsel, were of opinion that this case was governed by Duns Tew and Little Tew. And Lord *Kenyon*, C. J. added, "That whether the pauper were considered as joint-tenant with his brother, or as under-tenant, he equally gained a settlement in East Haslerton." Both orders quashed.

Renting one entire tenement, and jointly part of another, will, if the whole be of sufficient value, gain a settlement.

Rex v. *Tissington*, *Burr. S. C.* 499; 2 *Bott*, 198. The pauper, Isaac Wibberly, took a farm in Kniveton of 8*l.* a year; and, at the same place, jointly with Thomas Hill, took another farm of 3*l.* 15*s.* a year, and at the taking of the said farm of 3*l.* 15*s.*, it was agreed between Wibberly and Hill, that Hill should take one half of the corn and hay of the 3*l.* 15*s.* farm: and that Wibberly, after Hill had taken and carried away his half part of the corn and hay, should have the whole farm of 3*l.* 15*s.* till Lady-day following, paying 4*s.* for Hill's share of the farm. The question was, whether this were a tenement of the yearly value of 10*l.*? It was argued that Wibberly was liable (as being joint-tenant with Hill) to pay the whole 3*l.* 15*s.*; and that he was sole tenant of that farm for the last half-year; or, even taking it at the strictest, that he was really and properly to pay 10*l.* 1*s.* 6*d.* a year; for he is to pay 8*l.* and half of 3*l.* 15*s.* (which is 1*l.* 17*s.* 6*d.*, and 4*s.* more for the last half year,) which is in all 10*l.* 1*s.* 6*d.* But the court unanimously held, "That this tenement, thus rented in Kniveton, was under the yearly value of 10*l.* The act fixes the value at 10*l.* And the value must be estimated by the rent, and always is taken to be according to the rent. (*a*) And here the rent is 8*l.* a year, and the half of 3*l.* 15*s.*; which two rents taken together do not amount to 10*l.* Indeed he was to pay Hill 4*s.* for the advantage he was to have after the crop was off: but an agreement of this sort between two joint-tenants cannot be considered as rent."

Demise of a house and lands to two jointly of the annual value of 16*l.*: Held, that

Rex v. *Great Wakering*, 3 *Nev. & M.* 47; 5 *Bar. & Adol.* 971. An order of removal from Great Wakering to Great Wigborough. Case:—The appellants endeavoured to establish a settlement acquired by the pauper, either by renting a tenement in the respondent parish, or by paying

(*a*) That is, if the session find no other value.

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rates in respect thereof, under these circumstances:—By lease of the 27th February, 1827, between C. Summer, widow, and the pauper, and John Clay, Mrs. Summer, in consideration of the rents and covenants on the behalf of Bullock and Clay to be paid and performed, leased to Bullock and Clay certain freehold premises (therein particularly described), situate in the respondent parish, to hold from the 25th of March then next, for fourteen years, if Mrs. Summer should so long live, at the yearly rent of 16*l.* The lease contained a covenant by Bullock and Clay for themselves jointly and severally, and their heirs, executors, administrators and assigns, for payment of the taxes, rates, and assessments to be charged on the premises (but there was no covenant for payment of the rent); and, previous to the 29th of September then next, to lay out 30*l.* in repairs on the premises, and to keep and leave the same in repair. It also contained a covenant by Mrs. Summer, with Bullock and Clay, to repay them the 30*l.*, in case they should be evicted by any person claiming lawful title. The lease was duly executed by all the parties. *Denman*, C. J. "It appears to me that this letting did not confer a settlement, because it was a joint letting to two, and as the rent of 16*l.* would be payable by the two lessees, each would be liable only to pay a moiety. But in order to give a settlement, the tenement of each should be of the annual value of 10*l.* In *Rex* v. *Hooe*, (p. 785,) the demise was to one only, and his rent was guaranteed by another person, but the latter was not tenant. Whether the parol evidence be admissible or not, is immaterial; because, assuming it to be receivable, the letting was in fact to the two jointly, and the rent therefore payable by the two, and, consequently, neither rented to a sufficient amount. As to the other ground, that Clay may be considered as having let his moiety to the pauper, that is a fact not found by the sessions, and we cannot infer it." *Littledale*, J. "The demise being to two as joint tenants, each was entitled to occupy an undivided moiety in his own right. The pauper, therefore, if he occupied the whole, would occupy one half in his own right, and the other half as bailiff to Clay, and would be accountable to him for the profits. He therefore only occupied in his own right a tenement of 8*l.* a year value, which is not sufficient to give a settlement either by renting or by payment of rates." *Taunton*, J. "The rule laid down by Mr. *Nolan* (vol. 2, p. 37,) is, that where a tenement is occupied by two jointly, and is of the value of 20*l.* a year, both may gain a settlement, for the moiety occupied by each is of the value of 10*l.* per annum; but where the tenement is occupied by two jointly, and is under 20*l.* per annum, neither can acquire one: and he adds, (from the case of *Croft* v. *Gainford*, p. 787,) that 'if the law were otherwise, the inconveniences arising from it would be intolerable; for if forty persons, for the same purpose, were to rent a tenement of this value, each of them would be entitled to a settlement; the manifest design of the statute would be thereby eluded, and the parishes would be loaded with poor.' Here, no settlement was gained, because the rent for the whole premises was only 16*l.* per annum, and it was payable by the lessees jointly; and supposing that the parol evidence was properly received, it does not vary the case; for, although it may have been intended that Bullock should be sole tenant, and Clay surety, still the demise by the lessor was to the two jointly, and the rent therefore was payable by them. There is no ground for saying that there was a settlement by rates; for that depends on the same circumstances, precisely, as a settlement by settling on or renting land." *Patteson*, J. "This is a joint lease to the two as regards the landlord. Whether the parol evidence was admissible as between the parties to this record is immaterial. I think it was admissible as between them, though it would not be so as between the parties to the instrument. All the authorities show, that if there be a joint-tenancy, each of the parties should be interested to the amount of 10*l.* With respect to an underletting by Clay to the pauper, there were some circumstances to warrant such an inference; but the sessions have not drawn it, and we cannot." Order of sessions quashed.

neither could thereby gain a settlement, although the pauper alone was the occupier and alone rated, the other party being joined in the lease as a surety only.

See *Rex* v. *Kegworth*, p. 800.

Parol evidence admissible to show that one party was surety only.

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Pauper applied to take a tenement. The owner refused to let unless another person would become joint-tenant with him. On this two became joint-tenants, at 17*l.* a year. Pauper occupied the tenement exclusively, and paid all the rent for some years: This is a joint-tenancy, and no settlement acquired.

Reg. v. *Aberdaron*, 1 *G.* & *D.* 178; 1 *Q. B.* 671. A pauper was removed to Aberdaron. Order confirmed. Case:—In 1809, the pauper's husband applied to become tenant, to T. P. Jones, of a dwelling-house and premises in Llanistymdwy. The agent of Jones refused to let to the pauper's husband, unless his father-in-law became joint-tenant with him, and the tenement was accordingly let to the pauper's husband and his father-in-law, as joint-tenants, at the yearly rent of 17*l.* 17*s.*, and thereupon or shortly afterwards the pauper's husband alone entered into the occupation of the tenement, and continued in such sole occupation thereof for five years, without any benefit to or interference by his father-in-law, who resided twenty miles therefrom. The pauper's husband alone, from time to time, paid the whole of the rent for the first four years of the said period, and 15*l.* on account of the fifth year thereof, and his father-in-law did not pay any part of the rent though his name was also inserted as joint-tenant in each of the receipts. Lord *Denman.* "If we followed exactly the words of 13 & 14 Car. 2, c. 12, we should be led very far from the decisions. It is found indeed that the tenement was occupied by the pauper's husband solely, but that it was not let to him solely. It might afterwards have been underlet to him by his father-in-law, but that is not found, and, upon the case stated, his father-in-law might have come in at any time and have occupied with him. According to the decisions, and particularly *Rex* v. *Hooe*, we are bound to say that no settlement was gained." The other judges concurred. Order of sessions confirmed.

Under 6 Geo. IV. c. 57, no settlement is gained as joint-tenant, although the half of the rent paid by the pauper amount to 10*l.*

Reg. v. *Caverswall*, 1 *P.* & *D.* 426; 10 *A.* & *E.* 270. Charlotte Lawton was removed from Burslem to Caverswall. Order confirmed. Case:—The pauper's late husband, during the years 1828, 1829, 1830, and 1831, rented *bona fide* a dwelling-house in Burslem, at the rent of 7*l.* a year, and occupied and paid the rent and poor-rates for the same, during the whole of that time, under that renting. During all the time he so rented and occupied the dwelling-house, he also rented *bona fide* a building called a potwork, jointly with one E. A., at the rent of 15*l.* a year for part of the time, and 17*l.* a year for the remainder of the time, and occupied the same jointly with E. A. under such renting, and paid a moiety, at least, of the rent and poor-rates due for the same, during the whole of that period. Lord *Denman.* "I am not aware that this question can be decided by reference to any previous cases. But I think that the words, 'separate and distinct,' in the statute meant that the tenant must be unconnected with any other person, and be a separate occupier." *Littledale*, J. concurred. *Patteson*, J. "I am of the same opinion, and it appears from the reports that I have been so for some time past." *Williams*, J. concurred. Order of sessions confirmed.

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7. *Permissive Occupation is a "coming to Settle."*

7. Permissive Occupation is "a coming to Settle."

The words "coming to settle" in the 13 & 14 Car. II. are satisfied if the party takes up his residence in the place, although he is not responsible for the rent and taxes of the premises in which he dwells, but has a permissive occupation only. See several cases, *ante*, "*Tenancy.*"

Where a pauper's brother-in-law, without any authority from the former, and without his knowledge, hired a house at eighteen pounds a year, and allowed the pauper to remain in possession for two years and a quarter, and then, without notice, directed him to quit, which he did immediately, not

Rex v. *Chediston*, 4 *B.* & *C.* 230; 2 *D.* & *R. Mag. Ca.* 137. Thomas Squire was removed from Halesworth to Chediston. Order confirmed. Case:—The pauper occupied a farm in Chediston in 1806, assigned over his farm for the remainder of his term, together with his farming stock and crops, to his brother-in-law Page, upon trust to cultivate the farm, and at the expiration of the lease, to sell the stock and crops for the payment of the pauper's debts, and then to pay over the balance to the pauper. Page acted under this trust till Michaelmas, 1817, when the lease expired, but no final settlement of accounts took place, and nothing was paid to the pauper, his property, as stated by Page, not being sufficient to pay his debts. At Michaelmas, 1817, Page not having any authority from the pauper so to do, and without his knowledge, hired a house in Halesworth, of the value of 18*l.* a year, in which Squire and his family resided. Some

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having paid any rent or taxes during the time: The pauper is tenant at will, and acquires a settlement under 13 & 14 Car. II. c. 12.

of the furniture belonged to Squire, and some to Page. The house was much larger than was required by Squire, and was taken by Page because he could not procure a smaller one. Squire never paid rent for the house, nor parish rates, nor taxes. They were all paid by Page, who was assessed in the parish rates and in the tax collector's assessment for the house. The pauper and his family continued to reside in the house till Christmas, 1819, when Page, without any notice, directed the pauper and his family to quit the house at Halesworth, which he did. Page stated that he considered Squire responsible to him for the rent, but when Page hired the house he did not think he should get the rent. *Bayley*, J. " It appears to me that there was a sufficient *coming to settle* on a tenement in Halesworth. The assignment to Page dispossessed the pauper of all right to reside on the farm, and gave Page the complete control over it. Under these circumstances P. took the house in question, not for his own purposes, but as a residence for the pauper, who removed to it with his family. It is stated indeed that the house was larger than Squire wanted, and that P. put some of his own furniture into it, but S. had the exclusive occupation; and whether P. hired the house as agent for S., or whether he hired it for himself and underlet to S., still the latter was tenant; there might be a difficulty in saying that P. was agent; but then it is clear that S. was tenant at will to him; and *Rex* v. *Fillongley* (p. 793), and *Rex* v. *Lakenheath* (p. 796), are decisive authorities that such a tenancy is sufficient to confer a settlement. In the latter of those cases, *Abbott*, C. J. says, 'The pauper gained a settlement because he occupied in his own right, and not as a servant.' Here S. occupied in his own right, for P. took the house expressly for him." *Holroyd*, J. " Had a burglary been committed during S.'s occupation, the house must have been in an indictment described as the dwelling-house of S.; the case contains no statement of any occupation by Page. S. might have maintained trespass; that makes him at least tenant at will to P., and then *Rex* v. *Fillongley* and *Rex* v. *Lakenheath* are in point. It is said that in the former the pauper could not have been turned out, because he had sown the land; but it appears that he had sown it with his brother's corn; it is therefore difficult to understand how that can vary his rights, and no such argument can be urged against the latter case." *Littledale*, J. concurred. Order of sessions quashed. See *Rex* v. *Woolpit*, *post*.

A soldier who deserted and returns and remains concealed for seven weeks in a tenement taken by his wife, does not " come to settle."

Rex v. *Ashton-under-Lyne*, 4 *M. & Sel.* 357. Removal from Southcoates to Ashton-under-Lyne. Order confirmed. Case:—In 1803, S. Mills, the husband of the pauper, enlisted into the king's service, and in 1809 deserted from it, leaving his wife and children in Southcoates. Afterwards the pauper took a house in Southcoates at 5*l.* a year, and resided in it with her children to the time of her removal, a period of several years. During her residence in this house she took another house from one Dean at five guineas a year rent, and put some of her husband's furniture into it, intending at the time to remove from the house where she was then living into Dean's house; but she never did remove, but underlet it to another person. Dean considered the pauper as liable for the rent, and at the expiration of the first quarter called upon her for payment of it. During this quarter her husband came to see her, and remained for seven weeks of it concealed in the house in which she resided. Both that house and the house taken of Dean were taken without the privity of her husband, but the fact of their having been taken was communicated to him at the time of this visit. Dean never considered her husband as his tenant, nor ever knew of his being in existence. Lord *Ellenborough*. " This is a new head of settlement *latitando;* but it appears to me that it would be a gross perversion of terms to say that this pauper came to settle in a house, when he only came to it for the purpose of concealing himself from the search of those who had a right to his service, and when the most that can be said of his residence is that the wife does not turn him out. But the wife was the ostensible party; she it is that makes the contract in her own name, and nothing is ever done on the husband's part to ratify it in any way. His coming

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into the parish therefore was nothing better than the mere intrusion of a fugitive who is lurking in hiding places, and was not in any sense a coming to settle, that is, not a coming into the parish *animo residendi*." *Le Blanc*, J. "What the statute requires is a coming to settle in a tenement; the construction of which has been, that a person who comes into a parish to reside in a tenement must have some kind of interest in it. But in this case the husband had not any interest; for he neither took the tenement himself or by his agent; but the wife took it for herself in the absence of her husband, and without his privity or even his knowledge. Afterwards the husband came home to his wife, not knowing that she had entered into any contract, and resides with her for a time, during which it is communicated to him that she had made this contract. This is the whole of the case, and it does not appear to me to follow that the husband must be considered as having come to settle in this tenement, because he may be liable in respect of his wife's occupation. The contract of the wife was fraudulent, for the landlord was never made acquainted that she had a husband, and never knew or adopted him as tenant; he might have declined the contract altogether, or put an end to it, had he been informed that she was a married woman. It seems to me, that, under these circumstances, there was nothing to prevent the parish officers from removing him." *Bayley*, J. "I am entirely of the same opinion. It was never the intention of the landlord to let the tenement to the husband." Order confirmed.

If the pauper be removed after the contract for, and before the actual tenancy commences, he gains no settlement.

Rex v. *St. Michael in Coventry*, 15 *East*, 567. Stephen Merrall was removed from St. Margaret in Leicester to St. Michael in Coventry. Order confirmed. Case:—Stephen Merrall, in October, 1810, took a house in St. Margaret, Leicester, of the annual rent of 4*l.* 15*s.*, which he gave up on the 5th of July, 1811. On the 8th of April, 1811, he agreed with a Mr. Bradley for a house and shop in St. Margaret, at the annual rent of 13*l.* 13*s.*, which house was then in the tenure of Goff, who was to be tenant thereof to Bradley till the 5th of July following. The pauper was to commence tenant from the 5th of July, and to pay rent from that time. On the 15th of June, by permission of Goff, the then tenant, the pauper put part of a stocking-frame into the said shop, and received the key of the shop from Goff for the purpose. On the 17th of June he put in the remainder of the frame, and on the 22d and 24th of the same month he put other frames in. On the 25th of June the pauper's daughter went to the shop to work, on which day the pauper found the key of the house in the outward door, and took it and put some goods therein by permission of Goff and Bradley, and he continued to take articles of furniture to the house as he went backwards and forwards to work at the shop from the 25th of June until the 3d of July, when he and all his family went to sleep there, having slept until that day in the first-mentioned house. Goff paid the rent for Bradley's house and shop up to the 5th of July, but left the house on the 25th of June, and went into an adjoining one. From the 28th of June until the removal took place, the pauper continued to receive relief from St. Margaret's parish, his wife being ill, on which account he had applied for and received relief from the same parish some days before. The pauper was neither tenant of nor occupied Mr. Bradley's house for forty days, nor did he ever pay any rent for the same. Lord *Ellenborough*, C. J. "It is assuming more than the facts of the case warrant, to say that the landlord consented to the pauper's occupation as tenant on the 25th of June. The landlord could neither put him in nor turn him out, for another person was the occupier and tenant of the premises. Then the tenant's leaving the key in the door only showed his consent to the pauper's putting his goods into the house, and the question is, whether a mere liberty of that sort is an occupation. In *Rex* v. *Aldborough* (p. 793), there was a tenancy created in express terms; but here the pauper stood in no relation of tenancy to the premises at the time. He never got into the period of his tenancy, but while he was in the house, upon an expectation only of becoming tenant, he was removed." *Grose*, J. "The pauper's occupation as a tenant is expressly negatived by the case." *Le Blanc*, J. "I do not

Secus after, p. 797.

see how the objection can be got over, that at the time of his removal the pauper's interest had not commenced." Orders confirmed.

7. *Permissive Occupation.*

Rex v. *Netherseal*, 4 *T. R.* 258. Thomas Taylor removed from Finderne to Netherseal. Order confirmed. Case:—The pauper married the daughter of J. Shipman, of Finderne, who rented and lived upon a tenement there of the yearly value of 11*l.* The pauper and his wife continued to live in the family of Shipman until his death, which happened about two years after the pauper's marriage. Shipman made a will, and after bequeathing to his son and an unmarried daughter 5*s.* each, gave the pauper's wife all the rest of his property and stock upon his tenement of the value of upwards of 40*l.*, and appointed her executrix of his will. The pauper possessed himself of this property, and paid the above legacies about a year after Shipman's death. The pauper's children got the will out of a box and tore it to pieces. The pauper never proved the will on account of the expense, but continued with his wife, the executrix, to occupy the tenement in Finderne from the decease of Shipman on the 9th of November, 1774, until the Lady-day following, and paid the rent for the same. Lord *Kenyon*, C. J. thought, "If the question had depended on the title the pauper claimed under the will, it would not have been sufficient to give asettlement. But it being stated that the pauper resided for more than forty days on a tenement of more than the yearly value of 10*l.*, for which he paid rent, he had no doubt; although it was said that he might have been turned out of possession by some other person having a superior right; but it was not suggested who had any better title, and the landlord who received the rent could not turn him out." *Ashhurst*, J. "In order to acquire a settlement by taking a tenement of 10*l.* a year, it is not absolutely necessary that there should be an express contract for the tenement; it is sufficient if the tenant reside forty days on a tenement of such a value with the permission and consent of the landlord; for in such a case the law implies a contract." *Buller*, J. "Supposing there were no will in this case, the only persons entitled to the property of the pauper's wife's father were the pauper's wife and her brother and sister, and if it were necessary to go beyond the implied contract between the landlord and the pauper, here is sufficient evidence to show that all the parties interested consented to the pauper's continuing in possession of these premises, for the other son and daughter received 5*s.* each in lieu of all their right and claim to their father's property, therefore all the parties interested agreed to this occupation by the pauper, and consequently there is no pretence to say that this was a holding by wrong." *Grose*, J. of the same opinion. Both orders quashed.

An express contract is not necessary; it is sufficient if residence be with the permission of the landlord.

The husband of the executrix of lessee continuing in possession, acquires a settlement as *tenant.*

Rex v. *Aldborough*, 1 *East*, 597. The pauper, by an agreement with Slap, the tenant of a cottage, occupied it, and Slap left it. He brought part of his furniture, and occasionally resided there till he was removed. The pauper agreed to pay the same rent as Slap. Slap had no authority to let the cottage, nor did the landlord know it. The court thought the case too clear for argument, and that the pauper gained a settlement. And Lord *Kenyon* said that "Nothing appears of the former tenant's term having expired, and the law gave him authority to assign his interest, and the pauper did occupy above 10*l.* a year."

If the party be let into possession by prior tenant, it will suffice.

Rex v. *Fillongley*, 1 *T. R.* 458. Mary Watson removed from Bedworth to Fillongley. Order confirmed. Case:—John Watson, late husband of the pauper, rented a farm of 40*l.* a year at Fillongley, and being distrained on for rent, his brother purchased for him out of the distress two cows and three sheep, with which he came to Bedworth about Lady-day, 1783, where he took a house and land of 8*l.* a year rent, and resided thereon about three years; during which time the rent was paid, the first half-year by himself, the second half-year by the parish of Fillongley, the third half-year by himself, and the fourth by distress. About the said Lady-day, Thomas Watson, in a conversation with his brother John concerning his poverty, said "I am sorry for your family, and therefore I will give you a close in Astley (an adjoining parish) containing about four acres, to enjoy as long as I please, and to take it again when I please, and you

Living upon a tenement of the yearly value of 10*l.*, although a part thereof is given out of charity, is sufficient.

7. *Permissive Occupation.*

shall pay nothing for it." John enjoyed the close, which was worth 2*l.* 10*s.* a year, for three years, during which time his brother paid the land-tax and poor-rates for the same; all the tillage was done by the servants and horses of Thomas, and they also got in the harvest; one year the close was sown with John's wheat, procured by the gleanings of his family; and in the last year the same was sown with Thomas's corn, at whose expense the crops of the corn were carried to John's house. The cattle of Thomas were never put into the close, except for tilling the land; but the cattle of John were upon the close during the time he so enjoyed it. *Ashhurst*, J. "In all cases upon settlement law, it is the safest way to adhere to the *words* of the act; now taking it upon the words, nothing can be more clear; they are, 'that it shall and may be lawful, upon complaint made by the churchwardens, &c. within forty days after any person or *persons coming to settle as aforesaid in any tenement under the yearly value of* 10*l.* *for* any two justices, &c. of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by warrant to remove,' &c. The act does not say any thing about *ability*, that is not the *criterion*. And if the party come to reside upon a tenement of 10*l.* a year, he cannot be removed, and then he gains a settlement by forty days' residence. But if ability, or rather confidence, were to be taken into consideration, according to the case reported in *Strange*, yet if a man *have sufficient credit* and confidence *reposed in him* by another as to be trusted with a tenement of 10*l.* a year value, *even out of charity*, it is sufficient to answer the intent of the statute, because such a one is not likely to become chargeable. Therefore, neither upon the words nor the meaning of the act, was this man removable, and so he gained a settlement." *Buller*, J. "It is admitted that this is the first case which has come directly before the court for a construction on this part of the statute. Now the words of the act cannot admit of a doubt; they only speak of persons *coming to settle* in a tenement of 10*l.* a year, who cannot be removed. As to the question of *ability*, it seems to me that this idea is founded chiefly on the words of *South Sydenham* v. *Lamerton* (*post*), but the words, if attentively considered, will not warrant the construction put upon them; for the credit he has is only for the rent he has to pay, but that is only as between him and the landlord—the credit is given by the landlord. Lord C. J. *Parker* first says, 'If a man hires a house at a small rent, and pays a fine, yet if the house is worth 10*l.* per annum it makes a settlement; for the settlement depends upon the value of the tenement, not on the *rent*.' Then, indeed, he uses these words, 'The reason of this statute is this, that a man who is entrusted with a tenement worth 10*l.* a year, is of such credit, and must have such a stock as makes him not likely to become chargeable to the parish.' *Eyre*, J. took it to be within the letter and intent of the law, 'that a man who is capable of renting a tenement of 10*l.* a year should be settled in that parish.' It is clear that they applied this reasoning to the persons mentioned in the former part of the act, to show that that case did not come within the description: and this is put out of doubt by what *Pratt*, J. says, 'The mischief recited by the statute, and intended to be prevented, is *vagrancy of poor persons* who used to come into parishes where there was the best stock; and the statute describes who are intended by those poor, (viz.) *such persons as are not capable of hiring a tenement of* 10*l.* *a year*.' Now it is material to consider what was the case on which the court were then speaking; they were speaking of a case where the taking was of *more* than 10*l.* per annum; therefore, these expressions only relate to cases of above 10*l.* per annum, and are to be applied to the case then before them, and are not applicable to any case where the renting is not more than 10*l.* per annum. This is more decisive on account of what is said in the conclusion of the case, where, describing the poor persons whom the act intended to exclude from gaining settlements, *Pratt*, J. says, 'such persons as are not capable of hiring a tenement of 10*l.* a year.' There are no such words in the act, but if we have recourse to the preamble, it speaks of rogues and vagrants, and persons who are burthensome

Ability not the criterion for this settlement.

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to the parish; these, therefore, are the persons of whom the statute speaks as likely to become chargeable, and therefore the expressions in that case are only to be considered as *particular instances of persons* who, from their situation in life, *were not likely to fall* within the description of persons in the preamble of the act. But one who is settled on a tenement of 10*l.* a year is not within the act. It has been contended that the pauper never had the tenement; but it is impossible for us to say so after the justices have stated that he had it under an agreement, which made him a tenant at will; for what is to become of the estate after he had sown it with corn? Its being gained by gleaning is not material, for supposing he had stolen it, it would have been just the same, he would have been entitled to the growing crop; he was then in possession of a tenement of 10*l.* a year, and could not have been turned out by his brother; therefore this is a sufficient taking of a tenement within the statute." Order of sessions quashed.

A person renting a tenement in one parish, and residing rent free in a tenement in another, gains a settlement where he resides.

Rex v. *Fritwell*, 7 *T. R.* 197. Robert Hearne removed from Stoke Lyne to Fritwell. Order confirmed. Case:—Thomas Hearne, the pauper's father, about twenty-two years since, rented two farms in Stoke Lyne, one at 35*l.* and the other at 10*l.* a year; during the last four months that he occupied the above farms he dwelt in Fritwell, in part of a house belonging to a relation, who permitted him to live in it rent free; the house consisted of two separate tenements, one of which the pauper occupied, together with a barn, &c. He kept a team there, and drew his corn from his farm at Stoke Lyne to Fritwell. In this separate tenement he continued nearly two years, but never occupied any land in Fritwell. The separate tenement and use of the barn, &c. were of the yearly value of about 35*s.* He never paid any rent in respect thereof, but his relation had all the dung and manure made by the pauper's cattle, and spread it upon his own lands in an adjoining parish. Lord *Kenyon.* "It is now too late to inquire into the propriety of all the decisions that have been made on the settlement laws since the passing of 13 & 14 Car. II.; for even though it should appear on such inquiry (which I do not suggest is the case) that the words of that statute have been in some instances strained, yet as there is a series of decided cases on the subject, we ought not now to depart from them; if when the question first arose it had been holden, that the party must have one single tenement in the parish of 10*l.* a year, perhaps such construction of the act would have fallen in with the general opinion of mankind: however, it was not long ago decided that it need not be one undivided tenement held under one landlord, nor all lying in one parish, for that distinct tenements, held under different landlords, and lying in different parishes, may be joined together; and provided they all together amount to the annual value of 10*l.* they will confer a settlement on the party, and that being once decided I think it puts an end to this question. Here the pauper's father, who rented two tenements in Stoke Lyne, went to Fritwell, where he entered into part of a house forming a distinct tenement by itself, and belonging to his relation, where he was permitted to live, but not as has been argued out of charity. This is not like one of the cases cited, where the pauper was taken into the house of his son-in-law as a lodger, for here were two separate tenements, the whole of one of which he occupied, and I am not prepared to say that his relation could have turned him out of possession on a day's notice, and though it is stated in the case that the pauper paid no rent in money, it appears that there was an equivalent, there was a *quid pro quo:* the pauper brought all his dung and manure from his other tenements, and this relation had the benefit of it. As therefore he was in the occupation of more than 10*l.* a year in the whole, and some part of it lay in Fritwell, I am of opinion that this case was properly decided." *Ashhurst*, J. thought that it might be fairly collected that the parties stood in the relation of landlord and tenant. *Lawrence*, J. thought the manure was given as compensation for the use of the tenement, and the landlord might recover for use and occupation. Both orders confirmed.

See *Rex* v. *St. John's*, p. 786.

7. *Permissive Occupation.*

The master of a charity school, removable from his office at pleasure, resided for seven years, rent free, in a house of the annual value of 10*l.*; part of the house he underlet to the parish at an annual rent: He acquires a settlement.

Rex v. *Lakenheath*, 1 *B. & C.* 531; 2 *D. & R.* 816. H. Bailey was removed from Chippenham to Lakenheath. Order confirmed. Case:—The pauper had resided the last seven years in Chippenham under the following circumstances: Earl of Orford, by his will, dated the 2nd of March, 1726, charged his manor of and lands in Chippenham with the payment of a rent-charge of 20*l.* per annum, to be paid to the trustees upon trust, to be by them paid yearly unto a person, to be nominated by the person entitled to the manor of Chippenham, to officiate as a schoolmaster in the parish of Chippenham, for the teaching of the children of the parish, for no other reward than the 20*l.* a year, which was to be paid to the schoolmaster, without any deduction for taxes or otherwise, with a proviso that the schoolmasters should be removable and others nominated at the will of the person entitled to the manor. Upon the death of a former schoolmaster, about seven years ago, the pauper was appointed to the office. He resided at Chippenham during the seven years, and until the present order (rent free), in the house wherein his predecessors, the schoolmasters, had resided before him, and he received out of the rents of the manor and estates the annual sum of 20*l.* The house and the garden attached to it were of the value of 10*l.* per annum, part of which he underlet during the seven years to the parish at the annual rent of 2*l.* 2*s.* *Abbott*, C. J. "This case must be governed by the decision in *Rex* v. *Fillongley* (p. 792). There the pauper rented a house of the value of 8*l.* per annum, and resided in it three years. With respect to that house there was no question; but about the same time that he took that house his brother gave him a close in an adjoining parish, containing about four acres, saying, 'I'll give you a close to enjoy as long as I please, and to take again when I please, and you shall pay nothing for it.' The court held, that the occupation of the latter close was a coming to settle upon a tenement within the statute, and the two tenements being of the value of 10*l.* per annum, that he gained a settlement. *Ashhurst* J. says, 'If the party comes to reside upon a tenement of 10*l.* a year, he cannot be removed, and then he gains a settlement by forty days' residence.' And *Buller*, J. considered that the pauper was a tenant at will. This is not like *Rex* v. *Cheshunt* (p. 781), where the pauper occupied as a servant. In such a case the occupation is that of a master. Here it is found as a fact that the pauper occupied a house and tenement of the value of 10*l.* per annum, and it is clear that he occupied in his own right, for he actually underlet part to the parish. I am, therefore, of opinion that the pauper gained a settlement in Chippenham." *Bayley*, J. "The occupation of a tenement of the value of 10*l.* per annum for forty days, although no rent be actually paid, is a coming to settle upon a tenement within the statute so as to make the party irremovable. Here, indeed, the pauper might be considered to have given his services partly in consideration of his being permitted to reside in the house, and in that case the services so rendered would be something in the nature of a rent. At all events, he came to occupy as tenant at will, with a view to permanent residence; and that is a coming to settle upon a tenement within the meaning of the statute." *Holroyd*, J. "I think that the schoolmaster was tenant at will of this house. The legal possession of the house was in him, and not in the lord or receiver of the manor. In the case of a master and servant, the servant may merely have the use of the house as servant, but in that case the possession is that of the master; but here the schoolmaster actually under-let a part of the house to the parish; he, therefore, enjoyed the house as his own, and not as the servant of the lord or receiver of the manor. That being so, I am of opinion that he gained a settlement in Chippenham." Order of sessions quashed. (See *Rex* v. *St. Mary, Newington*, p. 773; and *Rex* v. *South Newton, post.*)

8. *As to Time for which Contract was made.*

8. As to the Time for which the Contract was made under 13 & 14 Car. II.

The 13 & 14 Car. II. did not require that the tenement should be taken for any length of time. The holding *for a year* was first made an essential part of the contract by the 59 Geo. III. In cases arising under the former act, though the value is to be estimated by the year, yet the taking may be for less than a year, or for no definite period.

Taking a tenement for eight months will gain a settlement, there being also a forty days' residence.

Rex v. *Shenstone*, *Burr. S. C.* 474; 2 *Bott*, 129. A person took a house of 30*s.* a year in Gratwich, and land in King's Bromley for the growing of potatoes, from Candlemas to Michaelmas, being eight months, for 11*l.*, and lodged the last forty days before Michaelmas in King's Bromley. He took them *boná fide*, and without any design of fraudulently obtaining a settlement in the parish; and it was adjudged a settlement in King's Bromley.

Same point.

Staunton-under-Bardon v. *Ulescroft*, *Burr. S. C.* 558; 2 *Bott*, 215. The pauper took a tenement from 1st June till Lady-day following, for twenty-six guineas, which he occupied accordingly, and paid the rent. The question was whether by continuing upon this tenement for forty days unremovable, he thereby gained a settlement? And by the court, "Clearly he did."

So by taking for five months.

St. Matthew's, Bethnal Green, v. *St. Botolph's, Aldgate*, *Burr. S. C.* 574; 2 *Bott*, 200. John Fell, the husband of the pauper, hired a house for five months, for which he agreed to pay 4*l.* He came and resided with his family there during the five months. And the house at the time of hiring and entering upon the same, was worth, to be let, 10*l.* by the year. It was argued that this could not gain a settlement. The criterion, which is the ability of a person to hire a tenement of 10*l.* a year value, fails in this case; for it doth not appear that this man had such a degree of credit as the statute requires. Besides, that the proportion of 4*l.* for five months falls short of 10*l.* a year by about 8*d.* a month. But by Lord *Mansfield*, C. J. and the court: "The rent is not material, but the value. And we are concluded from treating this tenement as under 10*l.* a year by the finding of the justices, who have stated it as a fact, that at the time when he took it it was of the value of 10*l.* a year to be let." And it was adjudged that he gained a settlement.

Removal under an order will not put an end to a contract for renting: and a pauper returning, after execution of an order of removal, to his tenement under such contract gains a settlement thereby.

Rex v. *Fillongley*, 2 *T. R.* 709. Removal from Fillongley to Kinwalsey quashed. Case:—The pauper, on 1st January, 1786, and for some years before, rented and resided on a tenement in Fillongley of the yearly value of 10*l.* He continued there till the 29th April in the same year, when he was removed by an order of removal from F. to Kinwalsey; on the same day on which he was delivered with the order he returned back to the tenement in F., where he resided without making any new contract with his landlord for the same, and without any interruption, for about three-quarters of a year, and then was removed to Kinwalsey. The question was, whether as the pauper entered into no new contract on his return, he could be considered as "coming to settle on a tenement of 10*l.* per annum," within the statute? and whether the former contract were done away by the order of removal? And it was urged against the order of sessions, that by *Rex* v. *St. Michael's, Bath* (*post*), there must be a privity of contract, and that mere possession will not suffice; that the pauper's return was a wrongful act, and that therefore, by *Rex* v. *Kenilworth*, no settlement could be gained. But it was held clearly by the court, that an order of removal could not put an end to a contract between the parties respecting the taking a tenement; that, therefore, the pauper could not be considered as returning in a state of vagrancy, and that the whole contract remained, and, therefore, he gained a settlement by a residence of forty days; that in *St. Michael's, Bath*, the pauper resided against the consent of the landlord. Order of sessions discharged. (S. P. *Rex* v. *Barham*, *post*, and *Rex* v. *Willoughby*, *post*.)

When the removal was before the tenancy commenced. See p. 792.

9. *The Tenement must be Hired for a Year.*

9. Under 59 Geo. III. c. 50, 6 Geo. IV. c. 57, and 1 Will. IV. c. 18, the Tenement must be Hired for a Year.

The above statutes render it essential that the tenement should be rented or hired for *one whole year*.

The taking of a tenement at twenty guineas a year, the rent to be paid weekly, but either party to be at liberty to give three months' notice from any quarter-day, is a yearly hiring within the 6 Geo. IV. c. 57.

Rex v. *Herstmonceux*, (*a*) 7 *B. & C.* 551; 1 *M. & R.* 426. Order of removal of J. Start from All Saints, Hastings, to Herstmonceux confirmed. Case:—On the 20th December, 1827, the pauper agreed with Foster to take a house in All Saints at twenty guineas a year, the rent to be paid weekly, and either party to be at liberty to give three months' notice from any quarter day, and at the expiration thereof to determine the tenancy. The pauper continued a year in the occupation of the premises, and paid a full year's rent. *C. a. v.* Judgment delivered by *Bayley*, J. "The pauper in this case clearly acquired a settlement in Hastings, provided this was a renting for a whole year, within 6 Geo. IV. c. 57, which requires that the tenement be *bona fide* rented for the term of one year. This statute repeals 59 Geo. III. c. 50. There is nothing in the preamble of 6 Geo. IV. which shows that it was then in the contemplation of the legislature to require more than what would constitute in ordinary cases a tenancy for a year. We find no recital in the act of any inconvenience having arisen where the tenancy by the original hiring was defeasible at certain periods. There is nothing in the act to show that by the term 'one whole year,' anything more was meant than what the law considers to be a tenancy for a year. The question in this case will therefore be whether this was a tenancy for a year; and I cannot entertain any degree of doubt but that this is *prima facie* a yearly tenancy. The legal effect of this agreement was to create a tenancy from year to year, with a proviso for determining that tenancy at an earlier period. Upon principle, as well as upon authority, the legal estate was vested in the pauper, subject to being defeated. In the case of all defeasible estates, the legal estate passes in the first instance. A lease for twenty-one years is frequently made determinable at the expiration of seven or fourteen years; yet it is not the less a lease for twenty-one years in law, though it may be defeated by matter *ex post facto*. (*b*) So where

(*a*) Though the 59 Geo. III. c. 50, expressly requires that the dwelling-house, &c. "shall be *bonâ fide hired* for the term of *one whole year*, yet a conditional hiring for that term, with liberty for either party to determine the tenancy at a shorter period, is sufficient, provided the tenancy *do in fact continue* for a whole year." The doctrine in this case is precisely within the principle laid down in *Rex* v. *Byker*, p. 522, as to *conditional hirings* of servants. "If the bargain be originally made for an entire year, and terms are introduced applicable to a continuance of the relation of master and servant [*landlord and tenant*] during the whole year; but there is also a provision, that on a given event it shall be competent to the parties to put an end to or suspend the service [*tenancy*] for a part of the year, still a settlement is gained if the service is actually performed [*tenancy actually exists*] for a whole year, and neither party avails himself of the condition. A conditional hiring [*renting*] is for this purpose the same as an absolute hiring [*renting*], unless the condition is acted upon."

(*b*) So *e converso* in *Birch* v. *Wright*, 1 *T. R.* 380, Mr. J. *Buller* says, "If a tenant from year to year holds for four or five years, either he or his landlord, at the expiration of that time, may declare on the demise as having been made for such a number of years. So it is expressly laid down by the court in *Legg* v. *Strudwick*, *Salk.* 414." This dictum was cited and recognised by *Gaselee*, J. in *Lippincott*, *Bart.* v. *Yard*, Taunton Spring Assizes, 1828. The words of Salkeld, however, are "*et per curiam*, it was held first, that after the two years the lessor or lessee might determine; but if the lessee held on, he was not then tenant *at will*, but for a year certain; for this holding on must be taken to be an agreement to the original contract and execution of it; and the first contract was from year to year; 2dly, the third year is not in the nature of a distinct interest, because it arises from the same executory contract, and therefore the lessor may distrain the third year for the rent of the second; and such an executory contract as this is not void by the statute against frauds, though it be for

the lease contains a proviso for cesser of the term upon non-payment of rent or non-performance of covenants. In *Co. Lit.* 42. a. (*a*) several cases are put of defeasible life estates. Lord *Coke* there says, "If a man grant an estate to a woman, *dum sola fuerit*, or *durante viduitate*, or *quamdiu se bene gesserit*, or to a man and a woman during coverture, or as long as the grantee dwell in such a house, or so long as he pay 40*l.* &c., or until the grantee be promoted to a benefice, or for any like uncertain time; which time, as Bracton saith, is *tempus indeterminatum;*—in all these cases, if it be of lands or tenements, the lessee hath in judgment of law an estate for life determinable if livery be made; and if it be of rents, advowsons, or any other thing that lies in grant, he hath a like estate for life by the delivery of the deed; and in court or pleading he shall allege the lease, and conclude that by force thereof he was seised generally for term of his life." (*b*) Order of sessions quashed. (*c*)

9. *The Tenement must be Hired for a Year.*

Reg. v. *Chawton*, 4 *P. & D.* 525; 1 *Q. B.* 245. W. Bone was removed from Chawton to New Alresford. Order quashed. Case:—"Articles of agreement made on 9th day of December, 1829, between R. Waight, of New Alresford, and W. Bone. Waight agrees to let, and Bone agrees to rent and take of him, all that dwelling-house, &c. in New Alresford, with the appurtenances, for the term of six months from the 1st January next, and so on from six months to six months, until one of the said parties shall give to the other of them six calendar months' notice to determine the tenancy, at and under the rent of 13*l.* for every six months, the first payment to be made on the 1st July, 1830, free of the payment of all rates and taxes. Bone agrees to keep the premises in suitable repair (accidents by fire and tempest only excepted), being first made so by Waight, and being allowed bricks, slate, lime, timber and sand for that purpose. Bone is not to assign or underlet the premises without the consent, in writing, of Waight, it being understood that Bone may take lodgers whilst he occupies the premises himself." Under this agreement the pauper entered into possession on the first of January, 1830, and continued to occupy the premises mentioned in it for several years; all the other requisites of the 6 Geo. IV. c. 57, were fully complied with, and the only question was whether under the above agreement there was a taking and renting of the tenement for one whole year within the above statute. Lord *Denman*. "I think it is clear that in this agreement the term six months means half a year, and then a demise for one half year, and so from half year to half year, as long as both parties should please, is a demise for a year." *Littledale*, J. "The authorities shew clearly that a demise for a half year, and so from half year to half year, would be a demise for one year at least, and the circumstances of the periods of the payment of the rent, and the length of time required in the notice to quit, sufficiently explain that calendar and not lunar months were intended." *Patteson*, J. "*Prima facie*, the word 'month' alone would mean a lunar month, but that ordinary presumption is here clearly rebutted." *Coleridge*, J. concurred. Order of sessions quashed.

A pauper became tenant of premises under a written demise for the term of six months from the 1st of Jan. then next, (1830,) and so on from six months to six months, until six *calendar* months' notice to quit by either party, at the rent of, &c. for every six months, the first payment to become due on the next 1st of July: This is a taking for one year at least.

Rex v. *Wainfleet, All Saints*, 8 *B. & C.* 227; 2 *M. & R.* 223. Order of removal of B. Markwell from Wainfleet to Horncastle quashed. Case:— The pauper previously to Lady-day, 1822, hired from his wife's mother seven acres of land in Horncastle, which she then rented, at the yearly sum of 8*l.* 1*s.* 6*d.*, and for which the pauper agreed to pay her the same rent and 3*s.* per week in addition; his tenancy to commence from the ensuing Lady-day. No time was specified for which the pauper was to take the

The pauper may hire for a year of a tenant from year to year.

more than three years, because there is hereby no term for above two years ever subsisting at the same time; and there can be no fraud to a purchaser, for the utmost interest that can be to bind him can be only for one year."

(*a*) 1 *Tho. Co. Litt.* 621.

(*b*) And see *Preston* on Estates, 405.

(*c*) His lordship afterwards re-delivered the judgment of the court in *Rex* v. *Sandhurst*, which had been given at the sittings before Michaelmas term (*ante*), confirming the opinion then pronounced by a reference to the above decision.

9. *The Tenement must be Hired for a Year.*

land, but he occupied it from Lady-day, 1822, for three years, and paid the several rents as they became due; and he resided and slept in a house in Horncastle for upwards of forty days and nights in the year immediately subsequent to Lady-day, 1822. *Bayley*, J. "The case states that the pauper hired of his wife's mother seven acres of land, which she then rented at a yearly rent, and that he agreed to pay her that yearly rent, and also a weekly rent of 3*s*. *Prima facie* a general hiring must be presumed to be a yearly hiring (*Doe* v. *Browne*, 8 *East*, 165; *Doe* v. *Watts*, 7 *T. R.* 83), and that presumption is the stronger where the subject-matter of hiring is land, because land varies in its value at different periods of the year. It is said that the mother's estate was determined at the end of the current year, and that she could not therefore convey to the pauper an interest for a year, commencing on a future day. But the mother was tenant from year to year; she had an interest therefore which would continue beyond the year, unless something was done to determine it, viz. unless six months' notice to quit had been given. That interest she conveyed to her son. I think therefore the land in this case was hired for a year." *Holroyd*, J. "For the reason given, I am of opinion that the land was clearly hired for a year." *Littledale* J. concurred.

A general taking is *primâ facie* for a year.

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10. *The Tenement must be bonâ fide Rented by the Pauper under the recent Statutes.*

10. THE TENEMENT MUST BE BONA FIDE RENTED BY THE PAUPER UNDER THE RECENT STATUTES.

By 59 Geo. III. c. 50, the tenement must be "*bona fide hired* by such person;" that is, the person claiming a settlement in respect thereof: the corresponding words in the 6 Geo. IV. c. 57, are "*bona fide rented* by such person;" the meaning of the legislature is the same in both forms of expression.

The renting must be *bonâ fide* by the pauper, but fraud of parish will not prevent a settlement.

Rex v. *Kibworth Harcourt*, 1 *M. & R.* 691; 7 *B. & C.* 790. (See the case more at length, *post.*) In this case, the pauper took a house and garden at 10*l*. a year; and shortly after his tenancy commenced, M. W. being churchwarden at the time, called upon him, and represented that the landlord had let the premises together with other lands to himself, and that the pauper was thenceforward to pay the rent to him; but that he should make a reduction of 8*s*. a year in his rent, to which the pauper assented, and he paid M. W. at that rate the two following quarters; and upon the death of M. W. two other quarters at the same rate to his successor in the farm. It appeared that this deduction of 8*s*. a year was repaid by the parish, which the sessions held to be fraudulent. *Bayley*, J. "As to the question of fraud, the case finds that neither the landlord nor the pauper was a party to the fraud; and though the act requires that the tenement shall be '*bona fide* rented,' I think that expression can only be construed to mean that the renting shall be *bona fide* as between the landlord and tenant. Here the renting was *bona fide* as between the landlord and tenant. It seems to me therefore that all the requisites of the 6 Geo. IV. c. 57, have been complied with in this case; and that a settlement has been gained under that act."

It is a *bonâ fide* renting by the party, although a third person be surety to the landlord for payment of the rent.

Rex v. *Kegworth*, 2 *M. & R.* 29; 1 *M. & R. Mag. Ca.* 281. Removal of John Jelly from Sutton Bonington to Kegworth confirmed. Case:—In December, 1823, the pauper Jelly applied personally and also by Smith to Jacques, to become tenant of a house and six acres of land situate in Kegworth, and finally Jelly himself concluded the agreement for and hired the house and land of Jacques, at the rent of 26*l*. a year, for one year. He entered upon the premises, and occupied the house and land, and paid rent for the same for one year and upwards. He also purchased of and paid for the fixtures on the premises to Jacques, and paid the parish rates and taxes; and upon quitting the premises Jacques paid Jelly for the fixtures then upon the premises. Smith agreed with Jacques to be surety for the rent, but Jelly always paid it, and with his own money. Lord *Tenterden*, "I think there was a perfectly sufficient *bona fide* hiring of the premises in question by the pauper, within the meaning of the act of parliament. The case expressly

finds that 'finally Jelly himself concluded the agreement for and *hired* the house.' What had previously passed between Smith and Jacques therefore became quite immaterial. As to Smith's becoming the pauper's surety for the payment of the rent, that cannot affect the case; for it does not appear that the pauper even knew of that arrangement between Smith and Jacques, and it is stated that the pauper paid the rent with his own money." Order confirmed.

10. *The Tenement must be bonâ fide Rented by the Pauper.*

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11. The Value under 13 & 14 Car. II. c. 12.

11. *The Value under 13 & 14 Car. II. c. 12.*

The value of the tenement, by the renting or hiring of which a settlement may be gained, has always remained the same, notwithstanding tenements which were worth only 10*l.* by the year when that minimum was fixed, must have increased in annual value down to the present time many-fold.

Before the important alterations introduced by the recent statutes on this subject, if a person came to reside upon a tenement of 10*l.* a year, and remained forty days, his settlement was complete, whether he paid his rent or not, or continued in the occupation the whole term for which he had hired the premises. The legislature, relying upon the caution and prudence of landlords not to let their tenements to persons too indigent to pay for the occupation, and the vigilance of parish officers in removing such poor persons as were *likely to become* a burden upon the parish by settling upon such tenements, gave authority to justices to remove them; but if this power was not exercised for forty days, then the settlement was accomplished; and when the 35 Geo. III. prevented the removal of any person not *actually chargeable*, greater facility was given for the acquisition of this species of settlement.

What has been deemed a tenement of 10*l.* annual value, sufficient for the purposes of a settlement under this statute of 13 & 14 Car. II., will appear by the following cases. The rent may be *primâ facie* the criterion of value; but whether the rent be more or less than 10*l.* the *real value* might have been inquired into.

The rent is not material, if the tenement be of the value of ten pounds a year.

South Sydenham v. *Lamerton*, 1 *Sess. Ca.* 115; 1 *Stra.* 57. Case:—A person took a lease of a tenement for ninety-nine years, determinable on three lives, and paid his fine, and the rent reserved was but 7*l.*, but the real value was 13*l.* By the court: "The quantity of the rent is not material, but the value of the tenement. If there be a lease of land worth 10*l.* a year, and a fine be paid, or no rent reserved, yet if the tenement be worth 10*l.* a year, it makes a settlement; for the settlement depends on the value of the tenement, and not on the rent."

If a rent of 10*l.* be given in contemplation of improvements by the landlord, which are never made, and the house is thereby not worth such rent, no settlement is gained.

Rex v. *Southwold*, 2 *Sess. Ca.* 198; 2 *Stra.* 1127. A person took a house at the yearly rent of 10*l.* The landlord agreed to make new buildings, which improvements were never made. The house, without the improvements, was worth only 6*l.* 10*s.* a year. By the court: "The sessions must judge upon the facts; they have stated that the agreement was for 10*l.* a year; this is evidence of the value, but the justices have a right to inquire into the real value, and they have expressly stated as a fact, that this house was only of the value of 6*l.* 10*s.* a year; and the mere covenant to build, which covenant was never performed, cannot alter the case. Therefore this was no settlement."

Rent evidence of value.

Rex v. *Weston*, 2 *Sess. Ca.* 141; 2 *Stra.* 1156. The pauper took a farm at Kirton of 10*l.* a year, which had been let at that rent for five or six years then last past, but before that time was let at 7*l.* a year only. When he first took and entered thereon, he was not of ability to stock the same. Before his entry he was told by the former tenant that his farm was too dear. To which he answered, that he did not regard the dearness; for as it was 10*l.* a year, it would gain him a settlement, and put an end to a dispute there was between two towns about his settlement; but desired the former tenant to take no notice thereof to any body. By the court: "We are not to determine the matter upon the evidence given to the sessions, but upon facts stated and adjudications made by them. Here they have

11. *The Value.*

stated circumstances; but they have not explicitly stated the real value, nor have they adjudged any fraud. The act requires the renting a tenement of the yearly value of 10*l.* They state that he did take a tenement of 10*l.* a year at Kirton. Indeed they add, that it had been let at 7*l.* a year formerly. But it might be then worth more, or might have been afterwards improved; and it had for five or six years last been let at 10*l.* a year. And the quantity or value of his stock doth not alter the value of the tenement. They also state a conversation between him and the former tenant, who told him it was too dear; to which he answered, that he did it to gain a settlement. Yet they do not adjudge that there was any fraud; nor do they state that it was under the value of 10*l.* a year, and the evidence rather proves it to be of that value. They must expressly state that it is fraudulent, or else we cannot take it to be so. And we must take the case stated to be the whole case. He gained a settlement at Kirton."

The quantity of stock on a tenement does not alter the value.

If land be taken ready sown for crop, the value may be computed higher on that account.

Rex v. *Purley*, 16 *East*, 126. Richard Emmons was removed from Woodley to Purley. Order confirmed. Case:—The pauper, from Michaelmas, 1808, to Michaelmas, 1809, occupied a cottage and garden in Woodley, as tenant from year to year, for the annual value of 4*l.*; he also held a piece of land in Tilehurst for one year, from Michaelmas, 1808, to Michaelmas, 1809, at the rent of 6*l.* 10*s.* It had been cropped by the landlord with clover and grass-seeds previously to letting thereof to the pauper, and in consequence of its being so cropped, it was worth 6*l.* 10*s.* that year; but had it not been so cropped by the landlord, it would have been worth only 2*l.* 5*s.* *per* year. Lord *Ellenborough*, C. J. "He occupied a tenement, which during that year was in fact of the value of 10*l.*; how it became of that value is immaterial; it might have happened that the crop was worth more in that year." Both orders quashed.

So also if the land which had been improved in value by the landlord having previously dug it for planting potatoes, and on that account let it at double the ordinary value.

Rex v. *Ringwood*, 1 *M. & Sel.* 381. Removal from Tollard Royal to Ringwood. Order confirmed. Case:—The pauper being settled in Ringwood, rented a cottage in Tollard Royal, for which he paid two guineas a year, and he had the use of a yard for which he paid 1*l.* a year. Whilst he occupied this cottage and yard, he took nearly an acre of land in another parish, at the rent of 8*l.* from Easter to October following, for planting potatoes. The ground had been dug by the landlord for that purpose, and it would not have been let for more than half price if it had not been dug. *Grose*, J. "The only question is, whether the pauper came to settle on a tenement of the yearly value of 10*l.* He went to Tollard Royal with his family, and resided there more than forty days. As to the value of the tenement which he occupied during that time, it is expressly stated to be above 10*l.*; but it has been contended that the land which he rented from Easter to October for planting potatoes might be worth 8*l.* for that time, and yet not of that value for a year. That proposition I do not understand, and therefore cannot assent to it." *Le Blanc*, J. "The pauper rented a cottage in Tollard Royal, at two guineas a year, during which time he also rented nearly an acre of land in another parish, from Easter until October, for planting potatoes, at the rent of 8*l.*, which land had been previously dug by the landlord, and would not have been let for more than half that price if it had not been so dug. All the premises taken together at the rent for which they were let, amount to above the value of 10*l.* But the question is, whether we are to reduce that value by taking the land, which was let for 8*l.*, at the rent for which it would have been worth to be let, if it had been in a different state; or in other words, whether we are to deduct from the rent the value of the labour bestowed by the landlord on the premises before he let them. I think the court must look to what was the value of the tenement at the time the pauper came to settle upon it, without considering by what means it became of that value. I agree that the value of the tenement increased by the labour bestowed upon it *after the letting* cannot be taken into the account; as if the pauper had taken it at the rent of 5*l.*, and had bestowed labour upon it to the amount of 5*l.* more, that would not have made a renting of 10*l.* But where the labour has been previously bestowed, so as to make the land fairly worth the rent at the time it is taken, the court

See *Rex* v. *Hellingley*, p. 809.

The value, at the time the pauper came to settle, to be regarded.

p. 803.

cannot separate the value of that labour from that of the land." *Bayley*, J. "This is nothing more than a party taking land in a high state of cultivation, which has rendered it of the value agreed to be given for it at the time of the taking. Nor do I think that it would have been worth less if it had been taken for a whole year. It is urged, indeed, that if the pauper had taken it for a year, he would have had to dig it himself, and then it would have been of less value to him than what was given for it for a shorter period; but it does not follow, that if he had taken it for a year he would necessarily have had to dig it. I think, therefore, that this tenement, coupled, with the other property, amounts to a tenement of more than 10*l.* a year." Order of sessions quashed.

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Rex v. *West Cramore*, 2 *M. & Sel.* 132. Removal from Monckton Deverell to West Cramore. Order confirmed. Case:—The pauper rented a house at Monckton Deverell of the value of 3*l. per annum*, and occupied and resided in it for four years. During one year of his tenancy he rented of Rossiter 136 lugs of land, at Monckton Deverell, at the rate of 9*d. per* lug, amounting to the sum of 5*l.* 2*s.*, for the purpose of planting potatoes. He also, at the same time, rented of one Maish 58 lugs at Hill Deverell, an adjoining parish, at the same rate of 9*d. per* lug, amounting to 2*l.* 4*s.* 9*d.* These rentings together amounted to 10*l.* 6*s.* 9*d.* The pauper agreed to take the land of Rossiter ready ploughed and manured; and *when he took it, the ploughing and manuring was begun, but not finished;* but when he entered upon it it was quite prepared. At the time of planting he followed Rossiter to plough, and planted the potatoes himself, which were afterwards covered in by the plough. The agreement with Maish was similar to that with Rossiter; and when the pauper took and entered Maish's land, it was ready ploughed and manured. The potatoes were planted in the same manner as before stated. The two pieces of land together, without being ploughed and manured, were worth about 2*l.* 8*s. per annum*, but being ploughed and manured, were worth what the pauper paid for them. The pauper took the two pieces of land in the spring for hoe crop, and he planted the potatoes in May, and took the crop out in November. This case had been reserved before *Rex* v. *Ringwood* (*ante*) was decided, and it was attempted to distinguish it from that case, because there the land had been dug by the landlord before the letting; whereas here the ploughing and manuring was not completed when the pauper took the land." Lord *Ellenborough*. "The pauper agreed to take a tenement, which should be of a certain value; and at the time when he entered on it it was of that value, for the ploughing and manuring were then finished." *Le Blanc*, J. "The distinction endeavoured to be made does not vary the case; and it does not appear that any precise sum was agreed to be paid for the labour. The observation alluded to from *Rex* v. *Ringwood* must be taken with reference to the case then before the court, and to the context where it is found, rather than as a general observation, or applicable to a case of this kind." Order of sessions quashed.

The pauper agreed to take land ready ploughed and manured. At that time the ploughing and manuring was begun, *but not finished.* It was finished, when he entered on it. Being of 10*l.* value *at the time of entry*, is sufficient.

p. 802.

Rex v. *Poulton with Fearnhead*, 6 *M. & Sel.* 252. Order of removal of Luke Whittle from Warrington to Poulton with Fearnhead confirmed. Case:—The pauper's father rented a cottage in Poulton of the annual value and rent of 6*l.* 10*s.*, and held at the same time land of the annual value of 7*s.* 6*d.*: he also took of Kay twenty-seven perches of land for growing potatoes, at 2*s.* 6*d. per* perch, in the spring of 1813, during the time of his holding the cottage and the piece of land. Kay agreed to furnish pauper's father with manure sufficient for the culture of potatoes, and that he should get and set the potatoes. After the holding commenced, the manure was brought by Kay, and put into the land by the pauper's father. The value of the land, upon the ordinary terms of husbandry, did not exceed 4*l. per acre;* but upon the terms above specified, of the value of 2*s.* 6*d. per* perch, amounted to 3*l.* 7*s.* 6*d.*, a sum sufficient, with the other tenements, for the purposes of a settlement. The pauper's father held all the tenements for above forty days after the manure was put into the land. It was urged that if, in the interval between the commencement of this holding and bringing in the

An increased value arising from manure, agreed for at the time, but put in after the holding commences, may be included.

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manure, the pauper had become chargeable, the improved value could not have been considered. Lord *Ellenborough*. "The difficulties that have been raised are occasioned by the decisions which I am almost inclined to wish had never been made, that a tenement of combined value is sufficient to constitute a settlement. However, taking the case as it stands upon the subsisting authorities, and keeping in sight the words of the act, which have been strongly and properly pressed on our consideration, I ask myself, is this a coming to settle on a tenement of the yearly value of 10*l.*? The answer depends on the value to be attributed to the twenty-seven perches; now the party who comes to settle contemplates the taking of a tenement of the value of 3*l.* 7*s.* 6*d.* He contracts for twenty-seven perches, with manure to be supplied by the landlord, and upon these terms the tenement was of that value, and if of that value the whole will exceed 10*l.* The pauper then undoubtedly comes to settle, in contemplation that he has taken and shall have the benefit of a tenement of the value of 10*l.* But the question is put, Are these perches of the value of 3*l.* 7*s.* 6*d.* at the time he comes to settle? The answer is, they are not, in point of actual pernancy, on the day when the party first takes possession; but they subsist in contract of that value the instant that he enters, and actually become so pursuant to contract by the act of the landlord, and the party afterwards occupies above forty days. In this way of considering it, the tenement is of the contemplated value contracted for by the landlord, and afterwards made good by him. If we are bound down to the precise moment when the party enters, the consequence will be, that in many cases the improved value to which the landlord contracts to raise the land, can never be taken into account. In many contracts there will be stipulations of some advantage to the tenant increasing the value of the tenement, which induce him to come to settle upon it, on the faith of having this improved value made good to him; these, therefore, when made good, may fairly be referred to the value at the time of the coming to settle. I might instance stipulations on the part of the landlord to paint and paper, or to make additions to the dwelling. In cases like these the value contemplated and engaged for by the contract, as it is an improvement from which the tenant is to derive a benefit, and perhaps his motive for coming to inhabit there may fairly be set down to the account of its value at the time he comes to settle, within the meaning of the act. I do not venture into all the cases for the purpose of reconciling the various *dicta* with the statute. It would be an Herculean labour to conflict with, and I am not sure that it would be attended with success." *Bayley*, J. "I agree that this was a tenement sufficient to confer a settlement. It has been argued that to constitute a tenement of the yearly value of 10*l.*, so as to make the party irremovable under this act, or, in other words, to confer a settlement, the tenement must be of the requisite value when he enters upon it. But I think the argument would be more correctly stated thus—that the tenement must be of the value of 10*l.* at the time of entry, or be made of that value at the expense of the landlord; and that this is so appears from the distinction which has been taken where the improvement is to be at the expense of the tenant; in which case it has been held that it ought not to be taken into the account. This was the principle on which *Rex* v. *Aston* (p. 805), was decided. The observation of *Le Blanc*, J., in *Rex* v. *Ringwood* (p. 802), certainly was not made in reference to the distinction between the actual value of the land at the moment of entering, and its becoming of that value a short time afterwards by the agreement and act of the landlord. It seems to me, that whenever it is a part of the contract for the letting, that the land is to be improved at the expense of the landlord, and this is done, the tenement is to be accounted of the improved value. According to the language of some of the cases, the question is, whether the pauper was of sufficient ability to obtain credit for a tenement of the yearly value of 10*l.* And certainly it is the same thing as it regards his ability, whether the land were of that value at the moment of taking it, or whether it was

Distinction between improvements to be made by the tenant, and those to be made by the landlord.

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stipulated to be made so, and was made so afterwards at the expense of the landlord. I think both cases are equally within the words and spirit of the act." *Abbott*, J. "It cannot escape our notice, that in *Rex* v. *Aston* the increased value arose out of several acts voluntarily performed by the tenant: here it arises, not out of any act done by the tenant, but from the act of the landlord stipulated for before entry, and done in pursuance of that contract. What is done by the landlord under such circumstances may, I think, fairly be considered as referable to the time of entry. If the court were tied down to the precise time of entering, it would lead to very subtle inquiries, which would be inconvenient, as to the instant of time when such and such repairs were made, as increase the value of the tenement to the necessary amount. To avoid such inquiries, I say, what is contracted for, before the entry, to be done by the landlord, and is afterwards done in pursuance of that contract, may be considered as done at the time of entering." *Holroyd*, J. to the same effect. Order confirmed.

Hiring land which is made worth 10*l.* a year by the manure, &c. which the landlord agrees to supply, though the same were not completed till after the tenant had taken possession, gains a settlement.

Rex v. *Huntsham*, 2 *Bar. & Adol.* 503. H. Vinnicombe was removed from Sampford Peverell to Huntsham. Order confirmed. Case:—The pauper's birth settlement was in Huntsham. On the 1st of April 1818, he took of one Hewett in the parish of Burlescombe, a field for potatoes, at the rent of 12*l.* Hewett agreed to supply twelve hogsheads of lime and a heap of manure, and to give the field three ploughings, to prepare it for the pauper to plant his potatoes; without which the field would have been worth less than 10*l.* a-year. About a week after the agreement, the pauper went upon the land and worked upon it, at which time the field had only been once ploughed, and none of the lime and manure had been then supplied; but Hewett performed all that he had agreed to do before the pauper planted the potatoes. The pauper, who took off his crop in the autumn, planted the potatoes himself, and paid the whole rent of 12*l.*, and the field ploughed and manured as it was by Hewett was worth that sum. The pauper went to live in Burlescombe in the year 1817, and lived there during the whole time that he occupied this field, which was about six months, and he occupied the field for more than forty days after Hewett had done his work. Lord *Tenterden*. "This case is not distinguishable from *Rex* v. *Poulton with Fearnhead*, (p. 803), and must be governed by it." The rest of the court concurred. Order of sessions quashed.

If the person is tenant from year to year, the value in any year is sufficient.

Rex v. *Bilsdale Kirkham*, 2 *Bott*, 137. T. Wilson went from Bilsdale Kirkham to Bilsdale Westside, and there married Sarah, the pauper, who rented a tenement of 4*l.* a year, and he occupied the tenement with her during his life. Evidence was offered to prove this tenement, at the time the man occupied it with his wife, was worth 15*l.* a year, though let at no more than 4*l.* But the sessions rejected this evidence, and determined on the rent actually reserved. Lord *Mansfield*. "The justices have done wrong in not receiving the evidence of the value of the tenement beyond the rent paid. Every lease from year to year begins afresh every year, and is in point of law a new demise. If the tenement was of the value of 10*l.* a year any year during the man's occupation of it, he will thereby gain a settlement." The case was sent back to the sessions to receive evidence of the value; which being certified as above, the court held it a settlement.

Evidence of value greater than the rent admissible.

Value increased by buildings made by *the tenant* during a lease for ninety-nine years, not to be regarded.

Rex v. *Aston*, 6 *M. & Sel.* 54. Order of removal of S. Jesson from Aston to Hales Owen quashed. Case:—The pauper was the widow of T. Jesson, junior, son of T. Jesson, elder, who in 1800, took land in Hales Owen for ninety-nine years, at 2*l.* 2*s.* a year, and built on it two houses, each of the value of 5*l.* 5*s.* a year. When the first was finished, he went to live in it; and before the other was built, he let it for 5*l.* 5*s.* a year; and the tenant, when it was completed, entered and occupied to the present time. Jesson, junior, lived with his father as part of his family. Lord *Ellenborough*. "I think, upon looking at the language of the statute, that we are bound, in considering the value of a tenement, to regard that as its value which it bore when the party took it, and not the increased value which it has acquired by improvements made during his occupation. If we find that

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this tenement was of no greater value than 2*l.* 2*s.* a year at the time when the pauper took and entered upon it, that must be deemed its value at the time *he came to settle upon it.* It cannot be that its value is to be perpetually fluctuating afterwards, the time pointed to being that when he comes to settle in it; at which time, if it be not of the annual value of 10*l.*, he does not acquire a settlement by it. I forbear entering more into the details of this case, because I fear that many of the doubts that have arisen upon subjects like the present, are owing to extraneous *dicta* that have from time to time fallen from the bench. The principle, however, seems to be this, that where a party comes into a parish with a sufficient credit to acquire the taking of a tenement of 10*l.* a year, this shall entitle him to reside irremovably." *Bayley*, J. "The value of the tenement must be taken as of the time when the person comes to settle in it. *Rex* v. *Bilsdale Kirkham* (p. 805) is a strong authority in point. That case was shortly this:—The pauper rented a tenement at 4*l.* a year, which during his occupation became of the value of 15*l.* a year; and it was held that evidence to prove it of the increased value ought to have been received, because being tenant *from year to year* the lease began afresh every year, and was in point of law a new demise. This was the express ground of distinction taken by Lord *Mansfield* in that case." *Abbott*, J. "This case is neither within the words or meaning of the act of parliament." Order of sessions confirmed.

The principle is, that the person has *credit* to take a tenement of 10*l.* value.

A furnished room with fire was taken, and as the sessions did not find the value of the furniture distinct from that of the tenement, the value was sufficient.

Rex v. *Whitechapel*, 2 *Bott*, 144. Removal from Whitechapel to West Ham quashed. Case:—The pauper's husband, P. Allam, hired a house in West Ham of the value of 8*l.* 8*s.* per annum, and lived in it till his death; he also hired a room in a victualling house in W. at 3*s.* a week, to be made use of, and which was used as an office or place for the justices to meet and transact the parish and other public business, he being the clerk to the justices. The room was furnished with chairs and tables, and the landlord was to find firing, and the landlord was to have the use of the room on assembly nights and when Allam did not want it. Allam had the key, and might have locked it if he would, but did not. Allam alone had the concern of and paid for the room. *Buller*, J. "There is nothing found as to the value of the fire and furniture, and all we can say is, that he has rented a tenement of 10*l.* a year." Order quashed.

The right of ferry may be included in the value of the tenement.

Reg. v. *Fladbury*, 2 *N.* & *P.* 471; 10 *A.* & *E.* 706. Louisa Berrington was removed from All Saints, Evesham, to Fladbury. Order confirmed. Case:—In 1811 Paul Berrington, the father of this pauper, rented under verbal agreement, and occupied for a year, a cottage, yard and garden, for which he paid 10*l.*, but included in the taking was a right of ferry over the river Avon, from the river bank of the premises in question, to the opposite bank of the river Avon in the parish of Cropthome. The use of the ferry-boat and line was also included. The emoluments of the ferry were derived partly from sums paid in gross, in lieu of tolls, and partly in specific tolls, which were paid sometimes on the Fladbury side, sometimes in the course of the transit, and sometimes on the Cropthome side. The cottage, yard and garden were not worth 10*l.* per annum alone. Lord *Denman.* "With regard to the settlement we must look at the facts referred to us. The case states that the cottage, yard and garden were not worth 10*l.* per annum alone; and the question was made, whether the profits of the ferry could be added so as to make up the 10*l.* I think that these profits may as well be added as tolls, or any other incidental value which arises from the occupation of the premises. It is true that the use of the boat and line was also included under the rental, but it is not stated of what value these were, or whether the payment for the use of them would have reduced the rent below 10*l.* The case therefore is brought within the rule laid down by *Buller*, J. in *Rex* v. *Whitechapel.*" *Patteson* and *Williams*, Js. concurred. Order of sessions confirmed.

If a chattel (as a post-windmill) be placed upon land by the tenant, its value cannot be

Rex v. *Londonthorpe*, 6 *T. R.* 377. John Ingram took a tenement of 6*l.* a year, and rented a piece of waste ground at the yearly rent of 10*s.* 6*d.*, on which he had the privilege of building a post windmill. This he did at the expense of 120*l.*, and worked it for three quarters of a year, but rented

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added to the rent of the land.

the ground for two years and a half, the greater part of which time the mill was standing. The mill was constructed on cross traces, laid upon brick pillars, but not attached or fixed thereto, which is the usual mode of building mills of that nature. The mill was considered as the property of the tenant. He let it to one J. for a quarter of a year at the rate of 9*l.* a year, and during that time resided in the said tenement at the rent of 6*l.* The pauper sold the mill afterwards as a chattel interest. It was never rated. *Per* Lord *Kenyon*, C. J. "There is no doubt but that the taking of a windmill attached to the ground of the value of 10*l.* a year will confer a settlement; a *præcipe* will lie for such a windmill. The taking of a rabbit warren was also held to give a settlement, because it was a tenement; and so in the case of the Landsale colliery. But this windmill, as described in the case, is nothing but a chattel. And if in questions of this kind we were merely to consider the ability of the pauper, without at the same time considering whether he rented a tenement, we should abandon the statute altogether, and the decisions upon it. It might as well be said, that an iron malt mill would give a settlement. This post windmill was the sole property of the tenant himself, and it was not fixed in the ground, but detached from it. But in order to confer a settlement it should be so connected with the land as in legal contemplation to fall within the description of a tenement." *Grose*, J. "It is no more a tenement than a large coffee mill put up in a house."

A mill was of wood, with a foundation of brick; but the wood work not inserted in the brick foundation, but resting upon it by its own weight alone. No part of the machinery of the mill touched the ground or any part of the foundation. This cannot be reckoned in the value of the tenement.

Rex v. *Otley*, 1 *B. & Ad.* 161. S. Stammers was removed from St. Mary, Lambeth, to Otley. Order confirmed. Case:—The pauper rented of J. Bedwell, of Ipswich, carpenter, in the appellant parish, a windmill called a smock mill, a brick built cottage, and a small garden, at the rent of 30*l.* per annum, during the space of six years and three quarters of another year, ending Midsummer, 1827; and during the whole of that time held, occupied, and actually paid for the same the said sum of 30*l.* per annum, and was rated to and paid several poor-rates of Otley for the cottage and garden, and mill, at the estimated value of 6*l.* per annum. The cottage and garden, with the mill, are together of more than the annual value of 10*l.*, but the cottage and garden, exclusively of the mill, are not of that annual value. The mill is of a circular form, and of wood, having a foundation of brick twelve inches high from the ground, in which the wood work is not inserted, but rests upon it by its own weight alone. No part of the machinery of the mill touches the ground or any part of the foundation; the whole is confined to the wooden part of it, which has two floors; but on the ground within the brick foundation, planks are laid down so as to form a flooring, and the mill would work as well upon the ground as upon the brick foundation. Some time after the erection of the mill, the tenant placed mortar on the inside and outside of the cill or bottom part of the wood work of the mill, for the purpose of excluding the weather, mortar so placed not acting as a cement between wood and brick work; and he also fixed posts in the ground, which sloping towards the mill, supported steps by which the mill was entered. The question was, whether the mill was a tenement. *Bayley*, J. "The question is, whether the mill be a parcel of the tenement. To be so, it must be part and parcel of the freehold. Now it is not parcel of the freehold unless it be affixed to it, or to something previously connected with it. Here the mill was not affixed to the land, but merely rested on a foundation of brick. The sessions have found that if it had stood upon the ground, it would have worked as well. If it had, the only difference would have been, that it probably would have rotted. This is analogous to the case of a barn set upon pillars; and that is nothing more than a chattel. The windmill in this case would clearly have gone to the executor, and not to the heir." *Littledale*, J. "This is precisely within *Rex* v. *Londonthorpe*, (p. 806). It is attempted to be distinguished, because the tenant in that case had permission from the landlord to put up the mill, and it was treated by both as a chattel; but that circumstance can make no difference. Suppose there were two mills in two distinct townships, and one of the townships treated

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the mill as a tenement, and the other as a mere chattel. That would make no difference. It must depend upon the nature of the building, and not upon the mode of treating it, whether it be a tenement or not." *Parke*, J. "I am of the same opinion. To constitute a tenement, it is necessary that the structure should be affixed to the soil, or to something annexed to the soil. Here the windmill rested merely upon the brick foundation, without being annexed to it by cement." Order of sessions quashed.

Landlord's (a) fixtures, which are parcel of the freehold, may be taken into the valuation of a 10*l.* tenement, though without them the tenement would not be of sufficient value to gain a settlement.

Rex v. *St. Dunstan in Kent*, 4 *B. & C.* 686; 7 *D. & R.* 178. M. Wilson was removed from Saint Mary, Canterbury, to St. Dunstan. Order confirmed. Case:—The pauper's husband, on the 23d of April, 1823, went to live in a house in St. Dunstan, at the yearly rent of 10*l.*; he had not occupied it for a year, but he had been rated for the house in that parish, and had paid the assessment for one quarter; one Butler had occupied the house before the pauper's husband; and at the time of the hearing of the appeal one Hunt held it, each of them paying the annual rent of 10*l.* It had for six years preceding the pauper's tenancy been let, together with the articles of furniture hereinafter mentioned, at 10*l.* per annum. All houses in St. Dunstan were rated at half their actual value; and in the assessment on the pauper's husband the said house was valued at 3*l.* 10*s.*: at the time of his occupation, the house was in a very bad state of repair, and then it would have required an expenditure of 40*l.* to put it into a tenantable condition: since his death and previously to Hunt's tenancy, 12*l.* had been expended upon it; there were a stove and cupboard in a room below stairs, a grate and a cupboard in the chamber, and a grate in the kitchen; the stove and grates had not originally belonged to the house, but had been put in by a tenant, and the landlord had taken them in part payment of rent about six years before; these were fixed with brickwork in the chimney places, but they might be removed without doing any injury to the chimney places; the cupboards stood on the ground, and were supported by holdfasts—and these might also be removed without doing any other injury to the walls than leaving a few marks of nails; the use of these several articles was worth about 6*d.* per week: and the tenement, including the use of them, was worth 7*l.* 10*s.*, and without them, about 6*l.* per annum. If any deduction, however small in amount, was to be made in respect of the above-mentioned articles, the tenement would not be of the annual value of 10*l.* *Abbott*, C. J. "It is found as a fact in the case, that these grates and cupboards were the property of the landlord, and affixed to the freehold, and they were taken by the pauper as the property of the landlord. I am therefore of opinion that they were a parcel of the tenement demised. Whatever might be the question, if they were merely tenant's fixtures, it is unnecessary to discuss in the present case. The sessions, in confirming the order, have stated their opinion to be, that if any deduction, however small in amount, is to be made in respect of these articles, the tenement would not be of the annual value of 10*l.*, from whence I infer, that in their judgment no deduction ought to be made." *Bayley*, J. "These articles being fixed to the freehold, and being part of the demised premises, I think they might enter into the valuation of the tenement." *Littledale*, J. "If the landlord had died, these articles would have gone to the heir, and not to the executor. Then as the annual value is increased by these fixtures, I think they must be taken into account with a view to the settlement. In *Winne* v. *Ingleby* (5 *B. & Ald.* 625), and *Colegrave* v. *Dias Santos* (2 *B. & C.* 76), articles savouring less of the realty were held to be fixtures and parcel of the freehold."

The special case must describe the nature of the tenement. The court cannot notice what a "land-sale colliery" means.

Rex v. *North Bedburn*, *Cald.* 452; 2 *Bott*, 96. Removal from Quarrington to North Bedburn, confirmed. The material part of the case stated, was an agreement between the pauper and certain other persons, by which they agreed to let to the pauper at a certain rent a landsale colliery in North Bedburn, which imported (as was stated by the counsel) the

(a) See *Robinson* v. *Learoyd*, 7 *M. & W.* 42.

taking of a right to get coals from a certain pit, and also the using of a quantity of machinery (personal chattels) belonging to the colliery. But per *Willes*, J. "We cannot take notice of the meaning attributed to the term landsale colliery, and said to be so understood in the north by the trade, unless it were so stated to us." Orders confirmed.

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Rex v. *Framlingham*, *Burr. S. C.* 748; 2 *Bott*, 201. S. Churchyard contracted with S. Hayle to hire of him a *public house*, &c., at the rent of 10*l.* per annum, Hayle to pay all parish rates and charges. By Lord *Mansfield*, C. J., and the court: "This was a good taking of a lease of a tenement of the yearly value of 10*l.*, within the intention and meaning of the act of parliament. *It turns upon the credit given the person;* now here, credit is given to this man for 10*l.* a year. He contracted for it at that rent, and he paid that rent to his landlord for it. It was a real and *bona fide* taking a tenement of that yearly value."

A contract at 10*l.* per annum, the landlord paying parish taxes, is a good taking of a tenement of the proper value.

Rex v. *St. Paul's, Deptford*, 13 *East*, 320. Richard Rice was removed from St. Paul's, Deptford, to Greenwich. Order quashed. Case:—The pauper, at Christmas, 1807, rented a tenement of E. Burford, in Greenwich, and resided upon it more than forty days, under an agreement that he should pay 10*l.* by the year to Burford for the tenement, that Burford should pay all taxes, rates, and charges whatsoever, which he did. If the taxes, rates, and charges usually deemed tenant's taxes, are to be deducted from the 10*l.* which the tenant agreed to pay to the landlord, the tenement was not of the annual value of 10*l.*; but if those taxes are not to be deducted, the tenement was of the value of 10*l.* This case was expressly brought to reverse *Rex* v. *Framlingham*. Lord *Ellenborough*. "If we were sitting to hear that case argued, the argument might have weight; but it having been settled nearly forty years ago, that the rent reserved (all fraud apart) is to be taken as the criterion of the value of the tenement, without reference to the payment of the rates and taxes by the landlord, we are not now at liberty to disturb that decision upon any speculative opinion. (*a*) The tenant may be said to obtain credit for a tenement in one sense of the yearly value of 10*l.*, and I cannot say that the former decision is so directly against the words of the act as necessarily to be wrong. *Grose*, J. "It is better *stare decisis*." *Le Blanc*, J. "If we were to decide against the former case, it would let in the deduction from the amount of the rent reserved of every payment to be made by the landlord, which might have been thrown upon the tenant. The rule being settled otherwise, it is better to abide by it." *Bayley*, J., concurred. Order of sessions quashed.

The rent, in the absence of fraud, is the criterion of value.

Rex v. *Hellingly*, 10 *East*, 41. Removal from Hellingly to Brighton. Order quashed. Case:—The pauper's husband hired a house at Brighton by the week, paying four shillings a week for the same, which house he so continued to occupy and sleep in. The house so hired and occupied by him is at all times of the year of the value of 4*s.* a week if taken by the week; but is not of the value of 10*l.* per annum if taken by the year. By Lord *Ellenborough*, "The words of the statute enable the justices to remove any person who 'shall come to settle in any tenement under the *yearly value* of 10*l.*;' that is, upon a tenement, the value of which is to be estimated by its annual value, *to be let by the year*, at the time of the party's coming to settle upon it. It need not in fact be let for a whole year; it may be let only by the week or the day. But those lettings are only *media* for ascertaining the yearly value, if nothing appear to the contrary. But when it is expressly found, that the tenement is not of the value of 10*l.* a year, to be taken by the year, it is impossible for any reasoning to make the matter more clear. The statute, speaking of *yearly* value, means the value of the tenement to be let by the year." *Le Blanc*, J. "A settlement may be gained by the taking of a tenement for less than a year, if it is of an aliquot value which would amount to 10*l.* a year. But where that has been decided, it did not appear that the estimated value depended on the

If the tenement be *worth less* than 10*l.* per annum, if let by the year, it is not sufficient that it *produce more* than that sum when let by the week.

(*a*) By 4 & 5 Will. IV. c. 76, s. 66, no settlement can be gained unless the tenant be rated and pay a year's poor rate.

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mode of letting by the week or other period shorter than a year. But the letting at so much a week was merely a criterion of the yearly value. Here the value of 10*l.* within the year depended on the taking being for a shorter period than a year. No person would have paid that yearly value for it. If this would confer a settlement, it would be next contended that a field, which nobody would take at 10*l.* a year, if it could be let out by the tenant for one night (which he might do to drovers of cattle on the road) at that rate would confer a settlement. I am not disposed to extend the words of the act further than the cases have already gone." *Bayley*, J. "The question was, whether the value of this tenement be 10*l.* a year? To ascertain that, the only fair criterion is, whether it would let at a single letting, without further trouble, for that sum. If it could be so let, the landlord might reside at a distance; but if it is to be let weekly, he must either reside on the spot and have additional trouble in letting it, or he must employ somebody, and pay him; in either case, part of the 10*l.* obtained within the year by weekly lettings would go either to compensate himself for his trouble, or in defraying the expense of his agent, besides the risk of not being able to let it for three weeks in the course of the year, in which case the actual rent would be reduced under 10*l.* The statute then, speaking of yearly value, and the question being whether the tenement were worth 10*l.* a year by the single letting, without further trouble, and that being negatived, no settlement was gained." Order of sessions confirmed.

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12. *The Value, &c.*

12. THE VALUE UNDER 59 GEO. III. c. 50; 6 GEO. IV. c. 57; AND 1 WILL. IV. c. 18.—*See* STATUTES, p. 744.

These statutes are similar in this respect, and require that the tenement should be *bona fide hired* or *rented* at and for the sum of 10*l.* a year at the least: and these statutes put an end to the too frequent perjuries and expensive litigations relative to the actual annual value of the premises.

By 6 Geo. IV. c. 57, s. 2, it is provided, that it shall not be necessary to *prove* the *actual* value of such tenement; it will, consequently, suffice to establish that it was *bona fide rented* at 10*l.* a year; and it will be no answer to prove that the premises were not of the yearly value of 10*l.*

If the rent is 10*l.* the real value is immaterial.

Rex v. *Ashfield-cum-Thorpe*, 4 *M. & R.* 709; 9 *B. & C.* 939. Order of removal of W. Miller from Snape to Ashfield-cum-Thorpe confirmed. Case:—The pauper, after the passing of 59 Geo. III. c. 50, and before that of 6 Geo. IV. c. 57, *bona fide* hired a house and land for one year in Snape, at a rent exceeding 10*l.*, and held, occupied, and paid the rent for more than one year, though at the time the value of the holding and occupation was under 10*l.* *Bayley*, J. "The statute 59 Geo. III. c. 50, requires that the tenement be *bona fide* hired at and for the sum of 10*l.* a year. It seems to me that by that statute the actual value is immaterial, provided the tenement be *bona fide* hired at the specified rent. The provision, 'that it shall not be necessary to prove the actual value of the tenement,' was introduced into the 6 Geo. IV. c. 57, for greater caution." *Littledale*, J. concurred. *Parke*, J. "One fertile source of those disputes and controversies (mentioned in the recital of the 59 Geo. III. c. 50), was the necessity of proving the value of the tenement; and that statute, in order to prevent litigation, requires that the tenement shall be *bona fide* hired at the sum of 10*l.* a year. Generally speaking, the rent agreed upon between the landlord and tenant is the best criterion of value, and I think the legislature meant to dispense with any other proof of value. If the tenement hired turns out to be of much less annual value than 10*l.*, that would be evidence to show that it was not *bona fide* hired at that sum. But if it be *bona fide* hired at that sum, I think that is sufficient. That being so, the pauper gained a settlement in Snape." Order of sessions quashed.

But now see 4 & 5 Will. IV. c. 75, s. 66; *Rex* v. *Pickering*, p. 812.

Hiring of a house at 10*l.* a year, the landlord paying

Rex v. *Thurmaston South End*, 1 *Bar. & Adol.* 731. J. Simpson was removed from Thurmaston South End to St. Margaret, Leicester. Order

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all levies and rates chargeable on the house, is a sufficient hiring and renting a tenement at and for the sum of 10*l.* a year within the 59 Geo. III. c. 50, and 6 Geo. IV. c. 57.

discharged. Case:—At Michaelmas, 1824, the pauper took a house for one year in St. Margaret, Leicester, of T. Mawley, at the annual rent of 10*l.*, Mawley agreeing to pay all levies and rates chargeable upon the house; and under this agreement the pauper occupied the house for one year, and paid 10*l.* by four quarterly payments. The question was whether the payment of the levies and rates by the landlord would defeat the settlement. Lord *Tenterden*. "Where the intention and the object of the legislature are doubtful, it is a safe rule of construction to be guided by the words of the act of parliament, taking them in their plain ordinary sense. The 59 Geo. III. c. 50, requires that the tenement shall be *bona fide* hired at and for the sum of 10*l.* a year at the least, for the term of one whole year, and that the rent for the same be actually paid. Here the house was *bona fide* hired at the sum of 10*l.*, and the rent has been actually paid for the term of one whole year. If it had been the intention of the legislature that the rent to be paid to the landlord should be 10*l.*, exclusively of all tenant's taxes, they would have said so in express terms. Perhaps the matter did not occur to the framers of the act; and if not, we cannot introduce such a provision. If it did occur to them, then the legislature must be considered as having intentionally omitted that provision. The cases put, of collateral benefit wholly unconnected with the occupation of the tenement, are not in point. In those instances, if they occurred, there might be ground for saying that the house was not *bona fide* rented at 10*l.* a year. But here the benefit conferred on the tenant was in its nature connected with the occupation. We cannot say that he has not *bona fide* paid 10*l.* rent." *Littledale*, J. "This case appears to me to fall within the express words of the 59 Geo. III. c. 50, and the 6 Geo. IV. c. 57. The tenement was *bona fide* hired at and for the sum of 10*l.* a year, and the rent for the same actually paid for the term of one whole year. If the legislature had intended to make a distinction between cases where the landlord paid the rates and taxes, and where he did not, they would have introduced an express provision for that purpose. Their attention must in all probability have been called to it by the decisions in *Rex* v. *Framlingham*, (p. 809), and *Rex* v. *St. Paul's, Deptford*, (p. 809). In those cases it was considered that the 'yearly value of 10*l.*' mentioned in the 13 & 14 Car. II. and 9 & 10 Will. III., might be calculated without deducting the rates and charges usually deemed tenant's taxes. The legislature, by not altering the law established by those decisions, have adopted it. Here the word rent must be taken in its ordinary sense, to import not what the landlord put in his pocket, but the sum paid by the tenant for the use of the premises. The payment of the taxes by the landlord was a collateral term introduced by agreement. I think, therefore, the house was hired at and for the sum of 10*l.* a year at the least, within the meaning of the 59 Geo. III. c. 50, and that the rent for the same has been paid, and therefore that the pauper gained a settlement in the parish of St. Margaret, Leicester." *Taunton*, J. "I am of the same opinion. A general principle may be considered as established by *Rex* v. *Framlingham* and *Rex* v. *St. Paul's, Deptford*, with reference to all cases where tenant's taxes are paid by the landlord; viz., that if the sum paid to him by the tenant be 10*l.*, it will be a sufficient yearly value of 10*l.* to gain a settlement. That being so, does the statute 59 Geo. III. c. 50, revoke those decisions, and give any new rule on the subject? I find nothing of that sort. The statute merely requires, in addition to the hiring of a tenement at and for the sum of 10*l.* a year, that the rent shall be paid. The taxes here are collateral to the rent. As the decisions just mentioned were well known long before the statute 59 Geo. III. c. 50, passed, it may be presumed that if the legislature had intended to alter the law in this respect, they would have used the words 'at and for the sum of 10*l.* per annum, clear of all taxes, parliamentary and otherwise, and all other outgoings.' In *Rex* v. *St. Paul's, Deptford*, the judges, who expressed some doubts, still felt themselves bound by the authority of *Rex* v. *Framlingham*; and if so, *à fortiori*, we are bound by the two cases." Order of sessions quashed.

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A settlement is gained by a pauper, who occupied a tenement for a year, and paid 10*l.* rent in respect of it, although the sum of 6*s.* for tithes has been paid by his landlord.

Rex v. *St. John's in Bedwardine*, 3 *N. & P.* 302; 8 *A. & E.* 192. T. Bryan was removed from Upton-upon-Severn to St. John, Bedwardine. Order confirmed. Case:—The pauper, at Michaelmas, 1829, took a house and buildings, two gardens and an orchard, in Upton-upon-Severn, for a year, of E. Perrins, at 10*l.*, the landlord agreeing to discharge all taxes and *payments* for that period. Previously to entering into this arrangement, Perrins had offered the premises to the pauper for 9*l.*, the latter satisfying the taxes and payments, but the tenant preferred to take at 10*l.*, upon the terms above stated. The premises were occupied for a year under that hiring, and the sum of 10*l.* paid to the landlord in respect of them. Under the head of payments, the landlord satisfied a claim for tithes, becoming due in the course of the year, to the amount of 6*s.* *Littledale*, J. "The settlement has been gained in this case. The facts are not distinguishable from *Rex* v. *Thurmaston*," (p. 810). *Patteson*, J. "I am of the same opinion. If a man rents a tithe-free farm, he does not the less pay rent for it." *Coleridge*, J. "I am very unwilling to introduce any nice distinctions in the poor laws. *Rex* v. *Thurmaston* is quite in point." Order of sessions quashed.

Settlement gained by the payment of rent of 20*l.* for the occupation of land lying in two parishes; and evidence is admissible to show that the amount of rent paid for the land lying in one of those parishes is sufficient to confer a settlement, notwithstanding 6 Geo. IV. c. 57.

Rex v. *Pickering*, 2 *Bar. & Adol.* 267. John Todd was removed from Pickering to Newton. Order quashed. Case:—Prior to the 6th of April, 1826, John Todd took of Hugh Kirby a dwelling-house and thirty-two acres of land, at the annual rent of 20*l.*, to be holden from the 6th of April, 1826, for one year then next ensuing. The dwelling-house and twenty-seven acres of the land were situate within the township of Newton, and the remaining five acres within that of Pickering. At the period specified he entered under such yearly hiring, and occupied the whole of the said premises for the said term of a year, and at its expiration paid the said reserved rent of 20*l.*, residing during the whole such time in the said dwelling-house. It was objected by the appellants, that there was no evidence of the tenement within the township of Newton being of the yearly value of 10*l.* Whereupon the respondents offered to prove, that the proportion of the rent payable in respect of the dwelling-house and land in Newton was more than 10*l.* in amount, either by showing the land within Newton to be of less value than 10*l.* a year, or by showing the dwelling-house and land within Newton to be of greater annual value than 10*l.* But the sessions refused to admit such evidence. It was stated by the appellants, that they were prepared to show that the land within the township of Newton was of no greater annual value than 6*l.* 5*s.* 3*d.* Lord *Tenterden*. "It was contended that no evidence of the value of the tenement could be received. The words of the 6 Geo. IV. c. 57, are undoubtedly very strong. The preamble recites, 'that the settlement of the poor had been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they have paid parochial rates, and that the ascertaining such value in such respective cases had given rise to very expensive litigation, and that doubts had been entertained whether the 59 Geo. III. c. 50, had been effectual for the purpose of altering the law in respect of proving the annual value of tenements so rented.' Then section 2 enacts, 'that no person shall acquire a settlement by reason of settling upon, renting, or paying parochial rates for any tenement, unless it shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bona fide* rented by such person, at and for the sum of 10*l.* a year at the least, for the term of one whole year; nor unless such house, or building, or land, shall be occupied under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least.' Then comes the proviso that it shall not be necessary to prove the actual value of such tenement. Now it is said that as evidence of the entire value of the tenement as contradistinguished from the rent was not admissible, and no distinction is taken between cases where the whole tenement is situate in one parish and where it is situate in several, the evidence ought not to have been received in this case, and consequently that no settlement was

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gained in the parish of Newton. The effect of that would be, if the argument were to prevail, that if a party rented land in two parishes, for which he paid an annual rent of 300*l.* or 400*l.*, and one acre was in one parish and the residue in the other, he would not gain a settlement in either parish. We think the legislature never could have so intended. The rent stipulated to be paid must be taken, for the purposes of this case, as the criterion of the value of the entire premises; but evidence was admissible to show that the rent payable in respect of the land in the township of Newton amounted to 10*l.*; that is, supposing the house and all the land to be of the value of 20*l.*, it was a question for the sessions to consider how much of that sum was paid in respect of the land in Newton. The amount must depend upon the relative quantity and quality of the land in each parish. The case must go back to the sessions, in order that they, taking the entire value of the tenement to be 20*l.* (the annual rent), may ascertain by evidence how much of that sum was paid in respect of the dwelling-house and land in Newton." Case sent back to the sessions.

The rent for the whole must be the criterion of value.

Reg. v. *Hockworthy*, 7 *A. & E.* 493; 2 *N. & P.* 383. Elizabeth Thorn was removed from Hockworthy to Chipstable. Order quashed. Case:—The grounds of such appeal were, that John Thorn, deceased (the late husband to pauper), was settled in the parish of Bampton, Devon, by renting of one Mr. Robert Elsworthy certain lands and hereditaments situate in Bampton, for a year from Lady-day, 1830, at a rent of upwards of 10*l.* a-year, and that he occupied the same for a year and paid a year's rent for the same. At the trial the respondents contended that they had received no notice to prove the settlement in the appellant parish, and that the appellants were bound to prove the settlement in Bampton. The court, however, called upon the respondents to support their order by proving the settlement (as stated in their examination in the appellant parish). The respondents objected to the right of the appellants to cross-examine the witness on this part of the case (under the terms of their notice). The court held that they were entitled to cross-examine, and they did so. The respondents attempted to prove a settlement in the appellant parish by hiring and service, which, in the judgment of the court, they failed to substantiate. The appellants then attempted to establish a settlement of the pauper through her late husband by reason of his renting a tenement in Bampton, and tendered in evidence a Memorandum of agreement made the 24th day of March, 1830, between Robert Elsworthy of Bampton, Devon, and John Thorn, of Chipstable, whereby Elsworthy let to Thorn a dairy consisting of ten cows and ten living calves to be all in pail by the 1st of May, or 3*s.* 6*d.* per week to be allowed for the deficiency of each or either of the said cows after the 1st May; and if any or either of the said cows should fail by loss of milk or misfortune, after seven days' notice has been given, to be exchanged for another, or satisfaction made for such loss; also the kitchen, back kitchen, dairy, two bedrooms (except as hereinafter excepted), also sufficient linhays, pigsties, and other appurtenances which had been usually let with the said dairy, together with the north part of the garden, and 120 perches properly manured and cultivated for potatoes, and twenty-five faggots of wood to be delivered in court for each cow, with liberty of cutting browze, at Elsworthy's appointment; to be found a horse one day in a week when barrelling of butter, and one day a fortnight when not barrelling. The pigs to run in the east part of the orchard until the apples are deemed necessary to be saved, and then in the Gorney until the apples are taken in, and to be kept well ringed to prevent their doing damage; and also to have certain plots of ground called Great South Moor Cross Park, Gorney Middle Castle, and West Castle, and the first fortnight keep in the South Castle. Also the pasture of the Home Meadow after the hay is carried off until the first day of November, 1830, the pasture of the West Meadow until the 20th day of November, and the pasture of the Lower Meadow until the 25th day of December, 1830; the said Lower Meadow to be unstocked when very wet, and to help, mow, and make the hay in the said meadows free of expense, except being found meat and drink; the

Where there is a demise of land and other things at a fixed rent, and the sessions find that the land alone is worth 10*l.* a year, a settlement may be gained by occupation under the demise, although it may be a demise of incorporeal tenements by writing not under seal. Where an instrument demises several matters, consisting of land and other interests, some of which are incorporeal tenements, at one fixed rent, an *ad valorem* stamp is sufficient.

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hay to be put in one rick, and divided into three parts, two of the three parts to be for the use of the said cows, one of which two parts to remain unconsumed at Lady-day, 1831, and to keep the windows properly glazed, and so to leave the same at the end of the term, except what glass Elsworthy or family breaks; in consideration of Thorn paying 75*l.*, the first quarter's rent to be paid on or before the 24th day of June; the second payment at Michaelmas; the third payment at Christmas; and the fourth payment at Lady-day, 1831, being the end of the term. Elsworthy reserved liberty of the fire-place in the kitchen with a friend or his servants when required, and also to dress all meat and vegetables that might be wanted, and the chamber over the back kitchen, and liberty of his servant girl sleeping in one of their bed-rooms. Thorn to dress all meat and vegetables when wanted, the servant girl to assist; also half of the poultry and eggs, the hearth ashes to be at the disposal of Elsworthy; the cows to be put to bull so as to calve by the 25th of March, 1831, and if any or either of the said cows should not go to bull, to be at the disposal of Elsworthy the 2d day of February, 1831; Elsworthy to find all firing for his use in the kitchen, the cows to be kept on straw before they have calved during the winter, also to have half of the poultry and eggs, and liberty of running pigs with Thorn, who is to keep fence for his own pigs and to attend to all stock on the said farm in the absence of Elsworthy, the parting in the orchard to be kept at a joint expense; Thorn to work for 1*s.* and liquor when required, and to quit at the end of the year without any further notice, unless otherwise agreed on. Signed, Robert Elsworthy, John Thorn. Witness, John Capron." The instrument was stamped with a 1*l.* 10*s*, stamp, and the pauper's husband occupied under it the premises referred to therein for above a year, and paid to the amount of 75*l.* reserved by it.

Where the sessions did not find the value of the *land*, decreed, case sent back to be reheard.

The court were of opinion that the appellants could not be heard as to the settlement in Chipstable, that not being noticed in the ground of appeal, and the case was sent back to the sessions, to find distinctly whether the *land* demised was worth 10*l.* a year. The sessions found that Great South Moor, Cross Park, Gorney Middle Castle, and West Castle, and part of the garden, were worth 13*l.* of the 75*l.*, and that the rent had all been paid. After further argument, Lord *Denman* said, "It is not necessary to consider the way in which this instrument may be construed on various contingencies that may arise. There might be a question how the rent reserved by it could be enforced, but with that we have nothing to do. We find a demise of land at more than 10*l.* a-year, which rent has been duly paid, and the land occupied for the time prescribed by the statute, and I cannot say that the instrument is void. Being so, is the stamp sufficient? I think it is, for it is a 1*l.* 10*s.* stamp, which is sufficient if the paper is an agreement for the lease of an incorporeal tenement or a demise of lands at a rent not exceeding 100*l.* per annum." *Littledale*, J. "This case may be illustrated by the following instance: suppose there were a demise of freehold and copyhold land in the same lease, and that the demise as to the copyhold were void from not being made with the consent of the lord, that would not render the whole void. So in this case, there is a good demise of land of sufficient value, and a sufficient occupation of it to confer a settlement." *Williams*, J. "As there is in this case a demise of land *nominatim* of sufficient value, I think enough appears to gain a settlement." *Coleridge*, J. "The principle of *Rex* v. *Pickering*, (p. 812,) is not disputed, but its application here. That principle is, that inquiry may be made as to the rent arising from each portion of the thing demised. But it is said, that it was taken for granted in *Bird* v. *Higginson* (*a*) that a demise of real property and of an incorporeal tenement by an instrument not under seal, is void altogether. I do not think that was so; but however that might be, if we were called upon to give a construction upon this instrument as between the parties, the question does not arise now. There has been sufficient occupation, which was not the case in *Bird* v. *Higginson*, and the only point is, whether there has been a demise of a tenement of 10*l.* a-year value. That also appears clearly when we apply to the case the

(*a*) 2 *A.* & *E.* 696.

principle laid down in *Rex* v. *Pickering*. I think that there was an attempt made to demise an incorporeal tenement by this instrument. The liberty of cutting browze was compared to the case of *Smith* v. *Surman* (a); but that case does not apply unless it were shown that the browze was to be cut elsewhere than on the land demised. I do not think we ought to imply that such was the intention of the parties, because it was to be cut by the appointment of the lessor. In my opinion, therefore, there was an attempt to demise an incorporeal hereditament, but for the reasons I have given, I think it immaterial. As to the stamp, taking it either way, it was sufficient. Order of sessions quashed.

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(a) 9 B. & C. 561.

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13. THE RENT MUST BE PAID UNDER 59 GEO. III. c. 50; 6 GEO. IV. c. 57; AND 1 WILL. IV. c. 18.

13. *The Rent, &c.*

The *actual* payment of any rent for the purpose of gaining a settlement was first rendered necessary by 59 Geo. III. c. 50. The 6 Geo. IV. c. 57, contains a similar though less extensive provision. Under the former statute the rent, whatever the amount, must be paid for the term of one whole year at the least *by the person hiring the same*. These latter words are omitted in 6 Geo. IV. c. 57; and under that statute it was sufficient if the rent was paid by the person hiring or by any other person. But the 1 Will. IV. c. 18, again requires that the rent should be paid *by the person hiring the same*; and by the second section, (which is retrospective,) payment of 10*l.* is sufficient.

In ascertaining whether the pauper has acquired a settlement it is most material to attend to the *dates* of the transactions. The rent must be paid *by the person hiring* the tenement under 59 Geo. III.; *i. e.* from 2d July, 1819, to 22d June, 1825: from this time (the date of the 6 Geo. IV. c. 57), to the 30th March, 1831, the rent may be paid by any person. But from the latter period (the date of 1 Will. IV. c. 18), the payment must be by the person hiring the premises. The *whole* rent must be paid under 59 Geo. III., but rent to the amount of 10*l.* is sufficient after 22d June, 1825.

As to the person paying the rent.

Rex v. *Ditcheat*, (*post*) *Bayley*, J. said, "That the words 'by the person hiring the same,' may be considered as struck out of the 6 Geo. IV. c. 57, and the law altered so far as it required that the rent should be paid by the person hiring the premises. It is now sufficient if it be paid either by the person hiring or *by any another person*, *i. e.* provided the payment be made in the lifetime of the party hiring."

The term for which it is paid.

The words of the act 6 Geo. IV. c. 57, are, "paid for the term of one whole year." If the hiring be from an antecedent period, and the tenant hold from the time of hiring into a second year, and then pay a full year's rent, that is sufficient. (*Rex* v. *Stow*, *post*).

The *second* sect. of 1 Will. IV. c. 18, which provides that payment of rent to the amount of 10*l.* shall be deemed sufficient, is retrospective.

Where a pauper in 1829 hired a house at a yearly rent exceeding 10*l.*, and paid not a whole year's rent, but above 10*l.* he gained a settlement.

Rex v. *Dursley*, 3 *Bar. & Adol.* 465. T. Merritt was removed from St. George's Hanover-square, to Dursley. Order confirmed. Case:— In March, 1829, the pauper took a house in St. George's, Hanover-square, at a yearly rent of 36*l.* He resided in and occupied that house from Lady-day, 1829, until August, 1830, and paid during such occupation several sums on account of rent, amounting in the whole to 29*l.* The question was, whether 1 Will. IV. c. 18, s. 2, applied to this case. Lord *Tenterden*. "I think we must understand the second section to be retrospective, because it would be useless unless it were so. The words that 'payment to the amount of 10*l.* shall be *deemed* sufficient for the purpose of gaining a settlement *under the said recited act*,' import that, as to the payment of rent, the statute is declaratory. If the words had been 'it is hereby declared that payment, &c. shall be deemed sufficient,' there could have been no doubt that the clause would be retrospective. Here the words are the same in effect." *Littledale*, J. "The act is not very clearly expressed; but taking the words in the first section, 'the rent for the same to the amount of 10*l.* at the least,' to be descriptive of the amount of rent to be actually paid, which I suppose is meant, then the effect of the first section is, that 'after the passing of the

13. *The Rent.* act no settlement shall be gained unless rent to the amount of 10*l.* be paid;' and if that be so, then unless the second section be retrospective, it adds nothing to the former." *Parke*, J. "This act is to '*explain*' the former. Sect. 1 provides for settlements by renting for the future. Sect. 2, therefore, unless it be retrospective, is without object." *Patteson*, J., concurred. Order of sessions quashed. See *Reg.* v. *Brighton*, *post*.

The *first* section of 1 Will. IV. c. 18, which requires that the rent to the amount of 10*l.* for a dwelling-house, building, &c must be paid by the person hiring the same, is prospective only.

(*a*) 30th November.

Rex v. *Ruthin*, 2 *N.* & *M.* 97; 5 *B.* & *Ad.* 215. D. Jones was removed from Ruthin to Cwm. Order quashed. Case:—The pauper took from Mr. Eddisbury, who was mortgagee in possession, a farm called Tynyffirth, in the parish of Llanrhaiadr yn Cimmerch, as tenant from year to year, at the rent of 24*l.* per annum. The tenancy was to commence according to the custom of the country; viz., as to the land *from St. Andrew's-day* (*a*), 1829, and as to the farm-house and outbuildings, from the 1st of May following. The rent was made payable half-yearly, on the 25th of March and the 29th of September following, though, according to custom, the first half-year was not to be called for until St. Andrew's, 1830, and the second half-year on the 1st of May, 1831. The pauper entered upon the premises at the appointed periods, and occupied the land until after the 30th of November, 1830, and the house and outbuildings until the 1st of May, 1831. In August, 1830, the mortgagor and mortgagee having agreed upon a sale of the property, and a purchaser having been found, the three parties met by appointment, and were attended by the pauper's wife, whose husband sent her on his behalf, he having been desired by Shaw, the mortgagor, to come to pay his half-year's rent. Mr. Eddisbury insisted upon being paid the half-year's rent due the 25th of March, 1830, and declining to complete the sale without it, the pauper's wife said that her husband was then unprepared, owing to its being demanded before the usual time, namely, St. Andrew's day: whereupon Shaw, being anxious to avoid delay in order to get the business concluded, agreed, without the previous knowledge or request of the pauper, but with the consent of the pauper's wife, to pay the 12*l.* for the pauper, and did so. The pauper had not repaid the amount when the appeal was heard; but there had been disputed accounts between him and Shaw. The year's holding as to the land, which was the principal taking, was begun and concluded, and the rent was due and paid as before mentioned, while the 6 Geo. IV. c. 57, was in operation, and before the passing of the act of 1 Will. IV. c. 18; but the year's holding of the house and outbuildings was not concluded until the 1st day of May, which was after the last-mentioned act came into operation. *Denman*, Lord, "The only question here is, whether the rent to the amount of 10*l.* has been actually paid. The party entitled to receive the rent has been satisfied, and the stat. 6 Geo. IV. c. 57, does not require that it should be actually paid by the party hiring. The sessions might have decided this case themselves." *Littledale*, J. concurred. *Parke*, J. "The rent to the amount of 10*l.* has been paid by some person, and that is sufficient. The second section of the 1 Will. IV. c. 18, is retrospective; but the first is prospective only. The enactment is, that from and after the passing of that act, no person shall acquire a settlement except as there stated." *Patteson*, J. "The first section of 1 Will. IV. c. 18, prevents the gaining of a settlement, unless the rent to the amount of 10*l.* at the least shall be paid by the party hiring; if that were retrospective, section 2, which provides, that where the yearly rent shall exceed 10*l.*, payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement under the recited act, would have been unnecessary." Order of sessions confirmed.

The rent must be paid before any order of removal made.

Rex v. *Ampthill*, 2 *B.* & *C.* 847; 4 *D.* & *R.* 447. Order made on the 5th day of August, 1829, for the removal of J. Apsley from St. Botolph to Ampthill, confirmed. Case:—The pauper, a ropemaker, came at Midsummer, 1822, to reside in a house in St. Botolph; he had hired it of one Mitchell for 10*l.* a year; he put his own furniture into it, worth 15*l.* or 16*l.*; he continued to live in it above a year, and in July, 1823, being much distressed, he applied to the parish officer of St. Botolph for relief,

who refused to give him any, but afterwards, in obedience to the order of a magistrate, gave the pauper 14*s.* on the 31st of July. The day after this relief was given, Mitchell called for his rent of 10*l.*, but gave the pauper a fortnight to pay it. On the 5th of August, the pauper was removed to Ampthill. He then applied to Furze, an auctioneer, to buy his furniture, to enable him to pay his rent. Furze went to Cambridge, valued it at 13*l.* 3*s.* (exclusive of his tools, which were worth 5*l.*), and agreed to buy them for 10*l.*, which he paid to the pauper, who kept the key of the house all the time, and returned to it about the 14th of August, on which day Mitchell had sent a person to distrain for the rent, but no distress was taken, because the bailiffs, Furze, and the pauper, went together to Mitchell, and the rent was paid by the pauper with the 10*l.* he received from Furze. Another auctioneer had been employed to sell some of the furniture, under the direction and according to the inventory of Furze, and sold it for 3*l.* 13*s.*, and after this sale the remainder of the furniture and the tools might be worth 6*l.*; without the tools, the remaining furniture would be worth 1*l.* The sessions decided that the house was not of the annual value of 10*l.* *Bayley*, J., after adverting to other points in this case, for which see *post*, said, "I am of opinion also that on the 5th of August, 1823, when the order of removal was made, the pauper had not acquired any settlement in St. Botolph. The 59 Geo. III. c. 50, introduces new provisions with respect to the gaining of a settlement by renting a tenement. Before that statute, any person renting a tenement of the annual value of 10*l.*, and residing on it forty days, obtained a settlement; but that statute enacts, that no person shall acquire a settlement by reason of dwelling for forty days in any tenement rented by such person, unless such tenement shall be *bona fide* hired by such person at and for the sum of 10*l.* a year at the least for the term of one whole year, nor unless it shall be held, and the rent for the same actually paid, for the term of one whole year at the least by the person hiring the same. Now in this case the pauper took the tenement at Midsummer, 1822, for one year; the year expired, and the rent became due and payable at the expiration of that time; and if the pauper had made a legal tender of the rent upon the premises before sunset, or the last hour of the day when it became due, and had been able to show that he was always afterwards ready to pay it, possibly such a tender might have been considered in point of law as equivalent to payment. But in this case he had neither paid the rent nor done anything which, in point of law, can be considered as payment at the time when the order of removal was made. He had not done what was requisite, in order to give him a settlement by the renting of a tenement, according to the provisions of the 59 Geo. III. c. 50. The order of removal, then, was a valid order at the time when it was made, and the subsequent payment of the rent cannot affect it. I am therefore of opinion that in this case the pauper, by having applied for relief from the parish in July, 1823, and having received that relief under an order of magistrates, was then actually chargeable, and therefore removable under the 35 Geo. III. c. 101; and I am also of opinion that when the order of removal was made he had not acquired any settlement in St. Botolph, because he had then neither paid a year's rent nor done any act which, in point of law, can bec onsidered as equivalent to payment." *Holroyd*, J. "A party, in order to gain a settlement by renting a tenement, is required by the 59 Geo. III. c. 50, to do certain things which were not requisite before. One of the things required is, that there should be a payment of one year's rent by the tenant to the landlord. Here the year's rent had become due and payable at Midsummer, and on the 1st of August the landlord gives the pauper a fortnight's time to pay it, and before it is actually paid, and before the pauper had done any act which the law considers equivalent to payment, the order of removal was made. At that time then the pauper had not gained any settlement in St. Botolph. It is, therefore, unnecessary to consider, whether the finding of the justices that the annual value of the tenement was less than 10*l.* is material or not. I

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A tender may be equivalent to payment.

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am of opinion that the subsequent payment of rent does not, by retrospective operation, give the party a settlement in St. Botolph at the time when the order of removal was made." *Littledale*, J. "It is unnecessary in this case to decide the question, whether in opposition to the contract of the parties any other value than the rent actually payable can be set up, because, since the statute 59 Geo. III. c. 50, no settlement can be gained until a year's rent is actually paid. Now in this case the order of removal was made on the 5th of August, and the year's rent was not paid until the 14th. The subsequent payment of the rent cannot, by retrospective operation, give him a settlement at the time when the order of removal was made, and therefore the pauper had not gained any settlement at that time, and having then become actually chargeable, he was properly removed." Order of sessions confirmed.

But the rent may be paid after the removal, and the settlement then be completed.

The forty days' residence required under this head of settlement must be within the year of occupation, but the period of the year is immaterial.

Rex v. *Willoughby*, 5 *Nev. & Man.* 457; 4 *A. & E.* 143. Removal from Byfield to Willoughby. Order confirmed. Case:—The pauper rented a house in Willoughby, from Michaelmas, 1832, to Michaelmas, 1833, of a Mr. Judd, at the yearly rent of 17*l.* He occupied the house under this hiring for the whole year, and in the month of July paid a half-year's rent, 8*l.* 10*s.* He continued to occupy this house until the 6th of December, 1833, without paying any more rent. On that day he was removed with his family from Willoughby to Byfield, by an order of removal, he having become chargeable to Willoughby. Byfield appealed against the order, and the appeal was tried on the first of January, 1834, and the order confirmed on the merits. On the 7th December, 1833, the pauper's family returned to their house at Willoughby, and on the next day the pauper himself returned and remained there in the same house until the 27th of the following January. On the 11th December, 1833, the pauper borrowed 8*l.* 10*s.* and paid his landlord his second half-year's rent, due at the preceding Michaelmas. On the 27th of January, the pauper left Willoughby with his family, and went to Byfield, where he remained until the 17th of March, when he was removed, by an order, back to Willoughby; and against that order Willoughby appealed. *Patteson*, J. "This case depends upon the construction which we are to put on the statute, which requires that in order to gain a settlement by residence and renting and occupation of a tenement, the rent shall be paid for the same. There has not been any case in which the court has decided that the rent must be paid within the year of occupation, or within a limited time after the expiration of it. It is said that it is not the occupation for a year, nor the payment of rent for a year, but the residence for forty days, that is the substantial ground of the settlement. That I do not deny: I admit that it is so: but still the question is, what is the *date* that is to be given to the settlement when acquired? The *time* of the forty days' residence, whether at the beginning or the end of the year, is immaterial. In this case there was an occupation for a year, residence for forty days, (which residence may be in any part of the year of occupation,) and half a year's rent paid. Under these circumstances, an order of removal was made; and there can be no doubt but that at that time no settlement was gained. The order was appealed against, and pending the appeal the party returned to Willoughby, and paid the remainder of the rent, so as to complete the conditions of the act of parliament. It is quite clear that this having been done, so as to fill up all the requisites, the party gained a settlement, unless it is affected by the order of removal which intervened. The order has been treated in the argument as if it had the effect of putting an end to every inchoate settlement. I do not find any authority for so treating it. *Rex* v. *Kenilworth* (p. 592) is relied on, but does not support the position for which it is cited. That was a case of hiring and service; the servant was removed under an order, which was not appealed against; and he returned to his master's service at Birmingham. If there had been an appeal against that order, it is not doubtful but that the party would have had a right to return to his master, and might have completed his service; and if he had done so, he would have acquired a settlement in

Birmingham. So Mr. Justice *Buller* appears to have considered; for he says, 'the question here is, whether the pauper gained any settlement in Birmingham subsequent to the order of removal? Now, in this case he did no act by which he could gain a settlement in Birmingham after the order of removal. *What I rely on* is this, that after the order of removal, unappealed from, the pauper *could not legally return* to the parish from whence he had been removed.' From this it follows, that, in his opinion, if the order *had* been appealed from, the pauper might have returned, and would have gained a settlement subsequent to the order. The learned judge then said, that it would have been a crime in the pauper to have returned, and that the order of removal therefore put an end to the contract of service. Whether he was right or wrong in this reasoning, is not now to be determined; but it shows how far his remaining words, which are the words relied on, are properly applicable to this case. The words are, 'now in this case the pauper returned, after the order of removal, to the parish of Birmingham, where he served a month; but that could not gain him a settlement there; for the act subsequent to the order of removal, by which he was to gain a settlement, *should be complete in itself*.' It is sought to be inferred from this, that all that is done towards gaining a settlement before the order of removal, must in every case be put out of consideration. These words, taken by themselves, might seem to warrant such an inference; but they must of course be construed *secundum subjectam materiam*, and being so construed, the inference is altogether shut out. The decision in *Rex* v. *Kenilworth* appears to me to rest on no legal principle. Can it possibly be said that if a man is serving or renting a tenement, and the parish officers choose to get him removed, the contract is thereby put an end to? I see no reason for so saying. It is true that the order of removal is conclusive, that at the time of making the order the pauper had no settlement in Willoughby; but the whole question comes to this, whether, when a man has done all that is required except one thing, the payment of the rent, and such payment is made after an interval, the settlement is to take effect from the time of completing the *main* requisites, or from the final completion by payment of the rent? We have the authority of *Rex* v. *Ampthill* for saying, that the payment has no reference back; and therefore, if the settlement is not to be dated from the time when the last requisite is complied with, there never can be a settlement gained in such case. The argument goes this length. That, however, cannot be right. The pauper did in this case, in my opinion, gain a settlement in Willoughby subsequent, in point of date, to the order; and therefore the order of sessions must be confirmed." *Williams*, J. "I am of the same opinion. There is no case to show that the payment of the rent must be within the year of the occupation; and there is nothing in the nature of an order of removal to make a payment of the rent, after the order, have a different effect from a payment where no such order has been made. The words of Mr. Justice *Buller* have been relied on; but those words, when taken in connection with the doctrine which he had just laid down, and with which (whether the doctrine be right or wrong) they are consistent, are no authority for the position in support of which they have been cited." *Coleridge*, J. "It was conceded in the argument, that all the facts of this case might have existed, with the exception of the order of removal, and that a settlement would in such case have been gained. The whole question therefore turns upon the effect of the order. It is argued that where an order of removal has been made, everything necessary to the gaining a settlement must be commenced anew after the order; and for this position he cites *Rex* v. *Kenilworth*. Now the decision in that case, when examined, will be found to be no authority at all here, as it arose upon a different state of things, and proceeded on a supposition that the order of removal dissolved the contract, which, after *Rex* v. *Fillongley* (p. 797) certainly cannot be said to be the case here. The dictum of Mr. Justice *Buller* must be considered with reference to the subject-matter. The question then is, what is the effect of the order of removal? It merely

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An order of removal does not put an end to a contract of hiring, or renting.

13. *The Rent.* determines the conclusion of the law upon the facts existing at the time when it was made. If, at the time of making the order, nine only out of ten requisites had been complied with, then the order is conclusive, that a settlement was not gained by the performance of the nine requisites; but there is no authority whatever for saying that, upon the tenth requisite being added, the order is to have the effect of preventing a settlement from being gained." Order of sessions confirmed.

The whole rent was required to be paid by 6 Geo. IV. (a)

Payment of part, and a distress for the residue, producing more altogether than ten pounds, but less than the entire stipulated year's rent, will not suffice.

Rex v. *Ramsgate*, 6 *B. & C.* 713; 9 *D. & R.* 688. G. Sweetman was removed from Ramsgate to St. Lawrence. Order quashed. Case:—In April, 1825, the wife of the pauper (who was of unsound mind) hired a house in St. Lawrence for one year, at a rent of 15*l.*, payable quarterly. The pauper occupied it for the year, and his wife paid 6*l.* 15*s.* of the rent. Soon after the year, the landlord distrained for the remaining rent, and received 4*l.* 17*s.* 6*d.*, making the total rent received 11*l.* 12*s.* 6*d.* *Bayley*, J. "It is very desirable in all cases to adhere to the words of the act, giving to them that sense which is their natural import, in the order in which they are placed. The 59 Geo. III. c. 50, (p. 744,) required that the rent (whatever its amount might be) should be paid for the term of one whole year. But as that statute applied only to settlements which might be gained by reason of *renting* a tenement, a settlement might still be gained by paying parochial rates in respect of a tenement of the annual value of 10*l.*, without complying with the requisites of that statute, and that was the cause of much litigation. The 6 Geo. IV. c. 57, was passed to remedy that inconvenience, and it recites, [he here read the recital and enactments; see p. 744, and added,] it is very material to attend to the collocation of these words, 'for the term of one whole year at the least.' They are the last words of a sentence, and, according to grammatical construction, apply to both branches of the sentence. It is contended that they do not apply to the latter branch, 'the payment of rent,' but that the words 'and the rent for the same to the amount of 10*l.*, ought to be construed as if they were in a parenthesis; but I cannot collect from the recital in previous provisions of the act that they ought to be so read. I think they ought to be construed according to the plain import which they bear, and the order in which they are placed. If the legislature had intended that it should be sufficient to pay rent to the amount of 10*l.*, the words 'for the term of one whole year at the least,' should have immediately followed the words relating to the occupation. It is true that the words 'to the amount of 10*l.* a year at the least' create some difficulty, but that difficulty is not such as to warrant us in construing them as if they were placed in an order different from that in which we find them. Taking them in that order, their application is not confined to one branch of the sentence. Undoubtedly it will follow from this construction, that if a person rent premises at a high annual rent he will not gain any settlement unless he pays the whole amount of one year's rent. On the other hand, if the other construction were adopted, a person who rented premises at 15*l.* per annum, and resided three years on the premises, would gain a settlement by paying 10*l.* on account of one year's rent. But I cannot think that was intended: upon the whole, I am of opinion, that the rent actually reserved must be paid for the term of one whole year at the least. The pauper, not having done this, gained no settlement in St. Lawrence." *Holroyd*, J. "I think that the words 'for the term of one whole year at the least,' must be construed according to their nature and import in the order in which they stand in the act of parliament; and so construing them, it appears to me that the rent, which must amount to 10*l.* at least (but which may exceed that sum), must be

(*a*) The retrospective clause of the 1 Will. IV. c. 18, has rendered payment of 10*l.* sufficient under 6 Geo. IV.; but it does not apply to the 59 Geo. III. The house was taken in this case before the 6 Geo. IV. came into operation, but the rent became payable afterwards. The effect of a payment by a distress was argued but not decided. See, as to the latter point, *Rex* v. *Ruthin*, p. 815, *Rex* v. *Pakefield*, p. 822, and *Reg.* v. *Melsonby*, p. 823.

paid for the term of one whole year at the least." *Littledale*, J., concurred. Order of sessions quashed.

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The whole rent required to be paid under 6 Geo. IV.

Rex v. *Ashley Hay*, 8 *B. & C.* 27, by the name of *Ashley-de-la-Hay*, 2 *M. & R.* 21. Order of removal of John Sneap from Ashley Hay to Mugginton quashed. Case:—At Lady-day, 1825, the pauper hired a farm at Ashley Hay by the year, at the rent of 54*l.* per annum, payable half-yearly. He held and resided upon the farm for more than twelve months, and he paid rent on account of the same to the amount of 40*l.*; but he did not pay a whole year's rent for the same prior to his becoming chargeable to, and his being removed by, Ashley Hay. He was, prior to the 22d June, 1825, charged in respect of the farm in two poor assessments, and with the public levies or taxes of Ashley Hay; and applications were made to him for payment of such levies or taxes prior to the 22d June, 1825, but he did not pay the same till after the 10th July, 1825. Lord *Tenterden*, C. J. "I entertain no doubt in this case, the more particularly as there has already been one express decision upon the point which it raises. In order to arrive at the true construction of this act of parliament, which it is contended was not done in the case of *Rex* v. *Ramsgate* (p. 820), it is necessary to consider the state of the law when this act was framed, and the object which the legislature had in framing it. By the statute 59 Geo. III. c. 50, it is quite clear that no person could acquire a settlement by renting a tenement, unless the whole rent for one year was actually paid; and therefore the only question is, whether any alteration in that respect was intended to be or has been effected by the 6 Geo. IV. c. 57. The recital states that inconveniences had been found to exist in consequence of the settlement of the poor being made to depend upon *the annual value* of tenements which they have rented, or upon *the annual value* of tenements in virtue of which they have paid parochial rates. The recital therefore clearly applies to 'the annual value' only; and the enacting clause, after repealing the former act, and then repeating its words, except so far as it mentions the payment of parochial rates, concludes by declaring that no person shall acquire a settlement by reason of renting a tenement, unless the rent for the same to the amount of 10*l.* be actually paid for the term of one whole year at the least. The true construction of these latter words in my opinion is, that a year's rent, which shall not be less than 10*l.*, but without reference to its being more than 10*l.*, must be paid, in order to entitle the party to a settlement. It is true, the words 'to the amount of 10*l.*' were not inserted in the former act; it is unfortunate that they have crept into the present act, and they have probably done so through mistake or inadvertence; but they do not appear to me to alter the spirit and meaning of the enactment. I think the passage may be read as if those words were not in it; that they may in fact be rejected as surplusage. This being so, the present case is governed directly by that of *Rex* v. *Ramsgate*, and no settlement has been acquired in Ashley Hay." The other judges concurred. Order of sessions quashed.

A person hired and occupied a 10*l.* tenement for more than a year, and after his death the rent is paid out of the proceeds of the sale of his effects; no settlement is acquired either under the 59 Geo. III. c. 50, or the 6 Geo. IV. c. 57.

Rex v. *Carshalton*, 6 *B. & C.* 93; 9 *D. & R.* 132. Charlotte Long was removed from Carshalton to Wandsworth. Order quashed. Case:—T. Long, the husband of the pauper, at Lady-day, 1824, came to reside in a house at Carshalton, which he had hired of his father-in-law by the year, at the rent of 14*l.* He put his own furniture into the house, and continued to reside there until July, 1825, when he died in possession. During his life-time, no more than 25*s.* was paid by him on account of the rent. His widow, after his death, continued to reside in the house until September following, when the landlord put in a distress, under which he seized the furniture and goods put in by T. Long, which were purchased by the landlord. The following was the receipt: "Received from Mr. Savage, on advance of goods, 12*l.* 15*s.* for balance of rent due from T. Long, to Midsummer, 1825." Signed. *Abbott*, C. J. "The question is, whether the pauper had a derivative settlement from her husband; or, in other words, whether the husband had acquired a settlement in Carshalton at the time of his death? I think he had not, whether we

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consider the 59 Geo. III. or the 6 Geo. IV. as the governing law. There was not any payment of rent by the person hiring the tenement, as required by 59 Geo. III.; nor was there any payment of one whole year's rent, as required by the 6 Geo. IV. *at the time of his death;* and I think that the subsequent payment by means of the sale of his goods is not sufficient to satisfy the requisites of that statute. The husband not having acquired a settlement in his life-time, the pauper cannot have any derivative settlement." *Bayley*, J., *Holroyd*, J., and *Littledale*, J., concurred. Order of sessions quashed. See *Rex* v. *Crayford*, p. 827.

Payment of rent by a trustee, out of the produce of effects assigned for that purpose, is not a payment by the tenant within 1 Will. IV. c. 18.

Where the pauper sells the growing crops before the expiration of the year, but retains possession of the house only, he is not the occupier of the tenement so as to gain a settlement under 1 Will. IV. c. 18.

Nor if he leaves the parish, with his goods and with that part of his family who resided with him, does he occupy, although a son sleeps in the house, boarding with his master in another part of the parish; nor although he leaves in the house a portion of his goods.

Rex v. *Pakefield*, 6 *N. & M.* 16; 4 *A. & E.* 612. Edmund Reader was removed from Pakefield to Walpole. Order quashed. Case:—On old Michaelmas-day, 1832, the pauper entered upon the occupation of a beer-house and several acres of land, in Pakefield, which he had previously hired for a year, at a rent of 30*l.* for the house and land, and 10*l.* for certain brewing utensils in the house. He continued to occupy the house and land until July following. On the 17th of that month, being in embarrassed circumstances, he by indenture assigned to T. Waterson "all debts, securities, and all his stock, effects, and utensils in trade, household goods and furniture, and also the crops of corn, grain, and hay, whether growing or severed, muck, summer-land, implements of husbandry, cattle, live and dead stock, the messuage or lands, in his occupation, in Pakefield aforesaid, and *all other his personal estate and effects whatsoever*, upon trust that Waterson should thenceforth cultivate and manage the lands, as the crops now growing should require, employ such persons as he thought proper, and use the cattle and implements in the management and getting in of the said crops, and generally to do as he thought meet, and should sell the stock, effects, &c., thereby assigned, and should get in all debts, &c., and receive the amount of the valuation to be made upon the said land, as between outgoing and incoming tenant, at the quitting and giving up of the same, and it was thereby declared that Waterson should stand and be possessed of the moneys to arise from the sale, &c., upon trust, first, to pay all the expenses attending the preparing and executing the indenture, and the carrying the trusts thereof into effect, and also the expenses of managing the lands; next, to pay and *discharge the rent, rates, taxes, and tithes, then or during the continuance of the trusts thereby created, to be due and owing in respect of the premises occupied by the pauper*, and the expenses of selling, collecting, and receiving the said effects; and lastly, to pay the residue among the creditors, who should become parties thereto, within three months, rateably. Covenant from the creditors not to molest or disturb the pauper." The deed was executed by Waterson and the pauper. Under it Waterson, on the 1st August following, sold all the pauper's stock, farming implements, furniture, and other effects, and also the crops then growing upon the lands; the crops were cut and carried away by the purchasers, but the straw and fodder were left upon the premises. Part of the furniture was purchased for the pauper, but after the sale he was not possessed of any farming implements, or any stock, excepting a pig, which, after the crops were carried off, was turned out upon the land. The pauper paid no rent himself, but Waterson paid the landlord 31*l.* 10*s.* towards the rent.—21*l.* 13*s.* out of the produce of the sale of the pauper's effects, and 9*l.* 17*s.* by the summer tilths and muck on the land, and certain fixtures in the house, taken by the landlord at that sum. The pauper, with his wife and four children, continued to live in the house and carry on the business, drawing beer there and making profit thereof, buying it and bringing it from Lowestoft, as he wanted it; on which profit he lived till Tuesday the 8th October, 1833. On that day he removed to a house which he had previously hired at Yarmouth, distant about 12 miles from Pakefield, taking with him his wife and three children, and all his effects, except a few articles of furniture, which were left in the house at Pakefield, because the waggon employed by the pauper to remove his goods was not large enough to carry them all. The things left behind were to have been brought to Yarmouth on the following day, but were not in fact sent until

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the Thursday. The pauper left the key of the house with his son, with a command not to give it up to the landlord till (old) Michaelmas-day. The son, who had lived with his father, continued to sleep in the house, having his clothes and chest there, until the Thursday or Friday, and on the Friday, which was (old) Michaelmas-day, delivered the key to the landlord, and went to lodge at the house of his master, a miller, residing at Pakefield, with whom he had boarded from the day his father left the parish. The pauper and his wife and three children, continued to reside at Yarmouth, from the 8th October, for several months, and did not return to Pakefield until a short time before they were removed, under the order, to Walpole. Lord *Denman.* "There was neither an actual occupation for a year, nor a payment of rent by the party hiring the tenement. The assignment gave the assignee power to enter, which destroyed the pauper's right of exclusive occupation. After the pauper had parted with the whole of his personal estate, the application of part of the proceeds of that personal estate by the trustee in the payment of rent, cannot be said to be a payment of rent by the pauper." *Littledale*, J. "I think so also. The pauper has conveyed all his interest to another for a valuable consideration. Surely he cannot be said to have been in the actual occupation, nor can this be considered as a payment by him." *Williams*, J. "I am of the same opinion. The pauper, from the 17th July, parted with the possession of the whole or a portion of the right of occupying the land. That being so, it is impossible to say that he had an undivided occupation; and there was no actual occupation. I agree also with the rest of the court, in thinking that the payment in this case cannot be considered as equivalent to a payment by the pauper himself. The only control which the pauper could exercise over the fund would be after payment of the debts." *Coleridge*, J. "I agree with my brother *Williams* on the last point. This cannot be considered as a payment by one person, by the hands of another. The trustee might or might not have paid the rent, whether the pauper had chosen or not. Although the rent was paid out of a fund raised by a sale of the pauper's effects, it was a payment by the trustee, and not by the pauper. I agree also as to the occupation. Though I do not think that there was *de facto* an *assignment* of the term, yet the land was in the *possession* of the vendee of the crops. The pauper merely continued to live in the *house.*" During the argument, *Coleridge*, J., said, "If you look at the habendum you will find that it was not the intention of the parties to convey the term. The assignee is to hold the premises as and for his own goods, chattels, and effects. I do not mean to say that the words here used might not be sufficient to convey the term, if from the whole deed it could be collected that such was the intention of the parties. There is no trust as to the possession of the land." Order of sessions quashed.

In January, 1831, M. being in possession of premises as tenant from year to year, upon a taking from Martinmas to Martinmas, at the yearly rent of 10*l* payable half-yearly at May-day and Martinmas, gave up the premises to the pauper and the landlord then agreed to take the pauper as his yearly tenant, provided he would answer for the current half-year's rent. The pauper then entered, and continued to occupy till October, 1832. At May-day,

Reg. v. *Melsonby*, 12 *A.* & *E.* 687. The pauper was removed from Melsonby to Bishop Auckland. Order quashed. In January, 1831, one Merryweather was the tenant of a separate and distinct house and premises in Melsonby, at the yearly rent of 10*l.*, payable half-yearly at May-day and Martinmas, which premises he had occupied for some time previous, and was then occupying as tenant from year to year. In January, 1831, Merryweather gave up the premises to the pauper, and at the same time the landlord agreed to accept the pauper as his yearly tenant from Martinmas to Martinmas, at the rent of 10*l.*, provided he would make himself answerable for the current half-year's rent. The pauper entered into the premises in January, 1831, and continued to occupy the same under this agreement until October, 1832. At May-day, 1831, pauper paid 5*l.* for the half-year's rent up to that time, having undertaken to pay both for the time in which the premises were occupied by Merryweather, and for the time since he was accepted as tenant himself. At Martinmas, 1831, the pauper paid 5*l.*, being the half-year's rent due from May-day up to that time. In October, 1832, the pauper agreed with one Rhodes to give up to him the possession of the premises. At that time the pauper had not paid any rent that became due after Martinmas, 1831, and it was agreed between

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1831, he paid 5*l.* for the rent then due, and at Martinmas 1831, he paid another 5*l.* for the rent due up to that time. He continued in the occupation ntil October, 1832, without paying any more rent. He then agreed with R. that R. should have possession, and should take his fixtures at 5*l.* and his furniture at 4*l.* 5*s.* and should pay the landlord 9*l.* 5*s.* for the rent due since Martinmas, 1831. R. took possession, and shortly after the landlord agreed to accept R. as tenant, and received from him an undertaking that he would pay the rent due from the pauper. At Martinmas, 1833, R. having failed to pay that or any subsequent rent, the landlord distrained for the whole amount. The distress, which consisted in part of the fixtures and furniture transferred by the pauper to R. to the value of 5*l.* paid the rent: Held, that there had not been a payment of a year's rent by the pauper, so as to satisfy 1 Will. IV. c. 18, s. 1.

Rent paid by the churchwarden sufficient, under 6 Geo. IV. c. 57. (*a*)

the pauper and Rhodes, that Rhodes should take the pauper's fixtures in the house for the sum of 5*l.*, and also some furniture in the said house at 4*l.* 5*s.*, and that in consideration of the said fixtures and furniture, he should pay to the landlord the said sum of 9*l.* 5*s.*, the price of the said fixtures and furniture, for the rent due from Martinmas, 1831. At Martinmas, 1831, the premises became the property of one Young. Shortly after Rhodes took possession of the premises in October, 1832, Young, the new proprietor, agreed with the pauper and Rhodes to accept Rhodes as his tenant, and received at the same time an undertaking from Rhodes that he would pay the rent due as aforesaid from the pauper. Up to Martinmas, 1833, no rent whatever was paid by Rhodes, and there was then due the half-year's rent from Martinmas, 1831, to May-day, 1832, and the whole rent from May-day, 1832, to Martinmas, 1833. At Martinmas, 1833, Young entered a distress upon the premises, the same being still in the occupation of Rhodes, for the whole rent, from Martinmas, 1831, to Martinmas, 1833. The fixtures in the house were seized together with other things, and all were sold and produced sufficient to discharge the expenses of distress and sale, and the whole rent so distrained for; and which rent, after deducting the said expenses, was accordingly paid over to Young. Among the articles sold under the distress were some which had been transferred from the pauper to Rhodes, consisting of fixtures and furniture to the value of 5*l.*, but there was no evidence of the sum which each of the fixtures or furniture, or the whole together, produced, except the general evidence before mentioned, of there being more than sufficient to cover the rent and expenses. Lord *Denman*. "I think *Rex* v. *Pakefield* (p. 822) is decisive of this case. The object of the statutes upon this branch of settlement was to simplify the law, and this the 1 Will. IV. c. 18, has to a great extent accomplished." *Williams*, J. "I am of the same opinion. The sessions have been perplexed in this case by going into a question of constructive payment, and I think the statute was intended to get rid of such questions. The words in the statute, as to the payment of rent, are intelligible enough. In *Rex* v. *Pakefield*, the deed of assignment contained an express provision that the rent should be paid out of the proceeds of the pauper's property, but the court would not adopt the maxim *qui facit per alium facit per se* with respect to payment of rent under this statute." *Coleridge*, J. [After going through the facts of the case.] "Young, the second landlord, had nothing to do with that part of the arrangement between the pauper and Rhodes, by which the pauper's goods were transferred to Rhodes for the purpose of paying the sum of 9*l.* 5*s.* When the goods were seized they were the goods of Rhodes. I think it cannot be said that there was a payment of 10*l.* rent in this case by the person hiring the tenement, so as to satisfy the statute." Order of sessions quashed.

Rex v. *Kibworth Harcourt*, 7 *B.* & *C.* 790; 1 *M.* & *R.* 691. Order of removal of James Asker from Kibworth Beauchamp to Kibworth Harcourt. Case:—About Lady-day, 1825, the pauper took of Thomas Bradshaw a house and garden situate in Kibworth Beauchamp, at the rent of 10*l.* for a year, to commence at the ensuing Michaelmas. The house and garden were then in the occupation of one Cooper, whose term expired at Michaelmas, but Bradshaw said he should expect Cooper to stand as tenant till Michaelmas, and should expect the rent when Matthew Waterfield, who was tenant of other premises to Bradshaw, paid his: and it should all be put in one receipt. The pauper was let into possession immediately by Cooper, and paid rent up to Michaelmas to Cooper; after which time he continued to occupy the premises, and paid rent as after mentioned up to Michaelmas, 1826. Early in the pauper's tenancy, Waterfield then being churchwarden of Kibworth Beauchamp, called upon the pauper, and represented to him that Bradshaw had let the pauper's premises, together with other premises, to him, Waterfield, and that the pauper was thenceforth to

(*a*) See this case observed upon by *Bayley*, J., *Rex* v. *Ditcheat*, p. 832. But now by 1 Will. IV. c. 18, the rent must be paid by the person *hiring*.

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pay the rent quarterly to him. At the same time Waterfield told the pauper that he should make a reduction in his rent of 8*s.* a year, to which reduction the pauper assented, and a rent of 9*l.* 12*s.* was accordingly paid by the pauper to Waterfield, in the course of that year, by four quarterly payments, namely, the first two payments to Matthew Waterfield, and the last two, after the death of Matthew, to John Waterfield, his brother and successor in the premises. At the end of the year, a sum of 55*l.* was carried by John Waterfield to Bradshaw, the landlord, which sum included 10*l.* for the pauper's rent of the house and garden for the year just completed, and the residue was composed of rent for the other premises occupied by Waterfield. Bradshaw returned 5*l.* to Waterfield, and gave him one receipt for the whole rent. It further appeared that John Waterfield was reimbursed out of the parish funds the sum of 8*s.* paid by him to the landlord, over and above the 9*l.* 12*s.* The sessions found that there was fraud (*a*) in this case on the part of the township of Kibworth Beauchamp, but that neither the landlord nor the pauper was a party to the fraud. *Bayley*, J. "If 6 Geo. IV. c. 57, had required that the rent should be paid by the pauper, there would be some difficulty in overcoming the fact of fraud found. I am of opinion that the pauper did acquire a settlement by renting a tenement in Kibworth Beauchamp under the 6 Geo. IV. c. 57. The renting, upon which the question in this case depends, did not commence till Michaelmas, 1825, after that act came into operation; therefore the former act of 59 Geo. III. c. 50, does not appear to me to bear upon the case. The new act does not require that the whole rent shall be paid by the person hiring the tenement, but only that it shall be 'actually paid.' Here the whole rent of 10*l.* was actually paid; and though a part of it was paid, not by the pauper, but by a third person, still the whole having been paid, I think the requisites of the statute have been satisfied in that respect."

Where the payment of the rent by the parish officers for the occupier was found to have been made fraudulently, no settlement can be gained under 6 Geo. IV. c. 57.

Rex v. *St. Sepulchre, Cambridge*, 1 *Bar. & Ad.* 924. T. Kisby was removed from Holy Trinity to St. Sepulchre, both in Cambridge. Order confirmed. Case:—About Michaelmas, 1827, the pauper, who was before settled in St. Sepulchre, hired of Sophia Bones a house situate in the parish of St. Andrew the Great, in Cambridge, at the rent of 10*l.* per annum, payable quarterly. He entered upon it at Michaelmas, 1827, and occupied it till Christmas, 1828. His wife paid the first quarter's rent at Christmas, 1827, the next soon after Lady-day, 1828, and 2*l.* towards the next, a little after Midsummer, 1828, but no more was ever paid by her or the pauper. The pauper, about the time he gave up the house (Christmas, 1828), went to the parish officers of St. Sepulchre, and asked one of the overseers for a little assistance, as he was rent run; but the overseer gave him nothing then, stating that he was only just come into office, but he would see the other officers. The pauper went a second time to the same overseer, when he said, "something must be done." The overseer did not know when the pauper applied for relief that his rent was 10*l.* a year, but the landlady having applied afterwards for the rent, he then knew the amount of rent, and that the pauper lived out of the parish; it did not however appear that at that time the overseer knew that the pauper had inhabited the house a year. The parish officers met, and determined to pay the remainder of the pauper's rent, and the amount (5*l.* 10*s.*) was paid by the same overseer to Miss Bones. The sessions found that the payment of the 5*l.* 10*s.* was fraudulent, with an intention of settling the pauper in St. Andrew the Great. *Per curiam*: "The sessions having found that the 5*l.* 10*s.* was paid fraudulently, no settlement was gained. It cannot be the meaning of the statute that the hiring or renting must be *bona fide*, but that the payment of the rent may be *mala fide*." Order of sessions confirmed.

(*a*) As to this, see the next case, and *Rex* v. *Tillingham*, (*post*).

14. *Occupation.*

14. Occupation under 13 & 14 Car. II.

A tenant at 10*l.* a year gains a settlement, although he lets part of the premises to under-tenants.

Rex v. *Llandverras*, *Burr. S. C.* 571; 1 *Bla. Rep.* 603. E. Hughes, father of the pauper, rented a tenement of 10*l.* a year, and paid the rent to the landlord. He lived for above forty days in a part of it, which was of the value of 40*s.* only. Immediately after his taking the tenement he let the residue thereof to under-tenants, without residing thereupon at all himself. It was argued that being liable only to the rent did not gain him a settlement. He must occupy as well as take a tenement of 10*l.* a year value, and he ought to occupy the whole 10*l.* a year; otherwise many different poor families might be introduced into a parish upon one such taking. It would quite evade the act if the mere taking of a tenement would do so; for then one would gain a settlement by taking, and another by occupying the same tenement. By the Court: "In case of a gross fraud, the sessions no doubt will find it so, and the settlement would be void. But no fraud being found, there is no doubt upon the law of the case, but that Hughes was the tenant and liable to the rent, and had credit for the whole; and therefore he is as much settled as if he had rented a tenement of 10*l.* a year, and let lodgings. The act doth not require a person renting a tenement of 10*l.* a year to occupy it; it is enough if he rents it and resides forty days in the parish. The ground the act goes upon is a person's having credit sufficient to hire a tenement of that value. This man appears to have had such credit. The under-tenants do not take a tenement of the yearly value of 10*l.*, therefore they do not hereby gain a settlement." (*a*)

Or occupies it jointly with another person.

Rex v. *Newnham*, *Burr. S. C.* 756. The pauper H. Denton, and R. Mann, his wife's father, jointly rented and occupied an estate at Newnham, of 80*l.* a-year, for three years. Mann dying about the end of that time, Denton soon afterwards took a house of R. White at Awre, of the yearly rent of 3*l.*, and another estate, consisting of lands, of J. Sergeant, at Awre, at the yearly rent of 8*l.* Mann leaving a widow, and she and Denton being upon the death of Mann jointly possessed of the remainder of the stock, which had been on the estate at Newnham, they went and lived in the house at Awre, and jointly occupied that house and the said estate of 8*l.* a-year, for one year, the stock on the house and estate being partly the property of Denton, and the other part the property of the widow; and sometimes one, and sometimes the other, sold parts of the stock and received the money; and at the time of taking the tenements by Denton, neither White nor Sergeant knew of any connection subsisting between Denton and the widow. A moiety of the stock was more than sufficient to stock the house and farm. (Lord *Mansfield* was not in court.) The other three judges declared themselves all thoroughly satisfied that the settlement was in Awre. *Aston*, J., observed, that "If two persons jointly take a tenement of less annual value than 20*l.*, this will not gain a settlement to either of them. But a man who takes more than 10*l.* in yearly value, may let part of it to under-tenants: and this will not destroy his settlement, though it will not gain one to such under-tenants who pay him less than 10*l.* a-year, as was determined in *Rex* v. *Llandverras*. The widow Mann was in the nature of an under-tenant to the pauper. The pauper had the credit of taking the tenement. He alone took the house and likewise the lands. Neither of the landlords knew of any connection between the widow and him; and he only was personally responsible for the rent. They were not partners in taking the tenement, though they were joint occupiers of it. She would gain no settlement by merely being a joint occupier, without having been concerned in taking it. Nor shall the person, who alone took it, lose his settlement by letting in a joint occupier."

Joint taking by two must be of the annual value of 20*l.*

(*a*) In *St. Lawrence* v. *St. Maurice*, p. 842, the pauper gave up the possession, but the landlord refused to accept it, and as the legal tenancy was not determined, the pauper acquired a settlement.

15. *Occupation.*

15. Occupation under 59 Geo. III. c. 50; 6 Geo. IV. c. 57; and 1 Will. IV. c. 48.

It may be doubtful whether the legislature did not intend that "to hold" and "to occupy" should be convertible terms, as they have used them both in these statutes upon the same subject. The courts of law, however, have felt themselves bound to notice the distinction in their legal signification, in adjudicating upon questions of settlement law, arising since these statutes were passed.

The 59 Geo. III. c. 50, requires that such house or building shall be *held*, and such land *occupied* by the *person hiring* the same. The 6 Geo. IV. requires that the *house*, or *building*, or *land*, shall be *occupied* under such yearly hiring for the term of one whole year at the least." And the 1 Will. IV. c. 18, requires that the house, land, or building, shall be *actually* occupied by the person hiring the same.

A pauper occupied a tenement till within three days of the end of the year, when he died. His family remained in it beyond the year: No settlement was gained under 59 Geo. III. c. 50.

Rex v. *Crayford*, 6 *B. & C.* 68; 9 *D. & R.* 80. Order of removal of Sarah Stone, widow, from Bexley to Crayford, confirmed. Case:—At Michaelmas, 1824, Thomas Stone, the pauper's husband, hired a house in Bexley, for a year, at the rent and annual value of 12*l.* He took possession on the 29th of September, and lived in the same till the 26th Sept., 1825, when he died. His body remained in the house till the 30th. The rent for the first three quarters of a year was paid by him, and for the last quarter by the pauper. The pauper continued in the house till she was removed under the order, and paid rent up to 25th December, 1825. *Bayley*, J. "The safest rule to adopt in these cases is to adhere to the words of the act. [He then read the 59 Geo. III. c. 50, and added,] The settlement therefore is to be gained by the person who has hired the tenement, and occupied it for one whole year. Here the husband may have hired, but he has not occupied the house for a whole year, inasmuch as he expired three days before the end of the year; and assuming that the wife occupied and paid the rent for a year, still she is not the person who hired the house. This certainly is a very critical case, and perhaps if it had been foreseen by the legislature at the time of passing the act, some provision would have been made to meet it." Order confirmed. See *Rex* v. *Carshalton*, p. 821.

The hiring of a cottage and land for a year, at the rent of 11*l.* 10*s.*, with an agreement that the land should be entered on at Lady-day, 1827, and held till Lady-day, 1828, and the cottage on May-day, 1827, and held till May-day, 1828: Held, to be an occupation for one whole year sufficient to gain a settlement under 6 Geo. IV. c. 57.

Rex v. *Ormesby*, 1 *Nev. & M.* 27; 4 *Bar. & Adol.* 214. Appeal against an order, whereby W. Milestone and family were removed from Stokesley to Ormesby. Order confirmed. Case:—About Candlemas, 1827, the pauper being legally settled in Ormesby, took of one Emerson a cottage and some land, both in the parish of Kirby. Both the cottage and land were bargained for at the same time, and the rent agreed upon, namely, 11*l.* 10*s.*, was for both conjointly, and each was to be held for the term of one year; but the times of entering upon and quitting the land and the cottage were different, the agreement being that the land should be entered upon at Lady-day, 1827, and the cottage at May-day, 1827, the same to be held till Lady-day, 1828, and May-day, 1828, respectively. The pauper entered upon the land at Lady-day, and the cottage at May-day; he quitted the former on the ensuing Lady-day, having occupied the same for a year, and at May-day quitted the latter, having occupied that for a year, paying the full rent of both cottage and land at two separate payments, namely, the first half-yearly rent after Martinmas, 1827, and the second half-yearly rent about a week before May-day, 1828. No evidence was offered by the appellants as to the value of the land alone or of the house alone. *Denman*, C. J. "This question depends on the statute 6 Geo. IV. c. 57, which enacts, 'that no person shall acquire a settlement by reason of settling upon, renting, or paying parochial rates for any tenement, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both *bona fide* rented by such person at and for the sum of 10*l.* a-year at the least, for the term of one whole year, nor unless such house or building or land shall be occupied under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid for the

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term of one whole year at the least.' Now here the tenement did consist of separate and distinct building and land; they were *bona fide* rented for 10*l.* The question is, whether it was occupied for one whole year. The house and land were occupied under the yearly hiring, and each of them was for the term of one whole year. The words of the statute are therefore satisfied." *Parke, Taunton,* and *Patteson,* Js., concurred. Order of sessions quashed.

A pauper who rents the whole house acquires a settlement, though he underlets part to lodgers, under 59 Geo. III. c. 50.

Rex v. *North Collingham,* see Case, p. 772. Upon the second question in this case, namely, whether the pauper gained a settlement when he underlet a part of his tenement, *Abbott,* C. J., said, "As to the second question, it is to be observed that a different expression is applied to land and to houses. The house is to be *held,* but the land is to be *occupied:* it was probably intended that a party taking lodgers, properly so called, should not be thereby prevented from gaining a settlement. The question is, did the pauper *hold* the whole dwelling-house? It is said that the lodger held a part distinct from the rest, so that a burglary committed in that part might in an indictment be laid to have been in the dwelling-house of the lodger. I think, however, that that proposition is not established by the facts stated. It is said that putting the key of the inner door into the hands of the lodger, was the same thing as if there was a brick wall between his and the adjoining room. If indeed it had been stated that the key was delivered to the lodger, for the express purpose of preventing the communication between the different apartments, there would be the more weight in the argument. But the key may have been delivered to him for the purpose of enabling him to enter either way; and if that was the object, then he had not any distinct dwelling-house. I rather infer from the facts stated, that that was the object for which the key was delivered; and if so, then the pauper held the whole house, and it is to be considered as one entire tenement; and in that case a burglary committed in the part occupied by the lodger, must have been laid to have been in the dwelling-house of the pauper. For these reasons I am of opinion that the pauper gained a settlement in North Collingham." *Bayley,* J. "The second point is a question of fact, rather than of law. The sessions might have found it a separate holding, but I see nothing in the facts stated, from which a separation of the part occupied by the lodger from the rest of the house must be necessarily inferred." *Holroyd,* J. "I am of opinion upon the facts stated, that the whole dwelling-house is to be considered as the dwelling-house of the pauper." *Best,* J. "It was probably the intention of the legislature that a settlement should not be gained in such a case as the present; but we are bound to decide according to the words of the statute. As to the second point, I have no doubt that in an indictment for burglary, the room occupied by the lodger might be described as the pauper's dwelling-house. Notwithstanding the underletting, in point of law he still continued the tenant of the whole house." Order of sessions confirmed.

Under 59 Geo. III. c. 50, a settlement was gained by holding for one year a dwelling-house, part of which was let by the week to an under-tenant, who had no means of access to the rest of the house.

Rex v. *Great Bolton,* 8 *B. & C.* 71; 2 *M. & R.* 227. Lucy Hall was removed from Great Bolton to Little Bolton. Order discharged. Case:—The pauper's mother, Mary Hall, being a widow, went to reside in Little Bolton in May, 1823, where she hired a house, consisting of six rooms and a cellar, and being a separate and distinct dwelling-house, for a year, and from year to year, at the annual rent of 11*l.*; and she continued to hold such house, and actually paid the said rent for the same, for the space of two years and upwards. Before she went to live in the house, but after she had hired it and put some of her furniture into it, she underlet to one Clough the cellar under the house at 1*s.* 6*d.* per week, and he occupied the cellar during the whole of Mary Hall's tenancy. The cellar was let unfurnished, and Clough occupied nothing but the cellar. The cellar communicated with the street by an outer door, of which Clough kept the key; and at the time Mary Hall took the house the cellar communicated with the room above in the house by means of a step-ladder and a trap-door; but when she went to live in the house she took away the step-ladder,

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which she placed in one of the higher rooms of the house, and shut the trap-door, expressly for the purpose of preventing any communication between the cellar and the rest of the house. The trap-door was not fastened, except that the furniture of the house was placed upon it, as upon other parts of the room-floor. The trap-door was never used by the cellar tenant, or by Mary Hall. When the cellar was underlet to Clough there was no fire-grate in it, and soon afterwards Clough applied to Mary Hall for a grate to be put up in the cellar. Mary Hall furnished the grate at her own expense, and it remained there until she left the house, when she sold the grate to Clough, who paid her for it. The pauper lived with her mother, as part of her family, in this house, during the whole of her tenancy. The question was, whether the pauper's mother gained a settlement in Little Bolton under the 59 Geo. III. c. 50. Lord *Tenterden.* "The safest course is to give effect to the particular words of the enacting clause. Where the legislature uses in the same sentence different words, we must presume that they were used to express different ideas. The words are, 'that the house or building shall be *held* and the *land occupied.*' Here the house was *held* for one whole year, and the pauper's mother gained a settlement in Little Bolton." Order of sessions quashed.

It is not necessary that the hiring and occupation under 59 Geo. III. should be for the same year.

Rex v. *Stow*, 4 *B.* & *C.* 87; 6 *D.* & *R.* 110. Joseph Ashton was removed from Sturton-by-Stow to Stow. Order quashed. Case:—*Three weeks after* May-day, 1820, the pauper took a house and land in Stow, at the annual rent of 15*l.*, for one year, from the preceding May-day to May-day, 1821; and at May-day, 1821, he took the same again at the same rent for the year then ensuing. The pauper resided in the house, and occupied the land from the time he first hired the same till *five weeks after* May-day, 1821, and paid the whole rent during the time he so occupied the house and land. *Abbott*, C. J. "I am of opinion that the sessions have in this case mistaken the law. All that the act in question requires for the obtaining a settlement has been complied with. There has been a hiring of a house and land for a whole year, at a rent exceeding 10*l.*, and there has been a *bona fide* occupation and payment of rent for more than a year. That satisfies the whole of the act. It has been contended that the legislature must have meant the hiring, occupation, and payment to be for the same year. (*a*) If that had been their intention, it would have been easy to say that the occupation and payment should be for *such* term. But as the words of the statute have been complied with, we cannot say that a settlement has not been gained, on the ground of some supposed intention of the legislature." *Bayley*, J. "Considering the state of the law before the act in question passed, the words of that act, and the decision of this court in *Rex* v. *North Collingham* (p. 828) I think we are bound to say that a settlement was gained in Stow. Before the passing of the act it was not necessary that a tenement should be hired for any specific period; the mere occupation for forty days of one or more tenements, together of the annual value of 10*l.*, sufficed. Then came the 59 Geo. III. c. 50, requiring that the tenement should consist of a house or land, or both, that it should be hired for a year, occupied for a year, and that the rent should be paid for a year. All those requisites have been literally complied with, and *Rex* v. *North Collingham* decided that the taking need not be of one entire tenement; and I collect from that case, that the court did not think it necessary that, where there are several tenements, the holding of all should commence at one and the same time. And this is a reasonable construction of the act; for suppose a man to hire at Michaelmas land for a year at the rate of 9*l.*, and in like manner to hire at each quarter of the year land of the same value, and to occupy the whole, and pay the rent for five years, unless the occupation under different hirings can be connected, it would be difficult to say that he ever occupied a tenement of 10*l.* per annum for one whole year. That surely would be a very unreasonable construction. I am therefore of opinion, that the occupation under the

(*a*) This is required by the 1 Will. IV. c. 18. *Rex* v. *Banbury* (*post*).

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different hirings stated in this case may be connected, and that the pauper thereby gained a settlement in Stow." *Holroyd*, J. "I think that a settlement was gained by the renting a tenement stated in this case, connected with the other circumstances of occupation and payment of rent. We are required to put a construction on a restrictive act; but even if that were not so, I should think that the words of it have been complied with. If it had been intended that the occupation should be for the same time as the hiring, the legislature would probably have introduced the words *for the said term*. It seems to me that the words 'nor unless' have been used in order to divide the sentence, and to exclude the construction now contended for on behalf of the appellants. The *dicta* as to the decisions on the 8 & 9 Will. III. c. 30, are not applicable to this case; that statute requires that the servant shall be hired for a year, and continue and abide in the *same* service for a whole year; there was, therefore, strong ground for supposing that the legislature meant the service which the party was hired to perform, viz. a yearly service. But the statute now before us does not require that the occupation shall be for the *same* term as the hiring." *Littledale*, J. "Upon the strict words of the act I think that a settlement was gained in Stow, but at the same time I cannot but think the meaning of the legislature extremely doubtful." Order of sessions quashed.

The land under 59 Geo. III. must be occupied by the pauper, and if he agrees with another to share the expense and the profits equally of cultivating some garden ground, and he only occupies the moiety, and that is not of sufficient value, he gains no settlement though he pays the whole rent.

Rex v. *Tonbridge*, 6 *B. & C.* 88; 9 *D. & R.* 128. John Hazell was removed from Tonbridge to Lamberhurst. Order quashed. Case:—The pauper, about Michaelmas, 1816, took a cottage, situate in Tonbridge, of one Douch, for a year, at the yearly rent and of the value of 8*l.* 10*s.* At Michaelmas, 1817, he made a fresh agreement for the cottage for one year, at the annual rent of 8*l.*, and continued to hold and occupy it from that time until Michaelmas, 1821, paying a rent of 8*l.* per annum only for it from Michaelmas, 1817. At Lady-day, 1821, he took a garden, also situate in Tonbridge, for a year, at the yearly rent and of the value of 2*l.* 2*s.* He agreed with W. Maynard that they should share the expenses and profits arising from the cultivation of the garden. Maynard paid to Hazell half of the rent, but the latter paid the whole rent to the landlord, who was not (to the knowledge of Hazell) aware of the partnership. The garden was thus occupied for a year, until Lady-day, 1822, and the rent paid for the whole year. At Michaelmas, 1821, Hazell having quitted Douch's house, took a house in Tonbridge of one Lawrence for a year, at the yearly rent of 9*l.*, and he occupied it from that time until his removal in 1825, and paid the rent for it during the whole time. The judgment was delivered by *Bayley*, J. "This was a settlement question between the parishes of Tonbridge and Lamberhurst, depending on the 59 Geo. III. c. 50. The facts were these:—The pauper was removed to Lamberhurst in 1812, and there was no appeal. In 1816 he took a cottage in Tonbridge at 8*l.* 10*s.* per annum, but in 1817 the rent was reduced to 8*l.* He continued in that cottage till Michaelmas, 1821. At Lady-day preceding (in 1821) he took a garden at 2*l.* 2*s.* a year, but he agreed with one Maynard that the expense and profits should be shared between them. The garden was occupied a year, and the rent paid. At Michaelmas, 1821, when he quitted the house at 8*l.* a year, he entered upon another at the yearly rent of 9*l.*, which he occupied till 1825. So that from Lady-day, 1821, to the Michaelmas following, he had the garden and the 8*l.* house, and from Michaelmas, 1821, to Lady-day, 1822, he had the garden and the 9*l.* house; and it is only from Lady-day, 1821, to Lady-day, 1822, that there is any pretence for saying he had 10*l.* a year. By 59 Geo. III. c. 50 (which operated from 2d July, 1819), a distinction is made between houses and buildings on the one hand, and land on the other; and though this distinction is removed by the 6 Geo. IV. as to settlements subsequent to the period from which that statute operates, it must still be attended to in cases of previous settlements. By the 59 Geo. III. c. 50, it was required, in case of a house or building, that it should be *held* for a year by the person hiring it; in the case of land, that he should *occupy*. In the case of houses and buildings, therefore, so as the tenure subsisted, it was in this respect, before the

statute of 6 Geo. IV. c. 57, sufficient; so that under-letting a part of a *house or building* would not have prevented a settlement; and that point was accordingly so decided in *Rex* v. *North Collingham* (p. 828) which was cited in the argument. But in the case of *lands*, the person hiring was to *occupy* for the year. Did the pauper, then, occupy the garden for the whole year? It is stated in the case, that though the pauper took the garden, it was agreed between him and Maynard that they should share the expense and profit. It is also stated that Maynard paid the pauper half the rent, and that the garden was thus occupied. It is not in terms stated that there was a joint occupation; but as Maynard was entitled to participate in the occupation, we think it must be taken that he did, and if so, the pauper cannot be considered as occupying more than a moiety of the garden. Unless the garden was separately occupied by the pauper the whole year, no settlement was gained. We are therefore of opinion that there was no settlement in Tonbridge, that the settlement in Lamberhurst remained, and that the order of sessions, which quashed the removal to Lamberhurst, on the ground of a settlement in Tonbridge, cannot be supported." Order of sessions quashed.

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Pauper took a house for a year at 10*l*. Having lived there nearly the whole term, he abandoned the premises a few weeks before the year ended, and they were then occupied by another person. It did not appear how that party came in. The pauper paid the whole year's rent. He gained a settlement under 59 Geo. III. c. 50, by holding the house for a year.

Rex v. *Stow Bardolph*, 1 *Bar. & Adol.* 219. M. Buck, and his wife and children, were removed from Stow Bardolph to Downham Market. Order quashed. Case:—The pauper, M. Buck, at Old Michaelmas, 1819, hired a house in the parish of Downham Market, of one Jonah Weston, for a year, at the rent of 10*l*. He occupied the house from that time until a few weeks before Old Michaelmas, 1820, when he removed to another house. The house was then occupied by one Mary Palmer. The pauper paid the whole year's rent, and took a receipt. The sessions found that the pauper had, previously to the Michaelmas, entirely abandoned the possession of the house, and stated the question to be, whether the pauper, having entirely given up possession of the house four or five weeks before Michaelmas, and being succeeded by another occupier, yet paying the whole year's rent, could be considered to have held the house for one whole year, within the 59 Geo. III. c. 50. *Bayley*, J. "This is a plain case. The distinction between land and houses, under 59 Geo. III. c. 50, was laid down in *Rex* v. *Tonbridge* (p. 830). Land was to be occupied; a house might be held only. In the latter case, 'so as the tenure subsisted, it was sufficient.' Can it then be presumed here, that the relation of landlord and tenant was determined? It must be taken to have continued, unless a determination of it be shown. The case finds that the pauper hired this house for a year, and occupied it till a few weeks before Old Michaelmas, when he abandoned the possession, and removed to another residence; that the house was then occupied by another person, and that the pauper paid the whole year's rent. It does not appear how the succeeding occupier came in. The duty of a tenant on quitting possession is to give up the premises to his landlord; it was essential to the appellants' case that there should have been a surrender, but nothing of this kind is stated. The rent is not shown to have been paid before the end of the year, nor does any intervention of the landlord appear previous to that time. *Abandoning* does not determine a tenancy; the tenant held till he should give up to the landlord, and that, according to the case, must be taken to have been at the expiration of the year." *Littledale*, J. "It should have appeared that the holding was put an end to,—not merely that the possession was abandoned. If the pauper had given up the premises, and the landlord, with his assent, had accepted Mary Palmer as tenant, that would have been a surrender by act and operation of law, as in *Thomas* v. *Cook*, (2 *Bar. & Ald.* 119). But we are not informed how Palmer came into possession." *Parke*, J. "The statute is not clearly penned, but construing it as other acts and writings are construed, we must suppose a distinction intended between lands and houses; that an occupation of the one for a year is required, but not of the other. In this case, for the purpose of the act, the house was the pauper's during all the year. Unless it could be shown that a regular surrender took place, or that another person was let into posses-

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sion with the consent of the pauper as tenant (as in *Thomas* v. *Cook*), we cannot say that his interest ceased until the year was out." Order of sessions quashed.

Since 6 Geo. IV. c. 57, occupation by the wife of the tenant and of a part by a lodger entitles husband to a settlement.

Rex v. *Ditcheat*, 9 *B. & C.* 176; 4 *Man. & R.* 151. Removal of Martha, wife of T. Jerrard, from Ditcheat to Lyncombe, quashed. Case:—Jerrard rented a tenement in Lyncombe by the year, from Lady-day, 1825, to Lady-day, 1826, at the rent of 15*l.*, with liberty to quit at a quarter's notice. After the first month's occupation Jerrard left his wife living in the tenement, and went to London and remained there about seven months. She remained on the premises, paid the year's rent, the receipts for which were given as if it had been received from the husband. A few days after Lady-day, 1825, Jerrard let an apartment in the tenement to Gay, at the yearly rent of 8*l.* with liberty to quit on a quarter's notice. Gay occupied till Lady-day, 1826, and paid his rent to that time. Jerrard gave notice at Christmas, 1825, to quit at Lady-day, 1826. The landlord permitted the wife to occupy part of the tenement till Midsummer, 1826, on paying 38*s.* for the same, till which time she lived there. Jerrard never paid any parochial rates, although rated. *Bayley*, J. "The 59 Geo. III. c. 50, is repealed by the 6 Geo. IV. c. 57. The question therefore is, whether a settlement was or was not obtained under the last-mentioned statute? By the 59 Geo. III. c. 50, a settlement could not be obtained in the case of a house or building, unless such *house or building* were *held*, or in the case of *land*, unless it were *occupied*, and the rent for the same were actually paid for the term of one whole year at the least, *by the person hiring the same.* There was therefore a specific enactment that the house should be *held*, and the land *occupied*, and the rent paid *by the person hiring the same.* The language of the 6 Geo. IV. c. 57, is different. That statute is wholly silent as to the occupation or payment of rent by the person hiring; and it has been decided in *Rex* v. *Kibworth Harcourt* (p. 824) that according to the true construction of the statute, the payment of the rent need not be made by the party hiring. The words, *by the person hiring the same*, are to be considered therefore as struck out of the statute 6 Geo. IV. c. 57, and the law altered so far as it required that the rent should be paid by the person hiring the premises. It is now sufficient if it be paid either by the person hiring or by any other person. The words of the 6 Geo. IV. c. 57, s. 2, are, that the house, or building, or land, shall be occupied *under such yearly hiring*, and the rent for the same, to the amount of 10*l.*, shall be actually paid for the term of one whole year at the least. Here the phrase is varied. The statute says, not that the house or land shall be occupied *by the person hiring the same*, but only that it shall be occupied *under such yearly hiring.* And although it may be difficult to arrive with certainty at the meaning of the legislature, which is not expressed in very intelligible language, I incline to think the true construction of those words is, that it shall be occupied by the person to whom that hiring gives the right of occupation, and that occupation by any other person, to whom that right is communicated either by assigning or underletting, is not an occupation under the yearly hiring within the meaning of the statute. That is my present opinion. If between this time and to-morrow morning I should change that opinion, I will certainly communicate it to the court. My learned brothers think that the words *under such yearly hiring* do not make occupation by the person hiring requisite, but that it is sufficient if either he himself or any other person under him occupy. I think that a party who occupies as an undertenant, though he may be said in some sense to occupy under the yearly hiring, cannot be said to occupy under the yearly hiring within the meaning of this clause of the act of parliament; because though he does occupy in part under that yearly hiring, he does not *in toto*; he occupies under the yearly hiring and something else. As to the other question, viz. whether the holding before the 22nd of June, when the 6 Geo. IV. c. 57, was passed, and the holding subsequent to that period, can be connected, I am of opinion they may; provided the occupation before the 22nd of

Effect of the words "by the person hiring the same," in 59 Geo. III.

Effect of the words "under such yearly hiring," in 6 Geo. IV.

A holding under 59 Geo III. may be connected with one under 6 Geo. IV.

June be such as will satisfy the requisites of the 6 Geo. IV. c. 57; and therefore if a party, before the 6 Geo. IV. c. 57, began to operate, was in possession of a yearly tenement, and held it under such circumstances as that statute says shall be requisite in order to gain a settlement, a settlement will be conferred. There are no words in the 6 Geo. IV. c. 57, which import that the taking shall be subsequent to the time when that statute came into operation. With respect to the *residence* for forty days, I think the case ought to go down to the sessions again, in order that it may be stated more distinctly what the nature of the residence was, or whether the whole forty days' residence required was actually by the husband himself. The cause of the husband's absence, whether it arose from his own free will, or from compulsion, or from other circumstances, may possibly be material. In *Rex* v. *St. George, Southwark* (p. 845), the husband was incapacitated by law from residing in his own house; for he was in prison during the whole of the time, and had not the power of residing on his own property for forty days." *Littledale*, J. "The principal difficulty in this case arises upon the construction of the word 'occupied,' in the statute 6 Geo. IV. c. 57. There is a material difference between a holding and an occupation. A person may hold though he does not occupy. A tenant of a freehold is a person who holds of another: he does not necessarily occupy. In order to occupy, a party must be personally resident by himself or his family. In this case it seems to me that the pauper has been the occupier of the house during the whole period. We have no distinct account how the apartment was let or occupied. In an indictment for housebreaking it might be laid to be the house of the pauper's husband. So in an action for use and occupation, he might properly be described not merely as holding but as occupying the house. In the 11 Geo. II. c. 19, s. 14, which gives the action for use and occupation where the agreement is not by deed, a distinction is made between the words held and occupied. That section enacts, 'that it shall be lawful for the landlord, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, &c. held or occupied by the defendant, in an action on the case for use and occupation of what was so held or enjoyed.' By the 43rd of Elizabeth, the rate for the relief of the poor is to be on the occupier. The rate in this case must clearly have been made on the pauper's husband for the whole house though he underlet part. In *Nolan's Poor Laws*, 176, it is laid down that no lodger, though possessing the principal part of the house, was ever rated; but the owner, how small soever the part reserved for himself, is, in the eye of the law, the tenant for the whole, and is rated as the occupier. Then, as in an indictment for housebreaking (committed in the apartment let to Gay), the house might be described as the dwelling-house of the pauper's husband; and as he might be described as the occupier of the house in an action for use and occupation, and would be rateable to the poor as occupier in respect of the whole house, I think he must be considered in point of law as having occupied and resided in this house. It is not necessary in order to make a man an occupier that he should actually sleep or take his meals in a house, or that his family should actually dwell in the whole house; but the law considers him for this purpose an occupier if he hold the whole, and by himself or his family occupy part. I think therefore the pauper's husband may be considered to have occupied the house within the 6 Geo. IV. c. 57. It might have been otherwise if he had underlet the whole house and occupied no part. The word occupation as applied to a house undoubtedly implies personal residence. (*a*) But if a lessee of a house dwell in any part of it, though he let the other part, he in point of law is to be considered as the occupier of the whole. If that be the true construction of the word 'occupied,' the pauper's husband occupied the house; and then the only question is,

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The occupation must be conformable to 6 Geo. IV.

Imperfect statement of residence.

The distinction between *hold* and *o cupy.*

(*a*) This remark has been misunderstood. Personal residence is not necessary for the purpose of a settlement. A party may occupy by retaining the key, and leaving a portion of his goods in the house. *Rex* v. *St Mary Kalendar*, (*post*).

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whether there has been forty days' residence by the pauper's husband? and upon that point there is some doubt. That certainly is essential; for the legislature did not intend by the 6 Geo. IV. c. 57, to alter the law in that respect. Upon the finding in this case, I rather collect that the pauper's husband had abandoned his wife, and gone to pursue his own course of living in some other place. If he had merely gone away for the purpose of business, with the intention of returning, the residence would be there still, though he was temporarily absent. I agree with my brother *Bayley* that the case ought to be sent back to the sessions, in order to have the fact ascertained." *Parke*, J. "I have entertained considerable doubt in this case; but I am inclined to think that a settlement was gained in Lyncombe. The question turns entirely on the 6 Geo. IV. c. 57. My judgment may have the effect of defeating the intention of the framer of that act. But it is a very safe rule of construction to adhere to the words of an act of parliament in their grammatical and natural sense, unless it appears clearly from the context that they were intended to be used in some other sense. There is a material difference between the 6 Geo. IV. c. 57, and the 59 Geo. III. c. 50. The latter expressly requires the building to be held, and the land to be occupied, and the rent to be paid, by the person hiring the same. The 6 Geo. IV. c. 57, omits the words 'by the person hiring the same.' It does not require the payment of rent or occupation *by the person hiring the same*, but occupation *under the yearly hiring*. These words may be satisfied by the continuance of the term and occupation by a sub-tenant or assignee during the continuance of that term. It is not necessary to decide in this case whether occupation by an assignee would be sufficient or not. Here there was an occupation by a person whose character is left doubtful. It does not appear by the case whether it was that of a sub-tenant having an entire occupation of one part of the building or that of a lodger. It seems to me there was an occupation by the husband of the pauper under the yearly hiring, provided the premises continued in the occupation of any person entitled under the tenancy created by the yearly hiring. I think we ought to give effect to the words of the act of parliament in their plain natural sense, unless we see clearly from the context that the intention of the legislature was different; but I find nothing in the context to show that that which those words taken in that sense import, was not their intention. I must suppose that the legislature, when they repealed the 59 Geo. III. c. 50, which expressly required an occupation by the person hiring, had some reason for omitting those words in the 6 Geo. IV. c. 57. Possibly that omission may have arisen from inattention on the part of the framer of the act, and it may have been intended to require occupation by the person who took the term. But it seems to me that the words used do not expressly require such occupation, and we must not presume the intention of the legislature, but collect it from the words of the act of parliament. Then if the meaning of the legislature be that which the words used naturally import, a settlement has been gained, provided there has been a residence of forty days. As to that, the case is ambiguous. I think it ought to be referred again to the sessions for the purpose of having the facts stated one way or the other. If it be found that there was no residence by the husband for forty days, then no settlement will be gained." Case sent back to the sessions.

Under the 6 Geo. IV. c. 57, a pauper who rented a dwelling-house and land at a rent exceeding 10*l.* per annum but who underlet the land, will gain a settlement.

Rex v. *Great Bentley*, 10 *B. & C.* 520. J. Peeling was removed from Little Clacton to Great Bentley. Order confirmed. Case:—The pauper hired a tenement consisting of a separate and distinct dwelling-house and a pasture field of two acres in Little Clacton, the hiring to commence on December 25th, 1826. He engaged to pay for this tenement the rent of 13*l.* 10*s.* a year for the term of two years; but in the latter part of March or the beginning of April, 1827, the pauper sold the grass in the field, from that time till New Michaelmas, to John Townsend, for ten guineas, to be mowed or fed by him, as he pleased, and during that time he discontinued to turn his donkey and cow into the field as he had before done, as he did not consider that he could feed the grass after he

had sold it to Townsend; and having a quantity of clover which he wished to stack in the field he asked Townsend's leave to stack it there; and having obtained that leave, abated one shilling from a claim he had upon Townsend for labour which he had performed for him, and which Townsend accepted as an acknowledgment for the damage done to the grass by the stack. The pauper sold the grass to Townsend in the same way in the second year, though with some variation in the price. Lord *Tenterden*. "The question in this case turned on the tenement act, 6 Geo. IV. c. 57. Upon consideration we are all of opinion that all that was required to be done by that act has been done in this case, and consequently that the pauper gained a settlement by renting the tenement in question. That statute enacts, that 'no person shall acquire a settlement in any parish or township by, or by reason of settling upon, renting, or paying parochial rates for any tenement, not being his or her own property, unless such tenements shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish or township at and for the sum of 10*l.* a year at the least, for the term of one whole year.' Here the tenement consisted of a separate and distinct dwelling-house and land: it was *bonâ fide* rented by the pauper in the parish, and at and for a rent exceeding 10*l.* per annum for one whole year. But then the statute continues, 'nor unless such house or building, or land, shall be occupied *under such yearly hiring*, and the rent for the same to the amount of 10*l.* actually paid for the term of one whole year at the least.' The rent for the term of one whole year has been actually paid. The only question is, whether there was an occupation of the whole of the premises hired *under the yearly hiring?* It was objected that the pauper did not occupy the whole of the premises hired under the yearly hiring; that he let off the land, and that this clause of the act of parliament therefore was not satisfied. There is a difference between the language of 6 Geo. IV. c. 57, s. 2, and that of the 59 Geo. III. c. 50. The last-mentioned statute required that the house should be held, and the land occupied, *by the person hiring the same;* but those words 'by the person hiring the same' are omitted in the 6 Geo. IV. c. 57. The legislature, when they passed that statute, must have had in their minds the very act (59 Geo. III. c. 50,) which they were repealing. We cannot therefore but consider that those words were left out by design. Then the only question is, whether the whole of the premises were occupied under the yearly hiring? It is clear that they were. That being so, every condition that was required by the terms of the act of parliament has been complied with, and the pauper has gained a settlement. We think it much the safer course to adhere to the words of the statute construed in their ordinary import, than to enter into any inquiry as to the supposed intention of the persons who framed it. The order of sessions must therefore be quashed." See also *Reg.* v. *St. Mary Kalendar* (*post*).

15. *Occupation.*

What is occupation under the "yearly hiring."

Rex v. *St. Nicholas Rochester*, 5 *Bar. & Adol.* 219; 3 *Nev. & Man.* 21. C. Tress was removed from St. Margaret to St. Nicholas, both in the city of Rochester. Order confirmed. Case:—The pauper, on the 3d of October, 1831, took a lease for a year of a house in the appellant parish, at the rent of 40*l.* per annum. Under this lease he entered into possession of the house, and remained there with his family until the 3d day of October in the following year; he paid the rent for half the year, and fulfilled all the conditions of the statutes 6 Geo. IV. c. 57, and 1 Will. IV. c. 18, unless the court should be of opinion, that under the following circumstances the house was not occupied by the pauper within the meaning of the 1 Will. IV. c. 18. The house in question was a separate and distinct dwelling-house, consisting of three floors. When the pauper had been in possession of the premises about three months, viz. on the 4th of January, 1832, he underlet the two upper floors, unfurnished, to one Boucher; and during all the time Boucher stayed in the house the pauper occupied the ground floor only, by himself and his family. Boucher's agreement with the pauper was, that he should take these two floors of the pauper by the quarter, at

Since 1 Will. IV. c. 18, there must be an *occupation* in *fact* of the *whole* dwelling-house or building of which the tenement consists *by the party hiring the same.*

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the yearly rent of 22*l.*; that Boucher should have the use of a wash-house on the ground-floor in common with the pauper, and that the pauper should have a sleeping-room in the upper floor for one of his children, whenever Boucher did not want it for his own family. Boucher entered into possession of the two floors on the 4th of January, furnished the rooms himself, stayed in them upwards of two quarters, and paid the rent agreed on. During Boucher's residence there, he had the joint use of the wash-house, and the pauper's child, by the permission of Boucher, occupied the sleeping room in the upper floor about a fortnight or three weeks according to the agreement. The ground floor was not separated from the upper floors by any door or partition, and both the pauper and Boucher, during Boucher's residence in the house, had common access to it by the front and back doors, and each took the key of the front door whenever he had need of it, without asking permission of the other. *Denman*, C. J. "The meaning of the word *occupied* may vary according to the occasion or the subject-matter. The meaning, therefore, which it has received in considering what occupation was necessary to constitute a mansion-house in which burglary might be committed, or to give a right of voting, or to make a party rateable to the relief of the poor, is no test of its meaning in this particular case. A new distinction is introduced by the 1 Will. IV. c. 18. Under 6 Geo. IV. c. 57, a constructive occupation was sufficient. This statute requires an occupation in fact. It recites the former act, and that doubts had arisen with respect to the intentions of the legislature concerning the occupation of *such* house, building, or land, by the person hiring the same, and enacts, that 'no person shall acquire a settlement in any parish by reason of *such* yearly hiring of a dwelling-house or building, or of land, or of both, *as in the said act expressed*, unless *such* house or building, or land, shall be *actually* occupied under such yearly hiring by the person hiring the same.' A constructive occupation will not satisfy these words. The statute requires in terms an actual occupation. Here it appears that the pauper underlet the two upper floors, and occupied the ground floor himself. It is impossible to say, in the face of the statute, that the pauper who occupied the ground floor only, actually occupied the whole house. The consequences resulting from this statute are remarkable; a person of whatever degree of respectability who hires a house by the year at a high rent, and underlets a part of it, will be prevented from acquiring a settlement by renting. But whatever the consequences may be I must say that the words which the legislature has used prevent a settlement being gained in this case." *Littledale*, J. "What I am reported to have said in *Rex* v. *Ditcheat* (p. 832) as to the meaning of the word *occupation*, applies to a constructive occupation only, which was sufficient to satisfy the statute that governed that case. The 1 Will. IV. c. 18, referring to the 6 Geo. IV. c. 57, enacts, that no person shall acquire a settlement by such yearly hiring of a dwelling-house, &c., unless such house, &c. shall be actually occupied under such yearly hiring by the person hiring the same. That evidently means an occupation in fact. But in this case another party, not the person hiring, had a right to occupy two-thirds of the premises; there was not, therefore, an occupation in fact of the whole house by the pauper, for he could not in an action of trespass justify going into the rooms which he had let, he had parted with all right to them from quarter to quarter. The word *actually* must have effect given to it; and giving the word full effect, it must mean occupation in fact, as distinguished from a constructive occupation. To the question I put during the argument, whether it would make any difference if the underletting were for a less period than a year, the proper answer has been given. If there be not an actual occupation of the whole house, within the statute, when part of it is let for a year, neither would there be when part of it is let for a week. It may be said, that deducting 22*l.*, which the under-tenant in this case was to pay, from the whole rent of 40*l.*, that part of the premises which the pauper retained was still rented at 18*l.*: but this cannot be taken into consideration. There must be an actual occupation of the

A constructive occupation is not sufficient.

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whole house. The consequence undoubtedly will be, that all persons who let lodgings will be prevented from gaining a settlement by renting a tenement of any value. But it is better to adhere to the plain words of a statute than to depart from them on the ground of some supposed inconvenience." *Taunton*, J. "It is a safe rule of construction to adhere on all occasions to the language of a statute. It has been often much lamented that the judges have departed from the plain and literal construction of the statutes relating to the settlement of the poor. On the language of this statute, which was made to remove doubts arising as to occupation, I have no hesitation in saying, that it requires an occupation of the whole house by the party hiring. The word '*such*,' which comes before the words 'yearly hiring,' is very material, because, by reference to the recited statute, it must be taken to mean the yearly hiring of a separate and distinct dwelling-house or building, or land, or both. There must be an occupation in fact of a separate and distinct dwelling-house, and not only under the yearly hiring, but also by the person hiring the same. Now, were all these conditions performed here? The pauper took a distinct and separate dwelling-house at 40*l.* a-year, but divided the occupation of that dwelling-house between himself and Boucher. The latter probably had the larger part; but whether that was so or not is immaterial. We cannot say that the pauper actually occupied a separate and distinct dwelling-house under the yearly hiring, when there was an exclusive occupation of part by another person. I am therefore satisfied that there was not an actual occupation within the meaning of this statute. The order of sessions must be quashed." *Patteson*, J. "I am of opinion, on the plain words of this statute, that no settlement was gained by the pauper. The words '*actually occupied*' put an end to all question, and the case must be considered as if the word '*actually*' were incorporated in the former statute, which is not repealed by the 1 Will. IV. c. 18. Then reading the 6 Geo. IV. c. 57, as if that word as well as the words 'by the party hiring the same,' were incorporated in it, it will prevent any one from acquiring a settlement by renting a tenement, unless such house or building (that is, the separate and distinct dwelling-house, or building, or land, or both, of which the tenement is required to consist,) shall be actually occupied under the yearly hiring, by the party hiring the same, for the term of one whole year. Now in this case it is clear that the whole dwelling-house was not actually occupied by the party hiring the same; part of it was occupied by another person. The decisions on the liability of persons to be rated, and their rights of voting, as occupiers, which have been referred to, are not affected by this case." Order of sessions quashed.

Same point.

Rex v. *Macclesfield*, p. 766. *Parke*, J., observed, that the occupation in that case was sufficient under the 6 Geo. IV. "though it will not be sufficient since the 1 Will. IV. c. 18, as that requires an occupation by the person hiring the premises."

Since 1 Will. IV. c. 18, a party who allows an undertenant to have the exclusive occupation of rooms in the tenement, for a short time and small sum, acquires no settlement.

Semble, That a letting of rooms by an innkeeper to his guests, is not such an underletting as would defeat the settlement.

The 1st sect. of 1 Will. IV. c. 18, (though prospective only) applies to cases in which

Rex v. *St. Nicholas, Colchester*, 4 *Nev. & Man.* 422; 2 *Adol. & Ellis*, 599. S. Sparrow was removed from St. James to St. Nicholas, Colchester. Order confirmed. Case:—By an agreement in writing, dated 24th March, 1831, the pauper and one Hutchinson hired a messuage at St. Nicholas for two years, at the rent of 60*l.*, payable half-yearly. Hutchinson was included in the agreement merely to guarantee the payment of the rent, the pauper only being intended to occupy the premises. 25th March, the keys were delivered to the pauper. 7th November, a distress was put in for the half-year's rent which had become due at Michaelmas, 1831, and the pauper's goods were sold under the distress by the bailiff, who, out of the proceeds, paid 30*l.* for the rent to the landlord who had employed him, and paid over the remainder, after deducting the costs of the distress, to the pauper. At Lady-day, 1832, the pauper gave up possession, in pursuance of an agreement made with Hutchinson, under which the latter took exclusively upon him the liability to pay the arrear of rent due from the pauper. During the year commencing Lady-day, 1831, and expiring Lady-day, 1832, three rooms in the said messuage were underlet by the

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the occupation had commenced, but was not complete at the time of passing of the act.

pauper to Mr. D. W. Harvey, who had the exclusive occupation of them for three weeks, for which he paid 8*l*. Lord *Denman*, "This is in truth a question whether *Rex* v. *St. Nicholas, Rochester* (p. 835), was well decided: for the attempt which has been made to distinguish that case from the present appears to me to fail. *Rex* v. *St. Nicholas, Rochester*, was decided after full argument, and upon great consideration, by my brothers and myself. At the same time, if there had been anything like a reasonable doubt raised as to the law having been improperly applied on that occasion, I am quite sure every one of us would have been willing to give the greatest attention to every argument that could be brought to show us that we were wrong. I recollect that upon the former occasion every judge who gave an opinion felt that the consequences were such as the legislature had not contemplated, and such as might involve some inconveniences. But we found the words of the statute too strong to grapple with. I am ready to declare that where I find the words of a statute perfectly clear I shall adhere to those words, and shall not allow myself to be diverted from the application of them by any supposed consequences of one kind or the other, as to which courts of justice are very often much deceived. The words of the statute (which came into operation on the 30th of March) are these: 'that from and after the passing of this act no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of such yearly hiring of a dwelling-house or building, or of land, or of both, as in the said (recited) act expressed, unless such house or building or land shall be *actually* occupied under such yearly hiring in the same parish or township, *by the person hiring the same*, for the term of one whole year at the least.' The fact is found in this case, that during the year commencing at Lady-day, 1831, and expiring at Lady-day, 1832, several rooms were underlet by the pauper to Mr. Harvey, who had the *exclusive occupation* of them for three weeks, for which he had paid 8*l*. I find that this very case was contemplated by one of my brothers in the decision of *Rex* v. *St. Nicholas, Rochester;* and it was admitted that if *for any period* another person had the exclusive occupation of any part of the house, that would defeat the settlement; and it seems to me we should frustrate the object of the act if we said that under such circumstances the pauper would gain a settlement. Some difficulty is supposed to be raised by the case of innkeepers. I cannot say that I feel the difficulty, for there is no analogy between the occupation of a room by a guest, and the letting out to a person the exclusive occupation of a part of the house. The occupation in the former case is that of the innkeeper, who has a general control over the whole house, and who, in fact, occupies by means of his guest. I do not think that any doubt can be raised on that subject; nor do I think that any great inconvenience can result from any of the consequences which have been suggested. *Rex* v. *St. Nicholas, Rochester*, however, having been fully considered, and the words of the act completely warranting that decision, I think we are bound to say that in this case also no settlement was gained." *Littledale*, J. "I see no reason to depart from the opinion I gave in *Rex* v. *St. Nicholas, Rochester;* and I think that we are bound by that decision, and that this is not such an occupation as falls within the meaning of the act of parliament. Then the only question is, whether the year having commenced prior to the passing of the act, the inchoate settlement can be affected by it? Now it appears to me that the words of the act being 'that no settlement shall be gained from and after the passing of the act,' which was the 30th of March, it clearly does apply to this case." *Williams*, J. "I am of the same opinion. One of the reasons which induces me to abide by the decision in *Rex* v. *St. Nicholas, Rochester*, is, that I am quite satisfied of the truth of that which has been often said by learned judges, who have very well understood this subject, that it is as important, especially in cases of this sort, to abide by the rule of law when ascertained, as it is to determine the rule originally. Unless, therefore, I saw the clearest ground for doubting the correctness of the decision in *Rex* v. *St. Nicholas, Rochester*, I should certainly give my assent to that decision. It appears to

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me that it is perfectly consistent with the principles and objects of the acts which have been passed upon this subject. The 6 Geo. IV. c. 57, was introduced in consequence of the very expensive litigation occasioned by the then state of the law; and, in order to remedy this evil, that act confined the legal settlement by renting a tenement, by enacting that no person should acquire a settlement in any parish, &c. by or by reason of settling upon, renting, or paying parochial rates for any tenement not being his own property, unless such tenement should consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by such person in such parish, &c. at 10*l.* a year for one whole year; nor unless such house, &c. should be *occupied* under such yearly hiring, and the rent for the same to the amount of 10*l.* actually paid, for one whole year at the least. That at once got rid of much of the vexatious litigation which arose on the subject. After that act came the one upon which this question depends, (1 Will. IV. c. 18,) which is expressly stated to be 'An Act to explain and amend an Act of the Sixth of his late Majesty, as far as regards the Settlement of the Poor by the Renting and Occupation of Tenements.' Now in what respect does it explain and amend it? It explains and amends it by still further abridging and curtailing the power of gaining settlements by renting a tenement, in conformity with the principles of the former act; and it acco dingly says, that 'no settlement shall be gained unless the house, &c. shall be *actually* occupied under such yearly hiring *by the person hiring the same* for the term of one whole year at the least.' It appears to me that the construction which was put upon those words by the court in *Rex* v. *St. Nicholas, Rochester*, is the true and right construction. It has been said, that this act ought not to have a retrospective operation. It is observable that the act does not affect the *contract*, but relates expressly to the *occupation*. It declares that after the passing of that act no settlement sha l be gained unless an occupation of a particular sort shall take place. If the act had required a *contract* of a specific nature, an inchoate settlement, by reason of an occupation under a contract valid at the time when it was made, would not have been affected by this. This case is, however, totally different. I therefore am of opinion, that those words 'actually occupied,' &c. which are studiously introduced into this statute, must point to an entire exclusive occupation; and, if it does, we cannot enter into the question of degree—whether the underletting be of 10*l.* a year, or 5*l.*, or 50*s.* If there be a clear underletting by the party of any portion of the house, for however short a period of time, and for however small a sum, it seems to me that it cannot be said that there was an *actual* occupation of a separate and distinct dwelling-house by the party hiring the same. I should not have said so much upon this case if I had belonged to the court at the time of the former decision." Order of sessions quashed.

A tenant, who took in persons to sleep in some rooms, generally by the night only, but occasionally by the week, such persons having no right to the rooms during the day, and he retaining the keys of all the rooms and having constant access to and control over the whole house, *actually occupies* the whole.

Rex v. *St. Giles in the Fields*, 6 *N. & M.* 5; 4 *A. & E.* 495. T. Barron was removed from St. Giles in the Fields to St. Mary-le-bone. Order quashed. Case:—In 1831, the pauper became the tenant of a house in the appellant parish, at the yearly rent of 24*l.* He held the house for three years, paid the rent, and complied with all the requisites of 6 Geo. IV. c. 57, and 1 Will. IV. c. 18, if under the following circumstances he was sufficiently in the occupation of the house. The pauper resided in the house with his family. The furniture in all the rooms was his, and he was in the habit of taking in labouring people to sleep in some of the rooms,—sometimes letting a bed, sometimes half a bed; the letting being generally by the night, but in some rare instances a bed having been let for the period of a week. The persons who thus slept in the house had no right to the rooms during the day, the pauper and his family having constant access to and control over the whole of the house, and the pauper always retaining the keys of all the rooms in his own possession. In the instances of letting for a week, which were of rare occurrence, the pauper let the bed only, reserving to himself the right of putting another bed in the same room at any time, if he thought proper. The question was, whether the pauper

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actually occupied the house within the meaning of the statute. Lord *Denman.* "It is clear that this was an actual occupation within the statute, although there was something which the pauper did not actually hold at all times, and although the parties, whom he took in, could not have been turned out in the dead of the night. The case of an innkeeper is a very strong illustration of the case, and nearly the same. A person who lives in a house, and merely lets out parts of it in the manner stated here, does not cease to be the actual occupier." *Littledale,* J. "The facts of this case completely distinguish it from *Rex* v. *St. Nicholas, Rochester,* where the tenant let a part of the house, and it was actually occupied by another person." *Williams,* J. "I am of the same opinion. It is true, as has been urged, that it is desirable not to fritter down plain rules, but we must deal with a case according to the facts, and here they put an end to all question." Order of sessions quashed.

Under 1 Will. IV. c. 18, the *whole* subject-matter of the renting must be occupied. Part of it equal to 10*l.* not sufficient.

Rex v. *Berkswell,* 1 *N. & P.* 423; 6 *A. & E.* 282. J. Wilday and family were removed from Berkswell to Ballsall. Order quashed. Case:—Before Lady-day, 1832, the pauper hired two cottages, being separate and distinct dwelling-houses, but adjoining to each other, and under one continuous roof, together with three acres of land, situate in the respondent parish, for a year from Lady-day, 1832, at the yearly rent of 14*l.* At Lady-day, 1832, the pauper entered into possession of one of the cottages and the land, and occupied the same, under the said hiring, till Lady-day, 1833. The other cottage he laid out money upon, and converted into a beer-shop, and underlet to J. Stoney at a yearly rent of 4*l.*, and Stoney occupied the same till near Lady-day, 1833, and paid the pauper the rent for it. The year's rent of 14*l.*, reserved by the agreement for the whole property, was paid by the pauper to the landlord. The cottage and land occupied by the pauper were worth more than 10*l.* of the remainder of 14*l.* paid by him for the whole premises. Lord *Denman.* "We think this statute (1 Will. IV. c. 18) cannot receive the construction contended for. Undoubtedly a great number of speculative questions may arise from that construction of the act which I think is the only true one, namely, that the subject-matter which forms the tenement should be occupied entirely by the party." *Williams,* J. "I am entirely of the same opinion. Before the passing of this act complaints used to be made of the *equitable construction* which had been put upon the statutes on this subject; now that we have to construe a recent set of acts of parliament, at least we ought to avoid that error. Each of these acts has been in restriction of the right of gaining a settlement. It seems to me the fair and obvious meaning of 1 Will. IV. c. 18, is, that the whole subject-matter of the taking should be occupied; and from the plain and obvious meaning I think we ought not to depart." *Coleridge,* J. "I am quite of the same opinion, and I decide this case precisely on the same principle too; that is, desiring to give the full meaning to the plain words of the statute, and not allowing myself to speculate on what may be *equivalent* to it, or what may be within the spirit of it. I construe the statute simply according to its expressions. Looking at those expressions, I cannot doubt that it is necessary to say that the whole tenement, under the words of this statute, must be occupied by the person taking it—the whole tenement. And when we are pressed with the inconvenience or absurdity which may result from that, I cannot but recollect that exactly the same argument was used with regard to the whole rent. It was said, 'suppose a man rents 1000*l.* a year, will you say he is not to gain a settlement, under the 6 Geo. IV. if he does not pay every farthing of that 1000*l.* a year rent, when 10*l.* would be enough.' The court, however, then determined they would act on the words of the statute. If the decision leads to inconvenience, it will be easy for another act to be passed to remedy it. That seems the better course than for us to mould the words of the act."

A tenant assigning his crops gains no settlement, the assignee taking possession.

In *Rex* v. *Pakefield,* p. 822, the pauper was a tenant of a farm, and during the year assigned his stock and crops, and the assignee took possession. The pauper or his family continued in the house. This is not an occupation within 1 Will. IV. c. 18.

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What a holding under the hiring.

Rex v. *Kibworth Harcourt.* (See the case, p. 824). *Bayley*, J. "I also think that the pauper occupied the premises for one whole year under that hiring, for nothing that was done by Waterfield could have the effect of altering the original tenancy created between the pauper and the owner of the premises. The pauper remained tenant under the original taking, and the landlord ought to have distrained on him for the 10*l.* if it had been in arrear."

Keeping key and a few articles in the house, is an occupation.

So also a tenant who retained the key of the house, and left some trifling articles of furniture in it, and took another house, is an occupier within 1 Will. IV. c. 18. *Reg.* v. *St. Mary, Kalendar, post,* "*Settlement by Rates.*"

During the year the pauper, but not his family, was removed by an order. He returned the same day: Held, sufficient occupation under 59 Geo. III.

Rex v. *Barham,* 8 *B. & C.* 99. Welch was removed from Barham to Dover. Order quashed. Case:—The pauper, on the 6th April, 1823, hired a house in Dover for a year, of the value and rent of 12*l.* per annum, payable monthly. In January, 1824, the pauper became chargeable, and was by an order directed, with his family, to be removed to Barham. He *alone* was removed, and an overseer of Barham received him, gave him money, and directed him to return to Dover. He returned the same day to his house, and occupied it under the original contract till Michaelmas, 1824; when, in consequence of threats by the overseer of Dover to send him to gaol for coming back, he agreed with his landlord to take the house by the week. At Michaelmas, 1824, the paper owed some rent. No final settlement took place till June, 1825, when a distress having been put in, the pauper paid the rent, and left the house which he had occupied first under the yearly and then under the weekly hiring uninterruptedly since April, 1823. The pauper paid his rent on account as it suited him, part in meat (being a butcher) and part in money, but had no regular settlement till he left the house. Barham did not appeal against the order in January, 1824. *Cur. adv. vult.* Judgment by Lord *Tenterden.* "The question depends on the 59 Geo. III. c. 50. [He then read it.] The language of this enactment is very peculiar. No person is to acquire a settlement by reason of dwelling forty days in any tenement, unless such tenement shall consist of a house (as it does in the present case) *bonâ fide* hired by such person at 10*l.* a year, for the term of one whole year; nor unless such house shall be held and the rent for the same paid for the term of one whole year at the least. It should seem, therefore, that if a pauper resides for forty days upon a tenement, and the other requisites of the act have been complied with, he gains a settlement. Now here the pauper resided in the house more than forty days, both before and after the removal, and all that the act requires in other respects was complied with; the house was taken for a year, held upwards of that period, and the rent paid. It has been contended, that the effect of the order of removal was to prevent the settlement only; all that the act requires has been complied with after that order was made. If the effect of the order had been to compel the pauper to abandon his tenement, it would make a difference. But he was absent from his home not even a day, and his family were never removed at all. It is admitted that *Rex* v. *Fillongley* (p. 797) has decided that the removal did not put an end to the contract between the landlord and tenant; and under all the circumstances we think it safer to say that a settlement was gained under 59 Geo. III. by the residence before and after the removal. [His lordship then adverted to the supposed offence of the pauper in returning after removal, for which see *post*, and concluded.] Our decision may, perhaps, in this particular case, operate to defeat the object of 59 Geo. III.; but it is better to abide by the consequence than to put upon it a construction not warranted by the words of the act, in order to give effect to what we may suppose to have been the intention of the legislature." Order of sessions quashed.

16. *The whole Tenement need not be in one Parish.*

16. The whole Tenement need not be in one Parish, under 13 & 14 Car. II.

As the renting of a tenement of the prescribed annual value was all that was required, the courts held, that if a person rented several different tenements, making together the required amount, it followed, that if these several tenements were situated in different parishes, that would not defeat the settlement, which would in such case be acquired in that parish in which the person resided.

An entire tenement lying part in one parish and part in another will gain a settlement.

South Sydenham v. *Lamerton*, 1 *Stra.* 57. A person rented a tenement of 10*l.* a year, being one entire tenement, but lying in two parishes. The question was, whether this gained a settlement. *Parker*, C. J. "The quantity of rent is not material, but the value of the land. A tenant often pays a fine, and thereby lowers the rent, and yet the land is of equal value. And if a man should out of kindness settle another in a tenement of 10*l.* per annum value, reserving no rent, that will not alter the case. The only difficulty is that there is not in this case 10*l.* per annum in one single parish. As to that, I am of opinion, that if such a person as this should take a tenement of 8*l.* per annum in one parish, and another of 3*l.* per annum in a different parish, that would not gain him a settlement in either; but if the tenement be entire, and the house in one parish, as this case is, and part of the land in another, yet this may properly be called a tenement of 10*l.* per annum in that parish where the house is. Two distinct tenements, in two parishes, making together 10*l.* per annum, will give no settlement; but it seems to me to be otherwise where the tenement is entire." *Eyre* and *Pratt*, Js. accordant.

Same point.

Elsted v. *Hollibourne*, 2 *Sess. Ca.* 130; 2 *Stra.* 849. A person rented a farm-house and lands at 12*l.* 10*s.* a year, which house and land lay contiguous and had been usually letten together and occupied by the same person; but the house and part of the land, together amounting to 9*l.* a year, lay in one parish, and 3*l.* 10*s.* in another parish. This was held to be a settlement, on the authority of *South Sydenham* v. *Lamerton*, *supra*.

Different tenements, lying in different parishes, held under different takings, would formerly confer a settlement.

Rex v. *Sandwich*, *Burr. S. C.* 44; 2 *Bott*, 107. A person rented a house in Studland at 30*s.* a year. After he had lived in it about two years he took lands in Langton of 12*l.* a year, on which there was no house, and occupied the lands two years; all which time he inhabited in and rented also the house in Studland. By the Court: "It hath been a question, whether two distinct tenements taken at different times (where neither of them alone amounted to 10*l.* a year in value) should make a settlement? But it is now settled that it does: and it is the same thing, whether the takings were distinct or entire, or in one parish or two parishes. The settlement is in the parish where he lives (*Rex* v. *Fritwell*, p. 795). The ground of these resolutions is the ability to rent a tenement of such a value; which excludes the presumption of his being likely to become chargeable to the parish.

Same point.

St. Lawrence v. *St. Maurice*, *Winchester*, *Burr. S. C.* 588; 2 *Bott*, 169. R. Gradidge rented a tenement of H. Warne, in Hursley, for a year from Lady-day, at 3*l.* 10*s.* a year, but resided therein five or six weeks only and then quitted it, and tendered the key to Warne, which Warne refused to accept, whereupon Gradidge left it with a neighbour before Midsummer-day then next, for Warne to take it when he thought proper. On Midsummer-day, Gradidge took a tenement in St. Maurice at 9*l.* a year; and on the same day entered into possession, and resided thereon above forty days, before the key in Hursley was received by Warne, who did not accept it till the 16th of August following. But by the Court: "Here is a contract for a year in Hursley not dissolved; nor could it be dissolved; the landlord refused to accept the key; and he did not receive it at last till the middle of August, which was more than forty days after hiring the second tenement."

17. *In what Parish the Tenement must be.*

17. In what Parish the Tenement must be, under 59 Geo. III. c. 50; 6 Geo. IV. c. 57; and 1 Will. IV. c. 18.

Under these statutes, the whole must be in the parish.

Under these statutes a person can no longer acquire a settlement by renting several small tenements in *different* parishes, making together a total of sufficient annual value. This settlement can now only be acquired in respect of the renting in the same parish in which the settlement is claimed.

The 59 Geo. III. requires that the whole of such land shall be situate within the same parish or township as the house, wherein the person hiring such land shall dwell and inhabit. The 6 Geo. IV. requires that the tenement shall consist of a dwelling-house or land, or both, rented by such person in such parish or township. The 1 Will. IV. c. 18, requires that the tenement "shall be actually occupied in the same parish or township." But it is not necessary that the whole of the tenement should be taken at one time.

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18. *Who may acquire this Settlement.*

18. Who may acquire this Settlement.

It would probably be difficult to say who may *not* gain this kind of settlement; of course, every person capable of entering into a contract for the renting of a house or land, is competent to acquire this right by such means; and even where, from the peculiar condition of the individual, it may be doubtful whether he is of ability to contract, yet if he actually hire a house or land, and continue in the enjoyment of the property the requisite length of time, it will be sufficient.

A foreigner may gain a settlement by renting a tenement.

Rex v. *Eastbourne*, 4 *East*, 103. Ann Borchert and her children were removed from Seaford to Eastbourne. Order confirmed. Case:—Ann B.'s maiden settlement was in Eastbourne; she married J. B., a German, by whom she had the children mentioned in the order. J. B. was, at the time of the removal, resident in a house at Seaford of above the value of 10*l.*, exercising therein the trade of a baker. His trade declined at Seaford, and he thereupon thought he could exercise it with more advantage at Eastbourne. The wife and children thereupon became chargeable, and were removed as above. The husband acquiesced in everything which took place with regard to the removal; accompanied them to Eastbourne, and afterwards continued to reside there with them. Lord *Ellenborough*, C.J. "This man was not an alien enemy, but a German by birth; an alien amy; and as such, though he may not take a lease of a dwelling-house or shop, yet he may occupy a tenement of 10*l.* a year, and carry on his trade there like any other person (*a*). Then he has that interest which may enable him to gain a settlement by the provision of the legislature." Order quashed.

(*a*) 1 Saun. R. I.

So a soldier, whilst on duty, may gain this settlement.

Rex v. *Brighthelmstone*, 1 *B. & Ald.* 270. W. Lancaster was removed from Gloucester to Brighthelmstone. The pauper had been serjeant in the militia, which lay in barracks at Brighthelmstone, and performed all the duties of his situation as serjeant, and during that time had taken a tenement there of the value of 10*l.* a year or more, in which he had resided with his family for more than forty days. Lord *Ellenborough*, C. J. "In this case, it seems to me, that the sessions have drawn the right conclusion. It is contended that the party here had no intention of coming to settle at Brighthelmstone; that is not correct; certainly he had the intention of settling there, subject, however, to the power of those who directed his movements. The case states that he himself took the tenement as a lodging for himself and his family. Now suppose an action then to have been brought against him for non-payment of rent, he clearly could not set up, as a defence, that he was not the tenant of the premises; then if he, as a tenant, occupied this house of the yearly value of 10*l.* and upwards, he was, during his occupation, irremovable, and that having continued for forty

18. *Who may acquire this Settlement.*

days, he has gained a settlement. But it is said the mutiny act prevents a soldier from gaining a settlement; that act, however, contains no such express provision: the clause enabling every soldier to be examined as to his settlement, does not disqualify him from obtaining a new one. The case of hiring and service is quite distinguishable from this; that proceeds on the ground of a person's not being permitted to contract two relations inconsistent with each other. In order to gain a settlement by hiring and service, he must engage to serve at all events for a year; now a soldier has not the capacity to render such service, for an order from the War-office may at any time intervene and take him from his master's control. The case of taking a tenement is quite different, he does not there engage to reside in it for any definite period, and if he does actually reside for forty days it is sufficient. If not, it would equally follow, that supposing an estate to have devolved upon him by act of law, or that he had made a purchase to the amount of 30*l.*, still no settlement would be gained by him." Order of sessions confirmed.

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19. *Residence, &c.*

19. Residence under 13 & 14 Car. II. c. 12.

Residence for forty days is sufficient; and the law in this respect is not altered by the recent statutes.

Forty days' residence upon a tenement of ten pounds yearly value is necessary.

Rex v. *Dilwyn*, *Burr. S. C.* 54. William Smith, the pauper, agreed for a farm in Eardisland, to hold from Candlemas, at 44*l.* yearly rent; and in April following he sowed about fifteen acres of the land with grain; in May following he came to live on the farm, and inhabited there about three weeks; and then the greatest part of his stock of cattle was seized for rent due to a former landlord. Smith then came to a new agreement with his landlord in Eardisland, and agreed to quit that farm, and to continue in the farm-house and garden, and to have a small parcel of pasture with it, at the rent of 3*l.* 10*s.*, and he continued thereupon in Eardisland till Michaelmas following. By Lord *Hardwicke*, C. J. "There was no inhabitancy for forty days in Eardisland under the lease of 44*l.*; and, therefore, there can be no settlement gained under it. And the next agreement with his landlord in Eardisland was quite a separate contract, and cannot be tacked to the former. It did not take effect till the other was finished."

Rex v. *Caversham* (see *ante*, p. 766), where the pauper rented a stall in a market, to which he had access only on two days in the week, and rented it from 1st of November, 1817, to the 4th of March, 1818, the court held that as he did not occupy it for more than thirty-eight days, he gained no settlement.

If a person be forcibly removed from his tenement, within forty days, it prevents his settlement.

Rex v. *Llanbedergoch*, 7 *T. R.* 105. Order of removal of the pauper from Llanbedergoch to Pentraeth quashed. Case:—The pauper rented a tenement in Lleckylehod, called Peurhyw, of Griffith, for the year 1795. In May, 1795, he received notice to quit at All Saints following. The pauper said he had no place to go to, and if he was compelled to quit he would take down a barn he had built upon the farm. Griffith then said, suppose we exchange, you shall go to Weyû Emâd, a tenement in Llanbedergoch that Griffith farmed of Pritchard, at the rent of 10*l.* 10*s.* a year, to which the pauper agreed, and promised not to take down the barn. It was agreed that they were not to mention the matter, lest the respondents should hear of it, and prevent the pauper getting into possession of the farm at Weyû Emâd. On the 16th November, 1795, he removed to Weyû Emâd, but did not remove his furniture there, lest the respondents should see him, he having been informed if he got into possession and slept in the house one night he could not be turned out. The pauper resided twenty-nine days on the premises, when Pritchard, aided by some of the parishioners and overseers of Llanbedergoch, *forcibly* removed him and his family from Weyû Emâd, and thereby prevented him residing there forty days, and he has ever since been forcibly kept out of the premises. Lord

19. *Residence.*

Kenyon, C. J. "In order to gain a settlement by living upon a tenement of 10*l.* a year, it is absolutely necessary that the party should reside there for forty days; with regard to the fraud, where a case is pregnant with circumstances of fraud, the court have repeatedly said they cannot infer fraud; that fraud is a fact to be expressly stated." Order of sessions quashed.

In case of *fraud*, it might be otherwise.

Rex v. *St. George the Martyr, Southwark*, 7 *T. R.* 466. Order for removal of Mary, wife of J. Lord, from St. George the Martyr to St. Martin in the Fields, quashed. Case:—J. Lord took the first floor of a house in St. Martin's at 15*l.* per annum, the rent to be paid quarterly; he went into possession on the 17th March, and on 22nd March he was arrested and carried to the Marshalsea prison in St. George's, but his family continued to reside in the house in St. Martin's parish until the 6th of May following, being seven weeks, the husband remaining all the time in the Marshalsea prison, when his wife and children went to him there, and he gave up possession of the house in St. Martin's, and the landlord took part of his furniture for seven weeks' rent. The question was, whether the husband gained a settlement in St. Martin's. Lord *Kenyon* said, "That no settlement could be gained by a residence on a tenement for a shorter period than forty days; and though in *Rex* v. *Leeds* (*post*), it was only decided that the justices ought not to have removed the pauper from Blackfordly during the continuance of his lease, the court added that 'if his lease at Blackfordly had been at an end, his last forty days' residence at Leeds might have borne a different consideration;' evidently intimating an opinion that forty days' residence is necessary to give a settlement." Order of sessions confirmed.

If a person be arrested and carried to prison in a parish different from that in which his tenement is, before he has completed a residence of forty days, he gains no settlement, though his family reside for seven weeks.

Rex v. *Ditcheat*, p. 832. *Bayley*, J., said, "With respect to the residence for forty days, the case ought to go to the sessions again, in order that it might be stated more distinctly what the nature of the residence was, or whether the whole forty days' residence required was actually by the husband himself. The cause of the husband's absence, whether it arose from his own free will or compulsion, or from other circumstances, may possibly be material. In *Rex* v. *St. George's, Southwark* (*supra*), the husband was incapacitated by law from residing in his own house, for he was in prison during the whole time, and had not the power of residing on his own property for forty days." *Littledale*, J. "There is some doubt whether there has been forty days' residence by the pauper's husband. That certainly is essential, for the legislature did not intend by 6 Geo. IV. c. 57, to alter the law in that respect. Upon the finding in this case, I rather collect that the pauper's husband had abandoned his wife and gone to pursue his own course of living in some other place. If he had merely gone away for the purpose of business, with the intention of returning, the residence would be there still, though he was temporarily absent." *Parke*, J., agreed that the case must be sent back, and added, "if it be found that there was no residence by the husband for forty days, then no settlement will be gained."

Absence on business, but family continuing, may constitute residence.

Rex v. *South Lynn*, 5 *T. R.* 664. Order of removal of the children of Ann Howard, widow, from South Lynn to East Bilney, quashed. Case:—C. Howard, the father of the paupers, on the 23rd October, 1792, being then and some time before in possession of a cottage and land in Wiggenhall, at the yearly rent of 2*l.* 12*s.* 6*d.*, hired a house in South Lynn at the yearly rent of 9*l.*, and paid 10*s.* 6*d.* in part of the rent, and on the following day he and his wife and children entered into possession, and resided thereon till his death on the 8th November, 1792, still keeping possession of the cottage and land in Wiggenhall. C. Howard died intestate, and no letters of administration have been granted to any person, but the widow kept possession of and occupied the house and cottage in South Lynn and Wiggenhall, but she and her children resided in South Lynn until 11th December, 1792, and on her quitting the house at South Lynn, she paid the landlord 12*s.*, which, with the money paid him before by her husband, was for half a quarter's rent. After this she remained in

Residence for thirty-three days by a widow, on a tenement of twenty pounds a year, cannot be coupled with a residence on the same tenement with her husband for sixteen days preceding, so as to gain her a settlement.

19. *Residence.* possession of the cottage in Wiggenhall. Lord *Kenyon*, C. J. "If we were to decide on the express words of the act of parliament, we should overturn ninety-nine cases out of a hundred that have been determined on this statute. If a mere residence on a tenement for forty days irremovable were sufficient to give a settlement, every lodger and every servant residing for that length of time would then acquire a settlement; but *in order to gain a settlement by residing on a tenement of the yearly value of* 10*l.*, *the party must stand in the relation of tenant to the property for forty days.* Here there was an inchoate right in the husband, and afterwards in the widow, which, if completed by a full residence of forty days, in either case would have been sufficient; but that one necessary act, residence for forty days, by the same tenant to the property, was wanting. The husband, after residing sixteen days on this estate, died, and then the wife resided on it; but what privity was there between husband and wife as to this property? It appears that she did not take out letters of administration, so as to give her a settlement by residing on her own for forty days, nor did she reside on the estate for that time as tenant of the premises; and, indeed, she was not solely entitled to administration. *Rex* v. *Netherseal* (p. 793) is different from the present, because there the estate was bequeathed to the widow, whose second husband lived forty days upon it; but here there was no privity of contract or of interest whatever between the pauper and her late husband, and we cannot connect the residence of the husband as tenant with the residence of the widow as tenant, so as to complete the forty days' residence by both. Though this case is new in specie, it is not new in principle; and upon the principles established in former cases, I am of opinion that the widow did not acquire any settlement in South Lynn." The other judges concurred. Order of sessions quashed.

Where the tenant is in the rules of the Fleet, and he has in the same parish a tenement he rents, he paying the rent, he gains a settlement.

St. Margaret's, Westminster, v. *Ludgate*, 2 *Barnard*, 76; 2 *Bott*, 127. Removal of Elizabeth Conyers from St. Margaret's to Ludgate. Case:—J. Conyers, father of Elizabeth, rented a house in Ludgate of 25*l.* a year, and paid to the rates of the church and poor; but he was a prisoner in the Fleet at the time he did so. In this case he was in the custody of the law, and in no capacity of gaining a settlement elsewhere; though occasionally absent, yet he might be looked upon as virtually resident in Ludgate, which was the place where he *came to settle.* (*a*)

The residence must be in the parish where some part of the tenement lies.

Rex v. *Topcroft*, *Cald.* 478; 2 *Bott*, 221. The pauper rented a farm in Kempnell at 30*l.* a year, and resided on it from Lady-day, 1779, till Christmas, 1781, when he went with his wife to reside with his son-in-law at Topcroft, taking with him all his furniture and the stock remaining on his farm at Kempnell; he resided with his son-in-law at Topcroft upwards of forty days before he delivered up the possession of the farm in Kempnell, but he did not hire or occupy any land or tenement whatever in Topcroft. *Rex* v. *Llanverras*, p. 826, was cited to show that the residence must be in the parish where the tenement or some part of it lies; and of this opinion was the court. And Lord *Mansfield*, C. J., said, "Even if residence in one parish and occupation in another were sufficient, here is no such occupation, for he had run away and left his tenement." Both orders quashed.

Same point.

Rex v. *Knighton*, 2 *T. R.* 48. Robert Hardy was removed from Knighton to St. Margaret. Order quashed. Case:—The pauper took a windmill in St. Margaret's of ten guineas a year, at Lady-day, 1778, and occupied it for one year. On the 30th of April following he married Anne, the daughter of Samuel Ward of Knighton. Before the marriage Ward said he would give him house-room till he could provide himself; and on his marriage he went accordingly to reside with his father-in-law at Knighton, whose house was about a quarter of a mile distant from the mill; and he continued there until the death of Ward, in 1786. During the time he

(*a*) See however the several statutes, p. 406, relating to residence in *prisons*, &c.

occupied the mill, or afterwards, he neither rented nor occupied any land in Knighton. During the last half year he rented the mill he kept a servant, who resided with him in Ward's house as part of his (the pauper's) family. The pauper believed it was known to Knighton that he rented the mill, because he served some of the inhabitants there with grist, and they knew him to be a miller. *Ashhurst*, J., delivered the opinion of the court. "The question of this case is, whether the pauper gained a settlement in the parish where he rented a tenement of the yearly value of 10*l.*, or in the parish where he resided, occupying at the same time a tenement in another parish? And we are all of opinion that he did not gain a settlement in Knighton, because, *in order to gain a settlement by renting* 10*l. per annum, there must be a residence either on the premises, or at least in the parish where some part of the premises lies. Rex* v. *Topcroft* (p. 846) is decisive of the question; and there are two or three other cases, *Rex* v. *Butley* (p. 785), which confirm this doctrine, where it has been taken for granted that there must be a residence." Order of sessions quashed.

19. *Residence.*

But not necessarily upon any part of the tenement.

Rex v. *Kenardington*, 6 *Bar. & Cress.* 70; 9 *D. & R.* 72. W. Knight was removed from Kenardington to Ulcomb. Order quashed. Case:— The pauper, when about sixteen years of age, hired himself for a year to T. Knight, at the wages of four guineas: he served the year in the parish of Ulcomb, dwelling in his master's house there, and received his wages. He afterwards, and about twenty-two years ago, married Sarah his wife; and having, about four years after his marriage, removed to Kenardington, he entered into a contract with Joseph Stead, a farmer there, to serve him as a labourer upon his farm, at the wages of 16*s.* a week, to have his wheat at 6*s.* a bushel, butter at 1*s.* a pound, and a small house of his master's situate in his master's farm, rent-free to live in. He entered into the service, and continued in it under these terms for three years; and between Christmas and Lady-tide, in the third year of his service with Stead, the pauper, with two other persons, hired of Joseph Boon seven acres and a quarter of land in the parish of Kenardington, at the price and of the value of 25*l.* 7*s.* 6*d.*, being 3*l.* 10*s.* per acre; and at the same time he, on his own account, took an acre of land in the same parish of Joseph Boon, at the price and of the value of 50*s.* The seven acre piece was cultivated and cropped with potatoes, and the expenses and the rent for the same were paid equally by the pauper and his two partners; but the one acre piece was cultivated and cropped with potatoes by and at the sole expense of, and rent for the same was paid by the pauper alone; thereby making his renting in the parish of Kenardington at one time 10*l.* 19*s.* 2*d.*; and these two parcels of land were held together by the pauper, and by the pauper and his partner six months. The pauper at no time resided on any part of the land taken of Joseph Boon, but resided in the small house of his master's on his master's farm, as his servant. At the end of the three years he quitted Stead's employment, and at the same time left his house. *Bayley*, J. "I am of opinion that the order of sessions was right; a settlement having been gained in Kenardington. The argument against the settlement is, that although the pauper rented a tenement of more than 10*l.* annual value, yet as he did not reside upon any part of it, but with a master, no settlement was gained. In *Rex* v. *Bardwell* (p. 778) expressions were certainly used by *Best*, J. and me, giving a larger meaning to the words *coming to settle* in the 13 & 14 Car. 2, c. 12, than we ought to have done, and *Rex* v. *Shipdam* (p. 778) was decided on the same ground. In *Rex* v. *Benneworth* (p. 763), the court took time to consider the question; because they were pressed with the former decisions, and re-considered them. The point is not mentioned in the judgment pronounced in *Rex* v. *Benneworth;* but that judgment could not have been given if the court had been of opinion that *Rex* v. *Bardwell*, and *Rex* v. *Shipdam*, were well decided. In *Rex* v. *Sutton St. Edmunds* (p. 759), it appeared that the pauper entered into a service where he was to have 18*l.* a year wages, and the keep of two cows. He lived in a cottage on his master's farm;

19. *Residence.* but it was found that the occupation of the cottage was incidental to his service. The court held that he did not gain a settlement; because there was no bargain that the cows should be pasture-fed. If the court had then thought residence upon the tenement necessary, the case would not have admitted of an argument, and the other point would not have been made the ground of the decision. In *Rex* v. *All Saints, Derby* (p. 748) there could not be any residence on the tenement, and yet a settlement was gained. In *Rex* v. *Benneworth* also there was no residence on the tenement, and the renting of the tenement was during the service. It can make no difference, whether the bargain for the tenement is connected with the contract for service, or whether, as in this case, it is a separate contract made with a third person." *Littledale*, J., concurred. Order of sessions confirmed.

Where a residence is in different parishes, and in one of them for forty days at different intervals, and the pauper sleeps there the last night, the settlement is gained there.

Rex v. *St. Mary, Lambeth*, 8 *T. R.* 240, 241. John Taylor was removed from St. Olave to St. Mary, Lambeth. Order confirmed. Case:—The pauper, about four years ago, took a tenement at the yearly rent of twelve guineas, in St. Mary, Lambeth, and continued tenant thereof until 29th September, 1797. He resided in that tenement from the time of taking it, until 24th June, 1797, when he took a lodging for the convenience of his business, at the rent of 8*l.* 10*s.* a year, in St. Mary-le-bone, where he occasionally slept, leaving his family at Lambeth: both tenancies expired on 29th September, 1797. The pauper slept sometimes in Lambeth and sometimes at his lodgings in St. Mary-le-bone, and for above forty days in the whole upon the tenement in St. Mary-le-bone, and he slept there the last thirty nights of that tenancy. His family never accompanied him, or slept in St. Mary-le-bone, but remained at the house in Lambeth until about three weeks previous to Michaelmas-day, 1797, when she went away, and took the furniture away with her. The court said "there could be no doubt but that the pauper's settlement was in St. Mary-le-bone, where he had a tenement of above the annual value of 10*l.* when joined to the other in Lambeth, and in which former tenement he had resided on the whole above forty days, and where he had slept the last night. The question was too plain for argument." Both orders quashed.

Place of sleeping.

Rex v. *Ringwood*, 1 *M. & S.* 381. Lord *Ellenborough* in the course of the argument said, "The court will not enter into minute inquiries whether the pauper *slept*, in the literal sense of the word, during the last night of his residence,—what will satisfy *pernoctavit* is sufficient."

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20. *Residence, &c.* 20. Residence and other Requisites under 59 Geo. III. c. 50; 6 Geo. IV. c. 57; 1 Will. IV. c. 18.

59 Geo. III. c. 50, no settlement shall be acquired by renting any tenement except a house or land in the parish *bonâ fide* hired at and for *ten pounds* a year, &c.

The 59 Geo. III. requires that the whole of such land shall be situate within the same parish as the house wherein the person hiring such land shall dwell and inhabit. There are no similar words in the 6 Geo. IV. or 1 Will. IV., but we have seen that the land or buildings, by renting which a settlement is to be gained, must *all* be in the *same parish*, and although the statutes require that the tenement shall be *occupied*, yet it does not follow that a longer *residence* is necessary than heretofore.

A residence therefore for forty days, and although not on the tenement, if it is in the parish, is sufficient under these statutes, as it was before they were passed.

In *Rex* v. *Ditcheat*, p. 816, it was assumed that if the pauper himself had resided for forty days, he would have acquired a settlement. *Littledale*, J., said, that the legislature did not, by 6 Geo. IV. c. 57, intend to alter the law in that respect.

Residence for forty days sufficient since 59 Geo. III. c. 50.

Rex v. *Wainfleet*, p. 799. *Bayley*, J. "Another objection is, that the pauper did not reside on the land, though he resided in the parish; and, secondly, that he did not reside in the parish for a year. Before the 59 Geo. III. c. 50, actual residence in the parish for forty days upon a tenement of the yearly value of 10*l.* conferred a settlement, although the party

did not pay any rent for the forty days. But the 59 Geo. III. altered the law in that respect, and the language of that statute must be abided by as nearly as possible. It enacts, that no person shall acquire a settlement in any parish by reason of dwelling for forty days in any tenement rented by such person, unless certain conditions mentioned be complied with.

20. *Residence.*

The residence must be within the year of occupation, but at what period of such year is immaterial. (*Reg.* v. *Willoughby*, p. 818.)

Such forty days must be within the year of occupation.

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21. The Occupier must be assessed to and pay Poor Rate under 4 & 5 Will. IV. c. 76, s. 66.

21. *The Occupier assessed to and paid Poor Rate under 4 & 5 Will. IV. c. 76, s. 66.*

We have seen that the 4 & 5 Will. IV. c. 76, s. 66, enacts that from and after the passing of this act (14th August, 1834), no settlement shall be acquired or completed by occupying a tenement, unless *the person occupying* the same shall have been *assessed to the poor-rate*, and shall have *paid* the same in respect of such tenement for *one year*.

No settlement shall be acquired unless occupier has been rated and paid poor rate for one year.

It has been decided, *Reg.* v. *St. Mary Kalendar* (*post*), that this section does not apply to settlements *by rating*; the section therefore is inapplicable where the pauper is assessed to and has paid any rate.

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22. Of the Evidence of Settlement by Renting, &c.

22. *Of the Evidence of Settlement by Renting, &c.*

Rex v. *Castle Morton*, 3 *B. & Ald.* 588. Removal from Tewkesbury to Castle Morton. Order confirmed. Case:—James Bedward, the husband of the pauper, took a tenement in Longdon of Miss Poole; the terms of the taking were contained in a written agreement, unstamped, which was lost. J. B., after residing on the tenement about half a year, gave Miss Poole 3*l.* to be off the bargain, and entered into a fresh agreement with Mr. Pencent, the landlord of Miss Poole, who accepted him as tenant in her stead. Parol evidence of the contents of the unstamped agreement was offered, in order to prove the amount of rent agreed for between Bedward and Miss Poole, and refused. *Dover* v. *Maester* (5 *Esp.* 92,) was cited. *Abbott*, C. J. "The promissory note was there admitted in evidence, on the ground that the defendant, who had been in that case guilty of a crime, should not be allowed to relieve himself from the consequences of it by such an objection. And so in the case of forgery, a prisoner cannot object that the forged instrument, when produced, cannot be given in evidence for want of a proper stamp. But this case is very different; for the parties here seek to show the value of a tenement by the proof of a contract previously entered into respecting it. The contract was not therefore in this case collateral, but of the very essence of the case. Nor can it be introduced as a declaration; for it is a declaration made under such circumstances as prevent its being admitted in evidence." Order affirmed. (*a*)

An agreement in writing, unstamped, for the letting a tenement at a certain rent, having been lost: Held, that parol evidence of its contents was not admissible for the sake of proving thereby the value of the tenement.

Rex v. *Kingston-upon-Hull*, 7 *B. & C.* 611; 1 *M. & R.* 444. Removal from Eccleshall to Hull, confirmed. Case:—On cross-examination of the pauper, who proved a settlement in the appellant parish, the appellants were proceeding to show that he had acquired a subsequent settlement by the occupation of a tenement, and to prove the rent paid, but the respondents interposed, and asked if the contract for the tenement was not in writing, and he admitted it was. The appellants contended that they might prove the fact of occupation, and the value of the tenement, without reference to the agreement, but the sessions refused it. *Bayley*, J. "The general rule is, that the contents of a written instrument cannot be proved without producing it. But although there may be a written instrument between a landlord and tenant, defining the terms of the tenancy, the fact of the tenancy may be proved by parol, without proving the terms of it.

A tenancy under a written contract may be proved by the payment of rent.

(*a*) Upon counsel alluding to this case in *Rex* v. *Hull*, *Bayley*, J., said "There the court only held that they could not receive parol evidence of a written agreement which was void."

22. *Evidence.* It was unnecessary in this case to prove by the written instrument either the fact of tenancy or the value of the premises." *Littledale*, J. "Payment of rent as rent is evidence of a tenancy, and may be proved without producing the written instrument." Case sent back to the sessions, to hear the evidence. (*a*)

Devise of land and right of cutting browse, requires an *ad valorem* stamp.

An instrument not under seal, devising land and other interests, (some of which are incorporeal,) at one fixed rent, requires only an *ad valorem* stamp. (*Reg.* v. *Hockworthy*, p. 813.)

The agreement if in writing must be produced, to show a tenancy under 6 Geo. IV.

Rex v. *Merthyr Tidvill*, 1 *B. & Ad.* 29. E. Davies was removed from Cadoxton to Merthyr Tidvill. Order confirmed. Case:—The respondents called the pauper, who deposed that he rented and held possession of a house in Merthyr Tidvill from May, 1827, to June, 1828. The rent was 25*l.* per annum, payable quarterly. He paid the first three quarters as they became due, and had a receipt for the last, which was not paid in money, but for which, as he alleged, the landlord accepted an equivalent in fixtures. On cross-examination, he at first said that the contract between him and Rock, the landlord, for the premises, was merely verbal; but Rock, who was in court, handed the agreement in writing to the advocate for the appellants, and the witness, on the paper being held up to him, admitted that the contract was a written one. The respondents then objected to any parol evidence of the agreement, but the sessions received it. The appellants called Rock to show that the transaction respecting fixtures was not a satisfaction of the rent and that the receipt was unfairly obtained. The questions were, whether the parol testimony was properly received, and whether the payment of rent was sufficient. *Bayley*, J. "This case is clearly distinguishable from *Rex* v. *Hull*, the facts of which took place before the 59 Geo. III. c. 50 and 6 Geo. IV. c. 57, and when the proofs necessary for establishing this kind of settlement were that a tenancy subsisted, and that the value of the tenement was 10*l.* a year. At that time the terms of the agreement were immaterial, except as a test of value, and when proved, they did not preclude the sessions from determining for or against the settlement. *Rex* v. *Hull* decided this, only that where the terms of the tenancy were not material, the fact of tenancy might be proved without the terms, but under 6 Geo. IV. c. 57, they are essential. This act requires the tenement to be *bona fide* rented for the term of a year, at 10*l.* a year; and it is therefore necessary to know what was the rent contracted for, which cannot be proved without reference to the agreement itself: that having been in writing, the general rule of evidence prevails, and the order is therefore bad. The other judges concurred. Order of sessions quashed.

A presumption of tenancy, arising from occupation, cannot be negatived without proving the written agreement.

Rex v. *Rawden*, 8 *B. & C.* 708; 3 *Man. & R.* 426. Removal from Idle to Rawden, confirmed. Case:—The pauper occupied a tenement for a year, and paid rent for it. In answer to this it was insisted, that the pauper was a joint tenant with two others, and to prove this the steward of the landlord was called, who said he did not know who occupied the tenement. He was then asked to whom he had let it, and who were the tenants, but being asked if there was not an agreement in writing, he admitted there was. The sessions received the parol evidence. *Bayley*, J. "The question in this case is, whether the evidence of the steward was sufficient to rebut a *primâ facie* case of tenancy made out by the appellants? In *Rex* v. *Hull* the question at the sessions was, whether the pauper came to settle on a tenement in the character of tenant? The proof was that he occupied and paid rent. The court thought that was *primâ facie* evidence that he came to settle in the character of tenant;

(*a*) In a case precisely similar in its circumstances (though it was an action for an injury to the reversion), the judges of the Court of Common Pleas were divided in opinion. *Best*, C. J., and *Burrough*, J., being of the opposite opinion to that given in the above case upon the point; and *Park*, J., and *Gaselee*, J., concurring in the opinion of the Court of King's Bench. (See *Strother* v. *Barr*, 5 *Bing.* 136; 2 *M. & P.* 207.)

there can be no doubt that a party may, by keeping out of view a written instrument, make out by parol testimony a *primâ facie* case of a tenancy, and it then lies on the opposite party to rebut it. Here the appellants made out a *primâ facie* case. The respondents attempted to vary it, by proving that the premises were let to the pauper jointly with others; but that letting was by a written instrument. It is quite clear it could be proved only by the production of a written instrument." *Littledale*, J. "This case is perfectly different from *Rex* v. *Hull*. There the tenancy was proved by occupation and payment of rent. That was *primâ facie evidence* of tenancy. Here the parol evidence was adduced to negative the presumption of tenancy arising from occupation and payment of rent." *Parke*, J. "A general hiring of land is presumed to be a yearly hiring." (*Rex* v. *Wainfleet*, p. 720).

22. *Evidence.*

If the occupier of the tenement is dead, the fact of his possession being first proved, any declarations which he may have made when in possession, tending to show in what manner or on what terms he occupied, may be given in evidence. A *primâ facie* case being thus made out, may be met by proof that the occupation was *against* the consent of the landlord, or that the party occupied in the capacity of bailiff or servant to the owner of the property, or only a privilege allowed him in respect of something else, which was the principal thing. *Doe* v. *Pettet*, 5 *B. & A.* 223.

If the occupier is dead, proof of his occupation, and evidence of his declarations as to the terms on which he held, will suffice.

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23. Effect of Fraud.

23. *Effect of Fraud.*

If the renting is colourable between the parties to the contract, or in any way fraudulent, the settlement will be defeated. (As to the effect of fraud, see *Rex* v. *St. Michael's, Bath, post*; *Rex* v. *Edington, post.*)

Rex v. *Woodland*, 1 *T. R.* 261. The pauper went to Ashburton, where he rented a cot-house at 1*l.* 12*s.* per annum, in which he resided; during which time he took a meadow in Woodland, *at the rent of ten guineas*, of one M. N., who resided in the same parish. The pauper did not stock it at all, but at Christmas he *let the grass* for 3*l.* 3*s.* to Edward Barter till Lady-day following, who stocked it and paid the rent to him. Several persons offered to take the grass of the pauper before he let it to Barter. The pauper laid up the ground for mowing, and then let the mow to M. N. for five guineas, and the after-grass for two guineas. At the end of the year, when the pauper settled accounts with M. N., he received two guineas on balance of accounts, after allowing five guineas to M. N. for the half year's rent then due; M. N. had frequently made a practice to take ground and let it again in parcels (it was the case now); three years before this transaction, the pauper had received relief from Woodland, and half a year after the expiration of the term, his wife received relief from Woodland. The sessions were of opinion that the said taking was fraudulent. The Court of King's Bench said they were of opinion that it was a fraudulent taking, and they would give no opinion upon the right of the court to examine into the propriety of such conclusion by the sessions.

Taking land, without stocking it, held to be fraudulent.

In *Rex* v. *Fillongley*, (see case, p. 797,) Lord *Kenyon* said, "There is no rule better established than that fraud is never to be presumed, and I believe in a case sent for the opinion of this court, which was pregnant with fraud, they would not presume fraud, because it was not so stated. (See *Rex* v. *Llanbedergoch*, p. 844).

The court of K. B. will not presume fraud.

Rex v. *St. Sepulchre, Cambridge* (p. 825), it was held that no settlement was gained under 6 Geo. IV. c. 57, where the case stated that the rent had been paid by the parish officers for the occupiers, *fraudulently* for the purpose of gaining the settlement.

Fraudulent payment of rent.

Rex v. *Tillingham*, 1 *Bar. & Adol.* 180. J. Spells was removed from Bradwell to Tillingham. Order confirmed. Case:—About Michaelmas, 1827, the pauper hired a house, garden, and bakehouse in Bradwell, of Mr. John Willis, under an agreement, by which Spells agreed to take the

A Pauper settled in B., applied to the overseers for relief, and they gave him money,

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which enabled him to pay a year's rent for a tenement in A., whereby he would become settled in A. If the money was paid solely to enable the pauper to gain a settlement in A., the sessions ought to find fraud; but if it was paid to relieve him, they ought to negative fraud.

house and shop late in the occupation of Stoker, situate in Bradwell, at the yearly rent of 10*l.* for the first two years, to commence at Christmas, 1827, clear of all rates and taxes, landlord's excepted, half-yearly payments. The pauper took possession of the premises at Christmas, 1827, and occupied them a whole year. He paid a year's rent for them, under the following circumstances: Soon after Midsummer, 1828, Mr. Willis applied to the pauper for a half-year's rent then due, which he was unable to pay. Shortly after Michaelmas, 1828, a similar application was made for three quarters of a year's rent then due, but no money was paid. The pauper being then distressed, his business of a baker failing, and his family in want, applied to Mr. Stowers, an overseer of Tillingham, for relief, and also for money to enable him to pay his half-year's rent, and to carry on his business. Mr. Stowers gave the pauper 1*l.* for relief, and directed him to call again two or three days afterwards. The pauper did call again accordingly, when he received from Mr. Stowers the sum of 12*l.* 10*s.*; 7*l.* 10*s.* of which he paid to his landlord for the three quarters of a year's rent due at Michaelmas, and the remaining 5*l.* he applied in carrying on his business and supporting his family. Shortly after Christmas, 1828, Mr. Robert Willis, an overseer of Tillingham, (but not the acting one), who was the nephew of the proprietor of the house in which the pauper resided, and acted as agent to his uncle, applied to the pauper for one quarter of a year's rent then due. The pauper said he was unable to pay it, and that he must apply to Mr. Stowers for relief for himself and his family. Mr. Willis said that if the rent was not paid the next day, he should put in a distress, to which the pauper replied he did not consider there was any rent due until the following Michaelmas, 1829. The pauper afterwards again applied to Mr. Stowers for relief; Mr. Willis was present, and asked the pauper if he would object to pay the rent if he had the money in his pocket; to which the pauper replied no, but repeated that he did not consider there was any rent due. Mr. Stowers then desired the pauper to withdraw for a few minutes, that he and Mr. Willis might consult upon the business. The pauper did withdraw accordingly, and in a few minutes was called in again, when Mr. Stowers gave him 3*l.* Mr. Willis then demanded of the pauper payment of the one quarter's rent, and the pauper accordingly paid him 2*l.* 10*s.* reserving only the remaining 10*s.* for himself; as he was going away, the pauper asked Mr. Stowers where he was to apply for relief when the 10*s.* were gone, saying that he supposed as he had paid a year's rent for his house he was in future to apply to the parish of Bradwell, to which Mr. Stowers replied that he was. Previously to his advancing the sums of 7*l.* 10*s.* and 3*l.* to the pauper, Mr. Stowers consulted the other parish officers of Tillingham upon the propriety of making such advances, and both those advances were made with their knowledge and approbation. He also took the opinion of two magistrates of the district upon a supposed case, and was advised by them that he might safely and properly make such advances, and that his so doing would not prejudice the pauper's right to acquire a settlement in Bradwell. The sessions did not assign fraud as the ground for determining that no settlement had been acquired in Bradwell, but stated, that as the facts of the case were novel, they were desirous of having the opinion of the Court of King's Bench whether the payment of rent under such circumstances was a legal payment. *Bayley*, J. "It is not for this court to draw the conclusion of fraud from the facts stated. It was a question for the justices at sessions whether there was fraud or not. If the money was paid by the overseer to the pauper when he was actually under pressure, as for the purpose of relief, that would be no fraud; but if it was paid not with a view to relief, but only to get rid of the pauper and to throw the burden of maintaining him on another parish, that would be fraudulent. I think that this case should go back to the sessions, in order that they may state that there was fraud, or that there was none. If upon this evidence they shall be of opinion that the money or any considerable

portion of it was paid by the overseer for the sole purpose of fixing the pauper on one parish, and enabling the other to get rid of him, they ought to find fraud; but if they shall be of opinion that the money was paid *bona fide* with the sole view of relieving the pauper, they ought to negative fraud." Case sent back to the sessions.

23. *Effect of Fraud.*

8. Of Settlement by Estate.

8. *Of Settlement by Estate.*

General observations.

The favour with which the ownership of real property, as indicative of individual respectability, has always been regarded, is corroborated, among many other of our civil institutions, by the law of parish settlements.

It has been seen under the last title, that the *credit* and confidence reposed in a man who has been trusted *as tenant* with the occupancy and temporary possession of a 10*l.* a year tenement, was sufficient to exonerate him from the condition of legal vagrancy, and to confer upon him the privilege of a settlement, although he in fact remained in the place where he was thus located not more than forty days. The law on this subject has certainly in more recent times been limited and restrained by various statutory regulations; but little alteration has been made as to settlements by *estate;* one condition added to the acquisition of this settlement is, that if the estate be acquired by the party's *own act,* that is, by pecuniary purchase, it must be of the value of, or rather that the price paid must be 30*l.* at the least. With this exception, where an individual is owner in fee, copyholder, mortgagee, or leaseholder, executor, or administrator, or comes to the possession in any other way by operation of law, his title to the land is sufficient to give him a settlement, although he may not have the beneficial ownership. It is also settled, that an *equitable estate* is sufficient for this purpose, though a mere *equitable interest,* which a court of equity *might probably* sustain and enforce, is not. The case of *Rex* v. *Stone* proves that the nature of the tenure or quantity of interest is immaterial, and that even an executor, by residing on a leasehold estate belonging to him in that character, may acquire a settlement.

The principle upon which these settlements are founded is, that the party ought not to be removed from his own, but is entitled to the superintendence and care of his property, however small the annual value. Having land in a parish will not of itself make a settlement, but *living* in a parish where one has land, will gain a settlement without notice; for the act (13 & 14 Car. II. c. 12,) never meant to banish men from the enjoyment of their own lands. (*a*) No one can be removed from the parish in which his freehold is situated within the first forty days of residence: but if he quits it voluntarily before he has been resident forty days, and becomes indigent, he cannot be removed thither. In order therefore to acquire a perfect settlement by estate, the party must have resided forty days in the parish in which his estate lies, and while his interest continued. (*b*)

Such a settlement, however, cannot now be retained if the party acquiring it ceases to reside within ten miles thereof.

This head of settlement admits of the following general arrangement and subdivisions.

I. *Of the* Statutes *relating to Settlement by Estate, and the Continuance of such Settlement.*

II. *Of Estates acquired* otherwise *than by* Purchase *for pecuniary Considerations.*

First, The Nature *of the Property.*
Secondly, The Tenure.

(*a*) *Per Holt,* C. J. in *Ryslip* v. *Harrow,* 2 *Salk.* 524.

(*b*) *Rex* v. *West Sheffield, Burr. S.* C. 307; *Wookey* v. *Hinton Blewett,* 1 *Stra.* 576; *Harrow* v. *Edgeware,* p. 862.

8. *Of Settlement by Estate.*

Thirdly, The Annual Value.
Fourthly, The Interest in the Estate, and who may acquire a Settlement.
1. *Of Infants.*
2. *Executors, Administrators, and the Next of Kin.*
3. *Trustee and* Cestui que *Trust.*
4. *In Remainder.*
5. *Dower.*
6. *Wife's Interest in Trust.*
7. *Guardian of Ward's Estate.*
8. *Estate in Mortgage.*
9. *Estate acquired by Possession without a perfect Title.*

III. *Of Estates by* Purchase, *for pecuniary Consideration, under* 9 *Geo. I. c.* 7.

First, What is a Purchase within the Statute.
Secondly, Of the Consideration paid.
Thirdly, Money laid out on Estate after Purchase.
Fourthly, Equitable Interest in purchased Estate.

IV. *Of the requisite* Residence.

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1. *Of the Statutes relating to Settlement by Estate.*

1. Of the Statutes relating to Settlement by Estate, and Continuance of such Settlement.

No statute *expressly* creates any settlement by *estate.* The statutes relating to this subject are the 13 & 14 Car. II. c. 12, s. 1, and the 9 Geo. I. c. 7. The first directs the sending a pauper to the place where he was last settled for the space of forty days. The last prevents a person who has not *bona fide* paid 30*l.* for a purchased estate, from acquiring a settlement by such estate, any longer than he shall inhabit in such estate.

13 & 14 Car. II. c. 12, does not mention residence as *owner.*

By 13 & 14 Car. II. c. 12. s. 1, within forty days after any person has come to settle in any tenement under the yearly value of 10*l.*, any two justices, if such person was likely to be chargeable, might remove him to the parish where he was last legally settled, "either as a native householder, *sojourner*, apprentice, or servant, for the space of forty days at the least."

Per *Lee*, C. J. in *Rex* v. *St. Nyotts, Burr. S. C.* 132. "The statute, 13 & 14 Car. II. c. 12, does not expressly mention residence as *owner* of an estate. This species of settlement must therefore either depend upon being an exception to the modes of acquiring settlement specified in the act, or upon applying the term '*sojourner*' to persons lawfully inhabiting a parish and who cannot be removed from it."

9 Geo. I. c. 7, s. 5, No settlement to be acquired by purchase, if consideration of purchase-money is under 30*l.*

The 9 Geo. I. c. 7, intituled "An Act for amending the laws relating to the Settlement, Employment, and Relief of the Poor," section 5, enacts, "That from and after the twenty-fifth day of March, which shall be in the year of our Lord one thousand seven hundred and twenty-three, no person or persons shall be deemed, adjudged, or taken, to acquire or gain any settlement in any parish or place for or by virtue of any *purchase* of any estate or interest in such parish or place whereof the *consideration* for such purchase doth not amount to the sum of *thirty pounds, bona fide* paid, for any longer or further time than such person or persons shall inhabit in such estate, and shall then be liable to be removed to such parish or place where such person or persons were last legally settled before the said purchase and inhabitancy therein."

This act is confined to cases of estates acquired by *purchase* in the common acceptation of that term, for which a consideration amounting to 30*l.* must be *bona fide* paid. It does not *create* or *enable* persons to acquire a settlement, but *prohibits* them from gaining one, except under certain circumstances.

4 & 5 Will. IV. c. 76, s. 68. No settlement by possession of es-

By 4 & 5 Will. IV. c. 76, s. 68, it is enacted, "that no person shall be deemed, adjudged, or taken to *retain* any settlement, gained by virtue of any possession of any estate or interest in any parish for any longer or fur-

1. *Statutes relating to Settlement by Estate.*

ther time than such person shall inhabit within *ten miles thereof;* (*a*) and in case such person shall cease to inhabit within such distance, and thereafter become chargeable, such person shall be liable to be removed to the parish wherein previously to such inhabitancy he may have been legally settled; or in case he may have subsequently to such inhabitancy gained a legal settlement in some other parish, then to such other parish."

tate shall be retained longer than the person shall inhabit within ten miles thereof.

Such a settlement is not merely suspended, it is extinguished.

Rex v. *St. Giles-in-the-Fields*, 1 *G. & D.* 557; 2 *Q. B.* 446. H. Walton was removed from St. Giles-in-the-Fields to St. James, Westminster. Order quashed. Case:—The pauper, on the 6th September, 1826, purchased for 1575*l.* certain leasehold premises, called the Turk's Head, situate in the appellant parish. The leasehold interest was for an unexpired term of 94 years, subject to the reserved annual rent of 150 guineas; and on the day above mentioned he paid the purchase-money, and a conveyance of the premises was duly executed to him. The pauper and his family occupied the premises from the time of the purchase until June, 1827, when an execution was put into the house, under which the pauper's goods were sold. The house was then shut up until the 25th day of October in the same year, when the pauper assigned the lease to another party, who thereupon entered into possession of the premises, and the pauper never returned to them. The pauper paid the reserved rent for the whole period that he held the lease. In 1830, the pauper removed to and resided at a place more than ten miles distant from the appellant parish. It was urged that the Act suspended only, and did not destroy, a settlement. Lord *Denman* asked, "Can you make that construction consistent with the language of the statute? It says, 'in case such person shall cease to inhabit within the prescribed distance, and *hereafter* become chargeable,' he shall be liable to be removed." After further argument Lord *Denman* said, "I think the settlement set up in this case by settling on the tenement of the pauper, can be considered as claimed only 'by virtue of the possession of an estate,' and that therefore it is put an end to by the statute, on the pauper ceasing to reside within ten miles of it." The other judges concurred. Order of sessions confirmed.

A settlement claimed under 13 & 14 Car. II. c. 12, s. 1, by "coming to settle" on a tenement of the yearly value of 10*l.*, in right of the pauper's own estate in it, is a settlement within the act.

Reg. v. *Whissendine*, 1 *G. & D.* 568; 2 *Q. B.* 450. This was an order of justices, calling upon the parish of Whissendine to pay 12*s.* per week towards the support of a lunatic, named Edward Peach, then being in the Leicester County Lunatic Asylum, and adjudging his settlement to be in Whissendine. Order confirmed. Case:—The pauper was entitled under the will of his father, R. Peach, to one-seventh share of his real estate, situated in Whissendine. He was born in that parish in 1810, and resided there with his mother until he was about fourteen years old (in 1824). He was apprenticed to J. Hind, an ironmonger, in St. Martin's, Leicester. He served three years in that parish, when he ran away from his master and went home to his mother at Whissendine. Shortly afterwards, and in 1827, the indentures were duly cancelled by mutual consent. From this period until the beginning of 1837, he continued to live with his mother in a house, part of the estate, in Whissendine, devised to him and his brothers and sisters by his father's

A person inherited a real estate, and acquired a settlement, by living in a house, part of the estate. He became insane and was removed by his relations to the county asylum, which was more than ten miles from the parish in which the estate was. Within the above statute "ceases to inhabit" and loses his settlement by estate.

(*a*) "Within ten miles *thereof*." This it is presumed, refers to the *parish* and not to the *estate*. The word "thereof" signifies "of that;" and the parish is the last antecedent. This is a more convenient conclusion than referring it to the "estate or interest," as the estate or interest may not have a local "habitation;" for the possession of an incorporeal tenement, *e. g.* fishery, or common in gross, may confer a settlement, and distance could not be calculated from them.

The statute has not defined the mode of measurement. It is not clear whether the measurement would be by the nearest way of access, by the straight line, or by the map. Similar words in the Reform Bill created much difference of opinion, and it was therefore *declared* by the 6 & 7 Vict. c. 18, that the distance should be measured in a straight line, on a horizontal plane. This may be considered as a legislative interpretation of such words. In *Leigh* v. *Hind*, 9 *B. & C.* 774, where a person had agreed not to carry on a business within a limited distance, the nearest available approach was taken as the proper mode of ascertaining it.

1. *Statutes relating to Settlement by Estate.*

will, and thereby gained a settlement by estate in Whissendine. In 1837, having become quite insane, he was removed to the Leicester County Lunatic Asylum, where he remained until April, 1841, being maintained partly by his relations and partly by his proportion of the rents of his estate, the latter alone being insufficient for his support. In April, his relations declining to contribute any longer to his support, he was taken from the asylum and brought to Whissendine, and remained there one night, but on the parish officers of Whissendine declining to acknowledge him as their pauper, he was taken back to Leicester, and the necessary warrant and order of two justices of the borough of Leicester, for his removal to the same asylum, and his maintenance there, at the expense of the parish of Whissendine, as a pauper lunatic, were duly obtained, made, and served on the parish officers of Whissendine, and he was accordingly removed. It was contended that the settlement gained in Whissendine, by estate, was destroyed by his removal into the asylum at Leicester, more than ten miles therefrom, and that the settlement of the pauper was in the parish in which he was apprentice. Lord *Denman*, "It appears to me, if the legislature had been called upon to make provision for this case, they could not have made use of stronger language. The words are not 'go' or 'depart,' but 'cease to inhabit.' It is certainly very possible that all the consequences of this enactment were not before the legislature in framing this statute; but that consideration will not authorise us to refuse to give effect to language which is clear and unambiguous." *Patteson*, J. "It is quite clear that, in order to satisfy this section of the statute, it is not necessary for the pauper to have resided, in the legal sense of the word, elsewhere. It certainly did appear to me, at first, very strange, that a parish might remove a lunatic pauper, and so rid themselves of the burden of his maintenance, but such is not the case here, the pauper was in the first instance removed by his relations. I have no doubt that he then 'ceased to inhabit.'" *Coleridge*, J. "I still entertain some doubts whether this case was in the contemplation of the framers of the statute, but, upon the whole, I think this pauper ceased to inhabit within the meaning of it." *Wightman*, J. "There may in some cases be difficulties in the application of this law, but they do not exist in this instance. The words are too strong to be overcome." Order quashed.

It does not deprive the emancipated child of such settlement.

Rex v. *Hendon*, 2 *G. & D.* 394; 2 *Q. B.* 455. J. Davies was removed from Hendon to Enstone. Order quashed. Case:—The pauper was the son of T. Davies. In 1814, the father married S. Gregory, who at the time of the marriage was the yearly tenant and occupier of the Crown public-house in Enstone, at the annual rent of 9*l.* The father resided in the house, and occupied it for several years after his marriage, and he continued to reside in the same parish until the pauper became of age, and was emancipated. After the emancipation of the pauper, and after the 3 & 4 Will. IV. c. 76, the father and the pauper removed to a greater distance than ten miles from Enstone, and continued beyond that distance till the pauper became chargeable, and was removed by the present order. Lord *Denman*, "The case is quite clear. The settlement put an end to by section 68, is a settlement gained by the party's own possession of property in the parish." *Coleridge*, J. "The settlement of an emancipated child cannot be affected by anything that happens to the father; and an unemancipated child of a person removing ten miles from his parish would lose his settlement, not by virtue of this clause, but of the general law." *Williams* and *Wightman*, Js. concurred. Order of sessions quashed.

2 *Of Estates acquired otherwise than by Purchase or for Pecuniary Consideration.*

2. Of Estates acquired otherwise than by Purchase, or for Pecuniary Consideration.

First. Of the Nature of the Property.

1. Nature of property. Generally land or houses.

The nature of the *thing* or property out of which the interest which is to confer a settlement must arise, has not been expressly defined. The reported cases generally respect settlements by estate in *land or houses*,

2. *Of Estates acquired otherwise than by Purchase, &c.*

and it is nowhere directly considered, whether a settlement can be acquired by *an estate in a "tenement,"* as that word has been explained under the 13 & 14 Car. II. c. 12, or in the more extensive denomination of property called an "*hereditament.*" The principle upon which these settlements are founded, before adverted to, seems to extend this right to all interest *in things immovable*, situate within a town or parish, which, as the party cannot take them with him to the place of his settlement, he must be allowed to remain where they are for the purpose of superintending them.

Must be some *realty.*

It is clear, however, that the interest must issue out of the *realty* locally situated in the parish where the settlement is sought; and it should seem it must be such an interest as would entitle the party to take possession of such realty, and therefore an annuity charged by will on *personalty* or *chattel real*, or even a *rent-charge* out of *freehold*, would not constitute a settlement.

Not a mere *rent-charge.*

Deed of conveyance does not estop the overseers from showing in what parish the property is.

The overseers of a parish are not estopped by the deed conveying the estate to the pauper, from shewing that the premises described in the deed as in the parish of A. are in reality in the parish of B. *Rex* v. *Wickham*, 2 *A. & E.* 567.

Living upon a *leasehold* estate out of which and other personal property the person has a *rent-charge* only, gains no settlement.

Rex v. *Stockley Pomroy, Burr. S. C.* 762. E., being possessed of an estate in C. for a term of years determinable on the death of S. W. (the mother of J. W., the pauper, in and by her last will devised to her grandson, J. W., the pauper,) *the sum of* 10*l. a year, to be paid* by her executors in trust therein named, *out of her estate*, during the said J. W.'s mother's life; and if her grandson J. W. should happen to die before his mother, that then his brother and sister, W. and M., should have and enjoy the aforesaid 10*l.* a year of like lawful money, to be paid by her executors in trust therein named, yearly and every year during the life of her daughter, S. W., aforesaid; and in case W. W. and M. W., her grandchildren aforesaid, should either of them happen to die before their mother, S. W., that then her will and pleasure was that the survivor of them should have and enjoy the aforesaid legacy of 10*l.* a year in manner and form aforesaid payable; the testatrix soon afterwards died, without altering or revoking her will, and left at the time of her decease the leasehold estate above-mentioned, and effects to the amount of 32*l.* only and no more. The pauper, J. W., being settled in S. and considerably in debt, in order to avoid his creditors went to reside in Cheriton Fitzpayne, and there resided with his mother on the leasehold estate, and did carry on the business of a jobber in cattle during the continuance of the annuity and while the same was due and payable for the space of forty days and upwards, between Midsummer, 1770, and Midsummer, 1771: it did not appear that the annuity was rated to any of the public levies. Lord *Mansfield* said, "There was no colour for adjudging the pauper to have gained a settlement in Cheriton Fitzpayne. He did not go thither to reside upon his *own:* he absconded there to avoid his creditors. This was *no specific* legacy: it is payable out of her whole personal estate. But if it were a specific legacy, has a specific legatee any right to go and *live upon* the estate? If it had been a rent-charge out of a freehold, it would not give a right to *live upon* such freehold. But this man had only a *pecuniary* demand. There was no colour for his going to live upon this leasehold estate as his own." The other three judges concurred. Order affirmed.

S. P. as to a rent charge on a freehold.

An annuity charged on real estates to a charity school to be paid to the vicar, is not an interest to the person officiating as schoolmaster which gives a settlement.

Rex v. *Milborne*, 1 *Wilson*, 87; *Burr. S. C.* 244. T. Membury, a certificate man, came from the parish of Sheepshead to the parish of Milborne, by a certificate dated November, 1733; was a schoolmaster and taught the charity-school there until his death, in 1743; but in what manner he was admitted to the school it does not appear, but only in general that he officiated till his death. The Lady Ann Hastings had by deed conveyed to trustees 10*l.* per annum in trust to be paid to the vicar of Milborne for the time being for the charity-school; and this 10*l.* per annum had not been appropriated to any other use than paying it to the schoolmaster; and whether Thomas Membury had gained a settlement at

2. *Of Estates acquired otherwise than by Purchase, &c.*

Milborne, either by serving an office or having a freehold in the school of 10*l.* a year, was the question; and the sessions were of opinion and declared he gained a settlement there as having had a freehold in the school. But *per curiam* (*absente Foster*, J.) "A schoolmaster is not an office but only an employment; and what interest Thomas Membury had in the school, whether for life, or how otherwise, or how he was admitted to or came into this employment, does not appear; and that the vicar is the person entitled to the 10*l.* per annum, and not choosing to teach the school himself, paid it to this poor man as his deputy, which could not gain a settlement for any person whatever. Order quashed (*a*).

In an award for the division of common field lands, an allotment was made for the shepherd of the common sheep flock: Held, that the shepherd being hired by the year had no such interest in the land as would give him a settlement by estate.

Rex v. *South Newton*, 10 *Bar. & Cres.* 838. Removal of T. Brown and family from Woodford to South Newton, both in the county of Wilts. Order confirmed. Case:—The pauper in 1823, while single, was hired as shepherd by the tenantry farmers of the manor of Lower Woodford for eleven months at 14*s.* per week, and was to have a piece of land called the Shepherd's Croft, which was to make up money as good as 16*s.* a week, to keep certain sheep belonging to them called the tenantry flock. Payment of his monied wages was made quarterly by the tenantry farmers. The pauper, after serving eleven months, was hired again for one month. Before the end of the month the pauper was hired "to go on again upon the same terms." He served a year under this last hiring, and slept the last forty nights at South Newton, the appellant parish, having married in the course of that year. The tenantry farmers above mentioned are leaseholders and copyholders of the manor of Lower Woodford. By an agreement under seal, made June the 12th, 1799, the parties to which were the Bishop of Salisbury, Lord of the manor of Lower Woodford, the leaseholders and copyholders of that manor, and William Beckford, of Fonthill Gifford, Esq., who then held the manor under the bishop for three lives, reciting among other things that the leaseholders and copyholders were entitled to divers lands within the manor by virtue of the several leases and copies to them thereof granted, arbitrators were duly appointed for dividing and allotting the open and common fields and common downs within the said manor. The powers of these arbitrators were, "to set out, ascertain, and allot the said open and common fields and common downs so intended to be divided and allotted as aforesaid, unto and amongst the said W. Beckford in respect of such lands as he had in hand or at rack-rent, and the several leaseholders and copyholders, entitled to or interested in the same, in proportion to their several and respective shares, interest, and properties in and over the said open or common fields or downs." They were also empowered to set out ways, and in some respects to direct the course of husbandry. And it was agreed that the persons to whom allotments should be made should be possessed of them for the same estates, terms, and interests, and subject to the same rents and services as the several lands in lieu whereof such allotments should be made were then subject to. Neither the shepherd of the tenantry farmers at that time, nor the pauper Thomas Brown, was a party to the agreement. The arbitrators appointed by the agreement made an award dated the 10th of October, 1818, which has been acted on ever since. By the award, among other allotments, they allotted to W. Beckford, Esq., lord or farmer of the manor of Lower Woodford, in trust for the shepherd or keeper of the common sheep flock of Lower Woodford for the time being, in lieu of lands in the common fields held by custom by the said shepherd, "two allotments of land (that is to say) one piece of inclosed pasture marked V. containing thirty perches, and one piece of inclosed arable land marked V. containing three roods and twenty-four perches, the shepherd for the time being keeping the fences of the same in repair." This was the land which the

(*a*) The pauper resided under a certificate. See 9 & 10 Will. III. c. 11. But if the schoolmaster is in effect the *cestui que trust*, residing upon what is substantially his own, he acquires a settlement. (See *Rex* v. *Owersby le Moor*, *post.*)

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pauper took when he was hired as shepherd as above, and which had been possessed by former shepherds since the time of the award. The pauper let part of the land to a tenant from year to year for about 5*l.*, and received the rent; a part he always occupied himself, but never paid rates. He is still shepherd, and at the time of his removal was resident in Woodford, and had been so more than forty days. Becoming chargeable he was removed by order of two justices to South Newton, without any objection on the part of his masters, or any interruption to his service, or his possession of the said Shepherd's Croft, both of which he still retains. Lord *Tenterden.* "I am of opinion that the pauper took no interest in the land by virtue of the award or allotment. The award itself was void for many reasons. The shepherd therefore could derive no legal interest from it. All the interest which he had, he took in his character of servant from year to year. He was tenant to those with whom he made the bargain, and his enjoyment of the land was in lieu of wages, which would otherwise have been paid him for his service." *Bayley*, J. "I am of opinion that the pauper was settled in South Newton by virtue of the hiring and service for a year. It appears that he was hired for eleven months and afterwards for a month, and then he was hired to go on again on the same terms: that was an indefinite hiring, and therefore a hiring for a year; and as he resided in South Newton the last forty days, he was settled in that parish. The agreement made the 12th of June, 1799, was binding upon those persons who were parties to it. The effect of it was that whenever a shepherd should be appointed he should have an allotment for his own use; it did not operate as a conveyance, but merely as an agreement between the several parties who signed it. As soon as the shepherd was appointed he took the land, not by virtue of the articles of agreement, but by virtue of the contract of hiring. He was hired upon terms and conditions which were pointed out to him: one of them was that he should have Shepherd's Croft, which with the wages of 14*s.* a week was to make it as good as 16*s.* per week. The persons who hired him therefore did confer upon him the right to occupy the land for such period of time as he should faithfully perform the office of shepherd. This right to hold the land was founded on his contract with them. The settlement therefore was in South Newton." *Littledale*, J. "It appears there was a custom to appoint a shepherd to attend the flocks, and that person was usually allowed the use of some land. By the agreement of 1799, arbitrators were appointed to divide the waste land, and the allottees were to hold their allotments for the same estates and interests as the lands in respect of which the allotment should be made; but as the lord of the manor, his lessee, and the copyholder and leaseholder, were in the habit of allowing the shepherd a piece of land, I think the pauper did not acquire in this case an interest sufficient to confer a settlement. Suppose there had been an agreement in writing to take care of flocks, and that in lieu of wages, the exclusive use of the land should be given to the shepherd, his interest in the land would be co-extensive with the time during which he was to remain shepherd. During one year therefore (the period for which he was hired) he would be entitled to the exclusive use of the land; but that was not such an interest as would give him a settlement by estate. For that purpose he must be the substantial owner of the property." *Parke*, J. "The sessions have come to the right conclusion. It is said that the pauper took either a legal or equitable estate by virtue of the award. He took neither. The parties to the submission were the Bishop of Salisbury, the lord of the manor, and his lessees of the manor, the leaseholders and copyholders. Now the shepherd was not a leaseholder or copyholder of the manor, nor lessee of the manor. The arbitrators therefore had no power whatever to allot to him, and *pro tanto* therefore the award is bad. He had a right to occupy the land for part of the year; that was not a settlement by estate, but a coming to settle on a tenement under 10*l.* a year, and therefore no settlement was gained." Order of sessions confirmed.

2. *Of Estates acquired otherwise than by Purchase, &c.*

Rex v. *Warkworth*, 1 *M. & Sel.* 473. Order for removing William Forster from Alnwick to Warkworth, confirmed. Case:—The pauper was a freeman by descent, and had been admitted to his freedom twenty-five years. The pasturage of Alnwick Moor is of considerable value, and the freemen of Alnwick, and no others, are entitled to common of pasture thereon, each freeman being entitled when resident, but not otherwise, to the pasturage of five stints of his own cattle, that is five cows, or twenty-five sheep: the freemen have also a right to dig and cut peats, furzes, turves, and bushes; and to get limestone, slates, and free-stones in the open quarries upon that moor: they have the privilege also of setting up their stalls in the market-place without paying stallage to the lord, and of having their children educated free of expense at the town school, at which school two of the children named in the order were placed at the time of the removal. The question was, whether the rights of the pauper as a freeman of the borough of Alnwick amounted to an estate from which he was not legally removable. *Grose*, J. "There is no doubt whatever in this case. The question is, whether the pauper was irremovable from his own estate? In order to determine that, we must first inquire what estate he had. Now it appears that he had neither land nor house; it is said, however, that he had a right of common; but supposing he had, it does not appear that he was ever in the enjoyment of or had any cattle wherewith to exercise that right. The profit *à prendre*, or easement, as it has been called, never existed in him; how, then, can he be said to have been resident on his own? It cannot be considered as a residence on his own, when in truth he never had it. It would be absurd so to consider it." *Le Blanc*, J. "The case made in argument to show that he was residing on his own is this, that he was a freeman of the town, and as such entitled to a right of common on Alnwick Moor, and this common right is said to be a tenement. But I think this is not in strictness a right of common, nor can it properly be said to be a tenement, it is a mere franchise. The argument, however, has been carried this length, viz., that supposing it to be only a franchise, still the pauper was irremovable from it. But to this I cannot accede. In the case, for instance, of a freeman of a corporation, who has a right of suffrage for the election of a mayor, or any other of the officers belonging to the corporate body, has it ever been decided that such a franchise made the person entitled to it irremovable? Here the pauper, as a freeman of the town, was entitled, if he had any cattle, to turn them on the moor. This, however, was a mere personal privilege, wholly unalienable, and not falling within the legal definition of a right of common. A privilege of this sort, I believe, has never yet been holden to be such an estate as to make the person entitled to it irremovable. It is a strong circumstance, that notwithstanding the existence of such rights in different parts of the kingdom, no attempt like the present has hitherto been made. It appears to me, therefore, that this does not fall within the purview of those cases which have decided that a party is not removable from his own; and which doctrine, I admit, has been extended to cases where a party was merely residing in the parish in which his estate was situate, and not upon the estate itself." *Bayley*, J. "The case does not find that the pauper had any house in which he was entitled to reside, and as a freeman he had no right of residence; but that must be acquired by other means. When he can obtain a residence, then as freeman he is entitled during such residence to turn cattle on the common. But when he removes he loses this privilege. I am not aware of any case in which a privilege of this description has been holden to be sufficient to confer a settlement. It is a mere local privilege, and attached to the person so long only as he is resident. From the frequency of these rights, which exist in many corporations in the kingdom, settlements must have been claimed in respect of them had they been deemed sufficient for that purpose. This case is very different from the cases of removals from landed property." Order of sessions confirmed.

Right to a stinted common of pasture for cattle, and to cut peat, and to get limestone, &c. never exercised, is not such an estate as renders the party irremovable.

This is a mere franchise.

Residence on the estate is not necessary.

Rex v. *Belford*, 10 *B. & C.* 54. Grace, wife of John M'Queen, then a prisoner in Berwick gaol, was removed from Berwick to Belford. Order

The burgesses were entitled to receive such share

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of the rent of the corporate estates as the corporation allowed it. The estates were let by and rent reserved to the corporation: Held, a burgess taking such a share is not irremovable.

confirmed. Case:—M'Queen is a burgess of the borough of Berwick, and in 1807 came to reside in Berwick, where he resided to the date of the order, at which time he was a prisoner. For the last three years he enjoyed as burgess certain pecuniary benefits arising out of the estates of the corporation lying in the parish. The mayor, bailiffs, and burgesses of the borough of Berwick, by virtue of a charter granted by James I. and confirmed by statute, hold, to the only proper use of them and their successors, a large estate in land in the parish of Berwick, which is co-extensive with the borough. This estate is chargeable, in the first instance, with the payment of salaries of officers and other corporation expenses imposed by the charter; but has from an early period after the grant of the charter, and from thence hitherto, been distributed into three portions, each applied to distinct purposes. The first consists of farms demised to tenants by the mayor, bailiff, and burgesses, the rent being reserved to them, or their treasurer for the time being, and collected by him. This rent, with the proceeds of other property, called the town's ancient revenue, now forms a separate fund, out of which the salaries of the officers and other corporate expenses authorised by the charter are paid; these farms are called Treasurer's Farms. The second portion is subdivided into quantities from one-and-a-half acre to two-and-a-half acres, and in value from 4*l.* to 9*l.* per annum; these are called Meadows; and at an annual meeting, called the Meadow Guild, are distributed, as they become vacant by the death or non-residence of the last occupiers, among the senior resident burgesses and widows of burgesses, who succeed to the rights of their husbands as to meadows and stents, though the charter has no provision in behalf of the widows; the oldest resident burgess being entitled to choose the most valuable vacant meadow, and so on down to the junior; the burgesses may occupy or let the meadows, reserving the rent to themselves. The lands forming the third portion were, up to 1761, open fields, upon which each burgess was entitled to a certain right of depasturing. At that period they were inclosed, and have ever since been let in guild, as farms, to tenants for various terms, and are now leased under the corporation seal; and the rent has, since 1810, been reserved to the mayor, bailiff, and burgesses (the name of incorporation), and successors, or to their treasurer. Previous to that, several instances occur of cases of stent land, wherein the rent was reserved to the mayor, &c., or treasurer, or to the several respective burgesses or burgesses' widows, who should from time to time during the term have shares in the farmhold, in equal portions; the rent of each farm is divided into equal portions, generally eleven, but in a few instances twenty-two. At another annual meeting, called a Stent Guild, a portion is allotted, as a specific farm, to each resident burgess or burgess's widow, or to as many as there are vacant portions; these are called stents, and vary in value from 2*l.* to 9*l.* per annum: the senior burgess is entitled to preference, as the more valuable become vacant. The portion of the rents called stents are paid annually by the treasurer to the burgesses entitled to them; but until the last fourteen or sixteen years the burgesses in many instances received their stent-money immediately from the farmer or lessee of the specific farms upon which their several stents were assigned. The burgesses in guild have, by their charter, a power of making bye-laws for the better preserving, disposing, and letting their lands, and they have made bye-laws to regulate the enjoyment of the meadows and stents, and prescribed the condition of husbandry under which these lands may be tilled, and the terms for which the meadows may be let, by the individual burgesses. They decide on the title of those who claim to enjoy meadows and stents according to such bye-laws, and instances of forfeitures are recorded. Unless there is such a forfeiture, or the party becomes non-resident, or relinquish his stent or meadow by choosing one of more value, he may enjoy the first allotted to him for life. Some enjoy one stent, others two, and others one and a meadow. Those who enjoy two stents hold one in lieu of a meadow. M'Queen for three years previous to his removal has been, and now is, in the enjoyment of one stent, assigned upon a farm

2. *Of Estates acquired otherwise than by Purchase, &c.*

within the parish, and annually receives from the treasurer for his portion of the rent 3*l.* 5*s.* 9*d.* He also enjoys another portion assigned on the outfields, under the description of stent, for a meadow, his share of which is 3*l.* 1*s.* 9*d.* The rents of these two farms, during the entire period of the pauper's share, is reserved to the mayor, &c., or treasurer, and paid to the treasurer, and by him to the pauper. The pauper is not at present entitled to a meadow, but he may claim one when there is a vacancy. The pauper, as burgess, is a member of the guilds, and entitled to vote in the meadow and stent guilds as well as others. The question is, whether the pauper was irremovable, so as to acquire a settlement? Lord *Tenterden*, C. J. "I am of opinion that M'Queen was not seised of any equitable estate, that being in the corporation. He was only entitled to such a portion of the rents as the body corporate might think fit to allow him. Whether they allowed him a portion of those rents, first throwing the whole together, and then dividing them among the freemen; or whether they assigned to each freeman the rent of a particular portion of land, seems to me immaterial. The freeman had no right to enter on the land: and in *Rex* v. *Warkworth* (p. 860) his lordship observed, 'In that case the pauper simply as a freeman had a right to exercise a right of common. Here the burgesses have no right to occupy the land, the corporation let it." *Bayley*, J. "*Rex* v. *Warkworth* shows that a burgess entitled to a right of common is not settled by residing in the borough. Being a freeman, and as such entitled to certain local privileges, did not give M'Queen any estate, legal or equitable; and if he had no estate in the land, he had no right to occupy. The estate was in the corporation." *Parke*, J. "The pauper had nothing but a privilege of taking a portion of the profits of the land, at the will of the corporation." Order confirmed.

2. *The Tenure and Duration of Interest.*

Secondly.—The Tenure and Duration of Interest.

The *nature* of the *tenure* is not material, as far as respects the law of parochial settlement. It may be acquired by an estate in lands held in frank tenure, or freehold, (*a*) or by copyhold. (*b*) The *duration* of the estate is also immaterial, if it were sufficient to insure a residence of forty days. (*c*) It may be either a freehold or copyhold estate, in fee or for life, (*d*) or a leasehold interest, determinate on lives (*e*) or years. (*f*) The right of a widow to continue forty days upon her husband's lands, until she is assigned her dower, (*g*) has been held to be an interest sufficiently permanent to confer a settlement.

3. *Of the Value of the Estate.*

The purchaser of a copyhold estate for life, under the value of 10*l.*, did acquire a settlement.

Thirdly.—Of the Value of the Estate..

Harrow v. *Edgware*, (*h*) *Fol.* 257; 2 *Bott*, 608; *E. T.* 11 Anne. C. having gained a legal settlement in the parish of H., afterwards purchased a copyhold estate for his own life, worth 1*l.* 5*s.* a year, in the parish of E., to which estate he was regularly admitted. He removed from H. to E., and lived on this copyhold estate near five years. His wife was afterwards admitted to the estate, and lived thereon till she died, leaving three children, who became chargeable to the parish, from whence they were removed to the parish of H., and the sessions confirmed the order. *Parker*, C. J. "A parochial settlement is nothing more than the privilege of living irremovable in the parish. (*i*) A man who has an estate for life,

(*a*) *Rex* v. *Charlton*, 2 *Bott*, 493; *Cald.* 416; *Rex* v. *Farringdon*, 6 *T. R.* 520.

(*b*) *Harrow* v. *Edgeware*, 2 *Bott*, 465: *Rex* v. *Burclear*, 1 *Stra.* 163.

(*c*) 2 *Nolan*, 71.

(*d*) *Id. Ibid.*

(*e*) *Rex* v. *Tharwood*, *Burr. S. C.* 386; *Rex* v. *Cold Ashton*, *Id.* 444, pauper certificated.

(*f*) *Mursley* v. *Grandborough*, 1 *Stra.* 97; *Rex* v. *Uttoxeter*, p. 863.

(*g*) *Rex* v. *Painswick*, *Burr. S. C.* 783; *Rex* v. *Long Wikenham*, *Cald.* 474; where the widow was certificated.

(*h*) This was before 9 Geo. I.

(*i*) This definition is not correct, as a person may be irremovable, and yet not gain a settlement.

or an estate of inheritance, of his own, cannot be removed from it, although in value it is under 10*l.* a year. It therefore follows that where a man does so live, he gains a settlement for himself and for the children in his family." *Powell*, J. "If this had been the grant of a copyhold for years, it might, as it is under the value of 10*l.* a year, have been within the reason of the statute, but as it is an estate for life, it certainly is not. The father clearly gained a settlement in E. by residing forty days on this copyhold, and the children must of necessity be settled in the parish in which their parents are settled, until they have acquired settlements for themselves, which in the present case they were not of an age to do. The argument respecting the possible inconveniences parishes may suffer from such estates being held to confer settlements, loses its weight, when it is recollected that lords of manors cannot create new copyholds, nor by 31 Eliz. c. 7, erect new cottages, without laying four acres of land to each, and it is not much to be feared that lords will give away merely from spleen such quantities of land, especially as the land itself would defeat the intended effect of such grants, by preventing the possessors from requiring parochial relief." *Eyre*, J. "The distinction attempted to be made between being settled and not being removable is imaginary, for a settlement is nothing but the privilege of living irremovable." And accordingly both orders were quashed.

2. Of Estates acquired otherwise than by Purchase, &c.

Fourthly.—The Interest in the Estate, and Who may acquire this Settlement.

4. The Interest in the Estate, and who may acquire this Settlement.

It seems that any person may acquire this description of settlement, and even an *alien*, though he cannot acquire a descendible interest, may yet hold till inquest found, (*ante.*) So an infant, and other persons under legal incapacity, may acquire the same.

1. *Of Infants.*

1. Of Infants.

Rex v. *Hasfield*, 2 *Stra.* 1131. The mother of the children removed had an estate of 4*l.* a year in Tirley, where she and her husband lived and had these children. She dying, the husband became tenant by the courtesy; and whilst such took 30*l.* a year at Hasfield and lived one year there with his two children and then died. The Court of King's Bench confirmed the order removing them to Hasfield as to the girl, but quashed it as to the boy; for as to the boy, who was eight years old, he was tenant in fee of the 4*l.* a year. And though it was not stated that he was actually upon that spot, yet it was enough that he had such an estate in the parish, from which he could not be removed. But as to the daughter, it was otherwise; she could demand no maintenance out of her brother's estate; as it was never yet determined that children should go to a grandmother for nurture. She may, indeed, be charged to contribute to their relief in the parish where they are settled.

An infant eight years of age residing in the parish in which it has an estate of its own of only the annual value of 4*l.* gains a settlement.

2. *Executors, Administrators, and the next of Kin.*

2. Executors, Administrators, and the next of Kin.

Rex v. *Sundrish*, 1 *Sess. Ca.* 200; 2 *Stra.* 983. T. Perch, by indenture, demised to T. Gates, the father, a cottage at 5*s.* a year, which was the full value, for ninety-nine years. The lessee held it till his death, and devised it to T. Gates, his son. And the question was, whether the son, as executor, being entitled to the term, shall gain a settlement by inhabiting in such cottage? The court were unanimously of opinion that this estate, though a leasehold, was his own estate; that he had come into it under his father's will; that it is, together with other things, charged with 20*l.*, payable to his mother for her maintenance, and that in *Mursley* v. *Grandborough*, a leasehold estate, although it was not a beneficial lease of the whole, had been held sufficient to confer a settlement.

An executor gains a settlement by residence as such upon leasehold.

Rex v. *Uttoxeter*, *Burr. S. C.* 538; 2 *Bott*, 620. The pauper, W. Gilbert, was settled at Uttoxeter. His mother rented and resided upon a farm of 22*l.* a year at Marchington Woodlands; which she devised to her five children, and made the pauper and her three other sons executors, and

Coming to a tenement by executorship, although under 10*l.* a year, gains a settlement.

2. *Of Estates acquired otherwise than by Purchase, &c.*

died. The pauper alone proved the will, and entered as her executor and resided upon the farm twelve or thirteen weeks. He afterwards returned to Uttoxeter, but continued to go over to Marchington Woodlands, to give directions from time to time, and had a servant upon the farm till the Lady-day following. The question was, whether he thereby gained a settlement at Marchington Woodlands? By the Court: "It is very true that a share not amounting to 10*l.* a year, of a tenement of above 10*l.* a year in value, will not do. But here he has a right as executor. The value thereof is totally immaterial; because, by common law, no person can be removed from his own. And one who has a right to reside irremovably doth thereby gain a settlement, if he reside forty days.

Value immaterial.

The executor to a tenant of an estate under 10*l.* a year gains a settlement by forty days' residence, although he do not prove the will.

Rex v. *Stone*, 6 *T. R.* 295. E. Symns removed from Salt and Enson to Stone. Order confirmed. Case:—The pauper went to live with his father-in-law, E. Bentley, in Salt and Enson, who rented from year to year a cottage and about six acres of land, under the yearly value of 10*l.* Bentley died, and by his will gave all his personal estate to the pauper in trust, that he would allow the testator's wife a sufficient maintenance thereout during her life; and at her decease his personal estate should be divided amongst his five children, the pauper's wife being one: and he appointed the pauper sole executor of his will. Upon the testator's decease, the pauper possessed himself of all his personal estate and continued in possession of the cottage and lands, without coming to any agreement with the landlord, buying and selling everything, paying the rent, and maintaining the widow until his removal, which was upwards of three years; but he did not prove the will till three days previous to his removal. Lord *Kenyon*. "I cannot distinguish this case from *Mursley* v. *Grandborough* (*post*,) and the other cases in which it has been held that an executor or devisee of a leasehold estate, of less value than 10*l.* a year, gains a settlement by residing upon it for forty days. It is said, however, that this pauper was a mere trustee: but no one had a right to take the estate from him; he took it liable to all the testator's debts, and the creditors would have had a right to call on him for payment of their debts before he made any distribution of the testator's property under the will. In fact, the pauper resided on this estate for more than forty days; and the established rule, which we ought to preserve with anxiety, is, that though a person cannot acquire a settlement by a purchase for less than 30*l.* paid, yet if he take such estate by devise, he may: so, though he cannot gain a settlement by renting a tenement of less value than 10*l.* a year, yet, if such an estate devolve on him by operation of law, he may gain a settlement by forty days' residence on it. The distinction taken between a tenant from year to year, and a tenant for a term of years, is rather a distinction in words than in substance. A tenant from year to year is entitled to estovers, and the same advantages as a tenant for a term of years. In truth, he is a tenant from year to year as long as both parties please. And, considering how many large estates are held by this tenure, it would be dangerous to say that the term ceased at the end of the year, because then the landlord might lose his right of distress. Although, on my first reading this case, it struck me as a very minute interest to confer a settlement, on consideration I am satisfied that we cannot, without overturning a variety of cases, determine that the pauper did not gain a settlement by residing on it for forty days." *Ashhurst*, J. "It is perfectly immaterial whether the pauper had a beneficial interest in the estate, it being sufficient that he resided there forty days for a necessary purpose, and could not have been removed from it." *Grose*, J. "It certainly seems strange, at first, that an executor should gain a settlement by a residence on the testator's estate, when such a residence by the testator would not have conferred a settlement upon him. But we must consider the difference of the situation of the two persons; the one comes in by his own contract, the other by act of law. This distinction was taken in *Rex* v. *Uttoxeter*" (p. 863). *Lawrence*, J. "It was settled in *Doe* d. *Shore* v. *Porter* (3 *T. R.* 13), that if a tenant from year to year died intestate, his administrator has the same interest in the

Tenant from year to year same as tenant for a term.

land that the intestate had; then what was the interest of the pauper's testator? He had a right to continue on the estate another year, unless six months' notice to quit were given, and, of course, the pauper (his executor) had the same right. With regard to the want of probate, there is a case in 3 *Dyer*, 367 *a*, that gives a decisive answer to this: a termor devised his term to another, whom he made his executor, and died; the devisee entered and died without any probate, and it was held that the term was legally in the executor by his entry, and an execution of the devise without any probate. So that if there had been no probate of the will in this case, still the term was vested in the pauper, the executor."

2. *Of Estates acquired otherwise than by Purchase, &c.*

Letters of administration are essential.

South Sydenham v. *Lamerton*, 1 *Stra.* 57. Held that next of kin of lessee acquires no settlement until he has taken out letters of administration. Where the pauper was *sole* next of kin, secus. (*Rex* v. *Horsley*, p. 869.)

A father, possessed of the residue of a term, dies intestate, leaving two sons. After order of removal made for one of the sons, he takes out letters of administration, he cannot acquire a settlement by virtue thereof.

The pauper took the lease as his share, and resided on the land.

Rex v. *Widworthy*, *Andr.* 4; *Burr. S. C.* 109; 2 *Bott*, 612. The pauper removed to Widworthy, and lived there with his father in a cottage-house of 30*s.* a year, working as day-labourer. The father died intestate, possessed of the cottage for the residue of a term, determinable on lives, leaving the pauper and another son. The pauper's brother took his distributive share of his father's estate in goods, and the pauper, after the father's death, continued in the cottage for five or six years until the lease was determined; after which, and since the making out the order for his removal, he took out administration to his father. *Page*, J. "At the time of making the order he had gained no settlement in W.; because nothing vested in him before administration was granted to him. If so, then the order for removing him to F. was a good order when made, and the sessions ought not to have quashed it; though administration had been afterwards taken out; for they could not quash a good order upon a matter which happened *ex post facto;* and if this administration really gained him a settlement, there ought to have been a new order of two justices to remove him back to W. When he was first removed from thence he had nothing to do with the cottage; for nothing vested in him till he took out letters of administration; consequently, if he gained a settlement at W. at all, it was gained subsequent to the making of the original order. But secondly, he had it not at all in his own right, even after administration; nor does it seem to be such a sort of estate as would gain him a settlement. This is a cot-house of so small a value as 1*l.* 10*s.* a year only, holden upon the residue of a term of years determinable upon lives. In the case of *Ashbrittle* v. *Weyley* (p. 896), there was a continuance of the quiet possession for thirty years and a descent cast. The pauper had a title against all the world except the lord of the waste; and it would be a good bar, even against the lord, in an ejectment. There the pauper clearly had such a possession as to be irremovable from it. But I apprehend that the pauper in the present case was removable even during the term; but afterwards he certainly was." *Probyn*, J. "The whole depends upon this single question, whether the pauper was removable during the five or six years that he lived in this cottage? *for I take the rule now settled and established to be, 'that if the pauper come to an estate by inheritance, or as executor or administrator, be it of ever so small value, he is irremovable; and if he remain forty days in possession and inhabitancy, he gains a settlement.'* Now I take it, that the pauper in the present case was removable. His possession rested only upon a private agreement between him and his brother. If he had taken out administration during the interest, he had had a vested right; but taking out administration after the term expired could never give him an interest in the expired term, in which he had none during its subsistence. He was in possession merely as a tenant at will; he was removable by the parish, and his right would have been without foundation if administration had been granted to any one else. Therefore he had no right at all till administration was granted. The case of Wyley was a strong case. That was a descent to the pauper after a possession of thirty years; which is a good title in an ejectment and a presumption of an inheritance. It was *primâ facie* a good title as heir-at-law: none but

The general rule.

Tenant at will of an estate less than 10*l.* can gain no settlement as such.

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the lord could contest the right. And if a pauper live forty days under a right which makes him irremovable, it gains him a settlement." *Chapple*, J. was of the same opinion. "For there was no time during the continuance of this lease when the pauper was irremovable, and without remaining forty days irremovable, a settlement could not be gained by him." And he observed, "that there was no agreement at all between the brothers, that the pauper should take this lease as his distributive share; or, at least, no such agreement appeared. It is only stated that the other brother did take his share in goods; and John did live in the cottage; but it does not appear that this happened in pursuance of any preceding agreement that it should be so." (See *Rex* v. *Cold Ashton*, *post*.)

Where a wife and two children survive the intestate, the wife cannot gain a settlement by letters of administration taken out after assignment by her of the intestate's term, which was a lease for years determinable on lives.

Rex v. *North Curry*, *Cald.* 137; 2 *Bott*, 631. Betty Winter and children removed from North Curry to Ruishton. Order quashed. Case:—John Winter, late husband of the pauper, purchased a cottage and garden in North Curry of the yearly value of 20*s.* for fourteen guineas, which was demised to him, his executors, administrators, and assigns, for ninety-nine years, or three lives, at the yearly rent of 2*s.* He and his wife resided in the cottage for several years until his death; his widow and their children soon after became chargeable to North Curry; but were refused relief unless they would go into the workhouse, which they did, and quitted possession of the cottage and garden, where they were relieved until they were removed to Ruishton in February, 1781. Ruishton appealed at the Easter sessions, 24th April 1781, which sessions was adjourned, and Betty soon after returned to the cottage and resided there till 28th April, 1781, when she sold the cottage and garden for six guineas for the residue of the term, and by indenture dated 28th April, 1781, assigned the term. On 11th July 1781, being the day after the first day of the present session, Betty sued out letters of administration of her late husband's effects. It was argued that there was a difference between the sole next of kin, and where several persons in equal degree have an *equal right;* here the widow had before administration a specific right in the thing, and only a ceremony necessary to make the assignment by her indefeasible. Lord *Mansfield*, C. J. said, "That this case did not materially differ from *Rex* v. *Widworthy* (p. 865); as the children were entitled to two-thirds of the effects, the widow is not properly and in the sense of the cases the sole next of kin." (*a*) Order of sessions quashed.

Residence by the daughter of a deceased tenant of leasehold property does not confer a settlement, letters of administration having been granted to the widow.

Rex v. *Berkswell*, 1 *B. & C.* 542; 3 *D. & R.* 9. Order of removal of J. Matthews, wife, &c., from Berkswell to Holy Trinity, Coventry, quashed. Case:—In 1808 a lease for thirty-one years was granted by the lady of the manor, under an inclosure act, to one Hands, of a cottage situate in Berkswell, at the annual rent of one shilling. Hands was residing in the cottage at the time of the lease, and continued to do so afterwards for upwards of a year, when he died intestate, leaving a widow and three daughters, one of whom was married to the pauper. Letters of administration were granted to the widow, but no distribution was made of the intestate's effects. After the death of Hands his widow lived in the cottage for about two years. One of the other daughters, with her husband, resided there for two or three years more, and then the pauper and his wife came and resided there for some years, and until the period of their removal, with the permission of the widow, she occasionally helping them, and always paying the annual rent of one shilling reserved by the lease. The pauper never paid any rent either to the widow or the lady of the manor. *Abbott*, C. J. "I am clearly of opinion there was not an equitable interest in this case, which would have entitled the pauper to say to the administratrix, 'I shall come and live in this place, and if you do not allow me so

(*a*) Can the widow be ever sole next of kin in such a sense as to be *entitled* to letters of administration? By 21 Hen. VIII. c. 5, administration is to be granted "to the widow or next of kin as by the discretion of the ordinary is good." The court, it is true, *prefers* a sole to a joint administrator. (4 *Burn. Ec. L.* 277, 278.) See *Patteson*, J., p. 887.

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to do, a court of equity will enforce my title.' The pauper had no such right. He was entitled indeed, in right of his wife, to call upon the administratrix to give an account of the estate and effects of the intestate, but it might have turned out that she had paid much more than the value of this tenement in discharging her husband's debts, and in that case he would have had nothing." *Bayley*, J. "In *Rex* v. *Toddington* (p. 889), which is the latest case upon this head of settlement, the beginning of Lord *Ellenborough's* opinion is, I think, decisive upon this subject. His lordship says, 'This is not an estate so clearly equitable, that a court of law can presume that a court of equity would, if applied to, clothe the party with the legal right to it.' That paragraph shows in what case an equitable interest shall give the party a right to be considered as gaining a settlement in right of it; and my brother *Holroyd*, in giving his judgment in that case, says, 'An equitable estate is very different from an equitable right to have a conveyance of the legal estate.' In this case it seems to me, that the pauper had no right at all to go into a court of equity to have a specific portion of this estate decreed to him, or to be admitted to reside upon the premises." *Holroyd*, J. "I am of opinion that the pauper in this case had not any equitable right to enjoy the property in question. He was entitled to his wife's share, assuming that the testator's effects were sufficient to pay it, but I think he had no right to enter and take possession of the cottage without the assent of the administratrix, nor even then, if she disposed of the possession, without reserving the powers given to the ordinary under the statute of distributions." Order of sessions quashed.

The husband of the pauper rented a house from year to year, and on his death the pauper told the landlord that she wished to pay the rent weekly, which she continued to do for nine months. The respondent parish had relieved her in the meantime, and the attorney of that parish suggested her taking out letters of administration, and did so for her: Held, that as the widow was bound by law to take out administration, it was not to be considered a fraudulent transaction, although the sessions had so found it. But it was referred back to the sessions to say whether after administration granted she continued a weekly tenant, or was tenant from year to year in her husband's right. See *Rex* v. *Barnard Castle*, p. 885.

Rex v. *Great Glenn*, 2 *Nev. & M.* 91; 5 *B. & Ad.* 188. Removal of M. Stevens and children from Great Glenn to Leir, both in the county of Leicester. Order quashed. Case:—The pauper Stevens was married to John Stevens in April, 1827; and on their marriage she and her husband went to live in a house in the appellant parish, which her husband had taken of Thomas Eaglefield as tenant from year to year, at the rent of 3*l.* per annum, which was a rack-rent. They continued to live in this house until the 14th of May, 1831, when the husband died. The widow (the pauper) continued the possession from thence for about a fortnight or three weeks. She then went to the respondent parish for a few days, viz. from Monday till Saturday, when she returned to Leir, having left her sister in possession of the house during her absence. She was relieved there by the respondents until the 3rd of December following. On the next 2nd of June after her husband's death the pauper had an interview with the landlord, and told him she wished to pay the rent weekly; he assented, and it was agreed that the pauper should pay 1*s.* 2*d.* per week, which she paid accordingly until the 5th of March, when she quitted in consequence of having received a week's notice to quit. Some time in August after her husband's death, the pauper took out letters of administration to the effects of her husband under the following circumstances:—The attorney for the respondent parish, accompanied by a clergyman, in that month called upon the pauper and administered the oath, saying, "We shall be obliged to get you to take out letters of administration: I dare say you don't understand it. You have a right to take out letters of administration if you like, and if you will leave it to me I will do whatever is necessary." This explanation was not understood by the pauper. However, she said she had no objection, but hoped they would not take her goods, which she believed the respondent parish were going to lay claim to. The pauper was ignorant of administering any further than she understood her oath was to declare that what she had was not worth 20*l.*; and she never heard until the 6th of December following that letters of administration had been taken out, when the attorney for the respondent parish having laid some papers on a table before her, said, "Those are your letters of administration." The pauper's goods at the decease of her husband were not worth more than 5*l.*, 3*l.* of which were due for rent, and 2*l.* for other debts. The letters of administration were taken out by the direction and

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at the expense of the respondent parish for the purpose of settling the pauper in the appellant parish. The pauper resided forty days and upwards in the house late her husband's in the appellant parish after the grant of the above-mentioned letters of administration, whereupon the order of removal appealed against was obtained. The sessions found that there was fraud in taking out the letters of administration, and discharged the order. *Denman*, C. J. "The pauper, as administratrix of a tenant from year to year, though at a less rent than 10*l.*, would gain a settlement by forty days' residence, because the interest vested in her by act and operation of law. The only question as to this point is whether the settlement is altogether void, because the sessions have found that there was fraud in taking out the letters of administration. They have stated the facts on which that finding was grounded; and I am of opinion that there was not in this case any fraud sufficient to prevent the estate of the intestate from vesting in his widow. She not only had a right, but was bound to take out letters of administration; and she consented that they should be obtained. There is no ground for saying that they should not have their full legal operation of vesting in her the property of the intestate. Another question is, whether she resided in the parish forty days while the leasehold estate (formerly her husband's) was vested in her. There are premises from which the sessions might have inferred an agreement by her, after administration granted, to become a weekly instead of a yearly tenant. They have not drawn any such inference; but have left it doubtful whether she resided forty days in the parish of Leir, while the leasehold estate which formerly belonged to the husband was vested in her. If that be really a matter of doubt, the case must go back to the sessions in order that they may determine it." *Littledale*, J. "I think that under the circumstances stated in this case the leasehold interest of the husband was not prevented from vesting in his widow, on the ground that the letters of administration were fraudulently obtained. She was not only entitled but bound by law to take them out; and was merely told by the solicitor to the parish of Leir that she was so entitled, and assented to administration being obtained. There was no misrepresentation or suppression of any fact. The only other question is, whether she resided forty days in the parish of Leir after her husband's interest as tenant from year to year had vested in her as administratrix. If within that period she held as a weekly tenant, and continued to do so ever afterwards, she was not irremovable. It is stated that on the 2nd of June she told the landlord she wished to pay the rent weekly, and that he assented; but whether she then actually took the premises from week to week, or only gave notice to the landlord that she wished to do so, is not very clear. I should rather think she then became a weekly tenant. It is true she could not surrender her husband's interest before taking out administration, but as the facts are left doubtful the case must be sent back to the sessions, in order that they may say whether after taking out administration she was a weekly tenant in her own right, or a tenant from year to year in right of her husband." *Parke*, J. "I should be satisfied to dispose of this case on the ground that the sessions had found (as I think they would) that the pauper, before the letters of administration were taken out, had become a weekly tenant in her own right and continued so afterwards, and consequently that she did not reside forty days in Leir while she was irremovable by reason of the estate which had vested in her by operation of law. She paid the rent weekly from the 2nd of June, 1831, to March, 1832, and quitted on a week's notice. As soon as she obtained the letters of administration she might have disaffirmed the weekly tenancy and claimed to hold as tenant from year to year in right of her husband; but I think there is abundant evidence of her having confirmed the weekly tenancy, for she afterwards always paid the rent weekly, and quitted on a week's notice. Then as to the other question, there were no sufficient premises to warrant the sessions in finding such fraud as would avoid the letters of administration and prevent the leasehold estate of the husband from vesting in his widow. The

Decision of sessions as to fraud reversed.

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pauper had a right to take out letters of administration, and a consenting mind that it should be done. She was only induced by the solicitor for Great Glenn to exercise that right, but there was no deceit practised by him; if there had, the case would have been different." *Patteson, J.* "In order to acquire a settlement by estate the pauper must have resided forty days in the parish where the estate lay, and where her interest in that estate by operation of the law still continued. If before that time elapsed she acquired an interest in her own right as weekly tenant, and resided in the parish in respect of that interest, she was not irremovable, and acquired no settlement. The sessions will probably find on the evidence that she had become a weekly tenant. The letters of administration are not void on the ground that they were obtained by fraud, because the widow had the right, and, indeed, was under a legal obligation to take them out, and consented that they should be taken out." Case to go back to the sessions in order to ascertain whether the pauper became a weekly tenant within forty days after the letters of administration were taken out.

A *sole* next of kin has such an equitable interest in a leasehold tenement of the intestate, that she gains a settlement by residing forty days in the same parish after the intestate's death, before administration granted to her.

It matters not that the widow of the intestate survived him, if she died afterwards without having taken out administration, leaving the other sole next of kin to the intestate.

But letters of administration have no retrospective effect.

Rex v. *Horsley*, 8 *East*, 405. Removal from Horsley to Avening, quashed. Case:—The pauper, S. B., was the widow of J. B., who died in 1801. W. P., the father of S. B., died about Christmas, 1802, intestate, possessed of a leasehold house in Horsley, of 40*s*. per annum, for a term of years, leaving a widow and the pauper his only child, whom he had by a former wife. W. P.'s widow died about a month after her husband. Upon the death of W. P., the pauper, who had previously occupied the leasehold house by permission of her father, continued to reside in it till the death of her mother-in-law, when she left the house, and let it to a tenant, who occupied it for three years from that time, and paid the rent for it to the pauper. The pauper during this time, and until the date of the order of removal, resided with her family in Horsley. On the 11th of January, 1806, the pauper obtained letters of administration to her father, and on the 29th sold her interest to W. D., who ever after continued in possession. The court said, the grant of administration could not operate by relation to make a person irremovable for a time past, who during that time was removable. On the other point, Lord *Ellenborough*, C. J. delivered judgment as follows, on a subsequent day. "This is the case of a *sole* next of kin exclusively entitled, after the death of her mother-in-law, to administration of the personal estate of the intestate, her father; and the question is, whether the pauper, having, after she became such *sole* next of kin to the intestate, resided more than forty days in the parish, in which a leasehold tenement of 40*s*. per annum belonging to the intestate lay, thereby gained a settlement in that parish. The grant of letters of administration cannot operate for the purpose of rendering her not removable at a time past, when, as far as the letters of administration are concerned, she was removable for want of them; and when any order which might have happened to be made for her removal (as no letters of administration then existed), could not, as was held in *Rex* v. *Widworthy* (p. 865), be quashed afterwards upon the subsequent grant of them. Can then a person *for this purpose* become the owner of a chattel real, which had belonged to the intestate before the actual grant of administration to such person? Upon the death of her mother-in-law the pauper became *sole* next of kin to the intestate; it was in her power, therefore, at any moment afterwards, to have clothed herself exclusively with the legal character and rights of an administratrix. Lord *Mansfield*, in *Rex* v. *Cold Ashton* (*post*), observes that there is 'a great difference between a *sole* next of kin, and where several persons in equal degree have all of them (as in that case they had) an equal right.' In *Rex* v. *North Curry* (p. 866), Lord *Mansfield* again observed, that the widow (the pauper in that case) 'was not properly, and in the sense of the cases, the sole next of kin.' The effect, however, of a forty days' residence by a sole next of kin has never yet received a judicial opinion. *South Sydenham* v. *Lamerton* (p. 865), was argued and decided on another ground. Adverting to the intimation

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given by other judges, of what would be their opinion upon such a case as the present, if it should come before them, and to the reason of the thing, according to which the exclusive right to enforce the proper means of acquiring a legal title to the property, coupled with the actual enjoyment of it in the meantime, through the occupation of a tenant, gives so much colour of right to reside without being removed within the parish in which the property is situate, as to exempt such residence from being considered as a vagrant intrusion into a parish, in which the party has nothing of *his own*, within the purview and scope of the poor-laws, and to the determinations thereupon; we are of opinion that in a case in which the language of no statute upon the subject precludes us from so determining, and where no principle of convenience, nor any decided case, is contravened by such a determination, we are well warranted in considering that a settlement was gained by a residence of forty days within the parish, in which a pauper thus circumstanced in respect to the real property there situate, resided; and of course that the order of sessions must be affirmed."

The widow, daughter, and son-in-law, occupied a leasehold house of the husband for more than thirty years, no administration taken out: neither of them gained a settlement.

Rex v. *Canford Magna*, 6 *M. & Sel.* 355. Order of removal of R. Poulden, from Canford Magna to Corfe Mullen, quashed. Case:—Richard, the father of the pauper, about thirty-nine years ago, lived in a house of John White, at Corfe Mullen, whose daughter, Ann, he married. The house was held by White, under a lease for years determinable on lives, one of which is still subsisting. Its yearly value is 40*s*. White died about thirty-six years ago, leaving a widow, and Thomas and Ann, his children. It did not appear that any administration had been taken out. The widow and Richard and his wife were all living in the house when White died, and continued there afterwards—the widow, until her decease, about six years ago, and Richard and his wife to the present time, they being, after her decease, in the sole occupation. The house is one tenement. No rent was ever demanded or paid but the quit-rent, and that by Richard. Thomas White lived close to the house. Lord *Ellenborough*. "The presumption raised in *Rex* v. *Cold Ashton*, *post*, was, that the pauper and his wife had agreed with the other children for their shares: no such presumption has been drawn here; nor do I think the case admits of it. There is not any circumstance from which to infer an abandonment by any of the parties to the others of their right. According to the facts, there was neither exclusive right nor exclusive possession. Had there been a sole occupation, I am not prepared to say it would have been enough in the present case, although it may be in the case of a sole next of kin." *Abbott*, J., said, "In order to determine in favour of a settlement, it must be presumed either that administration was granted to Richard, his wife, or the widow. Are we at liberty to make such a presumption? The sessions are judges of the fact and law. They have not done it, and, in my opinion, they have done right; for the acts and conduct of the parties must be taken together before any presumption can be raised; and we find from these (so stated in the case), so far from a presumption arising that the father was settled in Corfe, that about fourteen or fifteen years ago he received relief from Canford, being resident in Corfe. The sessions therefore could not do otherwise than conclude that at that time Richard had not acquired a settlement in Corfe."

Pauper resided for many years in the same house with his father-in-law, who had a lease for 99 years, determinable on three lives. Pauper added to his part of the house, and by agreement paid the rent (7*s*.). After his father-in-law's death, who left

Rex v. *Okeford Fitzpaine*. Removal of W. Brown from Bere Regis to Okeford Fitzpaine. Order confirmed. Case:—The pauper was born in the parish of Okeford Fitzpaine. In 1761, W. Phelps took a lease of a tenement in Bere Regis for ninety-nine years, determinable upon three lives,—his own, that of his wife, and that of a son named Henry,—at a rent of 7*s*. a year. The tenement consisted, at that time, of two cottages, with outhouses, garden, and other appurtenances. W. Phelps entered and continued in possession, except as hereinafter mentioned, till the time of his death. About fifty years ago the pauper, who had married Priscilla, daughter of W. Phelps, was invited by his father-in-law to reside on the premises; and upon that invitation went to reside there with his wife.

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also three sons, the pauper and his wife and two of the sons resided on the premises, and the pauper resided there till the end of the term, which was above thirty years from his death; but there was no will, and no administration was taken out: Held, that no settlement was gained, there being no legal estate in pauper, nor adverse possession.

The part of the premises inhabited by the pauper and his wife had been a fuel-house under the same roof with the dwelling of W. Phelps, and having the same outer door. They had also a portion of the garden allotted to them. The pauper, at his own expense, converted the fuel-house into a habitation, and two or three years afterwards pulled down the front of that part of the building which he occupied, and built it up again a few feet in advance of its former position, carrying on the side walls to the new front, throwing out a new door in the latter, and building up the old interior communication with the other part of the dwelling. He also built a carpenter's shop on a part of the garden which was allotted to him. By an arrangement between the pauper and his father-in-law, the former, both before and after the alteration of the building, paid the whole of the annual rent, and continued to pay it until the death of W. Phelps. W. Phelps died in 1791, leaving a widow, and three sons, Henry, John, and another son, and a daughter Priscilla, the wife of the pauper. After the death of W. Phelps, the pauper and his wife continued in the occupation of the same part of the premises, the pauper and John and Henry Phelps each paying a third of the annual rent. About ten or eleven years ago, a part of the premises occupied as a separate dwelling by John Phelps, having fallen into decay, John Phelps went away, and from that time the pauper had possession of that part, and paid two-thirds of the rent. And under these circumstances he continued to occupy until the last of the three lives dropped, in 1823, when the lease determined. Since 1823 he has continued in possession of the same premises by permission of the landlord, paying the same annual rent. The pauper, during the whole time of his occupation, repaired the part of the premises occupied by him, and once before the death of his father-in-law paid the highway rate. W. Phelps died intestate. No letters of administration were ever taken out. Nothing in writing passed between W. Phelps and the pauper. The question was, whether by possession for more than twenty years, the pauper had not such an estate in the premises as gave him a settlement in Bere Regis? *Bayley*, J. "In order to acquire a settlement in Bere Regis the pauper must have an estate; but neither he nor his wife had any estate. The father of the wife, William Phelps, had an estate for ninety-nine years, determinable on three lives. Upon his death that estate, being a chattel interest, would pass to his personal representative. Nothing was done to vest it in the pauper or his wife. No letters of administration were taken out by them. The estate would not vest in the widow, or in any of the next of kin, until letters of administration had been granted; and it belonged to the ordinary, according to his discretion, to grant administration to the widow or any of the next of kin. In *Rex* v. *Cold Ashton* it was said, that some agreement ought to be presumed between the pauper and the other next of kin; but I think we are not at liberty to make any such presumption in this case. *Rex* v. *Canford Magna* (p. 870) bears upon this case in all its points. There the father of the pauper went to live in the house of John White, in Corfe Mullen, and married White's daughter. The house was held by White, determinable on a lease of ninety-nine years (as in this case). White died, leaving a widow and Thomas and Ann, his only children, surviving him. It did not appear that letters of administration were taken out. The widow, the father of the pauper, and his wife, were all living in White's house at the time of his death, and continued to live there afterwards; the widow, until after her decease, about six years before the order of removal was made, and the father of the pauper and his wife down to that time, they being, after her decease, in the sole occupation. The occupation was by the widow, and the father of the pauper and his wife, about thirty years altogether. It was insisted that the court might presume that the father of the pauper and his wife had agreed with the other parties interested for their shares; but the court were of opinion that no such presumption could be drawn. I think that case is not distinguishable from the present, and, consequently, that the pauper did not gain any settlement by estate, and that the order of

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sessions is right." *Littledale*, J. "I am of the same opinion. It appears that W. Phelps died possessed of an estate for ninety-nine years, determinable on three lives, and letters of administration might have been granted to the widow or any of the next of kin; but they never were granted. The actual property in the leasehold estate would not, after the death of W. Phelps, vest in the widow or any of the next of kin till administration. But then, it is said, that the pauper gained an estate by adverse possession. It appeared that he married the daughter of W. Phelps, and during his life resided on a part of the premises; that Phelps died in 1791; that the pauper and his wife, and two of his wife's brothers, then occupied the property, the pauper and his wife taking a third. Three out of the four children of W. Phelps, after his death, therefore, continued in possession of part of the estate till one of them quitted the portion occupied by him, and then the other two (one being the wife of the pauper) had possession of that part, and the pauper afterwards paid two-thirds of the rent. The lease expired in 1823. There was nothing like adverse possession. Against whom could it be adverse? Only against the widow and the other sons. But neither of them had any legal interest in the property; and the possession, to confer a right, must be adverse against a person having title." *Parke*, J. "This case is not distinguishable from *Rex* v. *Canford Magna*. In *Rex* v. *Cold Ashton*, there was an exclusive possession by the pauper and his wife after the death of the father. But here, after the death of W. Phelps, there was no such exclusive possession by the pauper and his wife. The leasehold premises were occupied by them jointly with others, each of the occupiers paying an equal proportion of rent. In *Rex* v. *Canford Magna* the widow, the pauper and his wife, and after the death of the widow the pauper and his wife, lived on the property, to the exclusion of others; but it was there held, that there had been no exclusive possession on which a right could be founded. Here the pauper's occupation at first was a tenancy at will. After the death of the intestate, there was no person against whom there could be any adverse possession. As to drawing presumption of any agreement, there is nothing to presume, because, before there could be any legal title to convey, letters of administration must have been granted. Order of sessions confirmed.

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estator devised his real estate to trustees, to sell and divide the proceeds among his nine children, the share of such of his daughters as should be married at his decease to be to their separate use. The pauper, before testator's death, married one of the daughters, and resided with her in a house, part of the above estate, paying rent weekly to the testator. He resided also two years after testator's death, and before the real estate was sold, paying the rent to the trustees: Held, that he gained no settlement.

3. *Trustee and Cestui que Trust.* (*a*)

Reg. v. *St. Margaret, Leicester*, 1 *G. & D.* 625; 2 *Q. B.* 559. J. Inge was removed from St. Margaret, Leicester. Order quashed. Case:—John Norton, of Leicester, being seised of fourteen freehold houses, situate in the parish of St. Margaret, in the borough of Leicester, by his will, bearing date on or about the 24th of October, 1832, and duly executed and attested to pass real estates, after directing the payment of his debts and funeral and testamentary expenses, and certain pecuniary legacies, which he thereinafter bequeathed, out of his personal estate gave, subject thereto, all his personal estate, and also gave, devised, and bequeathed all his lands, messuages, tenements, hereditaments, and real estate whatsoever and wheresoever, unto R. Rawson and T. Cooper, their heirs, executors, administrators, and assigns for ever, upon trust, as soon as conveniently might be after his decease, to sell and dispose thereof, either by public auction or by private contract, for the best price that could be obtained for the same, and stand possessed of the monies arising from such sale, after payment of the costs and expenses attendant thereon, upon trust to pay and divide the same equally between and amongst the testator's nine children, being five daughters and four sons, respectively enumerated in the will. And as to the shares of such of the testator's daughters as should be married at the time of his decease, the testator gave and bequeathed the same to and for their own, sole, separate, and absolute use and benefit and advantage; and he directed that their respective receipts alone should be sufficient dis-

(*a*) As to the equity of redemption, see *Rex* v. *Cregrina*, p. 893.

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charges for the same. The trustees were authorised to reimburse themselves, out of the trust monies, the expenses of executing the trusts of the will; and their conveyances of the devised premises to the purchasers, and their receipts for the purchase-money were declared to be effectual and sufficient. J. Norton died about the 23rd of November, 1832. The real estate consisted of the freehold houses above-mentioned. The pauper married Ann Norton, one of the testator's nine children, mentioned in his will, in 1823. Some time prior and up to the testator's death, the pauper, with his wife and family, occupied one of the said houses, in St. Margaret, as his tenant, at the rent, first of 2*s*., and afterwards at 1*s*. 10*d*. per week. After the testator's death, the pauper continued to occupy the same house, and paid the same weekly rent of 1*s*. 10*d*., as tenant to the trustees, to a collector employed by them to collect the rents for the fourteen houses. The trustees every month divided the whole sum so collected equally amongst the nine children of the testator, and the share received by the pauper, on such division, was generally 8*s*. or 10*s*. per week. The pauper resided more than forty days after the death of the testator in the house, so occupied by him as tenant as aforesaid. The pauper continued to reside, and the trustees to receive and divide the rents in the manner above-mentioned, for nearly two years after the death of the testator. The testator's real estates were sold by the trustees in 1834, and the proceeds of the sale, after payment of the expenses attendant thereon, were equally divided amongst the testator's nine children. The pauper received his wife's share, amounting to 54*l*. 19*s*. Lord *Denman*, C. J. "*Rex* v. *Natland* (*a*) is not a very good ground to rest the settlement in this case upon. *Gould*, J. decided that case as an arbitrator, and the facts on which he decided do not seem to be very clearly ascertained." *Patteson*, J. "It is doubtful whether the statement of facts is correct in *Rex* v. *Natland*. In most of these cases where the settlement has been allowed, there has either been only one person entitled, or there has been an agreement between the several persons entitled. It appears too here that the pauper resided on the property as tenant." *Coleridge*, J. "This case may be decided on two

(*a*) *Rex* v. *Natland*, *Burr. S. C.* 793. T. Gibson and his wife were removed from Natland to Stainton. Order quashed. Case for the opinion of the judge of assize, and agreed to be determined by his opinion. Allan Court, by his will, devised his estate at Natland to his wife during her widowhood, and after the determination thereof to trustees to sell, and divide the money equally among his children, of whom the wife of the pauper was one. The testator died, the widow entered and let part of the estate to farm, reserving to herself a dwelling-house, which was worth about 30*s*. a year. The pauper, being reduced in his circumstances, came with his wife to live with her mother, the widow, in part of the dwelling-house: the widow died in June, 1769, the pauper and his wife continuing in possession of that part of the dwelling-house. In about a month after the death of the widow the trustees contracted for the sale of the estate, and in February following a conveyance was executed, the children of the devisor being no parties thereto. The pauper paid no rent to the widow; but, from her death, he paid rent to the purchaser until May-day following, when he quitted the premises. Upon this it was insisted that as the pauper and his wife inhabited in Natland in part of the house devised as aforesaid, from her mother's death, in June, till the same was conveyed in February following, and she being entitled to a distributive share of the money to be raised by sale of the said devised premises, the pauper was not removable during that time, and, consequently, gained a settlement in Natland. The opinion of the judge was given in writing in these words: "I have heard counsel on both sides, and am of opinion the settlement is in Natland. H. Gould." Afterwards a rule was obtained in K. B. to quash the order. But it was objected against the court's entering at all into the matter, for the judge having heard counsel and given his opinion in writing, this ought to be final, otherwise no judge of assize will ever hereafter accept a reference of this kind. The court saw it in the same light; and Lord *Mansfield*, C. J., observed, that here was a manifest consent of the parties to this reference to the judge, and therefore it was, like all other references, by consent. He intimated that, as at present advised, he was of opinion with the judge; however, after this consent, he thought it very improper to take the matter up again.

Where an estate was devised to a wife during her widowhood, and then to be sold for the benefit of the children; one of them, after the death of the widow, continued to live therein, and gained a settlement.

Reference to judge of assize.

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grounds. First, the pauper appears to have resided as tenant. Secondly, it is at all times a delicate matter for us to take cognisance of equitable rights, but we have one broad rule that we will notice nothing but a clear right, and will not go into doubtful cases of equity. Here there were nine persons interested in the devised property, and nothing has been done by agreement between them to turn it into real estate. I would rather not put our decision upon *Rex* v. *Geddington*, which is of doubtful authority, and it is not necessary to do so." *Wightman*, J. "I think there was not such an equitable right here as to bring the case within the rule laid down in *Rex* v. *Toddington* (p. 889), and *Rex* v. *Berkswell* (p. 866). There were nine persons interested, and the concurrence of all would have been necessary to induce a court of equity to convert the devised property: the power of sale would be much prejudiced if the whole could not be sold." Order of sessions quashed.

Where an estate was devised for sale, but one of the devisees took by agreement with the others, he gains a settlement.

Rex v. *Wivelingham, Doug.* 767. Robert Bittany, late husband of the pauper, Mary Bittany, came with a certificate from Haddenham to Wivelingham. Elizabeth Bittany, by her will, devised her estate at Wivelingham to trustees to be sold, and the money arising from the sale to be divided between Robert and three daughters of William Bittany. They agreed among themselves that Robert should have the real estate, and the three daughters the personalty amongst them; whereupon the trustees conveyed the real estate to Robert, (*a*) who entered and resided thereupon several years. It was insisted, that Robert had taken no interest of any kind in the lands by the will, neither legal nor equitable. He had only a right to call upon the trustees to sell the estate, and distribute the money arising from the sale. On the other hand, it was argued that Robert had clearly an equitable title under the will: all the parties had agreed that the trustees should not sell; and that it was clearly settled that a residence on one's own estate, coming either by descent or devise, whether the legal interest be coupled with the equitable or not, and whatever the value is, will gain a settlement, and discharge a certificate. Lord *Mansfield*, C. J. mentioned *Roper* v. *Radcliffe*, (9 *Mod.* 167, 181,) to show that a devisee of the surplus arising from the sale of lands, after payment of debts and legacies, has an equitable interest in the lands themselves, it being in his option to pay the debts and legacies, and keep the land. *Willes*, J. said, "The same question in this case had occurred in *Rex* v. *Natland* (p. 873, *n.*), which was referred to Mr. J. Gould, who decided that a settlement was gained: and that his opinion had been recognised by the court, and in the present case the court were unanimous, that Robert hereby vacated the certificate, and consequently gained a settlement."

The devisee of an equity of redemption has such an estate as will give her a settlement by residence in the parish.

The solvency of the estate immaterial.

Rex v. *Aslackby*, 6 *N. & M.* 582; 5 *A. & E.* 200. Elizabeth Hanson, widow of William Hanson, was removed from Aslackby to Pointon. Order quashed. Case:—In 1825, William Hanson, who had acquired a settlement in Pointon, purchased land in Aslackby for 670*l.*, which land was conveyed to him for life, with trustees to bar dower, remainder to him in fee, in 1828, and was immediately mortgaged to Mr. B. Smith for 450*l.* In May, 1830, W. Hanson died seised of the land, the said mortgage debt, with a considerable arrear of interest, being still a charge thereon. By will, dated 24th May, 1830, and legally executed for passing real estates, W. Hanson devised all his real and personal estate to Caswell and Wilkinson, in trust to sell and to apply the proceeds in payment of his debts, due on mortgage or specialty or simple contract, and the interest of debts carrying interest, and also his funeral expenses, and to pay the residue to his wife (the pauper) for her own use and benefit; to which words he added, "and I give and bequeath the same moneys and premises accordingly." And he appointed Caswell and Wilkinson his executors. W. Hanson died soon after the date of his will, which was duly proved by the executors.

(*a*) This was not considered as a purchase of the estate by Robert; for as he resided at W. under a certificate, he could not, by the purchase of lands, &c., acquire a settlement.

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After his death, his trustees and executors possessed themselves of all his personal estate, consisting of household goods and furniture, cows, horses, waggons, and stock in trade. They have occupied all his real estate, but have rendered no account to his widow, who, with her children, has resided for the last three years with her father in Aslackby. Upwards of a year after her husband's death, and whilst the pauper was so resident in Aslackby, Caswell, on her application for assistance, paid to her 30*s.* by two payments, on account. The respondents called the attorney for the executors, who proved that the estate had been put up for sale, but that no offer had been made for it, and that a large arrear of interest had become due since the decease of W. Hanson, and that the executors and devisees would be glad to sell the estate for the amount of principal and interest. The respondents then called Caswell, who was interrogated as to the solvency of W. Hanson's real and personal estate; but the appellants objected to the inquiry on the ground that the sessions was not the proper tribunal for such an inquiry, and that as the pauper, who was alone interested in the matter, never had been apprized of the state of her husband's affairs, or furnished with the particulars or any account thereof, the court could not enter upon the subject either of accounts or of the present value of the estate remaining unsold and in the occupation of the executors, as these were matters to be adjusted either by the parties themselves or by the Court of Chancery. The sessions concurred in this objection, and quashed the order, subject to question as to the admissibility of the evidence, and whether the pauper took under the will a sufficient estate to confer a settlement, in the absence of any adjustment of her husband's affairs. *Littledale*, J. "I think that the pauper had an equitable estate sufficient to confer a settlement. Her husband, being indebted by mortgage and otherwise to a considerable amount, devises in trust to sell and to apply the proceeds in payment of all his debts, and also of his funeral and testamentary expenses, and to pay the residue to his wife (the pauper) for her own use and benefit; to which words he added, that he gave and bequeathed the same moneys and premises accordingly. It appears that the estate is still in mortgage, and that the devisees and executors would be glad to sell the estate for the amount of principal and interest. But they have also the personal estate: it does not appear to what extent. *Non constat*, but it may be sufficient to pay off the amount due to the mortgagee, and also the other debts; in which case the pauper would be entitled to a conveyance of the estate. If she is so entitled, she has an equitable estate. Then it is said that the pauper did not reside upon the estate. She did not: but she resided in the parish. The devisees held, but they did not hold adversely. It appears to me to be the same thing as if she had resided upon the estate herself. It is said that the widow would have no right to go into a court of equity until the debts were paid. That is very true; but she has, nevertheless, an equitable estate. The cases cited against her settlement are cases of *purchasers*, which are very different. The only case that seems to bear upon the point is *Rex* v. *Berkswell* (p. 866). There, a lease for thirty years, of a cottage, had been granted to Hands, who resided in it above a year, and died, leaving a widow and three daughters. Administration was granted to the widow, but no distribution of the estate was made. The widow, and, by her permission, one of the daughters, with her husband, afterwards resided in the cottage for some years. It was held that the daughter, or her husband in her right, had not any equitable estate in the cottage, and that no settlement was gained by their residence in it. *Abbott*, C. J., says, 'I am clearly of opinion that the pauper (the daughter's husband) had not any such interest as would have enabled him to say, 'I will come and reside on this property.' If the widow of Hands had refused to let him do so, a court of equity would not have assisted him. The next of kin had not even an equitable interest, but had a mere right to an account, and perhaps upon that it might have turned out that the widow had paid debts to a greater amount than the value of the leasehold property in question.' Here the residue, after payment of debts, is all

Party may have an equitable estate and yet no right to go into a court of equity.

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devised to the pauper. She might have filed a bill to compel the devisees and executors to pay the debts, and, if there was sufficient without selling the estate, might have demanded a conveyance of it to her. Until sale, I think she certainly had an equitable estate. The sessions were an incompetent tribunal to try whether a man's estate is solvent or not. Besides, it is quite immaterial. The widow might have had money of her own sufficient to pay off the debts." *Patteson*, J. "This is in truth a devise by a mortgagor in possession of the equity of redemption. The trustees are to pay the debts, and the residue is for the sole benefit of the wife; and the question is, whether she took any equitable estate. It is immaterial what the *value* of the equitable estate may be. This is not a case under 9 Geo. I. c. 7, s. 5, of a purchase,—but of an estate coming to the pauper by operation of law. *Roper* v. *Ratcliffe*, 9 *Mod.* 167, and *Rex* v. *Natland* (p. 873, *n.*), are in point. The question is, not whether the pauper had any *beneficial* interest, but whether she had any *equitable estate*. The situation of the pauper in this case comes most precisely within the decision in *Roper* v. *Ratcliffe*, as stated by Lord *Mansfield* in *Rex* v. *Wivelingham*; and *Rex* v. *Natland*, which is quoted by *Gould*, J., in the same case, is also much the same. The pauper did not reside upon the premises, and it is argued that she had no right to reside. I do not know whether, under this will, she would have the right to reside or not. That might be a question. The devisees and executors, however, in fact resided as trustees. This is, I think, a clear case of trustees and *cestui que* trust. *Rex* v. *Geddington* is a case of a purchaser, and depending upon the act of 9 Geo. I.; and *Holroyd*, J., there says, 'If you show that the vendor and vendee stood merely in the relation of trustee and *cestui que* trust, then the latter would have an equitable estate and gain a settlement.' This comes exactly within that position. In that case it was held, that no settlement was gained, because the parties did *not* stand in the relation of trustee and *cestui que* trust. The only remaining question is, whether the position of the pauper could be altered by going into the question of assets. I think that quite immaterial. The question is merely whether any equitable estate passed. In *Rex* v. *Darlington*, *infra*, which is a different case, I would just mention that no question was raised, but that if there had been a clear devise of the surplus, the pauper would have gained a settlement; but it was held that, looking at the will, it was clear that the pauper was only one of several persons to whom the trustees might, at their discretion, have given the rents, if there had been any to dispose of." *Williams*, J. "It is too late to raise the question whether a person, having an equitable estate, can gain a settlement in respect of such estate. That has long been entirely settled. The only question is, whether *this* was an equitable estate. The argument against the settlement is based upon the assumption, that if the estate had been sold the pauper would have got nothing. But that is immaterial. The question is, what is the *nature* of the interest which she takes under this will. The devisees are trustees for the pauper, who is the person equitably entitled. That in a great degree disposes of the other question. Letting alone the question whether the sessions is a *proper tribunal* for an inquiry of the nature proposed,—I think it was immaterial, because any inquiry of that sort could not change the nature of the interest. It is not necessary to reside actually on the estate. It is sufficient if the party have an equitable estate in the parish in which he resides. The possession of the devisees in this case was not adverse, but as trustees for the pauper." Order of sessions confirmed.

A devise to the use of trustees in fee, in trust (after payment of debts) to receive the rents for the benefit of her brother, M. S., his wife and children, all or any of them,

Rex v. *Darlington*, 5 *M. & Sel.* 493. Order for removal of Elizabeth, widow of Meriton Sedgwick, from Brompton to Darlington, confirmed. Case:—Mary Sedgwick devised a dwelling-house, with appurtenances, in Brompton, to the use of G. Jackson and W. Marwood, in trust for her niece, M. A., daughter of her brother, Meriton Sedgwick, with remainder to three of his children. She also devised her other messuages and real estate, situate in Brompton, and all her personal estate, after payment of her just debts and funeral expenses, to the trustees, in trust, to receive and pay the

yearly proceeds thereof, for the benefit of her brother, his wife and children, all or any of them, during his life, as they should think proper; and she appointed the trustees her executors. The testatrix died on the 20th of June, 1815, and upon her death, Meriton and his family went to reside at Brompton. Meriton S. did not occupy any part of the premises devised in trust for him, but he occupied, by permission of the trustees, another cottage, worth 3*l.* or 4*l.* *per annum*, part of the property of the testatrix, devised in trust for M. A. Sedgwick, and resided therein from June, 1815, until his death on the 28th of December following. Meriton S., at the time of the testatrix's death, and also at his decease, was an uncertificated bankrupt. The *personal estate of the estate, and the rents and profits of the premises, were insufficient for the payment of her debts, and the trustees did not pay or appropriate any part of* the rents or profits for the benefit of Meriton S. or his wife, or any of their children, during the life of Meriton, the same being applied to the discharge of the testatrix's debts; and a considerable portion of debt remained undischarged at the time of Meriton's decease. The question was, whether Meriton took under the devise such an interest as enabled him to gain a settlement by his residence at Brompton. Lord *Ellenborough*, C. J. "It was evidently the purpose of the testatrix, knowing probably that her brother, Meriton, was an uncertificated bankrupt, to abstain from giving him any vested interest, and therefore she leaves this matter entirely in the control of the trustees. After hearing the argument, I am clearly of opinion that there is not a scintilla of interest in Meriton, either legal or equitable, which entitled him to reside irremovably in the parish. He was only one of several persons to whom the trustees might, in their discretion, have given the rents, if there had been any to dispose of." *Bayley*, J. "The only question submitted to our consideration is respecting the interest of Meriton, as to which, it seems to me, that it is only by losing sight of the real question that any doubt can be raised. The foundation of this head of settlement is, that a man is not to be removed from his own. But here the trustees had the estate; first, for the payment of debts, which they were unable to pay in the life-time of Meriton, and consequently were not in a condition to empower him to take any thing." *Abbott*, J. "If Meriton had taken an equitable interest the intention of the testatrix would have been defeated; because whatever he took, being an uncertificated bankrupt, it would have passed to his assignees." Order confirmed.

during his life, as they should think proper, and, after his decease, in trust for her nephew, &c.: Held, that M. S., who, after the death of testatrix, by permission of the trustees, occupied until his death a cottage in the township where the lands devised were situate, did not acquire a settlement thereby; the rents and profits of the lands having been insufficient to pay testatrix's debts; and M. S., at the testatrix's decease, and from that time until his own decease, being an uncertificated bankrupt.

Rex v. *Woburn*, *Burr. S. C.* 680; 2 *Bott*, 528. The paupers (two sisters) resided at E. under a certificate from Woburn. A person entitled to a long term of years in a cottage in Eversholt, after having devised it to Andrew Powell, son of their father William Powell, adds, "it is also my will and pleasure that William Powell (their father), his wife and children, shall have free liberty and power during their life to dwell in it." And accordingly, W. P. and his wife, and their son A. P., and the two daughters, (the paupers), resided in it till W. P.'s death. The court held clearly that the settlement of the two paupers was in Eversholt.

A leasehold cottage is devised to A. P., with liberty to the paupers to dwell therein during their lives; by residence under the will they gain a settlement.

Rex v. *Owersby-le-Moor*, 15 *East*, 356. Mary, wife of W. Saltfleet, deceased, schoolmaster, was removed from Maltby to Owersby-le-Moor. Order confirmed. Case:—In 1705 Mrs. Bolle devised a farm in Maltby-le-Marsh to certain persons and their heirs, in trust, to employ the rents yearly to the poor of the town 40*s.*, and the rest yearly to a fit person, to be *nominated and elected by the trustees*, who should be a *schoolmaster*, to teach the poor children of Maltby to read the Bible. On June 13, 1807, the following agreement was entered into between W. Saltfleet and James Digby and Catherine Digby his wife (the heir-at-law of the only surviving trustee appointed by the will). "Memorandum of an agreement made 13th of June, 1807, between J. D. and C. D. his wife, of the one part, and W. S. schoolmaster of the other part; Whereas J. D. in right of his wife is entitled to a school-house, &c. situated at Maltby, which they have agreed to *let* unto W. S.: W. S. *shall have the possession and the use and occupation of the school-house, yard, garden, and premises, for the purpose*

W. S., a schoolmaster, occupied a school house, yard, &c., under trustees, appointed by will, and directed to appoint such master: Held, that the appointment gave W. S. a life interest therein, and a settlement by forty days' residence.

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of teaching the poor children of M. to read in the Bible, pursuant to the will of Mrs. B.; and in consideration of W. S. agreeing to teach children, &c., *he is to reside upon the premises rent free, and to be paid by* J. D. *and* C. *his wife, a salary for the first year that he shall so teach, of* 10*l.*, such year to commence from the 1st August next, and 15*l.* for every year after. [Then a covenant by D. to pay as aforesaid. Then further agreement, that in case any reasonable complaint shall be made to J. D. and C., &c., it shall be lawful for him, &c., to suspend the salary of W. S. for two years, and apply the same to such purposes as J. and C. D., &c., shall think proper, without being liable to make any remuneration to W. S. In case of the death of W. S., it shall be lawful for J. D. and C. his wife, to turn out from the premises *the executors of* W. S., *and to appoint another person to the situation of schoolmaster thereto*, in such manner as he, &c., may think proper.] W. S. (June 13, 1807,) entered upon the school-house, &c., being part of the farm so devised in trust, and resided upon those premises till his death, about three years and a half afterwards. He taught the children to read during that time, and received from J. D., for the first year, a salary of 10*l.*, and afterwards a salary of 15*l.* per annum. The annual value of the school-house, yard, and garden, is about 5*l.* The remainder of the devised premises, consisting of a farm-house and twenty acres of land, was occupied by C. Barton, the tenant of J. D., at the rent of 52*l.* 10*s.* per annum. The court of sessions thought the above appointment fraudulent, and in no respect consistent with the will. *Per Curiam:* "We are of opinion that a settlement was obtained in Maltby-le-Marsh. The agreement of the 13th June, 1807, was we think in substance an appointment of Saltfleet to the situation of schoolmaster, to teach the poor children of Maltby to read the Bible: and though the sessions have stated that that appointment was *fraudulent*, and in no respect consistent with the will of Mrs. Bolle, it is clear that their meaning is not that it was a *colourable appointment*, under which he was not to discharge the duties of a schoolmaster, but that it was an appointment upon such terms as tended to deprive him of a great part of the emoluments attached to the situation. There was no fraud in him: he was to discharge every duty the situation of schoolmaster required; but the fraud was in those who appointed him, in attempting to withhold from him what Mrs. Bolle's will entitled him to receive. By that will the schoolmaster was to have all the profits of a farm at Maltby, except the yearly sum of 40*s.*, which was to be paid to the poor of the parish. The schoolmaster therefore for the time being was, to a considerable extent, to the extent of all but 40*s.* a year, the *cestui que trust* of the farm; and had the trustees kept in their own hands sufficient to raise the 40*s.* a year, and put the rest into the possession of the schoolmaster, they could not have dispossessed him whilst he continued schoolmaster, unless he had misused the property, or unless what they retained to raise the 40*s.* a-year had proved insufficient for that purpose. In this case the trustees allowed Saltfleet to have the possession of a house, yard, and garden, which were part of this farm, and they retained what was greatly more than sufficient to answer the 40*s.* a-year. He had this possession therefore not by purchase, so as to be within the statute 9 Geo. I. c. 7; not by renting, so as to be within the statute 13 & 14 Car. II. c. 12; but in the character of a *cestui que trust*, residing upon what was for the time substantially his own; and as the trustees could not have removed him, we are of opinion that this residence for more than forty days gave him a settlement in this parish." Orders quashed.

An appointment inconsistent with the trust is not fraudulent.

The rent must be appropriated to the schoolmaster, and not generally to the school.

Rex v. *Melborne, Burr. S. C.* 244; 2 *Bott*, 239. The pauper's husband, during his residence at Melborne, officiated as schoolmaster there. During his continuance in the school, certain lands were by deed indented and inrolled conveyed in trust to permit certain persons, being vicars of certain parishes and the succeeding vicars, to take the profits thereof, to employ the same for certain purposes: one of which was as follows: "Also the yearly sum of 10*l.* to the charity school of Melborne, to be paid to the vicar for the time being." This sum was yearly received by the pauper's hus-

band from the vicar of Melborne. It was held that this annuity of 10*l.* per annum did not appear to be appropriated to the schoolmaster, and that he had no freehold in it, and could therefore gain no settlement by receiving it.

2. *Of Estates acquired otherwise than by Purchase, &c.*

Rex v. *Holm East Waver Quarter*, 16 *East*, 127. Removal of Jane Anderson, single woman, and her child, aged five years, from Holm E. W. Quarter to Aicton, confirmed as to the child, but quashed as to the mother. Case :—Jane Anderson's father, Daniel Anderson, purchased an estate for less than 30*l.* in Holm and died, having devised it to a trustee in trust to let the same to farm during the life of his daughter, and to pay her the rent; and after her death to his right heirs. The pauper J. A. continued to reside upon the premises for more than forty days after the death of her father, the trustee never having interfered. Lord *Ellenborough*, C. J. "This species of settlement does not depend upon any term in a statute, but is an excepted case in the law, standing upon the rule, that a man shall not be removed from his own while his trustee permits him to occupy it, and from which nobody else had a right to remove him. Here the pauper did not reside in the character of a tenant: and whether the estate here were legal or equitable, it was still the pauper's own, and she could not be removed from it." Order confirmed.

A father devised a cottage and land purchased for less than 30*l.* in trust to be let to farm during the life of his daughter, and to pay her the rents after deducting expenses: Held, that by forty days' residence thereon by permission of the trustee, the daughter gained a settlement.

Rex v. *Thruscross*, 3 *Nev. & M.* 284; 1 *Ad. & E.* 126. Removal of J. Fryer from Thruscross to High and Low Bishopside, both in the West Riding of Yorkshire. Order discharged. Case :—The pauper's grandfather was the devisee of a copyhold estate in High and Low Bishopside, under the will of one Furniss. On the death of the devisor in 1780, the grandfather took possession of the estate under the devise; and the pauper's father, then about sixteen years of age, lived with him there as a member of his family till 1789, when he married; but the grandfather was not admitted tenant of the property in question before the year 1790. To prove a surrender of the copyhold to the use of Furniss's will, the steward of the manor was called, who produced the book of the records of the manor, and read from it a record of the admittance, reciting a surrender of the property in question, made in 1774, to the use of the will. He also stated that he had not been able to find the surrender itself upon the roll or elsewhere, except as recited in the admittance: that the old surrenders appeared to have been kept in a very loose and irregular manner; that the originals were very often not to be found; and further, that there were many surrenders to the use of wills on the records, the originals of which were not to be found; but that he had not been able to discover any other instance in which there was not either the original surrender itself, or a record of a surrender on the court rolls. The questions for the opinion of the court were stated to be, whether, under these circumstances, the entry in the book of the records of the manor was evidence of a surrender to the use of the will? whether the admittance of the pauper's grandfather in 1790 had relation back to his possession in 1780? and whether the residence of the grandfather for more than forty days, he having the right of admittance, was sufficient to confer a settlement by estate? Lord *Denman*, C. J. "I think this case is clear of doubt. The principle is, that a man is not to be removed from that which he has a right to enjoy. Here the pauper's grandfather had a right to enjoy the copyhold without being removed by the parish officers. I think the overseers, if they had presumed to remove him, would have been liable to an action. In several cases an interest as feeble as this has been held sufficient for a settlement." *Littledale*, J. "I think that the admission relates back to the time of the devisor's death for this purpose as well as others. I agree that the grandfather had not an actual estate at the time of the emancipation; he could not then have devised it at law or equity. He was a mere occupier. Still he was an occupier who, by doing an act which he might at any time do, could have obtained the legal estate. The lord could have ejected him, but only for a short time; for he might immediately have claimed admittance. He had the substantial power over the land. And although the lord or the heir-at-law might have removed him for a time, the officers of the

Devisee of copyhold was admitted after he had resided forty days thereon, and his son who had previously lived with him, became emancipated after the expiration of the forty days, and before the admittance: Held, that the father by such residence gained a settlement, which was communicated to the son. *Parke*, J. diss.

A record in the record book of a manor of an admittance to a copyhold, reciting the surrender of the same to the use of a will, is admissible evidence of such surrender, the original surrender being lost.

2. *Of Estates acquired otherwise than by Purchase, &c.*

parish had no right to do so; and if so, he became settled by forty days' residence under such circumstances." *Parke*, J. "I am not prepared to concur with the Lord Chief Justice and my brother Littledale, and should have wished for more time to consider the case. As at present advised, I think there was no settlement in the appellant parish. The question of evidence is disposed of: we must take it that a surrender to the use of the will is found by the sessions. The question then is, whether a settlement was gained by the grandfather before the pauper's father became emancipated. In the first place, there can be no doubt that admittance has relation back for some purposes, as to enable the devisee to avoid mesne incumbrances by another party. That relation, however, will not, in my opinion, operate so as to make the possessor irremovable in the mean time; he must have an interest before the admittance sufficient to make him irremovable. Then was the pauper's grandfather in this case removable in the meanwhile? He ought to have had a legal or an equitable estate; but that is not the condition of a copyholder before admittance. The law enables him to enforce a devise made in his favour; but he is not even obliged to accept such a devise. No case has yet gone so far as to allow a settlement to be created by that which is neither a legal nor an equitable estate." *Patteson*, J. "It appears to me that a settlement was gained by the pauper's father. It is true that he had no legal or equitable estate. That is, however, not absolutely necessary, according to *Rex* v. *Holm East Waver Quarter* (p. 879). Where a party can enforce the conveyance of a legal estate, and is in the occupation of it, that is sufficient to confer a settlement. Here the devisee had that right, and no one else had. He might have taken legal proceedings to compel the lord to admit him; and after he had enforced the admittance, he might have ousted the heir. Though I cannot find any case in which the court has professed to go the full length of this case, I think we may collect the principle that such an interest is sufficient. In *Rex* v. *Holm East Waver Quarter* there was neither legal nor equitable estate, though it is true that by the language of the court the decision seems to have turned on the notion that there was an equitable estate. It was held that an occupation, not as tenant, by permission of the trustee, as if the property had been the occupier's own, was sufficient to give a settlement. There the property was not the occupiers, nor could she have compelled a conveyance by any proceeding in equity. The facts of that case go further than those of the present. As to the first point, there can be no question but that the evidence was admissible." Order of sessions quashed.

4. *Estate in Remainder or Reversion.*

Tenant in remainder as such can acquire no settlement, there must be an immediate estate in possession.

Rex v. *Eatington*, 4 *T. R.* 177. Order of removal of John Harris from Eatington to Hooke Norton quashed. Case:—The pauper married the daughter of G. Malings. After the marriage, to induce the pauper and his wife to reside with and take care of him, by lease and release Malings granted a cottage to the pauper in fee, with this proviso, "that Malings was to live in and occupy the cottage as he had done, and then did for his life." The pauper paid nothing for it. The premises were then worth 30*l.* The pauper resided with Malings up to the time of the order. Lord *Kenyon*. "The material question is, whether an immediate estate in possession was vested in the pauper? for it is admitted, that unless an estate of present interest was conveyed, the pauper gained no settlement. If this had depended on the first words of the proviso, I should have thought that they would have been satisfied by determining that only a liberty to inhabit the cottage was reserved to the father; but the word 'occupy' carries it further, and shews that the whole estate was to be reserved to him. If such be the construction, the estate in remainder was not come into possession when the order was made, and consequently the pauper had not that which confers a settlement, viz. a present interest." *Ashhurst*, J. "The word 'occupy' shews that it is a reservation of the thing itself, of the whole

estate; for a licence to occupy an estate for a particular time is a lease of the whole estate for that time."

2. *Of Estates acquired otherwise than by Purchase. &c.*

Rex v. *Willoughby-with-Sloothby*, 10 *B. & C.* 62; 5 *M. & R.* 32. Order of removal of W. Stokes, &c. from Huttoft to Willoughby confirmed. Case: —J. Neal, by lease and release dated 19th and 20th May, 1825, in consideration of 105*l.*, conveyed a parcel of land and two unfurnished dwelling-houses in Huttoft, to the use of Elizabeth Stokes for life, or during widowhood, remainder to the pauper in fee. The 105*l.* had been bequeathed by the father of the pauper to him, and the interest of which the pauper had subsequently by deed settled upon his mother for life or her widowhood; the principal after her death to be paid to himself; 50*l.* was expended by the pauper after the conveyance in furnishing the dwelling-houses, which sum his father had bequeathed in trust to pay the interest to the widow for life or widowhood, and the principal afterwards to the pauper. The pauper paid the interest of the 105*l.* to the trustees, who paid it over to the mother. The pauper entered upon one of the houses and part of the land at the time of the conveyance. The mother let the other house and remainder of the land for one year after the execution of the conveyance, at the expiration of which the mother told pauper she would deliver up all the premises to him, and he might do as he liked with them. The pauper then entered into possession of the other house and land, let it, received the rent, and never accounted for it to his mother; and continued to occupy the same house he had previously occupied until both were sold in May, 1828, and conveyed by deed, to which his mother, still a widow, was a party. The pauper received the whole of the purchase-money, and did not account for it to his mother. They both joined in the receipt to the purchaser. *Bayley*, J. "Ever since *Rex* v. *Eatington* (p. 880), it has been an established principle, that a party cannot gain a settlement by residence on an estate in which he has not a freehold vested in possession. Here the pauper had a freehold estate in expectancy only, viz. a remainder, which implies a preceding estate of freehold in some other person. The *Rex* v. *Houghton-le-Spring* (p. 882), and *Rex* v. *Staplegrove* (*post*), only shew that where a present estate of freehold is vested, the premises need not be in the owner's occupation. In the first of these cases the present freehold interest was vested in the pauper. In *Rex* v. *Staplegrove*, the estate of freehold in possession was in the pauper's wife, a chattel interest only having been granted by her father to the parish officers. In this case the pauper never had any other estate of freehold in the premises than one in remainder. His mother had the estate of freehold in possession." *Littledale*, J. concurred. *Parke*, J. "This question was expressly decided in *Rex* v. *Eatington*, and considered by the court as settled law in *Rex* v. *Ringstead* (p. 881)." Lord *Tenterden*, C. J. "I entirely concur in the judgment given by my learned brothers." Order confirmed.

A remainder man during the life of the tenant for life has not such an estate as to gain a settlement.

Rex v. *Ringstead*, 9 *B. & C.* 218; 4 *M. & R.* 67. The question in this case was, whether the pauper took an immediate estate in land devised by his grandfather; the devise was "to his daughter, widow of T. M., all that messuage, &c., for her life, if so long she continued a widow, and from and after her decease or day of marriage, he devised the messuage and all other real property unto the four children of T. M. and their heirs for ever, as tenants in common." The pauper was one of those children. Between 1817 and 1819, when the property was sold, he resided in Ringstead forty days; his mother being then a widow. Neither of the children was heir at law to the testator, and there was a devise of other property to him. It was urged that the pauper took an estate in fee expectant on the death or marriage of his mother, and had as much right to reside in the parish as if he had a reversion for a term of years. *Contrà.* It is a clear principle of settlement law that a party cannot gain a settlement by estate, unless he has a freehold in possession. He must have an estate of which he may be disseised. *Bayley*, J. "Upon that point the court do not feel any doubt. It was then urged that the pauper took an immediate interest in all that was not devised to his mother;" and judgment was given by *Bayley*, J.

A pauper entitled to a reversion in fee after the death of tenant for life, gains no settlement by residence in the parish.

2. *Of Estates acquired otherwise than by Purchase, &c.*

If the estate be leased, and the owner reside forty days upon it by leave of the lessee, for the purpose of making repairs, he is settled there.

who said, "We are of opinion that the pauper did not take an immediate estate, and that he is entitled to no estate until the tenant for life died." *Rex* v. *Houghton-le-Spring*, 1 *East*, 247. Removal from South Shields to Houghton-le-Spring confirmed. Case:—The pauper became entitled as heir to three copyhold houses, let at 6*l.* per annum, and to one freehold house at Sedgefield. Upon becoming so entitled, he let to R. W. the freehold house at 3*l.* per annum, the paupér undertaking to sink a cellar, and make some repairs in the premises. W. entered and occupied. The pauper, in pursuance of such agreement, went, after W. had possession, from Houghton to Sedgefield, for the sole purpose of sinking the cellar, and making the repairs. He was occupied upon the work for forty days, during the whole of which time he resided as a lodger in W.'s house. After finishing the work he returned to Houghton to his father, with whom he lodged. During the whole of the pauper's residence at S. the copyhold houses were in mortgage to R. W. for 40*l.* *Rex* v. *Dunchurch* (*post*) was cited to shew that where the property was leased to another, a residence upon it will not gain a settlement. (But *per* Lord *Kenyon*, C. J. That was the case of a *purchase*, and a distinction has always been taken between cases where the party came to his property by his own act, or by operation of law.) It was also said that the general expression which runs through all this class of cases, that a party shall not be removed *from his own estate*, seemed to imply that he must be in *possession* of it though he need not actually reside in it. On the other side it was argued, that in *Rex* v. *Catherington* (p. 891) the mortgagee was in possession, and there did not appear any surplus on which the interest of the mortgagor could attach; that in *Rex* v. *St. Michael's, Bath* (p. 890), the insolvent had conveyed all his interest to trustees, and no probability of a surplus; and the possession of it was afterwards fraudulently obtained by him. Here the pauper had a substantial freehold interest in the parish where he resided, and an undisputed residue in the copyhold premises. In *Rex* v. *Sowton* he resided not on his estate, but at an ale-house; yet he gained a settlement. Further, 1st, A man cannot be removed from his estate devolved on him by operation of law, whatsoever the value may be. 2d, A residence for forty days irremovable will gain a settlement, except in case of a purchase under 30*l.* 3d, It is enough to reside in the same parish. *Ryslip* v. *Harrow* (p. 853), *Rex* v. *Sowton*, *Rex* v. *St. Nyott's* (p. 854), *Rex* v. *Hasfield* (*post*). 4th, The party need not actually occupy his estate. It is sufficient to reside in the parish where he has a freehold. Lord *Kenyon*, C. J., was clear that a settlement was gained at Sedgefield, and said "That he was decided by the case of *Hasfield*, where the child, residing with his grandmother, could not be taken to have been in actual occupation of the property; nor did the judgment of the court proceed upon any such ground." (*a*) *Grose*, J., agreed, "That a mere residence in the parish where the estate was, was sufficient." *Lawrence* and *Le Blanc*, Js., doubted; but afterwards the court were all agreed that here was a settlement gained in Sedgefield. See also *Rex* v. *Staplegrove*, *post*.

5. *By Widow's Right of Dower.*

A widow before assignment of dower, does not gain a settlement unless in right of her quarantine.

5. *By Widow's Right of Dower.*

Rex v. *Painswicke*, 2 *Bott*, 627; *Burr. S. C.* 783. The widow of a man who died seised of a house and orchard in South Stoke, entered and resided therein for seven years, without any assignment of dower, and then married a second husband, who resided in this house with her about two years, and then died. The second husband was settled in Painswicke. The court were of opinion that the mere right of dower was not sufficient to gain a

(*a*) It is to be collected from a MS. note of the late Mr. *Masterman* that the boy in *Rex* v. *Hasfield* was not living on his estate. It also appears that the settlement of the same pauper came in question again in *Ryslip* v. *Hendon*, 5 *Mod.* 416, where *Holt*, C. J., incidentally said, "Let a man be settled where he will, we are all of opinion he may go and live where he has an *estate*, and therefore that he might have gone to the place where he had a freehold." 1 *East*, 258.

settlement in South Stoke for her second husband, the children by him, but that by Magna Charta she was entitled to remain forty days, and to have estovers; she might by residence for that time have a claim for a settlement.

2. *Of Estates acquired otherwise than by Purchase, &c.*

Rex v. *Northweald Bassett*, 2 *B. & C.* 724; 4 *D. & R.* 276. Millicent Reynolds, widow, and children, were removed from Northweald Bassett to Magdalen Laver. Order quashed. Case:—Richard Reynold's, the pauper's husband, died in May, 1822, seised of a freehold estate liable to dower in Northweald Bassett. Dower was not barred, but it had not been assigned, nor had any steps been taken for that purpose. The heir at law has been from the time of his birth an idiot, and at Richard's death was twenty-one years of age. In 1820, long after the marriage of Richard and Millicent, the estate was mortgaged for a term of 1000 years by Richard, to secure the payment of 100*l.* The mortgagee received from the tenant the full half year's rent which accrued after the death of Richard at Michaelmas last, out of which he paid the sum of 3*l.* to the pauper, and took from her the following receipt: "The 7th December, 1822, received of the heir at law of my late husband R. Reynolds, deceased, the sum of 3*l.*, by the payment of Richard Hauchin (the tenant), being my third share, as his widow, of the half year's rent of the freehold part of his estate at Thornwood Common, in Northweald Bassett, due Michaelmas last." R. R. lived in Magdalen Laver, and after his death the pauper, his widow, resided in that parish for some months, and then hired and lived in a cottage in Northweald Bassett, which was not on the husband's estate. Before her residence of forty days had been completed in that parish, she became chargeable, and was removed. It was urged that the payment of rent was equivalent to assignment. But *Abbott*, C. J. said, "The payment was made by the mortgagee, who had no power to bind the heir;" and he added, "*Rex* v. *Painswicke* is stronger in favour of the settlement claimed than the present case, for there the pauper had actually resided upon the property out of which the claim to a settlement arose. I think it is our safest course to abide by that decision. If we consider the nature of the widow's right to dower before assignment, it will be seen that she had not any right, either legal or equitable, to the land. Her legal right was to have dower assigned, her equitable right to have an account of the rents and profits. But in *Rex* v. *Berkswell* (p. 866) a right of that nature was held insufficient to confer a settlement. Upon the authority of those two cases, but particularly the former, that being a case of dower, I am of opinion that the widow of Richard Reynolds had not any right to reside in the parish of Northweald Bassett, and that the order of sessions must be quashed." (*a*)

A widow, before assignment of dower, has not such an interest in the land of which she is dowable, as to be irremovable from the parish in which the land lies.

Rex v. *Long Wittenham*, 4 *Doug.* 193. A certificate man purchased a freehold cottage in the township to which he was certificated, and died, leaving a widow and three children residing in the cottage at the time of his death, and who continued to reside there for ten weeks. The widow thereby acquired a settlement in right of her quarantine.

A widow may gain a settlement by residence in right of her quarantine.

6. *By Wife's Estate in Trust.*

6. *By Wife's Estate in Trust.*

Rex v. *Offchurch*, 3 *T. R.* 114. Henry West and his wife were removed from Thurlaston to Offchurch. Order affirmed. Case:—J. West was the father of the pauper. In January, 1767, his wife, who was mother of the pauper, died, and in June, 1767, J. West married Jane Lockley, with whom he lived in Offchurch until 1770, when they went to Southam. In 1773 they removed to Ladbroke, to a house there held under the following title [the case then stated that his house was vested by a settlement in trustees, to the separate use of the wife, with the usual clause that her receipt should be a discharge to the trustees for the rents and profits, and that the rents should not be subject to the husband's debts, &c.] West and his wife lived in the house ever since 1773. Lord *Kenyon*, C. J. said, "The question had some novelty in it; where a person resides on his own property, he gains a

Where an estate is vested in trustees for the separate use of the wife, the husband may gain a settlement by residence upon it.

(*a*) As the widow did not reside in husband's death, she gained no settlement N. B. for the forty days next after her by her quarantine.

2. *Of Estates acquired otherwise than by Purchase, &c.*

settlement by it, it having been considered as an excepted case out of the acts of parliament. Lord *Macclesfield* first held, that as a man cannot be disseised of his freehold he is irremovable from it, and residing forty days on an estate of his own irremovable, and gaining a settlement, are synonymous terms. That indeed does not hold in all cases now; for by 9 Geo. I. c. 7, a purchaser of an estate for less than 30*l.* shall not acquire a settlement for any longer time than he resides upon it. Then here, if this had been the father's own estate, the settlement would clearly have devolved on the son. But it is said that this is only the equitable estate of the wife. Now *supposing it had been the wife's legal estate, the husband would have been seised* jure uxoris, *and by residing upon it would have gained a settlement.* Then must it be a legal estate in order to confer a settlement? Certainly not. This was not doubted in *South Sydenham* v. *Lamerton* (p. 865), or in any of the other cases. The question in that case was, whether the next of kin, without administration, had any estate whatever? and it was, held that he had not. In *Rex* v. *Cold Ashton*, a doubt was made whether a next of kin having the *sole right* of administration could not gain a settlement without taking out letters of administration. That shows an *equitable* estate is sufficient to gain a settlement; and indeed this position is confirmed by many other cases, and there are none in opposition to it. (*a*) Then it is said that this is going still further, because this is only the equitable estate of the wife, and that even the wife herself had no right to reside upon it without the consent of the trustees. But she might, beyond all doubt, if she had chosen, have elected to take the *esplees* with her own hands, and that the trustees could not have prevented. The objection then against the husband's gaining a settlement here is too refined; for the wife had a right to reside on her property, and to communicate it to the husband. And although there is no case directly like the present, yet the principles of the decided cases go the length of determining this." The other judges assented, and both orders were quashed.

A *legal* estate not necessary.

The husband of an administratrix entitled to the trust of a term only, gains a settlement by residence there for forty days.

Mursley v. *Grandborough*, 1 *Stra.* 97. Sir John Fortescue demised a cottage of 20*s.* a year to Eden for ninety-years, reserving 12*d.* rent: Eden assigns the term to Gadden in trust for his wife for life, and then in trust for his son, during the remainder of the term. The wife dies. Afterwards the son dies, leaving a wife, who, as administratrix to her husband, becomes entitled to this term; and she grants this cottage for twenty-four years, excepting two rooms (in which two rooms she lives), and marries John Chappel. The question was, whether Chappel, as husband of an administratrix, who was entitled to the trust of a term only, and as being entitled to a chattel in another's right only, was removable by 13 & 14 Car. II.? And by the court: "He is not: this is not a taking of a tenement under 10*l.*, for the 12*d.* is not reserved as a rent, but only an acknowledgment usually paid on long leases. The case of a copyhold is stronger than this, for that is but an estate at will. To strip the man of his own is the way to make him chargeable, for he may not be able to let it." Therefore the orders which adjudged this to be no settlement were quashed.

A woman, before marriage, purchases a tenement under 30*l.*, her husband, after marriage, resides on the premises, he thereby gains a settlement, and the settlement so gained will be communicated to her.

Rex v. *Ilmington*, *Burr. S. C.* 566; 1 *Bla. Rep.* 598. Elizabeth Stanley purchased a leasehold tenement in M. for 6*l.* for the remainder of a term of 1000 years. She resided upon it about nine years, and then married T. E., who resided with her upon the same tenement about sixteen years; then he died, and after his decease she continued upon the premises for several years, and at last sold the same for 6*l.*; and after such sale was removed to Ilmington, the place of her husband's settlement before their marriage. Order confirmed. It was urged, that this woman had an estate vested in her when Evans married her, which upon the marriage vested in him. The husband gained a settlement in Mickleton by forty days' residence upon his estate; and his settlement communicated itself to the wife. And of this opinion was the court. Orders quashed.

(*a*) *Rex* v. *Geddington* (*post*), and *Rex* v. *Llantilio* (*post*). The relation of trustee and *cestui que trust* must exist. It must be an equitable *estate*, and not an equitable *right*.

2. *Of Estates acquired otherwise than by Purchase, &c.*

Rex v. *Ynyscynhaiarn*, 7 *B. & C.* 233; 1 *M. & R. Mag. Ca.* 77. Order of removal of Hugh Hughes, Elizabeth, his wife, and children, from Aberdaron to Ynyscynhaiarn confirmed. Case:—H. Williams, the father of Elizabeth Hughes, resided as tenant of a small farm, called Peny Cwin, in Aberdaron, and which he held at the rent of 3*l.* 5*s.* per annum, and died thereon the 9th of June, 1782. Williams made a will the 23d of May, 1782, bequeathing all his personal estate and effects, subject to the payment of legacies, to his daughter Elizabeth, and appointed her sole executrix. Elizabeth continued to reside at Peny Cwin from the time of her father's death until the time of her marriage. On the 27th of July, 1782, Hugh married Elizabeth, and went to reside at Peny Cwin, where they continued many years. Elizabeth proved her father's will on the 23d of May, 1783. Williams never paid any taxes in Aberdaron, nor did Elizabeth while sole, nor Hugh after his marriage (except county bridge rate), until 1795. *Bayley*, J. "The wife in this case was executrix of a tenant from year to year, and by forty days' residence as such would gain a settlement. If, therefore, the wife took the interest as executrix, and in that character became tenant from year to year, and married, a settlement would be gained by her husband. If she took the land as tenant for a year, she became tenant from year to year, and the term would vest by marriage in the husband. *Rex* v. *Ilmington* (p. 884) shows that a man will acquire by marriage the same right to a settlement which an executor does by the death of the person whom he represents. The executor of a tenant from year to year of an estate under the value of 10*l.* may gain a settlement by residing on it forty days, because the interest vests in him by operation of law. And upon the same principle a husband may gain a settlement by residing forty days upon an estate vesting in him by marriage, although it be of less annual value than 10*l.* A settlement, therefore, was gained in Aberdaron." Orders quashed.

The pauper married the executrix of a tenant from year to year of an estate under 10*l.* a year, and he acquired a settlement by forty days' residence upon the estate.

Rex v. *North Cerney*, 3 *Bar. & Ad.* 463. Appeal against an order of removal of John Lovesey and Elizabeth his wife from Winchcomb to North Cerney. Order confirmed. Case:—About five years ago the pauper's wife Elizabeth, being at that time a widow, took a house and garden, situate in the parish of Winchcomb, of one Greening, from Michaelmas to Michaelmas, at the rent of 3*l.* per annum. She went into the house immediately after taking it, and continued to reside therein until the 23d of July, 1828, on which day she married the pauper, John Lovesey, who immediately went to reside in the said house with his wife, and continued to live there from that time till the order of removal was made. Before the marriage the rent was paid by the said Elizabeth, and after that time by the pauper. Lord *Tenterden*. "I am not able to distinguish this case in principle from *Rex* v. *Ilmington* (p. 884), and *Rex* v. *Ynyscynhaiarn* (*supra*). In the last-mentioned case it was expressly decided that a man by marrying a woman who was a yearly tenant of premises of less than the annual value of 10*l.* gained a settlement. So here upon the same principle the pauper gained a settlement in the parish of Winchcomb, his wife having before her marriage become the yearly tenant of a house and garden at the rent of 3*l.*, and that interest having on the marriage vested in him by operation of law." The other judges concurred. Order of sessions quashed.

A man marrying a woman who after the passing of 59 Geo. III. c. 50, has become a yearly tenant of premises at a rent of less than 10*l.* per annum, gains a settlement by forty days' residence thereon. (*a*)

Rex v. *Barnard Castle*, 4 *Nev. & M.* 128; 2 *Ad. & E.* 108. Removal of H. Siddle and family from Barnard Castle to New Forest. Order quashed. Case:—The appellants contended the pauper was settled in Marrick by residence on the property of his wife. The pauper in 1827 married his present wife, then a widow. Her former husband rented a cottage in Marrick at 50*s.* a year, payable on the 21st of June and the 21st of December in every year; and was residing in it at the time of his death, in September, 1826. The widow did not take out administration, but continued to live in the house with her five children from the period of her husband's death till her marriage with the pauper, and paid the

Tenant from year to year at the rent of fifty shillings died in 1826, and his widow continued to reside on the premises, and paid rent for two half years, without taking out administration, she then married again, and with her hus-

(*a*) By marrying a mortgagor in possession, *Rex* v. *Edington*, p. 891.

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band continued to pay the rent for several years.
If she became the tenant, her second husband acquired no settlement.
Secus, if she occupied as the representative of her first husband.
The court were equally divided as to the proper inference, and therefore the judgment of the sessions affirmed.

rent due in December, 1826, and June, 1827. The pauper, on his marriage with the widow in September, 1827, went to reside with her on the premises, and paid the half year's rent due on the 21st of December, 1827. He continued to occupy and pay rent for the tenement for several years: first, the old rent of 50*s.*, and afterwards 4*l.* Lord *Denman.* "I think the proof in this case was sufficient to establish the pauper's settlement in Marrick by residence on his wife's estate. It is stated that the widow on her first husband's death did not take out administration, but continued to live in the house with her children from her husband's death till her second marriage, and paid the rent due in December, 1826, and June, 1827. The question is, whether that statement raises such a presumption of her having assumed a representative character as makes her holding necessarily a holding by wrong. It seems to me that it ought to be shown by the case, and not assumed, that she was acting in a right which she did not possess; and the statement before us as to her holding, and the subsequent payment of rent, makes out, to my mind, that she was upon the premises as tenant in her own right, and not as a person entitled, but omitting to take out administration. Certainly there is some doubt upon the subject, and it would have been more satisfactory if the sessions had stated the case more particularly; probably, however, they have found all the facts that came before them, and I think those facts present to us matter from which we ought to infer that the holding by the widow was by such a title as she might lawfully claim, and not otherwise. With deference, therefore, to my brothers who are of a different opinion, I think the sessions have decided rightly." *Taunton,* J. "I am sorry that on so insignificant a subject there should be any serious difference of opinion on the bench; and I do not give my judgment without distrust on that account; but still the case is one upon which I cannot entertain what appears to me a reasonable doubt. We must proceed upon the facts as stated, and not upon any ingenious supposition of other circumstances. The first husband died in September, 1826; the widow continued in the occupation of the premises, and paid the rent up to December, 1826, and for the following half year. The question is, whether it is necessary to infer that those sums were not paid on her own account, so as to make her the tenant, but are referable to a prolongation of her late husband's interest, and consequently not made in her own right. The sessions, having found in favour of the settlement in Marrick, must be taken to have expressed their opinion that the payments were made on her own account. And with all respect to my brothers who are of a different opinion, I think it is putting a forced construction on the facts to suppose that she should have paid the rent as representative of her husband (being under no obligation to do so), and not on her own behalf. It is true that the landlord never having given any notice to quit, might, if he thought proper, have considered the tenancy of the husband as still subsisting; it does not, however, appear that he did so, but rather that she paid the rent, and he accepted it, as due from her. No dissent appears on his part to its being so paid; nor is there anything to show, on behalf of the respondents, that it was received (as they must contend) in contemplation of a prolonged interest in the widow as representative of the deceased. If then the landlord received the rent from her personally, in her own right, there is an end of the question; she became tenant from year to year, and on her marriage with the pauper, the estate vesting in him by operation of law, conferred a settlement on him, though the rent was below 10*l.* a year. Under all the circumstances, I think there is enough to satisfy us that she became tenant in her own right; the sessions might, indeed, have stated the case more distinctly, and it would have been desirable to send it back in order that they might say in what light they considered this point; but it would be attended with expense, and I do not think the doubt sufficient to warrant it." *Patteson,* J. "There is no doubt or difference of opinion as to the law of this case. It is clear, that if the widow became tenant in her own right, though she was not thereby settled in Marrick, the husband she married was; and there is no doubt, that if she continued on the premises only as a person having a

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right to take out administration, she could not acquire a settlement in her own right, nor the second husband through her, she not being the representative of the deceased. The only difference of opinion is on the facts of the case; and I think it would have been more satisfactory to send it back. The sessions are supposed to have inferred that the widow became tenant in her own right, because their order is in favour of the settlement in Marrick. But they ought to have drawn that inference expressly, and the danger of leaving it to the court is shown by what has taken place: one part of the court drawing one inference, and another the contrary. The question, however, is not of sufficient importance to warrant sending the case back. It appears to me that some evidence ought to have been given of an actual change of the tenancy, and of some new contract entered into between the widow and the landlord. Where the original tenant had his family living with him in the house during his life, and upon his death his widow (*a*), who is entitled to take out administration, remains with the children in the house, I think it is too much to say that a mere payment of rent by her is the commencement of a new tenancy, especially when a part of the rent she pays is rent which accrued during the tenancy of the husband. It appears to me, that she only continued on the premises in the situation of a next of kin, neglecting to take out administration. Suppose she had ultimately taken it out, could it have been said that she was in, not as personal representative, but as tenant, because she had previously paid rent? The want of any interposition by the landlord is relied upon as showing that her continued holding was in her own right; but I think that this fact tells the other way, and that an interposition of the landlord was requisite to make it appear that she became tenant." *Williams*, J. "I am sorry there should be a difference of opinion in this case; but the sole question is, upon the facts found, whether or not the widow became occupier of the premises in her own right. As to that I only say, it does not satisfactorily appear to me that the sessions meant to find a payment of rent by her, and acceptance of it by the landlord, on her own account, so as to make her his tenant. The fact is a simple one, and might have been expressly stated. As it is, I am not satisfied that the widow became tenant in her own right; if she did, it would have been better found by the sessions than left to be inferred by us." The court being equally divided in opinion. The order of sessions is not disturbed (*b*).

(*a*) See p. 866, n.

A. granted by lease a cottage to the eldest son of his only daughter and died. The daughter married and died, but never had reduced the estate into possession: Held, forty days' residence by the son after the death of his mother gives him a settlement.

Rex v. *Great Farringdon*, 6 *T. R.* 679. Order of removal of William Herbert from Stanford to Great Farringdon confirmed. Case:—The pauper on his marriage in 1782 went to reside in a cottage belonging to his grandfather, who had agreed to give it to him. The agreement was in writing, but not stamped. The pauper fitted up the cottage, and resided upon it *as his own* till 1795; no rent was ever paid, or claimed. The grandfather died in 1783. The pauper's mother was his only child, married to Herbert, the pauper's father. The pauper's mother died in 1786, leaving her husband and the pauper, her eldest son. The husband is now living. Lord *Kenyon*, C. J. "No interest passed by the agreement. Then, on the death of the grandfather, the estate descended to his daughter, who might have reduced it into possession, but did not; and in order to make the husband tenant by courtesy, there must be a seisin in fact in the wife. Then, as she did not reduce it into possession, it descended to the pauper, who is seised in fee." Orders quashed.

7. *Guardian by residence on Ward's Estate.*

7. *Guardian by residence on Ward's Estate.*

A feme covert as *guardian in socage*, residing on the ward's estate for forty days, cannot be removed from it.

Rex v. *Oakley*, 10 *East*, 491. Removal of John King and Mary his wife from Brill to Oakley confirmed. Case:—Thomas Hawes, about thirty-eight years ago, inclosed a piece of waste land in Brill, and built a cottage thereon, which he occupied till his death. By indenture, dated the 3d November, 1795, he and his son Thomas demised the cottage to James

(*b*) The unsuccessful party at the sessions brings up his case by a certiorari, and obtains a rule to show cause why the order of sessions should not be quashed: and when he does not convince a majority of the judges, the rule, "Semper praesumitur pro negante," applies, and his rule is discharged.

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Hawes for five hundred years, by way of mortgage, for securing 20*l.* and interest, which yet remains unsatisfied. (*a*) Thomas, the son, afterwards married the pauper, Mary, and resided in the cottage with his father until June, 1801, when Thomas, the father, died intestate, leaving his son his heir at law, who continued to reside on the estate till November in the same year, when he died intestate, leaving the pauper, Mary, his widow, and four infant daughters, three of whom at the time of the removal were under fourteen years of age. The widow continued with her daughters to reside on the said estate for more than forty days after the death of her husband, before her eldest daughter attained the age of fourteen, and in October, 1806, the widow intermarried with the pauper, John King, whose settlement was in Oakley, and who, with his wife and her children, resided on the estate from the time of the marriage to the time of the removal. The estate at the time of the removal was of a less annual value than 10*l.* It was admitted that Mary gained no settlement by any right of dower. The only question was, whether either John or Mary King gained a settlement by their respective residence on the estate? Lord *Ellenborough*. "There is no doubt in this case but that the mother, who was guardian in socage to her daughters, had a right to elect whether she would let the estate or occupy it for their benefit, and unless she let it, the law which imposes the duty of a guardian upon her, would necessarily protect her in the personal occupation and superintendence of it. The only difference which can be pointed out between the cases of an executor or administrator and of a guardian in socage, in this respect, is that the one is accountable for the profits by statute, and the other at common law. The law considers a guardian in socage as entitled to the possession of a ward's property, and incapable of being removed from it by any person; such a guardian has not the mere office or authority, but an interest in the ward's estate. It is laid down in *Wade* v. *Baker* (1 *Lord Raym.* 131), that he may maintain trespass and ejectment, avow for damage feasant, make admittance to copyhold, and lease in his own name. He cannot, indeed, convey the property absolutely as an executor or administrator, because the nature of the trust does not require it in the one case as it does in the other; but he may dispose of it during his guardianship, though accountable afterwards to the heir. The widow, therefore, had such an interest in the estate *as rendered her irremovable from it.*" *Grose*, J. "The question is, whether the widow was irremovable from this property for forty days? She had a right during her guardianship either to lease or occupy the estate, and if she chose to occupy it, she was irremovable from it as from her own, though liable to answer afterwards to the ward for the profits." *Le Blanc*, J. "The case, though new in circumstance, is not new in principle. It is governed by the decisions which have taken place, that in order to make persons irremovable on account of having property in the parish, it is not necessary to have a beneficial interest in it for themselves, but it is sufficient that they reside there for some beneficial purpose to another. Now a guardian in socage has a right to the possession, and until she leases it, it is for the interest of the wards that she should occupy the estate, and there can be no right to remove her from it to their prejudice, as in the case of an administrator, or of a sole next of kin, even before administration granted, who has a right to reside on the leasehold property, and such residence for forty days will give him a settlement in the parish." *Bayley*, J. "If a guardian in socage can maintain trespass and ejectment in his own name, and avow for damage feasant on the land, this shows that he has a right to occupy it. And this is confirmed by the old method of pleading by guardian in socage, which was, that he entered as guardian into the tenement in question, and was possessed. In like manner an administrator has a right to the possession of leasehold property, and is only accountable for the profits." Order of sessions quashed.

A guardian in socage has not a mere office, but an interest in the estate.

A *personal* beneficial interest is not necessary.

(*a*) This case was decided on the assumption that the parties had a legal estate (see *Rex* v. *Toddington*, p. 889); but in truth they had only the equity of redemption.

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A daughter by devise, and not by descent, becomes entitled to a freehold; she was above fourteen years of age. The father, therefore, being not a guardian in socage, but *natural guardian* only, has no interest in the land, and can gain no settlement by residing on it.

Rex v. *Sherrington*, 3 *Bar. & Ad.* 714. Appeal against an order for the removal of Mary Bailey from Olney to Sherrington. Order confirmed. Case:—Sarah Whiting, by her will, duly executed and attested, dated the 9th of October, 1821, devised her real estate unto and to the use of her niece Catherine Bailey, the pauper's sister, her heirs and assigns, and appointed John Bailey, the father of Catherine and of the pauper, executor. The testatrix at the time of the execution of her will, and thenceforward till her death, was seised in fee-simple of a real estate in the respondent parish, consisting of two cottages or tenements. On the testatrix's death Catherine was in the sixteenth year of her age, and her father immediately took possession of the two tenements, considering himself her guardian, and resided in one of them for five or six years, both his daughters living with him and forming part of his family during the whole of that time. He let the other cottage to a tenant and applied the rent to his own use, considering it a compensation for the expense of bringing up his daughter Catherine. The pauper had gained no settlement in her own right. Opinion of this court was, whether John Bailey gained a settlement in the respondent parish by residing under such circumstances on the tenement. Lord *Tenterden*, C. J. "The father of the pauper was not guardian in socage, because the land did not come to his daughter by descent, nor was she under fourteen years of age. Neither was he a guardian appointed by the parent of a child under the age of twenty-one years, pursuant to the statute 12 Car. II. c. 24, s. 8, who as such would be entitled to take the profits of the land. Then he was only the natural guardian, and had not in that capacity any title to a control over the land belonging to his child. To give a settlement there must be an interest in the land." *Littledale*, J. "In *Quadring* v. *Downs* (2 *Mod.* 176,) it was held, that there can be no wardship without a descent. The land, therefore, having come to the daughter by devise, and not by descent, the father was not guardian in socage. Nor was he a guardian appointed pursuant to the statute. He had, therefore, no legal or beneficial interest in the land, and consequently gained no settlement by residing on it." *Parke*, J. "The father here was only the *natural* guardian, and it is clear that as such he had no interest in the land, for that guardianship extends no further than the custody of the infant's person." (*Hargrave's note to Co. Litt.* 88. *b*, *note* 66.) *Taunton*, J., concurred. Order of sessions confirmed.

The mother of an infant copyholder was holden to be legal guardian of the copyhold, (there being no custom of the manor for appointing one), and therefore entitled to reside irremovably on the estate.

Rex v. *Wilby*, 2 *M. & Sel.* 504. Removal from Debenham to Wilby confirmed. Case:—In 1794 John Bedwell went with a certificate to reside in Debenham. In 1807 he purchased of Smith a copyhold estate, holden of the manor of Bloodhall, in Debenham. After his decease, his widow and family continued to reside on the premises for 143 days, and until their removal by this order. No instance appeared on the rolls of any actual assignment by dower; but it was usual for *femes covertes* to join with their husbands in securities (surrenders by way of securities) of estates possessed by such husbands in their own right within the manor, though never expressly stated in bar of dower; and the pauper had actually joined with her husband in the before-mentioned conditional surrender of these premises. The copyhold descended to the youngest son. *Cur. adv. vult.* Lord *Ellenborough*, C. J. "The court had looked into the cases, particularly *Egleton's case*, and that it seemed to them that the mother was the guardian of the infant's copyhold, and as such was entitled to occupy the same irremovably." Orders quashed.

There can be no guardian in socage of an equitable estate.

Rex v. *Toddington*, 1 *B. & Ald.* 560. Removal of D. Evans, Susannah his wife, and children, from Flitwick to Toddington confirmed. Case:—In 1801, S. Elmer, the then husband of the pauper Susannah, agreed to purchase a cottage at Flitwick of James Evans. There was no conveyance or written contract, but S. E. entered and continued in possession till November, 1802, when he died intestate, leaving Susannah and one child three years old. The widow and child resided in the cottage till July, 1804, when she married the pauper D. Evans, who, with his wife, resided in the cottage more than forty days. On the 12th September, 1808, J. Evans

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duly conveyed his cottage to the pauper, and the consideration was stated to be 16*l.* paid at the making of the deed by the pauper to J. Evans; but no sum was paid; the only consideration was the money paid by S. Elmer. On the 4th October, 1808, the pauper duly conveyed the premises to W. F. for 25*l.* Lord *Ellenborough.* "This is not an estate so clearly equitable, that a court of law can presume that a court of equity would, if applied to, clothe the party with a legal right to it. *Rex* v. *Oakley* (p. 887) is clearly distinguishable from this; that was decided on the assumed ground of a legal estate. But this is at most a question of an equitable estate only, and we are to consider, not only whether a court of equity would order a legal estate to be conveyed, but whether in that case the conveyance would operate *ab antecedenti,* so as to constitute a legal estate in the father which would descend to the heir; for unless that be so, the guardianship in socage, which is one of the incidents of the legal estate descending with it, will not go to the widow. I think, therefore, that the widow in this case was not nor ever has been guardian in socage. If so, her husband could not by residence in the parish gain a settlement." *Bayley,* J. "A court of law generally looks at legal rights only, and not at doubtful equitable estates. There are, indeed, equitable rights recognised by statutes, of which perhaps courts of law are bound to take notice; but how can we see that the party in this case is entitled to an equitable estate? We do not know what was the original bargain between Elmer and Evans, and the case states a subsequent conveyance to a stranger, and not to the heir at law, from whence a totally different conclusion from that contended for (of procuring a conveyance to the child) would seem to arise." *Holroyd,* J. "Where there is a conveyance to uses not executed, or on trusts stated on the face of the deed, the one party has the equitable, the other the legal estate. In these cases, for collateral purposes, a court of law will take notice of such equitable estates. An equitable estate, however, is very different from an equitable right to have a conveyance of the legal estate. Here the party had only the latter; and if there be any doubt as to what a court of equity would do, this court will not take cognizance of the estate. But supposing there is a sufficient equitable estate here, there must also be a guardian in socage. It is to be observed, that the law only took notice of the tenant of the legal estate. It was his duty to do all the services if he was of age; and if an infant or lunatic, the burden and right were cast on the guardian in socage. The guardian in socage, therefore, was only appointed in the case of a legal estate; for otherwise there would have been this incongruity; two persons would be bound to perform the services, viz. the trustee having the legal estate and the guardian in socage, for the *cestui que* trust. It is said that the widow might be by a court of equity clothed with the estate; but the utmost that that court could do, would be to decree a conveyance of the legal estate to the infant, who would then take by purchase and not by descent; and there can be no guardian in socage, except where the heir takes by descent." Order confirmed.

An equitable *estate* different from an equitable *right.*

8. *Estate in Mortgage.*

An estate conveyed to trustees to be sold to pay mortgages and other debts, will not give to the person conveying it a settlement by a subsequent residence till actually sold.

8. *Estate in Mortgage.*

Rex v. *St. Michael's, Bath, Doug.* 630. The pauper conveyed two houses, whereof he was seised in fee, at Walcott, to trustees, in trust to sell and pay mortgages and other debts, and to pay the surplus money, if any, to the pauper. Some short time after, one of these houses becoming void, the trustees having possession thereof, employed a woman to clean and air the house, and delivered to her the key for that purpose; which having done, she placed the key among some things of her own, intending afterwards to redeliver it to the trustees: but the pauper's wife took it from thence, and took possession of the vacant house, and she and her husband went and lived there till the removal, being about a year and three quarters. The deed did not provide for the annual rents to be sold. One of the trustees seeing her conveying her goods thither gave her notice that she was doing wrong, not having the consent of either the trustees or creditors. But the house still remained unsold, and it was stated that the value of the premises

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was 650*l.* and the debts 880*l.* It was argued, that the beneficial interest in the estate remained in the pauper till sold; and for this was cited *Rex* v. *Natland* (p. 873, *n.*); and that residing upon it as his own he was not removable from it, and consequently gained a settlement. And it was likened to the case of a mortgage. By Lord *Mansfield*, C. J., (unto which the rest of the court assented): "If the estate on which a pauper resides is substantially his property, that is sufficient, whatever form of conveyance there may be; and therefore the *mortgagor in possession gains a settlement*, because the mortgagee, notwithstanding the form, has but a chattel, and the mortgage is only a security. It is an affront to common sense to say the mortgagor is not the real owner. But here, what interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage, to sell and pay off two mortgages and other debts; and when this conveyance was made, it was so doubtful whether there would be any surplus, that the deed says, he shall have the surplus, *if any*. He had only a chance of a residue, and had not a right to continue a moment in possession. A mortgagor has a right to the possession till the mortgagee brings an ejectment. After the mortgagee has got into possession, he (the mortgagee) might gain a settlement. There is still another and a stronger ground in this case; for the possession was gained by fraud." (*a*)

A mortgagor in possession may gain a settlement.

So also a mortgagee in possession.

Rex v. *Catherington*, 3 *T. R.* 771. William Booker was removed from Compton to Catherington. Order confirmed. Case:—The pauper, prior to Michaelmas, 1789, was entitled to the equity of redemption of a freehold estate in Compton, consisting of several dwelling-houses of the annual value of 13*l.* 5*s.* which had been mortgaged by his father to Elizabeth Morey, which mortgage was afterwards assigned to one Ayles. In Michaelmas term, 1788, Ayles delivered declarations in ejectment to the pauper as landlord, and to the several tenants in possession of the estate in Compton, and thereupon the tenants attorned to Ayles. About Michaelmas, 1789, the pauper asked permission of Mr. Newland, the agent for Ayles, to inhabit one of the houses, part of the mortgaged estate, and which was then untenanted, *for the purpose of overlooking some repairs*, which he proposed to do upon the estate with an intent to sell the same and pay the mortgage money; in consequence of which he inhabited one of the houses upwards of three months, when he was removed by the present order. He did nothing towards the repair of the houses or sale of the estate. No agreement was made between him and Mr. Newland with respect to any rent to be paid for such house. Lord *Kenyon*, "It has been long established that an equitable title is sufficient to give a settlement; but, in the case alluded to, the mortgagor was in possession. So, by the act for regulating votes at county elections, either the mortgagor or mortgagee in possession may vote. But in this case the party had neither *jus in re* nor *ad rem*." *Buller*, J. "In *St. Michael's, Bath* (p. 890), it was said, that either a mortgagor or mortgagee might gain a settlement *according to circumstances; one* of these circumstances is *possession;* and upon possession all the questions have turned." Orders confirmed.

A mortgagor living on the premises mortgaged, but not in possession as owner, gains no settlement.

Rex v. *Edington*, 1 *East*, 288. Removal from Edington to Urchfont, quashed. Case:—M. M. being in possession of a cottage in Edington, granted to one C. W. for ninety-nine years determinable on three lives, purchased a reversionary interest in the same for a further term of ninety-nine years, to commence at the determination of the first term, but determinable with the lives of herself and her brother H. M. Having married one W. D., the premises were assigned by deed, to which she and W. D. were parties on one side, and J. P. of E. on the other, to J. P. as trustee for the parishioners of E. for the payment of 10*l.* and interest, in trust that J. P. should, by sale and mortgage of the premises, and by the receipt of the rent, or by one of those ways, raise the sum, &c., together with costs and charges; and after payment of the 10*l.*, &c., in trust to re-assign.

If a cottage be leased for years determinable on lives, and be conveyed by a woman and her husband in trust to raise money by sale or mortgage, with a clause for re-assignment, and the parties continue in possession and the husband die, and the wife marry a second time, she

(*a*) In *Rex* v. *Edington* (*supra*), the court said, "that the main point upon which the decision in this case was made, was the fact of fraudulent possession."

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retaining possession, the second husband gains a settlement by forty days' residence, though the money does not appear to have been paid.

W. D. died, leaving M. D. his widow, who afterwards married the pauper W. B., then settled in U. She and the first husband in his lifetime (and after his death and her second marriage, and also after the death of the surviving life named in the first lease, she with the pauper her second husband, for the space of four years,) occupied to the time of her death, and the pauper continued to pay the lord his quit-rent during his possession, and at different times repaired the premises: but it did not appear whether the lord had any knowledge of the assignment. Lord *Kenyon.* "Some points of this case are very clear. Generally speaking, in the case of a purchase, if the value be under 30*l.*, no settlement can be gained by virtue of it; that is, where it comes to the party by his own act: but if it come to him by operation of law, the value is not material. That is the case here; for the purchase was made by the wife before the coverture, and it came to the husband upon his marriage by act of law; and he might even during the coverture have sold it without the assent of his wife. But the objection now made is, that this was not such an interest in the husband as was sufficient to enable him to gain a settlement by residence on the property, on account of the antecedent conveyance to Price the trustee. But what was that conveyance? It was for the purpose of securing the re-payment of a sum of money expended by the parish for the use of the man's family. Lord *Mansfield*, in the case of *St. Michael's, Bath* (p. 190), said, 'it was an affront to common sense to say that a mortgagor has no interest in the mortgaged premises. The law recognises his interest; in the case of a freehold, he has a right to vote for members of parliament.' Now the conveyance in question is equivalent to a mortgage, and no more. Consider what in strictness is the interest of a mortgagor; after the usual time given for the payment is expired, the estate becomes absolute in the mortgagee at law; but neither the courts of law or equity lose sight of what the parties intended. In mortgage deeds there is sometimes introduced a clause that the mortgagee may repay himself by sale of the mortgaged premises, without the concurrence of the mortgagor: but a court of equity would, I believe, control the exercise of that power. I am sure they would control it in an instance like the present, upon payment of what was due. The trustee, in such a case, would be bound to execute a reconveyance: and here there is an express clause to that purpose. Virtually, therefore, this is no more than a mortgage, and must be governed by the same rules. With respect to the case of *St. Michael's, Bath,* principally relied on, it is very plain that the greatest stress was laid on the circumstances of the pauper's possession having been obtained by fraud. After touching upon the interest which he had in the premises conveyed, Lord *Mansfield* says at the end of the case, 'there is still another and a stronger ground in this case; for the possession was obtained by fraud.' Now if the other point had been clear, he would not have used such an expression. Here the possession was not fraudulent; and therefore I am of opinion that the second husband, the pauper, gained a settlement by his residence on this estate, which came to him by operation of law on his marriage." *Grose*, J. "I cannot distinguish this from the case of a mortgage. The purpose of the conveyance was to secure the money. The parties interested continued afterwards in possession: the pauper paid the quit-rents and repaired the premises. Now what more could a mortgagor in possession do? In the case of *St. Michael's, Bath,* another reason is given for the judgment than what is now relied on: the possession there was fraudulently obtained by the pauper: it was expressly found to be against the consent of the trustees who had before taken to the possession. Whereas here the pauper always continued in quiet possession of the premises." *Lawrence*, J. "The principal argument against the settlement set up in this case is grounded on a dictum in the case of *St. Michael's, Bath,* in the first part of the opinion delivered by Lord *Mansfield:* without which there is no pretence for the objection. For it cannot be disputed that a conveyance to a trustee in trust by sale, or mortgage, and receipt of the rents and profits, to raise 10*l.*, is merely a security for that sum: and it is plain that the parties themselves so con-

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sidered it, by providing for a re-assignment of all or so much as should not be sold, applied, or otherwise disposed of. Now in that case Lord *Mansfield* begins by saying that which is decisive as applied to this. 'If the estate on which a pauper resides is *substantially* his property, that is sufficient, *whatever forms of conveyance* there may be:' and therefore he says that a mortgagor in possession gains a settlement, 'because the mortgagee, notwithstanding the form, has but a chattel, and the mortgage is only a security.' If then the object be merely to secure money, whether the conveyance be in the form of a trust like the present, or of a mortgage, it is in substance the same thing." *Le Blanc*, J. "I am of opinion that the pauper gained a settlement by residing on this estate, in which he had an equitable interest; and I consider that the assignment to the trustee was no more than a security for so much money. According to what was said by Lord *Mansfield* in the case of *St. Michael's, Bath*, the court will not look to the mere form of the conveyance, but will consider what the parties really meant by it. Then, if this were substantially a mortgage, as I think it was, it is clear that the pauper gained a settlement by residing on the premises." Order of sessions affirmed.

Where one of several mortgagees agrees verbally to sell his interest for a sum which is paid him, and afterwards joins in executing a release and assignment of all his interest in the mortgaged premises: Held, that he gained no settlement by a residence in the parish where they lay, between the time of the agreement and the release.

Rex v. *Cregrina*, 4 *Nev. & M.* 455; 2 *Ad. & E.* 536. Septimus Lloyd was removed from Cregrina to Glascombe. Order quashed. Case:—The pauper acquired a settlement in Glascombe by renting a tenement in that parish for several years, up to 1830, at the yearly rent of 24*l.* The pauper's father John Lloyd died in 1822 intestate, possessed of a leasehold tenement situate in Cregrina, which he held for the residue of a term of 999 years at a peppercorn rent. He left a widow and four sons, John, James, Septimus (the pauper), and William. On the 4th of August, 1828, James took out letters of administration to his father's estate. By an indenture of assignment dated the 23rd of August, 1828, between the said James Lloyd, the administrator, John Lloyd, Septimus Lloyd (the pauper), and William Lloyd, and Mrs. Ann Guise, after reciting the lease, the tenement was assigned by James Lloyd the administrator, and confirmed by John, Septimus, and William Lloyd to Mrs. Ann Guise, by way of mortgage for the residue of the term of 999 years, for securing 120*l.* and interest. The four brothers divided the 120*l.* equally between them, executed the deed and signed the receipt, and covenanted for the repayment to Mrs. Guise of the 120*l.* and interest. At the time of this transaction the pauper resided in Glascombe. About a year afterwards, whilst residing in Glascombe, he agreed verbally with his brother William Lloyd to sell to William all his interest in the leasehold tenement, in consideration of his paying the share of the pauper in the 120*l.* and all interest due and to grow due, and also of the sum of 2*l.* which was allowed to the pauper by William. About a year after making this agreement, the pauper removed into a cottage in Cregrina, and continued there till his removal under this order, but did not interfere with the leasehold tenement. In September, 1832, William Lloyd, on behalf of himself and his brothers James, John, and Septimus, gave Mrs. Guise notice of paying off the principal and interest on her mortgage. By an indenture dated 29th of April, 1833, John Lloyd, James Lloyd (the administrator), and Septimus Lloyd (the pauper), in consideration of 30*l.* expressed to be paid them by William Lloyd, released and assigned to him all their interest in the leasehold tenement. No money passed to the pauper; William Lloyd claiming and retaining his, the pauper's share, under the bargain made three years before, and having received and retained the intermediate rents belonging to the pauper's fourth share. Lord *Denman*, C. J. "It appears to me that no interest whatever remained in the pauper after the agreement." *Littledale* and *Williams*, Js. concurred. Order of sessions quashed.

Estate purchased by the husband for less than 30*l.* and *after marriage* assigned as a security for money lent, and

Rex v. *Tarrant Launceston*, 3 *East*, 226. Removal from Tarrant Launceston to Tarrant Rawson quashed. Case:—J. C., the pauper, in June, 1795, made a purchase for less than 30*l.* of a leasehold tenement in T. L. for 99 years, determinable on three lives, in consideration of 10*l.* advanced to him by W. D.; he afterwards sold the estate with the

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after payment, in trust for the sole use of the wife: residence by her husband before payment gives no settlement.

lease to W. D., to hold for the remainder of the term, in trust to let the premises, receive the rents, and pay himself the 10*l.* with interest; and after such repayment to receive and pay the rents and profits to the wife of the pauper during her life, to her sole use, not subject to the debts of her husband, and her receipt alone to be a discharge of the rent; and after her decease, in case the pauper survived her, in trust to pay the rents to the pauper during his life; there were other trusts after the death of the survivor. After the execution of this deed, W. D. suffered the pauper to continue residing upon the premises, which he did till he became chargeable, when he was removed. It was urged that the pauper took a new estate by act of law, either as mortgagor in possession, or by virtue of the equitable interest of his wife in it, and that as the trustee did not reject the pauper, the parish officers could not procure his removal from the property, in which he as well as his wife had a reversionary interest. Lord *Ellenborough*, C. J. "If this had been *res integra*, I should apply to the plain letter of the statute [he read 9 Geo. I. c. 7, s. 5, and said], that is for so long as there is an union of interest and occupation in the thing. We must not however contravene the authorities, but preserve uniformity of decision. This was not a residence of the pauper as mortgagor. He had parted with the absolute interest which he had in the premises. (*a*) For even when the 10*l.* is paid, (which *non constat* is ever likely to be done) the trustee is to account for the rents and profits to the wife for her separate use during her life; and I think there is much weight in the observation which was made against any claim of the husband to reside upon property so circumstanced in the right of his wife. In the first instance however, and during the time of his residence there, the trustee was entitled to the rents and profits till the 10*l.* advanced by him was paid; it was contingent whether that would ever be done, whether the wife would ever be entitled to the rents and profits; and if she became so, it was also contingent whether the pauper would survive her, so as to have any claim of his own. I should therefore be much inclined to ask with Lord *Mansfield*, in *Rex* v. *St. Michael's, Bath* (p. 890) 'What interest had the pauper in this estate? He made an immediate conveyance to trustees, not a mortgage to pay off debts.' Upon the whole this was such a doubtful contingent interest in the pauper, that without clashing with any of the adjudged cases, I am authorised to say that no settlement was gained by the pauper's residence on this property." The other judges agreed, and the order of sessions was quashed. (*b*).

A freehold estate situate in the parish where the pauper resided, descended to his wife and her sisters as coparceners; one month after, he contracted to sell his wife's share, but the conveyance was not executed for more than forty days after their title accrued: Held, that by residence in the parish (without occupation) he gained a settlement.

Rex v. *Dorstone*, 1 *East*, 296. Removal of Mansell Powell with his wife from Dorstone to Blakemere quashed. Case:—The pauper went prior to November, 1778, to reside with his wife and family in Blakemere, upon a tenement which he rented at 1*l.* 15*s.* per annum. On the 14th of the same November, and whilst the pauper resided at Blakemere, T. Matthews died intestate, seised of a freehold house and lands in Blakemere, which descended to the pauper's wife and her two sisters as coparceners, being the grandchildren and co-heirs of T. M. On the 14th December the pauper entered into an agreement to sell his wife's share of the house and lands to John Delahay, husband of one of her sisters. After the agreement was signed, the referees valued the pauper's wife's share of the premises at 28*l.* The deeds not being ready by the 2nd of February, the pauper complained, and Mr. Elliott, agent for Delahay, offered to pay

(*a*) In a note to *Rex* v. *St. Michael's* Mr. Douglas (Vol. II, p. 632,) observes, "that it is difficult to reconcile this case with *Rex* v. *Edington*, and suggests that the better foundation for the decision in *Rex* v. *Tarrant* was, that it was an indirect attempt to acquire a settlement by a purchase under 30*l.*; and he adds, 'I find from a MS. note of this case that this objection was first stated by the court during the argument, in these pointed words: 'If the original estate was insufficient in value to give the husband a settlement, can the owner, by *granting away part of it*, make it sufficien?'"

(*b*) If the equity of redemption be parted with even by parol, subsequent residence gains no settlement. (*Rex* v. *Cregrina*, p. 893.)

him three months' rent for his wife's share of the premises if required; but the pauper did not require it; the deeds were executed and the money paid the latter end of February or beginning of March, 1779. From the 14th of November, 1778, when the grandfather died, to the execution of the deeds in the latter end of February or March following, the pauper resided in the tenement he rented at Blakemere, but did not occupy any part of the tenement which descended to his wife and her sisters; the house and gardens were in the occupation of Delahay and his wife, and the rest of the land was occupied by Mead, who had been tenant to the grandfather. A distinction was suggested between this case and *Houghton-le-Spring* (p. 881), that here the title accrued on the 14th of November, and within less than forty days, viz. on the 14th of December, the pauper bound himself to convey away the property. The court however said, "That the contract was executory, and the conveyance was not actually executed till long after the forty days were expired, till when the title remained in the pauper, and consequently he gained a settlement in Blakemere." Order of sessions quashed.

A pauper, tenant in fee of freehold and copyhold land, conveyed by lease and release his freehold land to trustees to sell and pay his debts, and pay the surplus, if any, to him. The release contained a covenant, on the part of the pauper, to surrender his copyhold land in D., upon the same trusts as in the release. Trustees were to manage the farm until the sale. The case did not state the value of the property or the amount of the debts. The pauper (who did not reside on the property, but in the parish) gained a settlement by a residence of forty days in the parish where the copyholds were situate, during the period between the execution of the release, and a surrender of the copyhold, which was afterwards made by the pauper to a purchaser.

Rex v. *Ardleigh*, 2 *N. & P.* 240; 7 *A. & E.* 70. T. Beckley was removed from Dedham to Ardleigh. Order confirmed. Case:—The pauper was for many years previous and up to 1832, seised and possessed of freehold and copyhold estates, situate in Ardleigh, Langham, and Dedham, which he derived as devisee in fee under the will of his father, and to which copyhold part, in Dedham, he was, in December, 1821, admitted as tenant in fee. The pauper received the rents of the premises from his father's death to January, 1832. At the time of his father's death, and from thence until the 17th April, 1832, the pauper resided at Ardleigh. On the 17th April, 1832, he went to reside at Dedham, where he continued to reside from that time down to the time of the appeal. He did not occupy the copyhold premises, but resided during the whole time in other premises in Dedham. By lease and release of 10th and 11th January, 1832, the pauper, to enable and to provide for the demands of his several creditors, released all his freehold messuages in Ardleigh, Langham, and Dedham unto trustees, to sell and receive the rents and profits until they were sold under the trusts aforesaid. And he did covenant, upon request by the trustees, to surrender the copyhold and lands as the trustees should direct, or to any purchaser. And that in the meantime, and until such surrender should be made, and the trustees or purchasers should be admitted, the said pauper, and his heirs, should stand and be seised and possessed of the copyhold premises, in trust for the trustees. The trust was to pay the creditors their respective debts. And if there should be any surplus trust, to pay the same to the pauper. The trustees were to manage the farming business, &c., of the pauper, until the sales should be completed, in such manner as they should deem most expedient for the benefit of the estate of the said pauper. By deed poll of 18th January, 1832, after reciting the said trusts, the persons, parties thereto, did covenant with the pauper, that they would accept the provision made by the release in full discharge of their demands, with a proviso that if the trustees should be prevented carrying the trusts into effect, then the creditors might proceed for recovery of their debts, as if they had not executed the deed-poll. On the 2nd October, 1832, the pauper, in consideration of 50*l.*, in the surrender stated to be paid to him by William Downes, (who had verbally agreed to purchase the premises, on the 11th May preceding,) out of court, surrendered, according to the custom of the manor of Overhall and Netherall, the copyhold cottage and piece of land, situate in Dedham, and holden of the manor of Overhall and Netherhall, to the use of Downes, who was admitted thereto on the 20th November, 1822, to hold to him, his heirs and assigns. The question was, whether, after the execution by the pauper of the release and the deed-poll, and from thence to the time of admission of William Downes to the copyhold premises in Dedham, or to the time of the surrender thereof to him, or during the period of any forty days after the 17th April, 1832, the pauper con-

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tinued to have an estate or interest in the copyhold premises in Dedham, sufficient to confer a settlement upon him. Lord *Denman*. "The legal estate continued in the pauper, and he was therefore irremovable. It is true he did not reside upon the property, but he resided in the parish, which is sufficient. It was not certain that the pauper would ever be called upon to surrender the copyhold property. The freehold property, for any thing that appears to the contrary, may be sufficient to pay off the debts, and there is nothing to show that the pauper was divested of the real beneficial interest in this property. It is however enough for us to say, that the pauper resided for forty days in a parish where he had an estate of his own, and that he thereby gained a settlement in that parish." *Littledale*, J. "The pauper had the legal estate, which was sufficient to give him a settlement. It is laid down in *Nolan's Poor Laws* (a), that "it is immaterial whether the party has a beneficial interest in the estate; a mere trustee may acquire a settlement, for nobody can take the estate from him, and it is sufficient that he reside in the parish forty days, and cannot be removed from it. The pauper could not have been turned out by an ejectment. It is not clear that the pauper had not some equitable interest in the estate." *Patteson*, J. "This case, in some respects, resembles *Rex* v. *Dorstone* (p. 894). In that case, the pauper had entered into an absolute agreement to sell. In this case, the pauper had covenanted to surrender the copyholds to the trustees, for the purpose of paying his debts. In *Rex* v. *Dorstone*, it was held, that the pauper gained a settlement by residing, not upon his estate, but in the same parish in which it was situated. The clause in the deed which relates to the management of the property, only authorises the trustees to take upon themselves the business of farming the freehold land, and does not appear to apply to the copyhold. In *Rex* v. *Cregina* (p. 893), the pauper had no legal interest, and it was very questionable whether he had any equitable interest." Order of sessions quashed.

(a) Vol. II. p. 105.

9. *By Estate acquired by Possession.*

Living in a cottage which came to the pauper by descent gains a settlement, though the pauper's father built the cottage upon a waste, without the lord's consent. for a justice of peace cannot determine man's title.

9. *By Estate acquired by Possession.*

Rex v. *Wyley*, 2 *Sess. Ca.* 115; 1 *Stra.* 608; 2 *Bott*, 610. A poor man built a cottage upon the waste of Wyley, belonging to Lord Pembroke, without his licence, who never disturbed him; he lived in this cottage for thirty years, and by his will left three guineas in the hands of his executors to purchase this cottage. Upon his death, Elizabeth, his only child, entered into the cottage and married one Barrow, and lived in the cottage, and they were in quiet possession for three quarters of a year and then sold it. It was argued the cottager was a disseisor, and had no right to build upon the waste, and was at any time removable by the lord; and if he might have been removed within forty days, his long possession gave no title; for he must only be considered as a tenant at will, and consequently his continuance upon the cottage though never so long could give him no settlement; and if the cottager had no right of settlement, none claiming under him shall be in a better condition. The court held it clearly to be a settlement. And though it was objected that the cottager himself was sensible he had no right, by his devising money for the purchase of a term under the lord of the waste, yet it was over-ruled. And by all the court it was held, "that when a man hath such a possession as he cannot be removed from, and hath enjoyed that possession forty days, he thereby gains a settlement; and that is the reason why a copyholder or lessee for years gains a settlement by an inhabitancy for forty days: for in those cases the justices of the peace cannot determine his right. This present case is very strong; for the thirty years' possession of the cottager without interruption would have been a good title in an ejectment, and for that reason the justices of the peace cannot determine his title. It appears upon the face of the order that the cottager had a good title in ejectment, and in any case but in a real action." Lord C. J. *Raymond* said, "He had known recoveries upon a twenty years' quiet possession, and twenty years' possession is a title to a plaintiff in ejectment as well as to a defendant. After so long a possession as this it shall be presumed that the cottager had a licence to erect the cot-

tage; but this case goes further; for besides the thirty years' quiet possession of the cottage, here is a descent cast upon the daughter, who was heir to the cottager, and *primâ facie* it is an inheritance in the daughter; and an estate by disseisin is in law a good estate and a fee simple till it be defeated." The Court held that the justices had no jurisdiction in this case, for they could not examine into the title to the land. And the settlement in Wyley was adjudged to be good.

Twenty years' residence in a cottage, built without the consent of the lord of the manor, confers a settlement.

Rex v. *Bitton, Burr. S. C.* 631; 2 *Bott*, 624. The pauper, G. Battman, built a cottage upon the waste without leave of the lady of the manor; was not rated nor paid any taxes; but continued nineteen years and a half in possession. About twenty years ago the pauper was turned out of possession of the cottage by an ejectment, brought by a person claiming the same under a mortgage thereof made by the pauper for 15*l.* And some time after that (which was more than twenty years ago) the pauper and the mortgagee sold the cottage to Williams for 28*l.*; and the pauper had 5*l.* of it. The Court were all of opinion that it appeared to be a possession of more than twenty years. He was himself in possession nineteen years and a half; and the mortgagee's possession must be also considered as his possession. And it was adjudged a good settlement.

Possession of a cottage for more than twenty years, though not altogether adverse, will gain a settlement.

Rex v. *Garway, Burr. S. C.* 632; 2 *Bott*, 623. The pauper, about thirty-five or thirty-six years ago, went to live with his father in a cottage built upon the waste in the parish of A., where his father had then lived about thirty years, and who, soon after the pauper went to live with him, died. The pauper (as eldest son) continued in possession of the premises, and paid an acknowledgment of 2*s.* 6*d.* to the lord of the manor for thirty years; but the pauper had no recollection of his father ever having paid an acknowledgment. The premises were of the yearly value of 50*s.* The pauper was removed from A., which order was confirmed; but K. B. quashed both orders.

Grantee of land without conveyance, built a house, and occupied it eighteen years, and gained a settlement.

Rex v. *Butterton*, 6 *T. R.* 554. R. O. purchased a piece of land, and gave part of it (but without executing a conveyance) to his son-in-law J. H., who built a house upon it at an expense exceeding 100*l.*, and resided in it without paying any rent or acknowledgment to R. O. for fourteen or fifteen years, when he removed to another house in the same parish, and let the one he had built, and received the rent to the time of his death, which happened three years after. Upon the death of J. H. the pauper (his eldest son and heir) continued to receive the rent and had mortgaged the premises. No claim had been made or rent demanded by R. O. or his heirs. Lord *Kenyon*, C. J. "As twenty years have nearly elapsed since the time when this land was given to the pauper's father, and as no claim has ever since been made either on the pauper or his father, *Rex* v. *Wyley* (p. 896) is an authority to show that the court ought not to permit the title to the estate to be determined on an order of removal. The strict rules to be observed on the trial of ejectment ought not to be applied to settlement cases. After such a length of time as this, perhaps a conveyance may be presumed to be executed. And in *Rex* v. *Cold Ashton*, where there had been a possession for nearly twenty years, *Wilmot*, J., said, 'There ought not to be a nicety of computation in a settlement case, but the court may presume a conveyance.' And even if no conveyance were executed to the pauper's father, and a claim were now made by Oakden's heir-at-law, he would perhaps be told in a court of equity that as O. stood by while the pauper's father built on this land, and treated it as his own, he could only resume the possession on certain terms." *Lawrence*, J. "I remember a case where Lord *Mansfield* would not suffer a man to recover in ejectment, who had stood by and seen the defendant build on his lands."

The court presumed a conveyance from peaceable enjoyment under twenty years.

When the settlement of the father was derived from twenty years' possession of an estate, a son emancipated

Rex v. *Calow*, 3 *M. & Sel.* 22. The removal of B. Maskery, his wife and children, from Wirksworth to Calow, confirmed. Case:—A *primâ facie* settlement in Calow being proved by relief given to the pauper's father about thirty years ago, it was proved in answer, that about the same period the grandfather of the pauper gave the pauper's father a

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before they had expired, follows the settlement.

piece of land in Wirksworth, upon which the father immediately built a house, and lived in it with his family for several years. He then resided in a third parish for some years, during which time he let the house and received the rent for it. Ten years ago he returned to the house, and has resided in it ever since, and never paid any rent or acknowledgment for the house or land on which it stood. The pauper was a part of his father's family at the time the house was built, and continued so for about fifteen years afterwards, when he married, left his father's family, and never returned. The pauper's grandfather resided in Wirksworth from the time when the house was built until his death, about seven years ago, within a few yards of his son, during which time he received occasional relief from Calow. Lord *Ellenborough*, C. J. "It is true that the father, at the time when the son ceased to be a part of his family, had been in possession of the estate for fifteen years; but he was in under some title or other under which he has continued the possession for fifteen years more, and up to the present time; therefore, looking at the whole, we must infer a title in him at the former period. The subsequent possession reflects light back on the title under which he before held; and the court will presume that his possession originated under a title which would have prevented him from being dispossessed at the time when the son quitted his family." *Bayley*, J. "It cannot be said that the father was in without any pretence of title, for the case states that he had a gift of the land." *Dampier*, J. "The subsequent possession legalises the former possession, and shows that it was of right." Orders quashed.

Adverse possession for less than twenty years of an estate at will, under 10*l.* a year, will not give a settlement.

Rex v. *Chew Magna*, 10 *B. & C.* 747. J. Naish was removed from Ubley to Chew Magna. Order confirmed. Case:—William Bath, about 1795, being seised in fee of a close of land in the parish of Ubley, gave a small piece thereof by parol to his nephew, the pauper, whereon to build a cottage. Naish, who had no settlement in Ubley, took possession of the spot, and built his cottage, and inhabited it with his family. In October, 1800, while he so resided in Ubley, his wife and children became ill, and he applied to the overseers of that parish for relief, and received the same, and on their complaint an order for the removal of Naish, his wife and children, to Chew Magna, was made, and Naish was under that order removed and delivered to the overseers of Chew Magna, who relieved Naish from time to time. Naish slept in that parish for one night only, and the next day returned to the cottage in Ubley, from whence neither his wife or children, on account of their illness, had been removed. Naish continued to reside there till about 1810, when Bath told him that he had sold the ground to one Carpenter, and asked Naish to give him free possession, and to sell him his right. Naish was unwilling to do so; but before Naish said any thing, Bath proposed that Naish should receive 3*l.* for giving such possession, and should take away the materials of the cottage. Naish never paid Bath any acknowledgment. Bath paid the 3*l.* to Naish, and Naish pulled down the cottage, carried away the materials, and delivered possession to Carpenter. No writing passed on the occasion. Lord *Tenterden*. "There is no ground for contending that Carpenter's occupation is to be considered a continuance of the estate of Naish; and if that be so, there was no more than a possession for fifteen years. The adverse possession in the cases (*a*) cited had continued for more than twenty years. There is no authority to show that a residence on an estate at will of a value less than 10*l.* per annum can confer a settlement." *Bayley*, J. "Undisturbed possession for twenty years confers an estate. It is evidence for a jury to presume a grant. Here there was only possession for fifteen years. It is said possession of Carpenter is possession of Naish. But Carpenter came into possession, not under Naish, but under his uncle Bath." *Littledale*, J. "I think that Naish was no more than a tenant at will to his uncle. There is no authority to show that a mere tenant at will can gain a settlement by residing upon an estate of less value than 10*l.* a year." Order of sessions confirmed.

(*a*) *Rex* v. *Calow* (p. 897); *Rex* v. *Butterton* (Ib.)

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Rex v. *Staplegrove*, 2 *B. & Ald.* 527. The facts of the case are stated in the judgment delivered by *Bayley*, J. "In this case there were two questions, one, whether forty days' residence in a parish in which the pauper had a freehold subject to a lease for years, would be sufficient to confer a settlement by estate? and the other, whether it would be so if the residence were upon that estate and without right? Upon the first point it appeared to us to be settled, especially by *Rex* v. *Houghton-le-Spring* (p. 881), that such residence is sufficient; and it was upon the second point only we wished time to consider. Upon that point the facts are these: the father of the pauper's wife had a freehold cottage in Creech; in 1795 he let it to the parish officers for 1000 years, and they took possession. In 1813 he was placed in it by the parish officers, and the pauper's wife came to nurse him. He died there that year, and his daughter continued in the cottage, and at the end of six weeks the pauper joined his wife, and laid claim to the cottage as his wife's property. The parish officers had mislaid the conveyance to them, and therefore could not withstand his claim, and the pauper and his family resided there from 1813 to 1818, when the pauper having become chargeable, and the officers having found the conveyance, they were removed, and the point submitted to us was, whether the pauper gained a settlement by this residence? We are of opinion that he did. The sessions have found no fraud in the pauper or his wife in acquiring or retaining possession; and if we were at liberty to infer fraud, which we are not, there are no premises from which such an inference could properly be drawn. The husband comes to the cottage under a claim of right, and for anything which appears, he might really believe he had that right. The parish officers who alone can gainsay, do not gainsay it or take any steps to oppose his occupation, but acquiesce in it for more than four years. There is no decision under circumstances in any respect like the present. *Rex* v. *St. Michael's, Bath* (p. 890), and *Rex* v. *Catherington* (p. 891), were cases where the pauper had nothing which he had a colour for calling his own, and if not, we must look to the words of the statute whether this is within the mischief against which that statute meant to provide. The 13 & 14 Car. II. c. 12, recites, &c. [here he read the recital and enactment, and added] is then the pauper within the words, the spirit, or the mischief of the provision? He comes to Creech, not for any of the motives this statute meant to repress, but because he has a freehold in the parish; not to prey upon the parish stock, but to live upon that of which he is the freeholder, and as to which he was warranted in concluding that he was entitled to the possession. This is not a case of fraud, nor a case in which the pauper is conscious at the time that he is taking the possession wrongfully, nor a case in which the person entitled to possession takes prompt measures to displace him. Leaving such cases to be decided when they arise, it is sufficient for us to say that in this case there does not appear to have been fraud or consciousness of wrong; and where no measures were taken within the forty days, or afterwards, to dispute the occupation, we are of opinion that the residence was sufficient."

The father of a pauper's wife mortgaged a cottage to the parish officers for one thousand years: he died; the pauper claimed the cottage, and resided there undisturbed by the parish for four years: as there was no fraud in his claim, he gained a settlement.

Residence under a claim of right, without fraud, is sufficient.

Rex v. *Wooburn*, 10 *B. & C.* 846. Hannah Beal and family were removed from Wooburn to Chipping Wycombe. Order quashed. Case:— In the spring of 1800, Dennis Beal, the husband of the pauper Hannah, and the father of the other paupers, being settled in Wooburn, inclosed a small piece of waste land from a common in the adjoining parish of Chipping Wycombe, and surrounded it by a bank, on which he planted a quick fence; he held and cultivated this land, subject to such interruption as after mentioned, until Christmas, 1827, when he sold it for 10*l.*, and conveyed it by deed to the purchaser. From the year 1800 to the year 1825, Dennis Beal resided out of the parish of Chipping Wycombe. In the year 1825 he removed to a cottage in that parish, but not on the land in question. In the year 1826 he built a hut on the said land, and was provided with straw to thatch it by one of the overseers of the parish of Wooburn, and up to the time of his building the hut he continued to receive relief

Inclosure of waste and occupation for twenty years: Held, a settlement gained, though interrupted by parochial perambulations.

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from the parish officers of Wooburn. He lived in the hut a year and a half. In the years 1806, 1811, and 1817, the parish officers and freeholders perambulated the parish for the purpose of marking the boundaries and asserting their rights of common by throwing open encroachments on the waste. In the first year they pulled up a large portion of the fence to the said land inclosed by Beal, dug up part of the bank and rode through the inclosure. In the two subsequent years they made a large gap in the fence, and again rode through the inclosure with the same object. In the year 1820 or 1822, but to which of those years in particular the witness could not speak positively, a similar perambulation was made by direction of the lord of the manor, when similar acts were done for the like purposes. It did not appear that Dennis Beal was present on either of these occasions, nor did it appear that any acknowledgment was paid by him to the lord of the manor or any other person during his occupation of this inclosure, nor that either the commoners or the lord of the manor commenced any action or did any other act to assert their rights, except as before mentioned. Lord *Tenterden*. "There has been an adverse possession for twenty years, and the husband of the pauper gained a settlement by estate in Chipping Wycombe." Order of sessions quashed.

A. inclosed a piece of the waste, and built a cottage, the parish giving him the materials; after fourteen years he gave, by parol, a part of such land to B., and B. built a cottage and took in another piece of the waste, and occupied them sixteen years; the copyholders, in the course of removing encroachments, twice broke down B.'s fences: Held, that B. gained a settlement by estate.

Rex v. *Pensax*, 3 *B. & Ad.* 815. Mary Radford and children were removed from Pensax to Martley. Order quashed. Case:—Mary Radford was the widow of John Radford, who was the illegitimate child of Hannah Radford. After his birth Hannah married William Yarnold, and they resided in Pensax, the child John Radford living with them. In the chapelry of Pensax there is much common or waste land, beneath which there is coal belonging to the lessees (under an old demise) of the Dean and Chapter of Worcester, who are the lords of the manor. Yarnold was often relieved by the officers of Pensax, and they furnished him with materials necessary for the erection of a cottage upon the common, which he accordingly erected about thirty years ago, having for the purpose inclosed an acre of land of about 10*l.* in value. Sixteen years ago he gave part of the land which he had so inclosed to John Radford upon his marriage with the pauper Mary, and Radford then built a cottage upon it. No deed was made between them. After John Radford had taken possession of the cottage and land, he inclosed a small piece of land immediately adjoining (about 5*l.* in value) from the common, and the whole was afterwards thrown together by him. The copyholders (who are accustomed to break down the fences of encroachments once in seven years, to prevent persons inclosing from establishing a right,) twice broke down the fences between the common and the new land thus inclosed by John Radford. The fence between the old and the new inclosure had been previously removed. The persons rode in at one side of the land and out at the other side, but they did not pass over that part which had been given to Radford by William Yarnold. On one occasion the lessees of the minerals under the dean and chapter sunk a coal pit on the land last inclosed by Radford. The question for the opinion of this court was, whether John Radford ever had such an estate in the land given to him by William Yarnold, or inclosed by himself from the waste, as would give him a settlement in Pensax. Lord *Tenterden* delivered the judgment: "We think this case is not distinguishable from *Rex* v. *Wooburn* (p. 899), and the pauper's husband consequently gained a settlement by estate in Pensax." Order of sessions confirmed.

Lessee for years during three lives held over on a false pretence that one of the lives is continuing: this is not such an adverse possession as will gain a settlement.

Rex v. *Axbridge*, 4 *Nev. & Man.* 477; 2 *A. & E.* 520. Richard Hooper was removed from Axbridge to Chappel Allerton. Order quashed. Case:—Lord Viscount Weymouth granted to one Martin a lease of a cottage in the parish of Cheddar for ninety years, determinable on three lives, at a rent of 4*d.*; and in 1784 the *cetteux que vies* in lease of 1732 being all dead, the then Lord Weymouth granted to Richard Gilling a lease of the same cottage, therein stated to have lately fallen into his lordship's hands, for a like term, determinable on three other lives, at the same rent. At that time Joseph Wolf, who was in possession under the lease of 1732, claimed to hold the cottage against Gilling, on the ground that one of the three lives

in that lease was still in existence, which was not the fact; and he did so hold the same until his death, about twenty-three years ago. On his death his widow, Ann Wolf, retained possession of the cottage, and continued therein until her death in 1827. In 1826 she made a will, and told the person who made it for her she had heard the cottage was Mr. Gilling's. By the will she devised the cottage to her daughter Martha, the wife of Richard Hooper (the pauper), and her heirs, and appointed Martha Hooper her executrix and residuary legatee. The will was duly attested to pass real estate; but no probate thereof was obtained. On the death of Ann Wolf, Richard and Martha Hooper, who had been living with her in the cottage, kept possession of it, and lived there for three years; when Richard Hooper conveyed it, by feoffment and livery, to a purchaser in fee for 8*l.*, it being well worth 40*l.* with good title. No rent has ever been paid by Joseph Wolf, or those claiming under him; but Gilling and his representatives have paid the rent of 4*d.* to Lord Weymouth and his heirs to the present time. One of the *cetteux que vies* in the lease of 1784 is still living. Lord *Denman.* "The question is, whether there is any proof of adverse possession. I do not find it expressly stated, nor do I find any facts from which it can be properly inferred. A lease was granted in 1732 for three lives to Richard Martin. In 1784 it is supposed that the lives are at an end. A new lease is then granted to Gilling, and he pays the rent. Wolf claims to hold under the first lease, on the ground that one of the *cetteux que vies* is still living, and he does so hold; yet Gilling, who must have acquiesced in his doing so, pays the rent during all that time to Lord Weymouth. It cannot be said that Wolf held under any other claim than this—that the first lease was in existence. Then his wife held the property. What proof is there that she held it adversely? I see none; and even if she had claimed to hold adversely, there was not sufficient length of time to create a title by adverse possession. There is no case which would warrant us in holding that the circumstances which occurred here amount to an adverse possession; and therefore I think that the order of sessions must be quashed." *Littledale*, J. "I am of the same opinion. In 1784 Lord Weymouth (now the Marquess of Bath) granted a lease to Gilling. At that time Joseph Wolf was in possession. How he came in we do not know; but he claimed to hold the cottage under the first lease, on the ground that one of the *cetteux que vies* was alive. He did not set up any *adverse* claim. He must be presumed to have held under the lease to the time of his death. He left a widow, who continued the possession. It must be presumed that she continued the possession in the same way as Joseph Wolf had done before. She devises expressing that she had some doubts whether it did not belong to Gilling, (but we do not take any notice of that), and appointed her daughter executrix. If she had entered by abatement, and made a will of it, that would have been a different thing, but she does not do so. I do not consider that her daughter acquired any right to the fee simple. She appointed the daughter executrix; but the daughter took no interest in any *term*, for there was none actually existing, except that which was in Gilling, for the whole lease was clearly gone in 1784. She could only claim in continuation of the estate which her mother had." *Williams*, J., concurred. Order quashed.

III. Of Estate by Purchase for Pecuniary Consideration, affected by 9 Geo. I. c. 7.

1. *What is a Purchase within the Statute.*
2. *Of the Consideration paid.*
3. *Money laid out on Estate after Purchase.*
4. *Equitable Interest in Purchased Estate.*

1. *The Statute; and what is a Purchase.*

Purchase money must be at least thirty pounds

By the 9 Geo. I. c. 7, s. 5, *No person or persons shall be deemed, adjudged, or taken, to acquire or gain any settlement in any parish or place, for or by*

3. *By Purchase for Pecuniary Consideration.*

bonâ fide paid, or party gains a settlement only while he inhabits such estate.

A convicted felon, discharged under the sign manual, may acquire a settlement by purchase.

virtue of any purchase of any estate or interest in such parish or place, whereof the consideration for such purchase doth not amount to the sum of 30*l.* bonâ fide *paid, for any longer or further time than such person or persons shall inhabit in such estate, and shall then be liable to be removed to such parish or place where such person or persons were last legally settled before the said purchase and inhabitancy therein.*

Rex v. *Haddenham*, 15 *East*, 463. Removal of E. Hill, from Thame to Haddenham, was confirmed. Case:—E. Hill was born in Thame, in May, 1791, and at the time of her birth the settlement of her father, S. Hill, was in Thame. She had not acquired any settlement in her own right. In 1790, S. Hill was convicted of horse-stealing, and received sentence of death. An instrument, under the sign manual, was then produced, which recited that S. Hill had been convicted of horse-stealing, and had sentence of death passed upon him; and that the king was induced to grant him a free pardon; and it directed S. Hill to be forthwith discharged out of custody, and that he be inserted in the next general pardon that shall come out for the Oxford circuit, without any condition whatsoever. Given, &c. By his majesty's command, W. W. Grenville. Search had been made in the office of the clerk of assize of the Oxford circuit, and it did not appear that any general pardon including S. Hill had been made out: it did not appear, by any evidence, that any general pardon, including S. Hill, or any special pardon to him under the great seal, had been granted. Pursuant to the direction of the instrument under the sign manual (*a*), S. Hill was shortly after discharged, and has been since at large unmolested. In 1803, S. Hill purchased, for 100 guineas, two cottages in Haddenham, copyhold of inheritance, held of the manor of H., which were surrendered to the use of S. Hill, his heirs and assigns, and he was admitted tenant thereof, according to the custom of the said manor, and took possession of and resided on the premises so purchased by him, and still continues to reside on part thereof, and has sold and surrendered the remainder. Lord *Ellenborough*, C. J., said, "The point raised is of some doubt, and of more general importance than usually arises on settlement cases. In the form of it a purchase was made, which satisfies the terms of 9 Geo. I. c. 7, s. 5, 'that no person shall acquire any settlement in any parish for or by virtue of any purchase of any estate or interest in such parish, whereof the consideration for such purchase doth not amount to 30*l.* *bonâ fide* paid, for any longer time than such person shall inhabit in such estate,' &c. Now this was in its form a purchase for more than 30*l.*, and he resided on it for more than forty days, and he has not been removed from it. Who then was in a condition to remove him for the forty days? The lord, who has, by admitting, accepted him for his tenant (even if he could, after that admission, object to him), has not objected. If the lord had no notice of the objection at the time of the admission, I do not mean to say that he was afterwards precluded from making the objection; but he has not in fact objected, and the tenant has now continued for nine years in possession; and, by the statute of limitations, part of the rents, issues, and profits, can be no longer recovered from him; so that if he had a defeasible estate during the first forty days, he has held the estate undefeated for more than that period, which cannot now be impeached. And whether or not the crown could have impeached his title, he has now held the estate under a title, not defeated for above forty days." The other judges assented. Order confirmed.

As no settlement can be gained by such purchaser, except whilst he continues on the estate so purchased, he of course *can communicate no settlement* thereby to his children, for a derivative settlement must be founded on a *perfect* settlement existing in the person from whom it is derived; and the estate must be actually *bought;* a gift or licence to possess, is not a *purchase* within the statute.

(*a*) The effect of a pardon under a sign manual is *now* equivalent to one under the great seal. 6 Geo. IV. c. 25, s. 1. See also *Doe* d. *Evans* v. *Evans*, 8 *D. & R.* 399; 5 *B. & C.* 585.

3. *By Purchase for Pecuniary Consideration.*

Children residing with their father upon a tenement purchased by him for less than thirty pounds, gain no settlement.

Rex v. *Salford*, *Burr. S. C.* 516; 1 *Bla. Rep.* 433. Peter White was removed from Salford to Over-Norton. Order discharged. Case:—The pauper's father, in 1726, for 29*l.* purchased a tenement in Salford. The pauper was born there in 1730, and lived with his father therein till about 1754, when he married, and left his father's family, and lived in a separate tenement at Salford, without having gained any settlement but what he derived from his father. Lord *Mansfield*, C. J., delivered the resolution of the court. "We are of opinion that no settlement of the father was gained in Salford by the purchase, but only during the time of his inhabiting in the purchased premises. And this would have been equally the case if the act had never been made: for he could not have been removed from his own estate, though he had no settlement in the parish where it lay. So that the father's settlement (if it may be so called) in Salford, was only temporary, and did not extinguish his settlement at Over-Norton. And the only settlement which the son could derive from his father was at Over-Norton; for there could be no derivative settlement from the father at Salford, the father himself having no settlement there, but being only irremovable from his own estate. And this may be illustrated by a supposition, that the son had not resided in Salford, but had gone to live in a third parish, and had there been likely to become chargeable: and the question had arisen, whether he ought to be removed to Salford? He could not possibly in such case have been removed to Salford, because such removal would have been conclusive upon Salford, and he would remain settled there for ever: which shows that he can have acquired no settlement in Salford by virtue of his father's purchase, even during the time of his father's residence upon it."

A conveyance from a father to his daughter, in consideration of natural affection, without any pecuniary consideration, is not a purchase within the act.

Rex v. *Marwood*, *Burr. S. C.* 386; 2 *Bott*, 615. Removal of T. Connibear, and Mary, his wife, from Kentisbury to Marwood, confirmed. Case:—Mary had conveyed to her by her father, in consideration of natural love and affection, a cottage, garden, and plot of ground, at Kentisbury, for the residue of a term of ninety-nine years, then determinable on the death of Joan Slocombe, the consideration of which purchase, originally, in the year 1689, amounted to 20*s.* Mary and her husband entered upon the premises, and continued thereon for several years, until the lease determined by the death of Joan, upon which they were removed from Kentisbury to Marwood. *Ryder*, C. J. "If I had any doubt I would not give an opinion now. This is not a 'purchase' within the meaning of the act. The word 'purchase' is not to be taken in the largest extent of it, but is confined to cases where a pecuniary consideration is paid. Otherwise, no devise, or gift, or settlement on marriage, would gain a settlement, unless there were a pecuniary consideration paid. The intention of the act was to prevent settlements by purchases for small money considerations. In the present case the husband is not to be considered as a purchaser, and therefore he acquired a settlement in Kentisbury." By the court unanimously, the orders quashed.

What is a purchase.

Same point, where the grantee was residing under a certificate. See as to this, *post*, *Certificate*.

Rex v. *Ingleton*, *Burr. S. C.* 560; 2 *Bott*, 621. Richard Speddy, and Rose, his wife, residing under a certificate at Astwick, the father of Rose conveyed to her, in consideration of natural love and affection, a customary cottage at Astwick to the use of herself for life, remainder in fee to her daughter. The paupers entered upon, and continued in possession of, the cottage for sixteen years, and then purchased of their daughter her remainder in fee for 5*l.*, and sold the whole for twenty guineas. On the authority of *Rex* v. *Marwood* (*supra*) this was held to be clearly a voluntary settlement, and not a purchase within the intent of the statute.

Rex v. *Ufton*, 3 *T. R.* 251. John Henwood removed from Ufton to Mortimer. Order quashed. Case:—The pauper came to reside with his father, about twenty-three years ago, in a cottage at Mortimer, which in 1766 the father duly conveyed to him in fee, *in consideration of natural love and affection, and of* 10*l.* *to him paid* by the pauper. About three years after, the pauper obtained a certificate from Ufton, dated 1st of January, 1770, and afterwards occasionally received relief from Ufton

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A conveyance for natural love and ten pounds to a son, the estate being worth more, is not a purchase (*b*).

during his residence at Mortimer; his father lived with him on the premises until his death, about eight years ago. The pauper was his eldest son and heir at law, and continued to reside upon the premises until 1788, when he sold the same for 50*l.*, and returned to Ufton. Lord *Kenyon.* "In *Rex* v. *Marwood* (p. 903) it was contended that a *purchase*, under 9 Geo. I., was to be understood as contra-distinguished from *descent*, as in a former case on the subject (*Rex* v. *Sawbridgeworth*), (*a*). But the court exploded that idea, and said that the legislature only intended to prevent persons who made small purchases for *pecuniary* considerations from gaining settlements, but that donations from a father to a child did not come within the statute. Now in this case we are bound to take notice that the conveyance was in consideration of natural love as well as 10*l.*, and we cannot suppose that 10*l.* was the real value of the estate, for there are circumstances to show the contrary, it having been afterwards sold for 50*l.* This being a donation from a father to a son, is clearly not a purchase within 9 Geo. I. c. 7, notwithstanding part of the consideration was in money. And though the certificate was conclusive at the time, it was afterwards done away by the pauper's residence on his own property at Mortimer." Order of sessions reversed.

A grant by the lord of A. for lives, in consideration of the surrender of leases of the same premises by A.'s grandfather and great uncle, at a nominal fine and rent, and no money passing from A. to his relations, is not a purchase within 9 Geo. I. c. 7.

Rex v. *Lydlinch*, 4 *B. & Ad.* 150. John Tucker was removed from Hilton to Lydlinch. Order confirmed. Case:—By lease, the 22nd of December 1754, G. Pitt, lord of the manor of Hilton, demised a house and garden to John Tucker of Lydlinch, the grandfather of the pauper, in consideration of a surrender made by Arthur Corfe and E. his wife, of the said house and garden, which they claimed to hold for their lives successively, the lease having, as was recited, been consumed in a then recent fire, together with the house, which Tucker was rebuilding, and also in consideration of another lease of the same premises, granted to William Corfe, determinable on the decease of John Tucker, and in consideration of the rebuilding of the premises by Tucker, and of 1*s.* paid by him to Pitt; *habendum* to Tucker, his executors, &c., for fourscore and nineteen years, if Tucker and his wife, and Meliar their daughter, or either of them, should so long live, at the yearly rent of 1*s.* The lessee covenanted to pay the rent, to attend the lord's court, and do suit and service there; to finish the rebuilding of the house within two years, and to repair. John Tucker, the grandfather, was the grandson of William Corfe, and the great nephew of Arthur Corfe, the surrenderors of the leases, who were brothers. It did not appear that any pecuniary consideration passed from Tucker to either of them. He continued to inhabit the premises until his death in 1818. The premises were not of the value of 30*l.* when Tucker rebuilt the house. The question was, whether John Tucker, the grandfather, gained a settlement by estate in Hilton. If so, the pauper was derivatively settled there. *Denman*, C. J. "*Rex* v. *Tarrant Launceston* (p. 893) is decisive to show that this is not a purchase within the 9 Geo. I. c. 7, § 5." *Parke*, J. "The statute applies to purchases for money consideration only. Here it may be inferred, from the relationship of the parties, that natural love and affection formed an ingredient in the consider-

(*a*) In that case (*Burr. S. C.* 56), the father of the pauper, being seised of a copyhold cottage in Aldbury, which let at 25*s.* a year, did, about a year and a half before the removal, surrender to the pauper and his heirs, who were admitted and lived upon it about a year and a half, and then sold for 14*l.* 2*s.* 6*d.*, being the full value; it was urged that this estate was the pauper's own by a surrender from his father, and there was no difference between a surrender from a father, and a descent. But the court denied it, without so much as making a rule to show cause. For they not only thought that the surrender looked fraudulent, but they said that the intent of the statute was to prevent persons gaining settlements who were any ways likely to be chargeable, and therefore provided that they should be able to lay out 30*l.* in a purchase. And both the orders were confirmed.

(*b*) Love and affection will not support an *equitable* interest; and if the money is less than 30*l.*, no settlement can be acquired by purchase. *Rex* v. *Piddlehinton*, (p. 919).

ation. The lord was only the medium of the arrangement in the family." *Taunton*, J. "In order to bring a case within the statute, the consideration must consist wholly of money. Here there were several considerations, and it does not even appear that there was a pecuniary one." *Patteson*, J., concurred. Order of sessions quashed.

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Rex v. *Hatfield Broad Oak*, 3 *B. & Ad.* 566. John Greygoose was removed from Takely to Hatfield Broad Oak. Order confirmed. Case:—The pauper had gained a settlement by hiring and service in Hatfield Broad Oak, but he afterwards returned to live with his father, who was then in possession of a copyhold estate and premises of inheritance in Takely, to which estate he had been admitted on the death of his father, as heir-at-law, in 1757. After the pauper's return, and about twenty-four years ago, the pauper's father told the pauper that he would give up the estate and premises to him, as they would be his afterwards by heirship, if he would pay off a debt of 15*l.* which he, the father, had borrowed upon them, and if he would permit him, the father, and his wife, the pauper's mother, to reside upon them rent-free during the rest of their lives. The pauper paid off the sum of 15*l.* for the purpose of relieving his father from that debt, and was duly admitted to the estate and premises upon surrender of his father. The father and mother continued to reside upon the premises; the father till his death, the mother till the time of the removal; and the pauper did so for eighteen years after his admittance, and gained no subsequent settlement. The admittance of the pauper on the surrender of his father, in 1807, contained no statement of any consideration except the verbal agreement between the pauper and his father, and the payment of the 15*l.* by the pauper. The sessions stated their opinion to be, that this was a purchase of an estate for less than 30*l.*, the only apparent consideration being the payment of 15*l.* by the pauper on his father's account, which payment originated in the want of the father, and therefore no settlement was gained under the 9 Geo. I. c. 7. Lord *Tenterden*, C. J. "I think the sessions have not come to the right conclusion. From the terms of the conveyance and the state of the family at the time, I think that natural love and affection must certainly be taken to have formed an ingredient in the consideration; and if so, this was not a pecuniary purchase for less than 30*l.* within the meaning of the statute." *Littledale*, J. "The 15*l.*, the debt charged on the estate, was not the only consideration for this conveyance. This is clear from the agreement that the pauper should allow his father and mother to reside upon the premises rent-free during the rest of their lives." *Parke*, J. "This was a conveyance of the property, in consideration of natural love and affection, and subject to a certain burden. I think the sessions came to a wrong conclusion." *Patteson*, J., concurred. Order of sessions quashed.

A. surrendered to B. (his son) a copyhold estate, on condition that B. would pay off 15*l.* which A. had borrowed on the estate, and would suffer A. and his wife to reside on it rent-free for their lives: as natural love and affection formed part of the consideration, this not a purchase within 9 Geo. I. c. 7, and B. gained a settlement by residing there.

Rex v. *Warblington*, 1 *T. R.* 241. Removal from Havant to Warblington. Order confirmed. Case:—William Bridger, father of the pauper, came to Havant with a certificate from Warblington. John Moody, lord of the manor of Havant, by copy of court-roll, in 1748, granted to William and his heirs, one parcel of waste ground, called the Gravel Pit, which did not appear ever to have been granted before. William built a house thereon, and lived therein for several years as owner; he afterwards borrowed 100*l.* of Mary Roper, and surrendered the premises for securing the same; and on the money not being paid, she was admitted in 1763. She sold her interest to John Hammond, who was admitted. After the death of William, his heir-at-law sold his equity of redemption to Hammond for 20*l.* 17*s.*, and surrendered the same. It appeared by the court books that William was admitted on the lord's grant to one parcel of land, called the Gravel Land, and in the copy of his admission were these words, "*fine one shilling, heriot one shilling, quit-rent one shilling.*" Moody's steward proved that Mr. M. was used to grant small parcels of the wastes of the manor for small pecuniary considerations, but he never knew him make such grants without. The value of the land at the time of the grant did not exceed 30*s.* or 40*s.*, and William was at that time a very poor man. It

The lord of a manor, for a fine of one shilling; heriot one shilling, and quit-rent one shilling, granted some land. This is a purchase, not a voluntary grant, and being under 30*l.*, no settlement can be gained.

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was not customary to express the consideration, if any, in the surrenders. It did not appear whether any pecuniary consideration was given for the grant, or whether it was voluntary and without any consideration: it further appeared that in the margin of all the copies was inserted, "fine 1*s*." *Willes*, J., said, "That the question was, whether this grant was a voluntary grant, or made for a valuable consideration? That the proof lay on the appellants to show it was a voluntary grant, for it was incumbent upon a certifying parish to get rid of the certificate: that if that could only be done by presumption, it must stand good, for that the court could not presume one way or the other. But if the court could presume either way, it must be that this was a purchase. That, however small the consideration, they would hold it to be a purchase: that this appeared to be a grant for a small pecuniary consideration, and therefore not a voluntary grant: and being a purchase under 30*l*. did not give a settlement since stat. 9 Geo. I. Supposing it true, that the fine (*a*) is a fee for alienation, that is no answer to the heriot and rent reserved: for if a person meant to make a free gift, he would not reserve a heriot or rent. As to the objection, that this land had never before been demised by copy, however defective the original grant might have been, there has been so long a possession that the presumption is strong that it was good." *Ashhurst*, J., said, "That a purchase was the acquisition of something for an equivalent: a *quid pro quo*. And that was so in this case."

A grant by the lord of copyhold land, paying a yearly rent of two shillings and sixpence (in a subsequent part called a quit-rent), is a purchase within 9 Geo. I. c. 7, and being under 30*l*. confers no settlement.

Where there is no custom for that purpose, the lord of a manor cannot make a new grant of copyhold; and if he does, the grantee acquires thereby no settlement by estate.

Rex v. *Hornchurch*, 2 *B. & A.* 189. Removal from Hornchurch to Purleigh. Order quashed. Case:—By grant, May 13, 1799, James Thurtell, the father of the pauper, obtained from the lord of the manor a piece of the waste in Purleigh, where he built three cottages. The grant was, "To this court came J. T. and S. his wife, and prayed to be admitted tenant to all that parcel of land, being part of the waste of this manor, containing about half a rood, with the cottage thereon, lately built, paying to the lord the yearly rent of 2*s*. 6*d*., to whom the lord, with the consent of the homage, granted and delivered seisin, to hold unto J. T. and his wife, and to the heirs of the survivor, at the will of the lord, according to the custom of said manor, at the yearly quit-rent aforesaid and by suit of court; and he giveth to the lord for fine for his admission nothing, of the special favour of the lord, and so, saving all right of the lord, he is admitted tenant. *Abbott*, C. J. "I think that this grant was not a valid conveyance of the copyhold estate, because there is no custom stated for the lord to make a new grant of copyhold within this manor. Unless that custom exists, there can be no copyhold except where the land has been at all times demised or demisable by copy of court-roll. The lord therefore had no right to make this grant. But even if the grant were good, I should still think that this case fell within the 9 Geo. I. c. 7, for here the land was originally demised for a mere money consideration to be paid annually, and the sum stated in the case was a full consideration for all that the lord granted at the time. I cannot distinguish this case from *Rex* v. *Warblington* (p. 905), which must govern our present decision. Then if the case falls within 9 Geo. I. c. 7, it is clear that the consideration was less than 30*l*., the sum required by the act." Order confirmed.

Grant of a licence from the lord of a manor to erect a cottage, rendering an annual rent of ten shillings and sixpence as quit-rent, and also a licence to inclose a piece of ground

Rex v. *Horndon-on-the-Hill*, 4 *M. & Sel.* 562. Removal from Orsett to Horndon-on-the-Hill. Order confirmed. Case:—The pauper applied to the lord of the manor for licence to erect a cottage on the waste in Orsett. In the court rolls was this entry: "Manor of Orsett, 9th November, 1805. At a general court baron, the lord of the manor granted licence to Benjamin Brad to erect a cottage on a piece of land, containing one rood, in the lane leading &c., rendering an annual rent of 10*s*. 6*d*. at Michaelmas in

(*a*) It had been urged, that payment of a fine was proof of purchase, *St. Paul's Walden* v. *Kempston* (p. 910); and in *Rex* v. *St. Mary, Whitechapel*, *Burr. S. C.* 55, a pauper had a leasehold of 5*l*. a year value, for which he paid only 6*d*. per annum, the court held that he acquired a settlement. His lease was for 50 years.

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every year, as a quit-rent for the same." No other consideration was paid. The pauper erected a cottage at an expense of more than 30*l.* on the piece of ground, and some months afterwards applied to the lord for a piece of ground for a garden. As to that, this entry was made: "24th March, 1806, (reciting the former entry); at this court the lord of the manor granted licence to B. Brad to inclose a piece of ground for a garden adjoining the cottage, containing —— roods." No consideration was paid for this piece of ground, and both were parts of the waste of the manor, and their value did not exceed 5*l.* After the building of the cottage, the pauper resided on the premises about a year and a half, and then sold them to one Robinson, of which the following entry was made in the court rolls: "3rd June, 1809, (reciting the grant of the first licence and the grant of the second,) it was at this court presented that the said B. Brad had erected the cottage, and inclosed the ground, and had sold it unto Robinson for 40*l.*, whereby happened to the lord an alienation fine of one guinea, which had been paid." Robinson sold the premises to Bonham, of which the following entry was made: "7th June. 1813. At a general court baron then held, the homage presented that since the last court, Henry Bonham, Esq., purchased of Wm. Robinson a cottage erected on the waste by B. Brad, and also a garden adjoining, granted by the lord, whereby there happened to the lord an alienation fine, which has been paid." None of these entries were stamped, and this was the only evidence of title produced. There was no evidence that these two pieces of waste land, or either of them, had ever been demised by copy of court-roll, or that there was within the manor any custom to create copyholds, or to grant any part of the waste thereof to hold as in the nature of copyhold. Lord *Ellenborough*, C. J. "A licence is not a grant, but may be recalled immediately; and so might this licence the day after it was granted. We cannot take into our consideration what it may be conjectured a court of equity would determine in this case. Perhaps a court of equity might interfere, but can we say with certainty that it would? We ought to see that the party has clearly an equitable interest, and not merely such a claim as might possibly induce a court of equity to interpose in some way or other. This was a mere personal licence, and not a grant by copy of parcel of the land, as *Rex* v. *Warblington* (p. 905). Here the pauper never had a more perfect estate than the licence gave him, that is, a permission to occupy." *Bayley*, J. "We cannot know how a court of equity would deal with this case; (*a*) probably the utmost that it would do would be to grant an injunction, if an ejectment was brought. But here is no grant of any interest in land; I cannot say that the pauper took any estate; and therefore this would be a new species of settlement." Order of sessions confirmed.

for a garden to said cottage, and building a cottage thereon and residing in it a year and a half, is a mere licence, and not a grant of any interest in land, so as to confer a settlement.

Licence by lord not a purchase.

(*a*) *Rex* v. *Geddington* (p. 915).

Rex v. *Hagworthingham*, 1 *B. & C.* 634; 3 *D. & R.* 16. Order of removal of E. Turner from Stainton to Hagworthingham confirmed. Case: —In 1798, the commissioners for the inclosure of Hagworthingham, by their award, allotted to the Earl of Manvers, as lord of the manor, an allotment, as compensation for his right in the soil of the waste lands. In 1809, Goodwyn applied to Lord Manvers for leave to build a house upon the waste in Hagworthingham. Lord Manvers gave him liberty in writing. Goodwyn built on the waste by the road side, in the same year, a blacksmith's shop, which two years afterwards he sold to Bayley, who sold it to the pauper for 30*l.* No deed of conveyance was executed to the pauper. The pauper converted the shop into a dwelling-house, where he resided during five years, and then sold it to Wright for 34*l.* The pauper continued to live therein, as tenant to Wright, for two years longer. During the five years that the pauper resided in the house as owner, he paid 1*s.* a year to Lord Manvers as lord of the manor. The surveyor of the highways once demanded this 1*s.* to be paid to him, but it was never so paid. On the pauper quitting the house, Wright went to live there, and it is let by Wright to a tenant for 2*l.* 18*s.* a year at the present time. No adverse claim has ever been made. *Abbott*, C. J., delivered judgment. "It was contended, that this was a settlement obtained by purchase of an estate or

A. built a house on the waste of a manor by licence from the lord, resided in it two years, and then sold it to B. The latter sold it to C. for 30*l*, but no conveyance was executed. C. resided in it five years, and paid one shilling per annum rent to the lord, and then sold his interest. No adverse claim was made: Held, that C. did not acquire by purchase an interest or estate sufficient to confer a settlement within the statute.

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interest in the parish for a consideration of 30*l.* paid. Some discussion arose as to the nature of the estate or interest, by the purchase whereof a settlement may be acquired. But we think the inquiry into that point unnecessary in this case; because upon the facts stated, and on the authority of *Rex* v. *Horndon-on-the-Hill* (*ante*, 906), we think there has been no purchase of an estate or interest of which we can take notice. The pauper after his purchase paid 1*s.* a year to Lord Manvers, but no such payment appears to have been made either by Bayley or by Goodwyn; therefore although the pauper might in consequence of this payment have acquired the character of a tenant from year to year, yet there is nothing to give that character either to Bayley or Goodwyn, and the matter purchased by the pauper is the same as in the case referred to. It was there decided, that a licence to occupy does not operate as a grant, nor confer any legal title; and as to equitable right or title, the observations made by Lord Ellenborough are unanswerable: 'We cannot take into our consideration what it may be conjectured a court of equity would determine in this case. Perhaps a court of equity might interfere, but can we say with certainty that it would? We ought to see that the party has clearly an equitable interest, and not merely such a claim as might possibly induce a court of equity to interpose in some way or other.' Upon the ground, therefore, that this was not a purchase of any estate or interest in the land or building, we are of opinion that no settlement was gained." Order of sessions quashed.

Where the purchase is under 30*l* the pauper is not removable from his estate.

Rex v. *Martley*, 5 *East*, 40. Removal from Doddenham to Martley confirmed. Case:—On the 25th of November, 1754, the dean and chapter of Worcester granted to H. B., the grandfather of the pauper, a lease for lives of a cottage and a garden, at the yearly rent of 2*s.* 6*d.* At his death, leaving no will, he was succeeded in possession by his son William (the pauper's father), who afterwards died leaving a will, devising the premises to his wife for life, remainder to W. B. the pauper. The pauper came at the end of two years to reside with his mother on the premises till he married (February 2, 1790), when she demised to him the premises at a yearly rent, and went to reside elsewhere, leaving the pauper in the sole occupation. On the 27th August, 1795, the second life died. On the 13th of July, 1798, the mother of the pauper, who was tenant for life under the will of the pauper's father, died. The pauper continued in possession till November 26th, when on payment of a fine of two guineas, a new lease was granted to the pauper at a new rent of 1*s.*, for three new lives, still existing. At this time the lives in the first lease were all extinct. The pauper's residence on the premises continued till the time of the removal. Lord *Ellenborough*, C. J., said, "That there would be difficulty in deciding that this was a purchase under 30*l.* within the statute: but he asked how, admitting that, and presuming the third life under the first lease to be extinct (she not having been heard of for thirty years), this order removing the pauper *from his own estate* could be supported?" To this it was answered, that where a man applies for relief, he must be taken to consent to all things necessary to afford him that relief in the due course of law, and consequently to an order of removal to his last legal settlement. But the court held that such a person was altogether irremovable, whilst he resided on his own estate.

2. *Of the Consideration paid.*

2. *Of the Consideration paid.*

The consideration for the purchase must amount to "*the sum of* 30*l. bonâ fide paid.*"

Where the purchase-money mentioned in the deeds was twenty-eight pounds, but the sum *bonâ fide* paid was 30*l.*, a settlement is acquired.

Rex v. *Scammonden*, 3 *T. R.* 474. Removal from Scammonden to Soyland. Case:—The pauper agreed with Harrison for the purchase of an estate in Rishworth for 28*l.*, and the consideration mentioned in the deeds and in the receipt indorsed was 28*l.*, but by parol evidence it was proved, that before the deeds were executed the vendor declared that as the agreement was not in writing he was not bound by it, and having since had 30*l.* offered for the estate he would not take less, nor would he execute the deeds unless the purchase-money were made up that sum. Upon which

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the pauper advanced 1*l.* 15*s.* more, which, with 5*s.* owing from Harrison to the pauper, it was insisted made up the sum of 30*l.*, but the deeds were not altered, and the consideration therein mentioned was left according to the original agreement, viz. 28*l.* The sessions were of opinion that no parol evidence could be given (*a*) to contradict the consideration mentioned in the deeds. The estate purchased was the estate of Harrison's wife: and there was a covenant from Harrison that he and his wife would levy a fine at the cost of the pauper; towards the expense of which the pauper left in the hands of his attorney four guineas. The pauper resided above three months upon the premises, and afterwards sold them to his brother. To this conveyance Harrison and his wife were parties; and it recited the covenant to levy a fine; but as such fine had not then been levied, it was agreed that instead thereof, Harrison and his wife should acknowledge and levy a fine of the premises unto the brother in fee, which was in 1787 levied; part of the expense whereof was discharged by the four guineas so left in the hands of the attorney by the pauper, and the other part was paid by the brother. And the sessions being of opinion that the four guineas was to be considered as part of the consideration under the act, and that the pauper by such purchase gained a settlement, discharged the order. Lord *Kenyon*, C. J., said, "It was clear that the party might prove other considerations than those expressed in the deed. It is permitted in all cases of covenants to stand seised to uses. And in *Filmer* v. *Gott* (7 *Brown's Parl. Cases*, 70), where the considerations mentioned in the deed were 10,000*l.* *and natural love and affection*, the lords commissioners of the great seal directed an issue to try whether natural love and affection formed any part of the consideration, the estates being worth near 30,000*l.* On an appeal to the House of Lords this was confirmed; and the jury on the trial of the issue finding that *natural love and affection constituted no part of the consideration*, the deed was afterwards set aside by the Lord Chancellor." Order of sessions confirmed.

The parish officers are not estopped by the recital in a deed from giving parol evidence that the consideration stated in the deed was never paid or intended to be paid.

An estate voluntarily conveyed is not a *purchase*.

Rex v. *Cheadle*, 3 *Bar. & Adol.* 833. W. Smith and family were removed from Cheadle to Scropton and Foston. Order quashed. Case:— W. Smith, at the time of his marriage in 1808, was settled in Scropton and Foston. To establish a subsequent settlement by estate in Cheadle, the respondent proved that John James, the father of the pauper's wife, had been seised in fee of a house and some land in Cheadle, on which he resided with his family (a wife and five children), and of which he continued in possession till 1807, when he died intestate, leaving his eldest son Simon James his heir at law. It had been agreed in the lifetime of John James, by all the members of the family, including Simon James, that the four younger children (of whom the pauper's wife was one) should have a parcel of the said land allotted to each of them, in order that they might build houses thereon respectively, when they could raise the money. In pursuance of this agreement, a portion of the land was staked out for the pauper to build on a short time after his marriage, and he built a cottage thereon upwards of twenty-one years since, in which he resided sixteen or seventeen years, and then sold it for 60*l.* to one John Higgs, who still has it. The land so staked out was a small plot, about four yards by six or seven, and the full value of it in fee before the cottage was built was two guineas or two guineas and a half. When the cottage was built Simon James (the eldest son of John), who lived within a few yards, assisted the pauper in staking out the land, and in doing some of the work at the foundation. The respondents proved lease and release of the 6th and 7th of January, 1815, for the purpose of showing that this land had been purchased by the pauper for a money consideration not amounting to 30*l.* The release was between Simon James (therein described as eldest son and heir at law of John James deceased) of the first part, William Smith, the pauper, of the second part, and John Moreton (therein described

(*a*) As to the admissibility of this evidence, see *Rex* v. *Llangunnor* (p. 670); *Rex* v. *Skiffington* (p. 729); *Rex* v. *Wickham* (p. 847); *Rex* v. *Great Wakering* (p. 789).

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as a trustee nominated by and on behalf of the said William Smith) of the third part; and after reciting, that "the said William Smith some time since agreed to purchase from the said Simon James the plot or parcel of land thereinafter mentioned, and has paid the said Simon James the sum of 2*l.* 2*s.* as consideration for the same, and lately erected a dwelling-house thereon, but no conveyance thereof had yet been made," it was witnessed, that for and in consideration of 2*l.* 2*s.* to the said Simon James in hand paid by the said William Smith at or before the sealing and delivery of these presents, the receipt whereof Simon James did thereby acknowledge, and thereof did acquit and for ever discharge the said William Smith, his heirs, &c.; he the said Simon James did grant, bargain, &c., the said plot of land, and the said houses erected thereon, to the pauper, his heirs and assigns, &c. Each of these deeds were stamped with a 15*s.* stamp. The evidence of the pauper, and also of one Jeremiah Robinson (who was not a party to the deed), was then tendered on the part of the appellants, and objected to on the other side, but received by the court, to show that the consideration stated in the deed was not paid, nor intended by the parties to be paid; and that the deed was only made for the purpose of confirming the pauper's title to the plot of land which had been allotted to him shortly after his marriage, under the parol arrangement between John James and his children. The sessions found that the consideration mentioned in the deed was not paid, nor intended to be paid. The questions were, whether the evidence was properly admitted? and if it was, whether the pauper acquired a settlement? Lord *Tenterden.* "I think a settlement was gained in Cheadle. The appellants proved that John James, the father of the pauper's wife, being seised in fee of a house and land in Cheadle, and having several children, it was agreed among them in his lifetime that a part of the land should be allotted to each of them. One of the children married the pauper in 1808, and soon after, in pursuance of the agreement, a portion of the land was staked out, upon which the pauper built a house, and after residing there seventeen years he sold the house for 60*l.* There having been twenty years' possession, the case thus far showed such an estate as gave the pauper a settlement. To avoid this settlement by estate, the parish officers of Cheadle proposed to show, by the deed of 1815, that the pauper's title to it accrued by a purchase for a money consideration not amounting to 30*l.* That deed recited, that Smith had agreed to purchase the land for the consideration of two guineas. The other parish alleged in answer that the recital was not true, and that the real consideration was not a money consideration; and they gave evidence that the two guineas were not paid, nor intended to be paid, and that the only object of the parties in executing this deed was to confirm the pauper's title. The objection is, that evidence to contradict the statement of the consideration in the deed ought not to have been admitted. Now, the parties to the deed might be estopped by it from saying that this was not a purchase for a money consideration; but the parish officers, who were strangers to it, are not. If that were otherwise, the greatest inconvenience and injustice might arise, because a settlement might be acquired or not according to the language used by parties in an instrument of this nature. The evidence was, in my opinion, properly received, as showing, not that the deed was void, but that this was not a purchase for a money consideration." *Littledale,* J., concurred. *Parke,* J. "It is quite clear, that although the parties to this deed were estopped by it, strangers were not, and consequently the parish officers might show the real nature of the transaction. If this were not so, parishes might be burthened with settlements for which there was no colour. It is clear that a settlement was gained in this case by an estate voluntarily conveyed to the pauper." *Taunton,* J., concurred. Order of sessions confirmed.

A purchase of 30*l.* part of which was paid by the parish officers of another parish, is not

St. Paul's Warden v. *Kempton, Fol.* 238. Case:—A person purchased a copyhold tenement in St. Paul's Warden, which, with the fine and fees paid to the court, amounted to 30*l.*; and it appeared by the same order, that the officers of the parish of Kempton had given him 40*s.* towards

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paying his fine and fees. It was insisted that this was fraudulent and not a good purchase. But by the whole Court: "We cannot take notice of its being fraudulent, unless the justices had adjudged it so."

Rex v. *Cottingham*, 7 *B. & C.* 603; 1 *M. & R. Mag. Ca.* 137. Order of removal of W. Hardy from Bishop Burton to Cottingham confirmed. Case:—In 1813, Hardy, the father of the pauper, agreed with E. Page for the purchase of a copyhold cottage at Bishop Burton. It was agreed that Hardy should pay 22*l.* and all the expenses attending the sale. Upon these terms the purchase was made. In 1813, the cottage was surrendered to Hardy the father; in 1814 he was duly admitted, and has ever since continued to reside in it. The amount paid was 22*l.* to the vendor; 3*l.* 10*s.* the fine to the lord of the manor; 1*l.* 13*s.* to the steward of the manor for his admission copy; and 6*l.* 12*s.* 6*d.* to Hardy's attorney, for the expenses of the surrender; making a total of 33*l.* 15*s.* 6*d.* *Bayley*, J. "This case admits of no doubt. The question is, what was the consideration for the purchase *bona fide* paid within the act? I think the sum given to the seller for his interest in the land, and to other persons whose concurrence was necessary to make the sale valid and effectual, was the consideration for the purchase. The fine paid to the lord and the fees paid to the steward, in my opinion, form part of the consideration. But the sums paid to the vendor, the lord, and steward, do not amount to 30*l.* The expenses of the surrender paid by the purchaser to his own attorney, were no part of the consideration for the purchase. The cases cited are distinguishable from the present. In *Rex* v. *Scammonden* (p. 908) the purchaser paid 30*l.*; for he paid the expenses of levying a fine, which it was necessary for the seller to levy to complete the title, and which he ought to have paid for, if the purchaser had not agreed to pay. In *St. Paul's Warden* v. *Kempton* (p. 910) 30*l.* was paid, including the fine to the lord and the fee to the steward." *Littledale*, J. "I think the consideration for the purchase was the sums paid to the seller and to the lord. The lord has an interest in the land, and the fine may be considered as paid to him for the purchase of part of his interest in it. I doubt whether the fee to the steward can be considered as part of the consideration for the purchase. The steward has no interest in the land. But it is unnecessary to decide that, because the money paid to the seller, the lord, and the steward, does not amount to 30*l.*" (*a*)

taken to be fraudulent, unless so stated.

The expenses of the surrender of a copyhold estate, paid by the purchaser to his attorney, are not part of the consideration.

The fine to the lord is a part of the consideration.

Rex v. *Tedford*, *Burr. S. C.* 57; 2 *Bott*, 666. Removal from Waddingham to Tedford. Case, laid down before the judge of assize:—Francis Gill contracted with John Atkinson for a house in Waddingham for 39*l.*, which was conveyed to Gill and his heirs. Gill paid 9*l.*, and Isaac Bristol paid the remaining 30*l.* to Atkinson, by Gill's order. Conveyance, dated May 2, executed May 19, 1730. June 18, 1730, Gill mortgaged the premises to Bristol. Gill continued in possession about four years after the mortgage. Then Bristol entered, by virtue of the mortgage *and release of the equity of redemption*. The order of sessions recites, that whereas the judges of assize had not time to hear it, and whereas the parties agreed this to be the true state of the case; therefore, upon hearing counsel and further evidence on both sides, this court doth adjudge that the purchase made by Gill was fraudulent; but that the appellants are no ways concerned in the fraud. By Lord *Hardwicke*, C. J. "This case doth not appear to be within the act; for the act is confined to purchases under 30*l.* *bona fide* paid. Now the consideration was 39*l.* and *bona fide* paid to the vendor. And it would be pretty hard to say that the justices had a power upon this act to inquire *whether or no the purchaser borrowed the money*. It is a common case to borrow money to make up the price. And as to the fraud, it is true that

Purchase for 39*l.*, though 30*l.* thereof was borrowed on mortgage of the premises, gains a settlement.

(*a*) In the report of this case, in 1 *M. & R. M. C.*, *Littledale*, J. is reported to have said, "that the fee of the steward is part of the consideration." This is at variance with the above report, and with a MS. note of this case taken by the Editor. In the case as reported in 1 *M. & R.* 439, it is merely stated, "*Littledale*, J., concurred," *Holroyd*, J., was absent.

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Q. B. not concluded by the finding of *fraud* when the facts are stated.

the justices are the proper judges of fraud. But fraud is a fact which must be found. It must be so by a jury upon a special verdict. The residing four years is a very material circumstance in this case: it is frequent for persons to purchase, having no ready money to do so. It does not appear how much, or that any of the purchase-money was borrowed. The justices are judges of the fact; and they may judge of the fraud arising from the fact. If they had generally found the fraud, we might have been bound by such general finding; but when they state the facts particularly, the matter is as much open for our determination upon it as it was for theirs." And the whole Court was of opinion that here was no sufficient evidence of fraud. Orders quashed.

Purchase of a cottage for 60*l.*, which was then mortgaged for 50*l.* and payment afterwards of that 50*l.* by borrowing the same, will gain a settlement, though the estate be mortgaged for the 50*l.* the same day.

Rex v. *Chailey*, 6 *T. R.* 755. W. Shaw removed from Chailey to Newick. Order quashed. Case:—In November, 1786, Shaw agreed to purchase a copyhold messuage in Chailey of R. Hale, (by whom it had been mortgaged to R. Coppard to secure 50*l.*,) and to pay for Hale's interest therein 10*l.* The pauper paid Hale 10*l.*, who, on the 4th November, 1786, surrendered the premises to the pauper, subject to the conditional surrender made to Coppard, for securing 50*l.* In May, 1790, the pauper agreed with J. Heath to borrow of him 50*l.* on security of the estate, in order to pay off the mortgage to Coppard: and on the 8th of May the conditional surrender to Coppard was discharged. On the same day the pauper made a conditional surrender of the premises to Heath, for securing the re-payment of 50*l.* which Heath had advanced to discharge the mortgage to Coppard. On the 4th November, 1795, the pauper sold the estate for 80*l.*, being 30*l.* beyond the amount of the mortgage. The pauper resided in the cottage from the time of his purchase until the re-sale. By Lord *Kenyon*, C. J. "By 9 Geo. I. c. 7, no settlement can be gained by residing on a tenement that is purchased for less than 30*l.*; but it was decided in *Rex* v. *Tedford* (p. 911), that though the party cannot pay the money out of his own fund, if he can borrow it on credit that is sufficient to satisfy the words of the statute. It has been argued, that this was only an assignment of the original mortgage from the first to the second mortgagee, and that the mortgage interest never was in the pauper: and to be sure if that interest never were in the pauper, it would be difficult to say that it conferred a settlement on him. Then it was said, that though the mortgage interest did pass through the pauper, it was merely the mode of transferring a copyhold interest from one person to another, and that this interest did not vest in the pauper; but the latter part of the proposition is not true; the estate did not pass immediately from the first to the second mortgagee; there was an interval, though a short one, in which the estate was vested in the pauper, and he conveyed it to the second mortgagee. An attempt, however, was made to distinguish this case from *Rex* v. *Tedford*, by saying, that there the legal estate was in the pauper for a longer period than in the present case, but that cannot furnish any real ground of distinction. If this had been a freehold estate, every judgment signed against the pauper, and properly docketed, would have attached on this estate. Although when I first read this case I hesitated whether this could confer a settlement on the pauper, yet, on consideration, I think it is more safe to support the decision of *Rex* v. *Tedford*, from which I think this cannot fairly be distinguished, and which has been adopted in subsequent cases, than to introduce nice and artificial distinctions." Order of sessions affirmed.

Purchase for 39*l.* 17*s.* 6*d.* the premises being then mortgaged for 32*l.* which was never paid, is a purchase only for 7*l.* 17*s.* 6*d.* *bonâ fide* paid, and confers no settlement.

Rex v. *Mattingley*, 2 *T. R.* 12. Removal from Mattingley to Heckfield. Order quashed. Case:—On the 18th June, 1769, the pauper came to Mattingley with a certificate from Heckfield, and lived there till the removal. Previous to August, 1780, he contracted with John Ironmonger for the purchase of a copyhold tenement at Mattingley, which had been mortgaged to T. Bayley for 32*l.*, which money was unpaid at the time of making the contract; the pauper was to pay 39*l.* 17*s.* 6*d.* for the tenement, which was inclusive of the 32*l.* due on the mortgage, and the pauper paid to Ironmonger 7*l.* 17*s.* 6*d.*, which with 32*l.* to be paid to Bailey, made the sum of 39*l.* 17*s.* 6*d.* On the 3rd of August, 1780, the pauper was admitted on the surrender of

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Ironmonger, subject to a mortgage surrender to Bailey, and the pauper entered and continued in possession for four years, during which he paid Bailey two years' interest, which was all the interest Bailey received after the purchase. He never paid off the mortgage money: and in 1784 delivered up the possession. *Ashhurst*, J., said, "The only question was, whether the purchase made by the pauper was in fact of the value of 30*l.*? The pauper only purchased the interest of the mortgagor subject to the mortgage. Now the estate was mortgaged for 32*l.*; therefore the mortgagor's interest subject to that was only 7*l.* 17*s.* 6*d.*, which was the whole of the pauper's purchase. The estate having been mortgaged for 32*l.*, the instant the mortgagee got into possession he might have gained a settlement upon it; if so, the mortgagee was a purchaser for 32*l.*, and the pauper only purchased subject to that charge. In the *Tedford case* (p. 911), it was only decided that if a man purchased an estate for 30*l.* *bona fide paid*, the court would not inquire how the purchaser came by the money, but here the purchaser did not *bona fide* pay 30*l.*; and that circumstance distinguishes this case from *Rex* v. *Tedford*. If the pauper, previous to the contract for purchase, had given the mortgagee a personal security for the mortgage money, then he would first have bought an estate for 30*l.*, though part of the purchase money would have been borrowed on mortgage; then the statute would have been satisfied, and the pauper have gained a settlement." *Grose*, J. "It is to be observed that the statute does not give a settlement to a man *purchasing* an estate of the value of 30*l.* It has been argued, that if the vendor has been satisfied with 30*l.* it is a purchase. But that is not the true construction of the act; for the question must be, whether the purchaser is able to pay, or has *bona fide* paid, 30*l.* I agree that if the purchase money has been *bona fide* paid, the court would not have inquired how the purchaser came by the money, nor whether he mortgaged the estate for the payment of it: that might be a question of fraud for the consideration of the sessions: and if fraudulent, no settlement could be gained. In order to constitute a purchase within 9 Geo. I., the sum of 30*l.* must not only be paid in point of fact, but must be also *bona fide* paid." Order of sessions quashed.

A purchase for 52*l.*, 40*l.* of which remained on a mortgage of the premises to the vendor, is not a payment of 30*l.* within the statute. After some years, pauper sold the messuage for 60*l.* to another, who paid the 40*l.* to the original vendor, and 20*l.* to the pauper, who quitted the messuage in less than *forty days* afterwards: he gains no settlement.

Rex v. *Olney*, 1 *M.* & *S.* 387. Order of removal of Richard Mayes from Olney to Earl's Barton, discharged. Case:—The pauper came to Olney by a certificate, dated July, 1788, directed to that parish from Earl's Barton. Whilst the pauper was residing in Olney under the certificate, about September, 1800, and some time prior to the feoffment hereinafter mentioned, he agreed with Michael Hinde to purchase a messuage of him in Olney at 52*l.*, if Hinde would allow 40*l.*, part of the 52*l.*, to remain upon mortgage, to which Hinde consented; by a deed of feoffment of the 8th of October, 1800, Hinde, in consideration of 52*l.* therein mentioned to be paid by the pauper, conveyed to him the messuage in fee; and upon the deed there was indorsed a receipt for 52*l.*, but in fact only 12*l.* were paid to Hinde, and the remaining 40*l.* was secured to him by a mortgage, bearing date the 9th of October, 1800, by which the pauper, pursuant to the agreement, demised the messuage to Hinde for 1000 years, in consideration of 40*l.* in the deed of mortgage mentioned to have been paid by Hinde to the pauper; and there was a proviso for the deed's becoming void upon payment of 40*l.*, with interest, on the 9th April then next. The feoffment and deed of mortgage were both executed at the same time, and remained together with the title deeds in the custody of Hinde. The pauper immediately entered into possession, and continued to reside there, and paid the interest upon the 40*l.* to Hinde, until the execution of the deeds hereinafter mentioned, but during such time never had the ability to pay off the principal. About a month before the 12th of June, 1812, the pauper agreed with Thomas Bowden to sell to him the messuage, in consideration of 60*l.*, and soon afterwards Bowden paid to Hinde the 40*l.* in discharge of his mortgage, and in part of his (Bowden's) purchase money, and received from Hinde the title deeds, together with the feoffment and mortgage. Afterwards, by indorsement on the indenture of mortgage, bearing date the 12th of June,

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1812, Hinde, in consideration of 40*l.* to him therein mentioned to be paid by the pauper, assigned the 1000 years to the pauper, and by deeds of lease and release, dated the 12th and 13th of June, 1812, the pauper conveyed the messuage to Bowden in fee for 60*l.*: and 20*l.*, being the balance of the purchase money, were then paid by Bowden to the pauper. The indorsement and indentures of lease and release were all executed at the same time. It was urged that when the mortgage was ultimately discharged on June 12, 1812, it became a *bona fide* payment of the whole sum. But *Bayley*, J., observed that "the pauper did not reside forty days after that time." *Grose*, J. (Lord *Ellenborough*, C. J. *absente.*) "The question is, whether this was a purchase for 30*l.* *bona fide* paid, so as to satisfy the stat. 9 Geo. I. where the purchase was contracted for upon security to be given for part of the purchase money, and such part never paid by the purchaser? The case in substance states that the premises were mortgaged for 40*l.* of the purchase money, and that that money was not paid. But I think that the consideration must be *bona fide* paid at the time of the purchase, in order to satisfy the statute. Then it is clear that this was not the purchase of an estate for 30*l.* paid at the time, the consideration money having remained upon security." *Le Blanc*, J. "The 9 Geo. I. enacts, that no person shall gain a settlement by virtue of any purchase of any estate whereof the consideration doth not amount to 30*l.* *bona fide* paid. The question arises on the purchase. The purchase money amounted to 52*l.*, of which 12*l.* only were paid at the time, the rest was left on mortgage to the vendor. That circumstance distinguishes it from the cases cited, where the party purchasing paid the whole money to the vendor by borrowing a part *aliunde*, so that there he had credit to borrow of others. In *Rex* v. *Mattingley* (p. 912), it was held, where the purchaser contracted for the purchase of a copyhold estate for 39*l.*, which was mortgaged for 32*l.*, and paid only 7*l.*, and was admitted subject to the mortgage, that it was not a purchase for 30*l.* *bona fide* paid, so as to take it out of the statute. That is a direct authority on this part of the case. But it has been argued upon a supposed difference, inasmuch as the purchase money was ultimately paid in the subsequent transaction with Bowden. But how does that stand? All that was done by Bowden, when he became the purchaser of the estate, was to pay off the incumbrance, in order to get the title deeds into his hands, which had never passed from the original seller into the hands of the pauper. That was a payment therefore made by Bowden for his own benefit, and not on behalf of the pauper." Order quashed.

A mortgagee entering as a principal creditor for above 30*l* is a purchaser for more than 30*l*.

Rex v. *Stockland*, 2 *Stra.* 1162; *Burr. S. C.* 169; 2 *Bott*, 667. John Spiller, the pauper, was a mortgagee of a term for 15*l.*; and 30*s.* were due to him for interest, and 18*l.* 10*s.* more on bond and simple contract. The mortgagor died. Spiller took out administration as principal creditor; entered and was possessed: and so continued till removed by the original order. By the court: "Spiller gained a settlement as a purchaser for a consideration of more than 30*l.* *bona fide* paid."

3. *Money laid out on Estate after Purchase.*

Laying out money afterwards upon a purchase under 30*l.* will not gain a settlement, even though the money be laid out in the erection of a shop.

3. *Money laid out on Estate after Purchase.*

Rex v. *Dunchurch*, *Burr. S. C.* 553; 1 *Bla. Rep.* 596. Edward Tansur, a certificate man from Dunchurch, with his wife, were joint purchasers of a house and garden at South Kilworth, and paid for it 19*l.* He laid out 15*l.* more in repairs, and built a shop on the premises; and was taxed after the rate of a tenement of 30*l.* value, and resided in the same till his death. After his death, his widow, the pauper, continued in possession for ten months; afterwards sold part for upwards of 30*l.*, and reserved part to herself; but removing out of the same into another house in the same parish she was removed to Dunchurch. Order confirmed. By the court:—The whole question is, whether this woman was a *bona fide* purchaser of an estate of 30*l.* value? She cannot be presumed to have come to it by descent, or executorship, or any such like act of law, because the contrary appears. She and her husband were joint purchasers. They

took jointly and by entirety, and not by moieties." If so, she can only stand in the same situation as her husband did; which is that of a purchaser. And as to the value, the act takes it according to the purchase money actually paid; and no money afterwards laid out can make the prior purchase of a greater value than it really was at the time of making it. Therefore she gained no settlement by this purchase." Orders confirmed.

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4. *Equitable Interest in Purchased Estate.*

4. *Equitable Interest in Purchased Estate.* A written agreement was made for the purchase of an estate, to be paid for by two instalments; the first to be payable within a few days after signing the agreement, and the last at the expiration of seven months. The vendor was to make out a good title on the payment of the last instalment, and to convey the premises; but the purchaser was to be let into possession upon the payment of the first instalment. The purchaser paid the first instalment, and was let into possession, and continued in possession for a year and a half; but the last instalment was never paid, nor any conveyance executed; and the purchaser afterwards gave up the contract upon receiving back part of the first instalment: Held, that under this contract the purchaser did not acquire an equitable estate, so as to gain a settlement under the 9 Geo. I. c. 7, s. 5.

Rex v. *Geddington*, 2 *B. & C.* 29; 3 *D. & R.* 403. (*a*) Order of removal of J. Garfield from Geddington to Dunton Bassett quashed. Case:—In November, 1814, Garfield entered into a written agreement with Richard Nason, by which the latter agreed to sell to Garfield a messuage situate at Dunton Bassett, for 310*l.* to be paid as follows: 160*l.* on the 30th of November instant, and 150*l.* on the 24th June next, with interest at 5 per cent. Nason agreed at his cost to make out a good title, and to convey the same at the cost of Garfield on the 24th June next, on payment of 150*l.* with interest. Garfield agreed with Nason to pay him on the 30th November the 160*l.* and the 150*l.* with interest on the 24th June, on having the premises conveyed to him. On payment of the 160*l.* Garfield was to be let into possession; but in case default should be made by him of payment of the 160*l.*, the agreement was to be void, and Nason was to be at liberty to sell the premises on the 5th December next. The 160*l.* was paid on the day appointed, and possession then given by Nason, and the pauper resided in the house for a year and a half; but he never paid the 150*l.*, nor was any conveyance ever executed. An action at law was brought by Nason for the 150*l.*; but afterwards, by agreement, discontinued; Nason paying the costs, and returning to the pauper 30*l.* of the 160*l.*, and the pauper agreeing to give up the contract and the possession, which was accordingly done. [During the argument, *Holroyd*, J., said, "If you show that the vendor and vendee stood merely in the relation of trustee and *cestui que trust*, then the latter would have an equitable estate, and would gain a settlement. But none of the cases cited show that a court of equity would, under the circumstances of this case, consider the estate to belong to the vendee as he failed to pay the residue of the purchase money." And *Bayley*, J., observed, "That *Rex* v. *Long Bennington*, 6 *M. & S.* 408, seems to be precisely in point. There the pauper agreed by parol to buy a copyhold for 150*l.* He paid 34*l.* and entered into possession, in part performance of the contract, and continued near six months; the contract was then rescinded, because the seller would not give an indulgence he had promised for the residue of the purchase money, and the seller returned the pauper 14*l.* The question was, whether this gave a settlement? The sessions thought it did; but this court held otherwise: for the pauper had purchased no estate or interest in this land; he could have made no claim in equity without paying the remainder of the purchase money; and though an equitable estate is sufficient to confer a settlement, a questionable right to go into a court of equity is not."] After the argument was concluded, *Bayley*, J. "In cases relating to the law of settlement, the manner of determining any particular point is not so important, as it is that the decisions should be uniform and consistent. For as that law is administered gratuitously by a most respectable and meritorious body of magistrates, whose habits and duties are not likely to make them acquainted with the nice distinctions of the courts of equity, it is desirable that they should have cases settled upon plain grounds for their direction, rather than that they should be called upon to entertain and decide difficult questions of equitable law. The question in this case arises on the 9 Geo. I. c. 7, s. 5. There must either be an estate or interest *purchased;* and by the latter word I understand a definite interest, for which the party contracts at the time of making the contract. If the question raised were *res integra*, I should be disposed to hold that the legislature meant a legal interest only.

(*a*) See observations on this case in a pamphlet by A. Amos, Esq.

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It has been decided, however, that a *cestui que trust* has a sufficient interest in land to gain a settlement under this statute, and I feel bound to adhere to those decisions; but there may be a distinction between an equitable estate and a mere equitable right, and that is adverted to by my brother *Holroyd* in *Rex* v. *Toddington*, (p. 889). The *Rex* v. *Long Bennington* is expressly in point with the present, and shows that in cases of constructive trusts a settlement is not gained by the *cestui que trust*. The agreement there, indeed, was by parol, but that circumstance formed no ingredient in the judgment of the court. The principle of the decision was, that a court of law, perhaps in ignorance of what a court of equity would do under the circumstances, held that it was not the case of a mere naked trustee and a *cestui que trust;* for, until the payment of the full purchase money, the vendor had a beneficial interest, and was something more than a trustee; and therefore that no settlement was gained. There is one distinction between the two cases. In the case cited it does not appear when the residue of the purchase money was to be paid: whereas in this case part was paid on the 30th November, and the residue was to have been paid on the 24th June. And it is said, that during the interval the pauper was irremovable; but I think he was not irremovable till the 24th June, because it was not his own estate, either at law or in equity, until he paid or tendered the residue of the purchase money; and that being so, I am of opinion that there was no settlement gained in *Dunton Bassett*." *Holroyd*, J. "I am of opinion that this was not to be considered the estate of the pauper, either in law or equity, so as to give him a settlement under the contract which is stated in this case. Whether, if the vendee had paid, or offered to pay, the remainder of the purchase money, an equitable estate would have been gained, so as to give a settlement, is a very different question. The cases which have been cited show, that where the vendee has performed the contract in part, and has offered to pay the remainder of the purchase money, the vendor then becomes a trustee for the vendee, and a court of equity will compel a specific performance. *Rex* v. *Long Bennington* seems to me to have been properly decided, and to govern the present. There, indeed, the contract was by parol, and it did not appear that the vendee was to have possession for a specific period of time; but these distinctions were not relied upon. Here time is given till June, when the residue of the purchase money is to be paid; and it is agreed that the vendee should have possession till that time. The effect of which is merely this, that it might or might not amount to a demise for that time; but there is not sufficient found in the case to show that there was a renting of a tenement of 10*l.* annual value. But it is said, that at all events there was a purchase of an interest for six months; it does not, however, appear how much was to be paid for that, or that the pauper, in purchasing that, acquired an interest in land to the value of 30*l.* If the contract was rescinded by the fault of the vendor, it is questionable whether anything could be recovered for the possession during the six months. For these reasons I think that no settlement was gained in *Dunton Bassett*." *Best*, J. "It has long been settled that an equitable estate will satisfy the words, *any estate or interest*, in the 9 Geo. I.; but it must be a clear and absolute equitable estate; such an estate as a court of equity would put the person claiming it into the complete possession of, and protect him against any attempts to disturb his enjoyment of it. A court of equity could not give possession to a purchaser who had not paid the purchase money, or keep him in possession if he were put in against the legal claim of the vendor. Such a purchaser has only an inchoate right, which is not rendered a perfect equitable estate until he has paid all that he has stipulated to pay. Where purchasers have been ready to pay the price, and tendered it to the vendor, cases have occurred in which very nice questions have arisen, whether they are entitled to a conveyance. The business in which we are occupied in this court does not qualify us for the decision of such points. But if we are incompetent, how much more so must those be who compose the courts of sessions; and these things cannot be submitted to us until they have

first been decided upon by them. I say, therefore, with my brother *Bayley*, in *Rex* v. *Horndon-on-the-Hill*, (p. 906,) 'we cannot know how a court of equity will deal with such a case;' and that I do not see that the pauper had any equitable estate, certainly not such a perfect one as confers a settlement." Order confirmed.

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A purchase for 40*l.* and payment of 30*l.* on account, with possession without a conveyance, is not sufficient; nor, although on a resale of the premises for 40*l.*, the original vendor was paid the 10*l.* owing upon the first purchase.

Rex v. *Llantilio Grossenney*, 5 *B.* & *C.* 461; 8 *D.* & *R.* 320. William Edwards was removed from St. Peter's, Hereford, to Llantilio Grossenney, confirmed. Case:—In 1816 the pauper made a parol agreement with Ann Carter for the purchase of a cottage and garden for 40*l.* Under this contract he took possession, and paid Carter 30*l.* on account. No conveyance was executed. After the pauper had for twelve months lived in the cottage with his family, he sold the property for 40*l.* to Sarah Watkins, to whom he gave possession, and afterwards paid the remaining 10*l.* to Carter. The pauper was never in possession of the premises after he had paid the whole of the purchase money. *Bayley*, J. "It is very desirable to adhere to the language of the statute, and to the construction put upon it by decided cases. There must be a purchase of an estate or interest; and the latter word must be understood some specific definite interest, and the party contracting must become the purchaser. *Rex* v. *Long Bennington* (p. 915), and *Rex* v. *Geddington* (p. 915), establish that although an equitable estate is sufficient to give a settlement, still the purchase must be completed; and that if it be not an estate, but an equitable right only, no settlement is gained. The principle deducible from these cases is, that the relation of trustee and *cestui que trust* must be created in order to give a settlement by the purchase. In *Rex* v. *Geddington* the agreement was to purchase an estate for 310*l.* of which 160*l.* was to be paid on the 30th November, and 150*l.* on the 24th June then next. The latter sum was never paid. The pauper resided a year and a half, and afterwards the contract was rescinded; there, by paying 150*l.* a perfect equitable estate would have been acquired; but it was never paid; therefore the pauper was held never to have had a perfect equitable estate. Here the pauper had paid 30*l.*, and by paying 10*l.* more he would have performed all he was bound to do, and would have acquired a perfect equitable estate. During the whole time the pauper was in possession, he might have been removed. He never was the purchaser of an estate or definite interest. It has been argued that the payment of the 10*l.* would have given the purchaser a right to demand a conveyance; and that as it might have been made at any time, the payment, when made, related back to the time when the occupation began, and therefore that the estate by relation was the estate of the purchaser from the time his occupation commenced. I think, however, for the purpose of a settlement, such a payment did not give him the estate *ab initio*, but only from the time the payment was actually made; the expression of my brother *Holroyd* in *Rex* v. *Geddington* as to the vendee having acquired a settlement by having paid or offered to pay the remainder of the purchase money must be understood in that sense." *Holroyd*, J. "The pauper in this case never was in possession of the estate after he had paid the 10*l.* He therefore never came to settle upon his own estate. A tender of the purchase money might perhaps have been equivalent to payment, upon the principle that an offer to perform is equivalent to actual performance; but then in that case, in order to give a settlement, the purchaser, at the time of the tender, must have had a right to continue to hold the premises. Here at the time when the payment of the residue was made, the purchaser had no right to hold possession of the premises." Order confirmed.

Payment of purchase money has no retrospective effect.

Rex v. *Woolpit*, 4 *D.* & *R.* 456; 2 *D.* & *R. Mag. Ca.* 272. John Pennell was removed from Woolpit to Coombs. Order quashed. That part of the case on which judgment was given stated that the pauper, by a written contract, agreed to buy some cottages for 70*l.*, and paid 10*l.* of it "at the time." He never paid any more, nor was any conveyance executed. He built on the garden, but never lived on the premises. *Bayley*, J. "After *Rex* v. *Geddington*, (p. 915,) which was founded upon *Rex* v.

Payment of a deposit does not give an equitable estate.

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An equitable *estate* is necessary to give a settlement. An equitable *right* is not sufficient.

Long Bennington, it is quite idle to contend that the mere payment of a deposit upon the purchase of an estate of this description is sufficient to create such an equitable estate as will confer a settlement or render the party irremovable. Those cases have decided that an equitable right is not sufficient to confer a settlement, or make the pauper irremovable. There must be an equitable estate actually vested to produce these consequences. It is impossible to say that this pauper ever had an equitable estate. He had an equitable right; that is to say he had a right, upon the payment of the remainder of the purchase money, to go into a court of equity, and call upon the vendor for a conveyance. He had an inchoate equitable right, but clearly had not an equitable estate. It never could be predicated of him that he had a right to go into a court of equity and demand a conveyance of the estate at all events, and say that he was seised in his demesne as of fee, in equity." *Holroyd*, J. "I am also of opinion that, so far from the pauper having an equitable estate, he had not even a right to go into a court of equity until he had tendered or signified his consent to pay the remainder of the purchase money; and if it was refused on the other side, and he had filed a bill in equity, notwithstanding the refusal, the bill, I should presume, would be dismissed with costs. He had no right to go into equity unless he had done, or offered to do, all that was necessary on his part to perfect his title." *Littledale*, J. "He had no right to go into equity unless he did something else which he had not done." Order of sessions quashed.

A father, upon parol agreement, advanced money to his son, on condition of his purchasing a piece of land and building a house thereon, which the father and mother were to occupy during their joint and separate lives, but not to dispose of the same; the father, after living in the house three years rent free, died: Held, that he had no legal or equitable estate in the house, and that the occupation conferred no settlement; nor was the mother entitled to reside in it irremovably.

Rex v. *Standon*, 2 *M. & Sel.* 461. Removal from Eccleshall to Standon confirmed. Case:—Ann is the widow of Joseph Farmer, deceased. Five years ago Joseph, their eldest son, agreed to give 65*l.* for a piece of land in Eccleshall, which was offered to sale by the commissioners under an inclosure act; but not having sufficient money himself, he applied to his father, who consented to advance him 20*l.*, (which had been left to his wife, Ann,) upon the following conditions:—viz., that a house should be built by the son upon the land, which the father and mother were to have for their lives, and the life of the survivor, after whose death the same was to go to the son; but it was also agreed that the father and mother were not to sell or dispose of the place, nor to take any other family into the house. The father was at that time advanced in years, and the son wished to show his good will towards him and his mother, and to assist them all he could. This agreement was not reduced into writing, but the father having advanced the 20*l.* to the son, the whole 65*l.* were then paid by the son for the purchase, and the land was conveyed by the award of the commissioners to the son in fee. The house was built immediately afterwards at the son's expense, but the father assisted personally in building it. When finished, the father and mother took possession of it with the consent of the son, who did not think himself at liberty to turn them out, nor did he ever attempt to do so. The son lived in another house, and his father and mother paid no rent to any person; and after having resided in the house about three years, the father died, and the mother continued to live in it as before, with the son's consent, until her removal under the order to Standon. Lord *Ellenborough*, C. J. "It appears clearly that no estate, either legal or equitable, was conveyed to the father or mother, nor any such interest probably as a court of equity would have decreed to be conveyed. They had nothing more than a conditional and qualified licence by parol to occupy, irrevocable perhaps, except on breach of the condition not to let in any other person. This is not like the case of a devise; here is no gift or grant of an interest in the land; and the parties seem to have been aware of that, for they stood by and suffered the whole to be conveyed to the son, resting merely on his parol licence that they should live there." *Le Blanc*, J. "The ground on which this case is rested is, that a party cannot be removed from his own estate. The cases decide that if a party has clearly an equitable estate, he shall not be removed from it. But the court must see clearly that he has an equitable estate, which would be perfected in him by the intervention of a court of equity. I think the argument here has

failed in showing that these parties could, by resorting to a court of equity, have obtained a conveyance of the legal estate."

3. *By Purchase for Pecuniary Consideration.*

An equitable estate may be acquired by a bond from the legal owner.

Rex v. *Lopen*, 2 *T. R.* 577. A woman, on her marriage with a copyholder of a manor where the widows were entitled to free bench, gave a bond that the son of her intended husband, by a former wife, should have possession of part of the copyhold after her husband's death, on condition of his repairing the whole. At the husband's death the son took possession. It was urged that as the bond was without consideration, a court of equity would not compel performance. *Buller*, J. "It was not a voluntary bond, for it was executed in consideration of marriage, and the widow reserved in it a benefit to herself. But this is an instrument obligatory at law. There is another circumstance decisive in this case; the widow was so satisfied that she was bound by the bond, that on the death of her husband she actually delivered up possession according to the contract; and from that time till 1768 the pauper's father (who was the son mentioned in the bond) continued in possession under an idea that he was entitled under the bond. This man then, so in possession, had a good title against all the world but the widow; nay, the widow herself was so far bound by the bond, that she could not have recovered in ejectment. So that he not only had an equitable title, but he had also the possession, and no person could have recovered the estate from him."

A father, in consideration of natural affection and of 24*l.* which he owed his son, made over to him premises *by verbal agreement* only, and the son received the rents for three years: This is a *purchase* for less than 30*l.*

Rex v. *Piddlehinton*, 3 *Bar. & Adol.* 460. John Northover was removed from Piddlehinton to Charminster. Order quashed. Case:—On the 13th October, 1813, J. Browne and his wife, in consideration of 40*l.*, demised to William Northover, the pauper's father, a cottage in the parish of Stratton, Dorsetshire, for sixty years. The pauper, by a verbal agreement with his father, who owed him 24*l.*, was put into the possession of and received the rents of the cottage for three years, 3*l.* for the first year and 5*l.* for the two next years. At the end of which term, by indenture dated the 4th of November, 1816, between the said W. Northover of the first part, the pauper of the second part, and one Thomas Bowring of the third part, reciting the deed of October, 1813, and that the father, since the delivery and execution thereof, had, in consideration of his natural love and affection to his son (the pauper), and also in liquidation of a certain debt due to him, verbally, and without any assignment or conveyance, given to his son the said cottage, and put him in possession of the rents, and that the pauper had contracted to sell the premises to the said J. Bowring; the father, by the direction, approbation, and consent of the pauper, in consideration of 25*l.*, assigned and conveyed the said cottage to Bowring, and the pauper ratified and confirmed the conveyance. The father and the pauper joined in the usual covenants to the purchaser. The pauper received the 25*l.* purchase money from Bowring. During the three years above-mentioned, the pauper resided in the parish of Stratton; and upon this evidence the sessions were of opinion that he had gained a settlement there. It was contended, that this was not a purchase but a gift, as in *Rex* v. *Ufton*, p. 903. But *per Curiam:* "That is where there has been an actual conveyance. Here there was none, and the pauper could not ground an equitable interest on natural love and affection; such interest, if he had any, must have rested on the pecuniary consideration, and that was below 30*l.*" Order of sessions quashed.

IV. Of the Residence.

4. *Of the Residence.*

It is essential to the perfecting of a settlement in respect of *estate*, that the owner should have *actually resided* in the parish where it is situated for full *forty days*, and whilst his interest continued. After he has so resided for that time he has acquired a perfect settlement, and cannot be removed. Although a pauper may not by residence be able to acquire a settlement, as the purchaser of an estate for less than 30*l.*, yet he may be irremovable. *Rex* v. *Martley*, p. 908. If he quit the parish voluntarily, he cannot be removed thither, unless he has acquired a settlement.

4. *Of the Residence.*

The pauper however will not now retain a settlement acquired by estate in any parish for any longer time than he inhabits within ten miles thereof. See 4 & 5 Will. IV. c. 76, s. 68, and the cases on this statute, p. 855.

Settlement lost by non-residence within ten miles.

Residence in the parish sufficient.

Ryslip v. *Harrow*, 2 *Salk.* 524; 2 *Bott*, 673. By *Holt*, C. J. "Having land in a parish will not make a settlement, but living in a parish where one has land will gain a settlement without notice: for the act never meant to banish men from the enjoyment of their own lands."

Residence by the wife, where husband is absent, on an estate devised to wife, is not sufficient.

Berkhamstead v. *St. Mary, North Church*, 2 *Sess. Ca.* 182; 2 *Bott*, 51. J. Woodward, the husband, ran away, and it was not known whether he was alive or dead. In the mean time the wife had two houses devised to her in North Church, and she and her children went to live in one of them. The question was, whether by continuing therein forty days they gained a settlement. Lord *Hardwicke*, C. J. "As this case is stated, the mother cannot gain a settlement for her children: the father, whilst alive, is the head of the family, and the children must derive their settlements through him. As to the cases of *foreigners* or *Scotchmen* who have no settlements, they are singular cases, and the wife gains a settlement through necessity: but there never was an instance where the wife was held to acquire a settlement during *the life* of her husband. The husband, in right of his wife, has a title to live at N. C., but he can gain no settlement there without a residence for forty days. There must be in all cases an inhabitancy; the wife's inhabitancy at N. C. with her children is not the inhabitancy of her husband. A *feme covert* cannot by residence gain a settlement for her husband; the only doubt is, whether, as he is stated only to have been a clerk, we are bound to look on his appointment as for life." *Page* and *Probyn*, Js., agreed. *Lee*, J., seemed to think that the mother could gain a *right of residence* for her children at N. C., but he admitted that she could not gain *a settlement* for them during the father's life.

Residence for less than forty days is insufficient.

Rex v. *West Shefford, Burr. S. C.* 307; 2 *Bott*, 677. John Bird came into West Shefford with a certificate from Baydon. During his stay at West Shefford he became beneficially entitled to a leasehold estate of 14*l.* a year there, determinable upon his own life; upon which he entered on November 17th, and continued in possession till the 15th of December following, being twenty-eight days only, when he died. By the Court: "In all cases, whether of ownership of land or renting 10*l.* a year, a residence of forty days is necessary. And *Mursley* v. *Grandborough*, (p. 884,) was cited as in point, in which it was holden that any person who has an estate of his own, either freehold, copyhold, or a beneficial term for years, by act of law (as by descent, marriage, executorship, or administration,) may dwell upon it as his own, and he is not removable, and will gain a settlement if he continue forty days, though under 10*l.* a year. But he must abide forty days. And neither he nor his can be removed to it from any other place, unless he shall have resided forty days.

It is not necessary to reside on the estate or successively for forty days.

Children, part of the family, though living elsewhere, follow such settlement.

Rex v. *Sowton, Andr.* 345. T. Willes, the pauper, rented an estate in Sowton at 100*l.* per annum, and being distrained, left the estate, and having an estate in his own right for a term of years, of the value of 19*l.* 10*s.* per annum in Sidbury, went there and took possession of the estate. He continued at Sidbury from November to April, weeding the ground and sowing turnips therein, but paid no taxes and had no stock on the lands, nor any goods in his house at Sidbury, but lodged at a public-house there, without having a particular room assigned to him. He continued there forty days in the whole, but not successively, and went frequently to Sowton to see his wife and children, who were left behind, and remained at Sowton, where he stayed sometimes a week at a time. Afterwards, in April, he sold his estate, and went back to Sowton, from whence he was removed. *Lee*, C. J. "The pauper had certainly no settlement at Sowton if he obtained one at Sidbury, which is the point in question. And to determine this, it is proper to be considered whether it appears he had such an interest in the estate as was properly his own, and contra-distinguished to a rack-rented estate. The case is not stated so fully as it should have been; for it should have been shown by what title the pauper came by the estate, whether by act of

4. *Of the Residence.*

law as an executor, or by devise or purchase, or in what other manner. As this is not done, we cannot intend that he was a purchaser thereof, and consequently this case does not fall within the late act. However, upon the circumstances set out in the sessions' order, the estate does seem to be of a beneficial nature, and the pauper is mentioned to have had it in his own right, and consequently the *quantum* of the value is not material, because the owner has a right to be where his estate lies, and so it has been determined. The next matter to be considered is the pauper's residence at Sidbury. It is rightly admitted at the bar, that it is not necessary, upon the statute of Car. II., the continuance should be for forty days successively. In *Edgeware* v. *Harrow*, (p. 862,) it was held, that a residence for forty days, where the party is irremovable for that time, gains a settlement. And upon the old law, when a man came to a place, on the first day he was regarded as a stranger; on the second as a guest; and on the third as an inhabitant: and a place of settlement (which is a modern term, and has arisen from the acts of removal,) is a place of habitation. Now in this case it is plain, from what is said under the former head, that the pauper was irremovable whilst he was at Sidbury; and though he lodged at a public-house, this is not very material, because a man may have 100*l.* a year in a parish, and no house there. And the reason of his going to Sowton and other places is mentioned to be for the purpose of seeing his family, and about his affairs. Objected: That the party's settlement at Sowton was not determined, because it does not appear he was absent from thence for forty successive days. Answer: This point depends on the question whether he was long enough at Sidbury to gain one there; for if so, then he loses his former settlement at the other place. Upon the whole, therefore, we must take the estate to be a beneficial interest, and the property of the pauper. And his residence at Sidbury was such as is sufficient to gain him a settlement there. As to the other point, there has been some diversity of opinion amongst the judges, how far the settlement of children shall be derived from that of the father. In *Edgeware* v. *Harrow* it was said by *Parker*, C. J., 'That a child cannot be sent to the place of the father's settlement unless the child hath been there; for that he derives a settlement from his father, not as he doth an inheritance, but by reason of his being in a place from whence he could not be removed whilst he was with his father. But in *Eversley* v. *Blackwater*, (p. 445,) where that objection was taken by Mr. Reeve, the court held that a child may be sent to the place of his father's settlement though he hath never been there, which was that case, but the child was only two years old. In *East Woodhay* v. *West Woodhay*, (p. 435,) where the child was of a considerable age, and parted from his father, it was held that he could not be sent to the place of his father's settlement: and so it was resolved in *St. Michael's, Norwich*, v. *St. Matthew's, Ipswich*, (p. 435,) where the child had been twelve years parted from his father, and emancipated from him, and also married. This therefore is the true distinction, that where a child remains in his father's house, and has gained no settlement of his own, his settlement shall attend that of his father; but otherwise it is where he has been separated from his father and has gained a settlement of his own. The consequence is, that as in this case the children have always continued in the father's family, and it is not stated that they have gained a settlement of their own, though some of them are twenty or thirty years old, they are settled where the father is. And the law is the same in the case of a mother as of a father." The rest of the court was of the same opinion with the chief justice upon both points, and for the same reasons, and therefore the order of justices was now confirmed, and the order of sessions quashed.

The forty days need not be successive.

Rex v *St. Nyott's, Burr. S. C.* 132; 2 *Bott*, 676. Nicholas Penquite, the pauper, was born at St. Cleere; afterwards he gained a settlement at St. Nyott's; and from thence returned to St. Cleere, and lived there with his mother on a tenement, in part of which he had an estate of freehold and inheritance, and of which he was seised in common together with his mother and sisters. He worked there as a day-labourer, and lodged some-

4. *Of the Residence.*

times on his own estate and sometimes in other places, where he worked in St. Clere, and at other times in other parishes adjoining; but did not reside on his estate in St. Cleere, or in St. Cleere, forty days together at any one time between his return to and selling his estate in St. Cleere (about three years). By the Court: "This depends on the 13 & 14 Car. II. which directs the sending a pauper to the place where he was last legally settled for the space of forty days. But this man continued off and on for more than forty days. And it is not necessary that he should have resided there forty days together. He was irremovable from St. Cleere for above forty days; and that is sufficient."

IX. Of Settlements by Office.

No settlement can now be acquired by serving an office. Before however the 4 & 5 Will. IV. c. 76, it was observed by Lord *Ellenborough*, that "a man who is of sufficient repute and station among his neighbours to be appointed to a public annual office, and who discharges the duties of such office for that period, seems peculiarly entitled to the privilege of a settlement in the parish where he has been thus known and employed. The law therefore which is to this effect, carries with it an obvious propriety, not so easily to be discerned in some of the other species of settlement." *Rex* v. *Mersham*, (*post*).

Though the service of an *office* may not gain a settlement, because it is not a *public annual office*, yet it may amount to an *hiring and service.*

1. *Statutes on the Subject.*
2. *What Office, and what placing therein, will gain a Settlement.*
3. *Of the Time of Serving.*
4. *Of the Residence.*

1. *Statutes on the Subject.*

1. Statutes on the Subject.

The 3 & 4 W. & M. c. 11, s. 6, (*a*) enacts, "That if any person who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any public annual office or charge in the said town or parish, during one whole year, then he shall be adjudged and deemed to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required."

Certificated person must be *legally placed* in his office.

And the 9 & 10 Will. III. c. 11, enacts, "That no person or persons whatsoever, who shall come into any parish by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bona fide* take a lease of a tenement of the value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office."

From and after the passing of the 4 & 5 Will. IV. c. 76 (Aug. 14, 1834), no settlement shall be acquired by serving an office.

2. *What Office, and what placing therein, will gain a Settlement.*

2. What Office, and what placing therein, will gain a Settlement.

The nature of the office is defined by the enactment itself;—it must be an *annual* office or charge, and *public* in its nature, and the party must have been legally placed in such office. The act also requires that the person shall *execute* it for *himself* and on his own account, to entitle him to a settlement thereby: it follows that one who fills the office for another person, or a deputy, gains no settlement.

A person sworn into and serving the office of constable, as deputy to another, does not thereby gain a settlement. (19 *Vin. Abr.* 379.)

(*a*) "This statute was evidently intended to be confined to *inferior* annual officers, such as constables and the like known to the parish, and though the construction of the act has been extended in some cases, it ought not to be carried further." Lord *Kenyon* in *Rex* v. *Wantage.*

2. *What Office will gain a Settlement.*

Deputy constable gains no settlement.

Rex v. *Winterbourn*, *Burr. S. C.* 520; 1 *Bla. Rep.* 452 (*a*). The custom was for the constable to be presented by the jury at the leet. The jury presented R. Bayly, Esq., who procured the pauper to serve for him, in order to gain the pauper a settlement. The pauper accordingly was sworn into the office by a justice, and served the same for a year; but was not presented thereto at the court leet as constable in his own right. The court were clear that this was not serving an office on his own account, within the intent of the statute.

Same point.

Rex v. *Allcannings*, *Burr. S. C.* 634; 2 *Bott*, 242. The house occupied by Mr. Amor, being in turn to furnish a tithingman for Patney, the leet jury presented him to that office. And he, by leave of the court leet, put in his place Thomas Palmer, a common labourer and housekeeper, living in the parish, who was sworn in at the leet, and served the office for a year; Amor paid him all expenses attending the execution of it. Lord *Mansfield.* "The question is, whether the pauper served the office *on his own account* or not? The question is not how he was *presented* to it, but how he *served* it;" and after stating the facts, said, "It is clear that he executed the office for Amor, and not for himself." The rest of the court concurred, and *Yates*, J., said, "In the case of *Winterbourn* (*ante*), the pauper was considered as a substitute."

But a constable residing under a *certificate* and sworn into his office, and executing it by deputy, gains a settlement under 9 & 10 W. & M.

Rex v. *Hope Mansell*, *E.*, 23 Geo. III., *Cald.* 252. James Davies, &c., was removed from Hope Mansell to Brampton Abbotts. Order quashed. Case:—D. Davies, being a *certificate* person from Ross to Brampton, resided at Brampton, where his son the pauper was born: the son lived in the parish, was chosen constable, and sworn to execute the office. After being so sworn, he declared he would not serve himself, and employed and paid another to serve for him; and the court were of opinion that the pauper having been sworn into office, and executing it by deputy, discharged the certificate and acquired a settlement.

But not under 3 & 4 W. & M.

In *Rex* v. *St. Maurice*, *Winchester*, *Burr. S. C.* 34, *Lee*, J., in alluding to *Rex* v. *Burclean*, said, "In that case the court unanimously held, that this act (9 & 10 Will. III.) was not to be considered as an explanatory, but a *new* act;" and he added, "And that is true; for it enlarges the certificate man's power of gaining a settlement: for now, if he executes such an office by deputy, he gains a settlement: whereas by 3 & 4 Will. and Mary, he was to execute it for himself, and on his own account."

Parish clerk is an annual office.

Gatton v. *Milwich*, *Set. & Rem.* 241; 2 *Salk.* 536; *Fol.* 123; 2 *Bott*, 157. A person being chosen *parish clerk* by a parson, served for several years, and received his fees and dues. By the Court: "It is a parish office, and has the care and custody of the ornaments of the church. 'Tis more than an annual office, for he is not movable and has fees: he is by common law an officer, and in for life. 'Tis true, if he is poor and has a family, they may remove him: for although he came in by the parson only, yet their not removing him implies their consent and approbation; and by this consent of theirs, the law adjudges him in by the concurrence of the parish."

The office of parish clerk is an office within the statute.

What is a legal appointment and notice to the parishioners.

Rex v. *Bobbing*, 5 *A. & E.* 682. H. Smart was removed from Barning to Bobbing. Order confirmed. Case:—The pauper being settled in Bobbing went, in 1797, to Barning and resided there till removed by the present order. In 1811, the offices of parish clerk and sexton of Barning being vacant, Mr. Noble, then rector of the parish, sent for the pauper on a Sunday in that year, and requested him to perform the duty of clerk for that day. He did so, and Mr. Noble on coming out of the desk, said to him, "I shall appoint you my regular clerk and sexton, and to follow me in marriages and funerals." The pauper thereupon, without anything being further said or done, entered upon the execution of the duties of the said office, and continued to perform all the duties, and to receive the emolu-

(*a*) Mr. *Nolan* cites this case as an authority for saying that under 3 & 4 W. & M. a person must be *appointed* to the office; but the case as reported in *Blackstone* corresponds with the text.

2. *What Office will gain a Settlement.*

ments from them till 1833.' Soon after the pauper entered upon the office, two of the principal inhabitants objected to what the rector had done, inasmuch as the pauper was not settled in Barning: but the rector said, the pauper was the fittest person he could find, and that he therefore should persist in what he had done. A salary of 1*s.* per week was attached to the offices, and had been paid by the parish to the person who had previously filled them; and the pauper applied for this at the end of the first year. The overseer to whom he applied at first refused payment, assigning as a reason that the pauper was not settled in the parish; but the rector having threatened to take legal proceedings against the parish officers, the salary was paid to the pauper by the overseer, and continued to be paid by the parish to him for four or five years without any objection on their part. At the end of that period, the pauper applied to the parish for an increase of salary; and the subject having been taken into consideration at a vestry meeting, it was at such meeting agreed to raise the salary to 1*s.* 6*d.* a week, and at this rate the pauper was paid during the remainder of the time he served. The counsel against the settlement contended that there had been no formal notice of the appointment to the parishioners, upon which *Patteson*, J., observed: "Some parishioners understood it as an appointment, and remonstrated with the rector, who said he should persist. Then the parish pays the salary and increases it. Can you say there was not an appointment and notice of it to the parish?" After the argument, Lord *Denman* said: "*Gatton* v. *Milwich*, (p. 923,) shews that the office of parish clerk gives a settlement, and that case has not been overruled. And this was a distinct appointment to the office." The other judges concurred; and the order of sessions was quashed.

The pauper must have been legally *placed* in an annual office. A person performing the duties of a parish clerk without any appointment, legal or *de facto*, does not acquire a settlement, although he performs the duties for twelve years, and receives an annual salary.

Rex v. *Stogursey*, 1 *B. & Ad.* 795. Joel Leversham was removed from Stogursey, in the county of Somerset, to Kilton. Order quashed. Case:—The office of parish clerk of Kilton being vacant in October, 1818, the pauper began then to perform the duties of that office, and continued to perform them until his removal in January, 1830, and until the order appealed against, and received a yearly salary of 2*l.* 13*s.* from the parish; but neither he nor any other person was, during that period, chosen to the said office by the vicar, in whom the appointment is vested, nor was any such choice signified to the parishioners according to the canon. The pauper, when he first served the office, was resident in the parish of Kilve. On the 2nd of February, 1819, he took a lodging in the parish of Kilton, and resided there until the 25th of March following, when he went to the parish of Stogursey, where he has since continually resided. The question for the opinion of the court is, whether the pauper gained a settlement in the parish of Kilton. Lord *Tenterden*. "I think the order of sessions must be quashed, on the ground that there was no execution of an office. In my own opinion, there is great doubt whether this be an annual office within 3 & 4 Will. & Mary, c. 11, s. 6. It is not so, strictly speaking, for it is more, it is an office for life. *Gatton* v. *Milwich*, (p. 923,) can hardly be said to have been decided on the ground that the office was annual. *Powell*, J., there says, 'It is more than an annual office, for he is not removable, and has fees.' And in *Helsington* v. *Over* (*post*), *Aston*, J., (a judge very well acquainted with the poor law) after observing that the employment of officiating curate under a sequestration cannot be called an annual office, when the sequestration may be determined at any time, adds, 'It is not the annual office of a constable or a tithing-man, they are appointed yearly, and to serve for the year. That of parish clerk is a freehold, and it is upon that footing that a parish clerk gains a settlement' I doubt therefore whether this be a public annual office within the statute. But assuming that an office for more than a year might be so considered, it appears to me that in this case the pauper cannot be said to have executed the office. There is indeed a difference between the statutes 3 & 4 Will. & Mary, c. 11, and 9 & 10 Will. III. c. 11. Under the last, it is necessary that the party, to gain a settlement by serving an office, should have been legally placed in it; under the former, if the office has actually

A curate under a sequestration does not hold an *annual office.*

been executed, it is not necessary to inquire whether the placing was legal. But here the party was never in any way placed in the office. The case merely states that he performed the duties from a certain time. The only proper appointment would have been by the vicar. If however he had been elected by the parishioners, and the vicar had afterwards assented, it might perhaps have been said that the service under such election was a good execution of the office. But here was not even a colourable appointment. The pauper only did the duties which a legal parish clerk, when appointed, would have done" *Littledale*, J. "It is not necessary to decide now whether or not the office of parish clerk be a public annual office within the statute, though I am rather inclined to think it is. But here the office was not executed. It is true the pauper served twelve years; but whether it were twelve or one makes no difference. The case merely states that the office of parish clerk being vacant in October, 1818, the pauper began then to perform the duties and continued doing so down to the time of his removal. It shows no appointment either by any person entitled by custom or otherwise. If there had even been such an appointment, as though not legal in the first instance, might ultimately have been rendered so, perhaps a settlement might have been gained. But here was no appointment whatever, and consequently no execution of the office" *Taunton*, J. "Whether this be an annual office or not it is unnecessary to decide, and perhaps the necessity may never arise, because a parish clerk duly appointed has at any rate a settlement by freehold. It is not pretended in this case that the pauper was legally placed in the office within the terms of 9 & 10 Will III c. 11, and it appears to me that he never was placed in it at all. He appears by the statement to have put himself into the office, and there done what would have been performed by a parish clerk if one had been legally appointed, but he himself never was appointed, elected, or nominated, he merely did the duties and received the salary I think this was not an execution of the office within the meaning of 3 & 4 Will. & Mary, c. 11, and that no settlement was gained" Order of sessions quashed. (*a*)

2. *What Office will gain a Settlement.*

A parish clerk acquires a settlement in respect of his freehold.

Rex v. *Yalding*, 3 *D & R* 352; 2 *D & R Mag Ca* 39 Order of removal of John Russell from Yalding to Marden quashed. Case —The manor of Aylesford is a manor of the ancient demesne of the crown, the court-rolls of which have been regularly kept for a long series of years, and the borough of Rugmorhill is a district within the manor, extending into seven parishes, and some part of it lying within the parish of Yalding At a court leet holden for the manor, it has been usual, from time immemorial, to appoint constables and borsholders, such officers being always expressed to be appointed to serve "for the year ensuing," and sworn to discharge the duties. A custom of appointing an ale-conner at the court-leet has also existed in the manor from time immemorial, but it does not appear that that officer was ever sworn to execute his office Since 1793 the office of weigher of weights and measures has been added to that of ale-conner. These latter, as well as the street-driver, have been appointed from time to time at the same court-leet as the constables and borsholders, although not expressed to be "for the year ensuing." At a court-leet holden in 1750 a street driver of the borough of Rugmorhill was appointed for the first time. Similar appointments took place in 1753, 1764, 1772, and 1784, and from that time to the present thirty-eight courts-leet have been held, at each of which a street-driver has been appointed, with the exception of 1798, no court having been held in that year. But in 1799 two courts-leet were held, one in January and one in November, at which the appointments

The court leet of the manor of A. appointed a person to be street-driver of the borough of R, a district within the manor, extending into seven parishes, to continue from one court to another It is not an annual office

(*a*) In *Rex* v. *St Mary, Berkhamstead*, 2 *Sess. Ca.* 182, the court seemed to be of opinion, that the executing the office of *parish clerk* is sufficient for a certificate person to gain a settlement, for it is an *annual office* and more.

In *Peak* v. *Bourne*, 2 *Stra.* 942, the plaintiff declared in prohibition, for that he was sued for serving the office of deputy parish clerk, without the licence of the ordinary; and the court held, that a licence was not necessary.

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were in the same form as in other instances, so that such officer, together with the constables, borsholders, &c., has been appointed on the days of holding the court-leet, which have occurred at intervals, sometimes of more, and sometimes of less, than a year; but it does not appear that he was ever sworn to discharge the duties of his office, or that there is any oath applicable to the office. In the record of the proceedings of a court-leet holden for the manor of Aylesford on the 19th of January, 1813, is the following entry:—"Also they present and appoint John Russell to be street-driver of and within the borough of Rugmorhill, within the manor." On the 8th of January, 1814, the pauper was again appointed in a similar form, and a third time on the 20th of February, 1815. The pauper never appeared at the courts at which he was nominated, and was never sworn. He discharged the duties of the office in person from the 19th of January, 1813, up to his re-appointment on the 8th of January, 1814; he also served in person for a short period after his re-appointment in 1814, but another person, to whom he paid no compensation, served at his request in his stead during the remainder of 1814, and after his appointment in 1815; including, however, his services under the first and second appointments, he served the office in person for more than a whole year. During 1813, 1814, and 1815, he resided in the respondent parish, but not in that part of it which is situate within the borough of Rugmorhill, where his duties were to be executed. He was not residing under a certificate. It was urged that *St. Thomas, Winchester*, v. *St. Mary, Winchester*, was decisive to show that the service was sufficient, though it did not extend through the whole parish. [*Bayley*, J. "There the pauper executed the office throughout the whole of the parish in which he resided, and therefore it was fairly to be presumed that it was notorious to every inhabitant of the parish, that he did in fact hold the office."] It was urged that the duties of the office need not extend over the whole of the parish in which the pauper resides. [*Bayley*, J. "Is there any case in which it has been held, that the serving an office in one part of the parish, and residence in another, affords sufficient notoriety, and is a sufficient service to confer a settlement?"] It was also urged that residence in any part of the parish is sufficient. *Bayley*, J. "That will hardly be enough to support this settlement; but independently of that point, can this situation be called an 'office' within the meaning of the statute? It is unnecessary to go more at large into the objections raised upon the face of this case, because it is perfectly clear that the office held by this pauper is not a public annual office or charge within the meaning of this statute. This person was appointed at one court-leet to serve till the next; the interval between the two courts did not amount to a year, and the courts were held at various intervals *ad libitum*. Therefore he was neither appointed for a year, nor did he serve a year; the office was neither in its nature annual, nor was the appointment to it annual; and one or the other of those characteristics is absolutely necessary. I entertain very considerable doubt whether his residence was such as to afford due notoriety of his being the person who held the office, and also whether, not being sworn, he was legally invested with the office; but it is not necessary to decide those points, because the settlement is evidently insufficient upon the ground already noticed. This is not a public annual office in its nature, and the pauper was not appointed to it for a year; and therefore it is not such an office as is necessary to confer a settlement." *Best*, J. "Upon the point last alluded to by my brother *Bayley*, it is quite clear that no settlement has been gained in this case. There must be either an appointment to an office to serve for a year, or an appointment to an office which by its nature is annual; and here there is neither the one nor the other. I am also inclined to think that the pauper's residence was insufficient. The principle upon which the courts have been accustomed to decide what is or is not good residence, is, that there shall be such a residence as necessarily renders it notorious to all the parish that the officer is within it. Now here there is no such notoriety, nor from the very nature of the residence can be. This case

Semble the residence must be in the parish where the office is served.

also comes within the very distinction laid down by Lord *Kenyon* in *Rex* v. *Whittlesea*, (p. 928,) namely, that an appointment by the parish at large is good, but that by individuals is not; because this pauper was clearly appointed by a portion of the parishioners only." Order quashed.

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A pauper in 1825 was sworn in as *pinder* before two justices, (being ordered to be sworn by a few occupiers only, and not at a public meeting,) and served as such for several years, the office being unknown in the parish previously: he gained no settlement.

Rex v. *Clixby*, 1 *Nev. & M.* 118; 4 *Bar. & Ad.* 153. W. Clayton and family were removed from Caistor to Clixby. Order confirmed. Case:—Clixby belongs, with the exception of about twenty acres of land, to one proprietor, Mr. Harman. There are nine occupiers of land in Clixby, including Harman, who retains some portion of his estate in his own hands; he holds no courts. The pauper (the only witness examined) stated that he had known the place thirty-three years, and had never known or heard of any pinder there before 1825. In 1825 Harman and two other occupiers of land in Clixby, of whom Mr. Lawrence, constable of Clixby, was one, ordered the pauper to go and be sworn in pinder. It did not appear in evidence that there was any public meeting of the parish, or any other meeting, to appoint him. The pauper went with Lawrence to a justice of peace, and was sworn in. He impounded cattle in Clixby in that year, and continued to do so for several years, till he was removed. In 1826 he was again sworn in before two justices of the peace. During all this time he resided in Clixby. The sessions found that this was a public annual office. *Denman*, C. J. "The sessions have found this to be a public annual office, subject to the opinion of this court on the evidence. We think their finding is not warranted by the facts which they have stated. The office of pinder in this parish is not proved to be ancient, for it is not known that there was any such officer before 1825. Nor was the pauper appointed by any authority known to the law. The hog-ringer is an annual officer of great public utility, appointed at the court-leet. It is not necessary to decide generally whether a pinder properly appointed be a public annual officer within the act; it is sufficient to say, that under the circumstances of this case the office was not in this parish a public annual office." The other judges concurred. Order of sessions quashed.

Office of town-crier is sufficient.

The office of bellman and town-crier is an annual office within the statute, and will give a settlement in that parish wherein such officer resides, if his office extends over several parishes of which the town is composed. (See *Rex* v. *St. Nicholas, Hereford, post.*)

A sworn tithing-man for part of a parish is sufficient.

Rex v. *Fittleworth, Burr. S. C.* 238. A certificate man was elected and sworn a tithing-man for a tithing which did not extend through all the parish. By the Court: "*It is not necessary that the office should extend throughout all the parish;* the act only requires the executing some annual office in the parish."

Bailiff or ale-taster for a borough is an office.

Rex v. *Whitchurch, Burr. S. C.* 365; 2 *Bott*, 163. The pauper was nominated at the court-leet, and sworn in to the office of *bailiff* or *ale-taster* for the borough; and he executed the office for a year: the office consists in inspecting weights and measures within the borough, and in warning the jury to serve at the court-leet there: the borough is not one-sixth part of the parish, the bailiffs have never executed any authority over the parish at large, great part of the parish knew nothing of such office; new married men and new comers were frequently nominated for the sake of colt-ale. Ale-taster is an ancient and known officer, and as to the objection of the parish, *Rex* v. *Fittleworth* (*supra*) is in point, and this is a good settlement.

Tithing-man is an office.

Burliscomb v. *Sandford Peverell*, 1 *Stra.* 544. The sessions adjudge that the office of *tithing-man* is not such an office as that a man thereby shall gain a settlement. But by the Court: "The order must be quashed; for this is an annual office in the parish within the words and meaning of the act."

Whether a certificate man entering upon office immediately, but not sworn in till after

Holy Trinity v. *Garsington, Fol.* 123; *Sett. & Rem.* 95. A certificate man was appointed *tithing-man* by the steward of a leet. He served a year; but was not sworn in till half the year was expired. The court inclined that it was a good settlement; but being a new case, and somewhat

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doubtful, they ordered a second argument to this point, whether he was legally placed in the office, or not, as not having been sworn till half the year was expired? But the order was afterwards quashed for want of complaint that the pauper was actually become chargeable.

the expiration of a year, be sufficient, *ib.*?

A certificate man chosen borsholder, but not sworn in, gains no settlement.

Wingham v. *Sellindge*, 2 *Stra.* 1199; *Burr. S. C.* 223. A certificate man was told by his wife that the borsholder had left a *wooden tally* at his house, as a token that he had been chosen *borsholder* at a court-leet of the manor; but he did not know it of his own knowledge, nor was there any evidence of a presentment by the leet jury, or of his appointment or election, nor did he ever take the oath of office; but once he executed a warrant of a justice directed to the borsholder, and for that whole year he was willing and ready to execute the office. By the Court: "When an order of sessions states the facts specially, the court must take it, that the justices have stated all the evidence that appeared to them. Now the act requires a legal placing in the office. But it is stated here negatively, that there was no presentment, no admission or swearing. So that here is no foundation for supporting a legal placing."

He must be the officer both *de facto* and *de jure*.

A settlement gained by serving the office of hog-ringer for the parish.

Rex v. *Whittlesea*, 4 *T. R.* 807. Removal from Crowland to Whittlesea. Case:—The pauper, during his residence in Crowland, was legally chosen a *hog-ringer* for that parish for one year, at a court-leet for the manor of Crowland: he was presented by the jury for the office, and was sworn therein, and paid 4*d.* for the oath, and he served such office two years on his own account. The duty of such office is to attend the open commons to see that all hogs turned thereupon were rung, and such hogs as were not rung to take to the pound, which he frequently did, and he always received 1*d.* for impounding, and 6*d.* for ringing, each hog. The appointment to such office is of great antiquity, and serviceable to the inhabitants of Crowland. Lord *Kenyon*, C. J. "It is stated in the case that this is an annual office of great antiquity, and serviceable to the parish at large, and that there is an oath of office; therefore it seems to me, that it is a public annual office within the meaning of the act. *Every employment in a parish is not indeed equal to express notice, though it be a matter of notoriety to the parish.* It was once made a question, whether shoeing the horses of the lord of the manor was not equal to notice? But it was determined not to be equivalent. If this person had been hog-ringer to certain individuals only, he would not have thereby gained a settlement; but he was not merely an officer of A., B., or C., but of all the inhabitants of the parish. It has been held, that a tithing-man, a borsholder, an ale-taster, or a hayward, may gain a settlement by serving either of those offices; and the latter, whose duty it is merely to take care of the fences within his district, cannot be distinguished from this case." Order of sessions confirmed.

Hayward.

That of an assistant overseer is an office within the act, but the appointment must have been duly stamped. (*a*)

Rex v. *Lew*, 8 *B. & C.* 655; 3 *M. & R.* 369. Order of removal of W. Purlrick from Charlbury to Lew confirmed. Case:—The pauper was on the 16th of October, 1820, duly elected by the inhabitants of Charlbury an assistant-overseer, pursuant to the 59 Geo. III. c. 12. The vestry determined that the pauper should perform the duties and receive the salary mentioned in the warrant of appointment. On the 18th he was appointed by a warrant under the hands and seals of two justices; it recited that the inhabitants had nominated the pauper to be the assistant-overseer, and did fix the yearly sum of 10*l.* as and for the yearly salary for the execution of the office; it then appointed him to be the assistant-overseer, and authorised him to perform the duties, and receive the salary. It was not stamped: the pauper performed the office for a year. *Bayley*, J. "I have no doubt that the pauper held an office within the meaning of the 3 & 4 Will. & Mary, c. 11, and that he executed that office for himself, and on his own account. It was a public office in the parish; the duties were executed

(*a*) By 4 & 5 Will. IV. c. 76, s. 86, the appointment of any paid officer engaged in the administration of the poor laws shall not be chargeable with any stamp duty.

throughout the parish. He was appointed by the inhabitants in vestry assembled. I think also that it was an annual office; the pauper was to receive a yearly salary for executing the duties of it; and although he might be removed within the year, he would continue in the office for a year, unless something was done to determine it during that period. He had an estate for a year in his office, defeasible on a particular event, as in the case of a lease for a year, determinable by notice within the year. In that case the lessee is in the estate for the year, though it may be determined by notice. (*Rex* v. *Herstmonceux*, p. 798). The office held by the pauper was held by him in his own right, not as deputy of the principal overseer. The great difficulty in this case arises from the want of a stamp. If I were at liberty to conjecture, I should say, the legislature did not contemplate an appointment of this description, but I am bound to give effect to the words of the statute. The 55 Geo. III. c. 184, Sched. tit. *Grant*, requires that any grant or appointment made by any person to any office or employment by writing, where the salary, fee, or emolument, appertaining thereto, shall not amount to 50*l.* per annum, shall have a stamp of 2*l.* Here there is an appointment in writing to an office or employment where the salary does not amount to 50*l.* It is, therefore, within the very words of the act, and requires a stamp." *Littledale*, J. "The appointment requires a stamp. There are some general exemptions at the end of that part of the schedule which relates to offices, but this is not among them. I have no doubt on the other point. This is called an office in the act. It is from the nature of the thing an office. If an overseer be an officer, an assistant-overseer is equally so. It is also an annual office, for there is an annual salary; and although he may be removed within the year, still he is appointed to the office for the year." *Parke*, J., concurred. Order confirmed.

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See p. 931.

Rex v. *Hammond*, 2 *Bott*, 157. By *Pratt*, C. J. "Serving the office of collector of the land-tax is a sufficient office to gain a settlement within the 3 & 4 Will. III. c. 11, s. 6, for it is not necessary that the office should be a parish office; any office is sufficient, so that by the notoriety of it, it may be presumed that the parish had notice of the person's being come into the parish."

Collector of the land-tax is a public annual office.

Bisham v. *Cook*, 1 *Stra.* 411. The pauper lived in Bisham, and executed there the office of *collector of the duties* given by 6 & 7 Will. III. c. 6, on *births and burials*. It was moved to quash it, because this was not a parish office, and it would be giving the commissioners (who are to appoint the collectors) a power to bring what charge they would upon the parish; besides, it was not stated in the order that this was an annual office, as it must be to give a settlement within the express words of the act. By the court: "The reason why the executing an office gives a settlement without notice, is because of the notoriety of the thing, of which the parliament thought it impossible but the parish should have notice; can anything be more notorious than this, which is to collect a duty from house to house? We cannot suppose a fraud in the commissioners, that they would appoint a person of no substance to be collector, only to bring a charge upon the parish. It needs not to be a *parish office*, but a *public annual office in the parish*. And as to its not being said, that this man executed it for a year, we must take it he did so, because it appears, on looking into the statute, that the power given to the commissioners is to appoint *a person who shall be collector of the duties for a year*, and then give in his accounts. It hath been held a settlement in the case of the land-tax, and why not in this?" Order confirmed.

So also a collector of duties on births and burials.

It need not be a parish office, but *a public annual office in the parish.*

Helsington v. *Over*, *Burr. S. C.* 746; 2 *Bott*, 243. Order of removal of Rev. John Langhorn from Helsington to Over confirmed. Case:—On the 1st day of October, 1766, the vicarage of the parish of Over was sequestered for three years, or till the bishop should release the same. On the 12th of October, 1766, the pauper was ordained deacon, in order to supply the cure of Over during the sequestration. From the 15th of October, 1766, to the 15th of June, 1768, he, by an exchange with the curate of Acton, resided and did duty in Acton, but received his salary regularly from the sequestrators

A curacy under a sequestration is not a public annual office.

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of Over. From the 15th of June, 1768, to the 1st of October, 1769, he resided and did duty as curate at Over, when the sequestration ended. It did not appear that he had any licence to the curacy of Acton. Lord *Mansfield*, C. J. "There is no colour for considering this as an annual office; it is no office at all." And *Aston*, J., said, "You cannot call it an annual office, when the sequestration may be determined at any time. It is not like the annual office of a constable or a tithing-man. They are appointed generally, and to serve for a year. That of parish clerk is a freehold; and it is upon that foot that a parish clerk gains a settlement." Order quashed.

Nor an ordinary curacy.

Rex v. *Wantage*, 2 *East*, 65. R. Puzey, clerk, was nominated by the rector of East Lockinge to be curate of the same, and was duly licensed, with a yearly stipend of 45*l.* The licence authorised the party during pleasure "to perform the *office* of curate in the parish, &c., in reading the common prayer and performing other ecclesiastical duties belonging to the said office according to the form prescribed," &c. Puzey entered on the curacy the same year, and performed the duties for six years, during which he resided in the parsonage house in the parish. Lord *Kenyon*. "There is no pretence to say that this is an office the executing of which for a year will give a settlement. The 3 & 4 Will. and Mary, c. 11, s. 6, was evidently intended to be confined to inferior annual officers, such as constables and the like, known to the parish; and though in some instances the construction has been carried farther, yet I am not inclined to extend it to cases still farther from the contemplation of the legislature." Order of sessions confirmed.

Schoolmaster not a public officer.

Rex v. *Milborne*, 2 *Stra.* 1225. T. Membury was certificated from Sheepshead to Milborne, and staid there ten years, during which time Lady Elizabeth Hastings conveyed lands to trustees for several charities out of the profits; and among others the sum of 10*l.* a year to the charity school at Milborne, to be paid to the vicar there for the time being. In the special order of sessions it was stated that the certificate man officiated as schoolmaster several years, and received the 10*l.* a year from the vicar: and this the sessions held gained him a settlement in Milborne, where they declared he had a freehold estate; and so had both the requisites to obtain a settlement to a certificate person, namely, a tenement of 10*l.* a year, and executing an annual office. But by the Court: "The order must be quashed; a schoolmaster is not *an office*, but only *an employment*; and what interest T. M. had in the school, whether for life or otherwise, or how he came into this employment, doth not appear; and the legal right to receive the salary is in the vicar, who not caring to officiate himself has therefore paid it over to this man as his deputy, which could never give any person a settlement, much less a certificate man."

What is not a sufficient estate.

An appointment from one court till the steward should please to hold another confers no settlement.

Rex v. *Bow*, 8 *T. R.* 445. The pauper, at a Michaelmas court-leet, holden by adjournment for Chumleigh, November 16, 1792, was appointed to the office of ale-taster to the borough, and duly sworn, according to the custom of the manor, to *execute the office for one year thence next ensuing, or until he should be lawfully discharged.* He entered upon the office and served till November 1, 1793, when at a similar court holden by adjournment a new officer was appointed. No business is transacted at the original court; and there is only one original court in the year, and it is held within the month after Michaelmas at the convenience of the steward. Lord *Kenyon*, C. J. "This is an attempt to carry the point further than in *Rex* v. *Newstead*, (p. 505). This is not an appointment for a year, from one moveable feast to another, but from one court till it should please the steward to hold another. The statute is express, and *Rex* v. *Fittleworth* (p. 927), shows that it has been construed according to its plain meaning."

No settlement gained by serving an office to which a local statute authorised the appointment for a discretionary period.

Rex v. *Middlewich*, 4 *Nev. & M.* 682; 3 *Ad. & El.* 156. M. C. Yarwood was removed from Church Hulme to Middlewich. Order confirmed. Case:—Both townships support their own poor. The pauper, two years before the date of the order, being then settled in Middlewich, was duly appointed under the Cheshire Constabulary Act assistant petty constable

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for fourteen townships in the county of Chester, of which Church Hulme was one, and under that appointment he served the office fifteen months, during the whole of which time he resided in Church Hulme. The question was whether the pauper gained a settlement in Church Hulme by serving an office. Lord *Denman.* "If this office were annual in its nature we should have wished to see the appointment. But we think that it is not annual in its nature, and that it may last for such time as the justices think proper. The *Rex* v. *Lew* (p. 928,) seemed at first to present a difficulty in the way of this view. But, first, the assistant-overseer's office corresponds with that of overseer, which is annual, and by the 59 Geo. III. c. 12, s. 7, it is to continue till the appointment is revoked, or till the officer resign. Secondly, the salary is to be annual by the same. Thirdly, in *Rex* v. *Lew* the salary was in fact annual. The case is therefore easily distinguishable from the present, where the duration of the office depends on the discretion of the justices." *Littledale*, J. "I am of the same opinion. In *Rex* v. *Lew* the officer was an assistant-overseer, appointed under the 59 Geo. III. c. 12, s. 7, which directs that he shall execute all such duties of overseer of the poor as shall be expressed in the warrant of appointment, in like manner and as fully to all intents and purposes as the same may be executed by an ordinary overseer. Now the office of an ordinary overseer is annual. The person appointed assistant-overseer is to continue in office till he shall resign or till his appointment shall be revoked, it is therefore an annual office defeasible. *Rex* v. *Lew* is consequently inapplicable. By the words in the act now before us, the appointment is to be for so long as the justices think expedient, it is therefore not an annual office." *Patteson*, J. "In *Rex* v. *Lew* the appointment, if for less than a year, would not have been valid." *Coleridge*, J. "I am of the same opinion. If the office were annual in itself, we should recur to the appointment, in order to see whether it was annual, in fact for a year; there is nothing to show that it would be an annual office. I have always understood that the office must be such, that if the appointment were general, it would be assumed that the tenure of it was to be for a year." Order of sessions confirmed.

The office of *pinder for the town of F.* appointed at a manor court, which manor did not comprehend the whole of the town of F., gives no settlement, as the homage of one manor cannot elect an officer for a parish which lies in several manors.

Rex v. *Newmarket, St. Mary*, 3 *Ad. & El.* 151; 4 *Nev. & M.* 693. John Porter was removed from Fordham to Newmarket, St. Mary. Order quashed. Case:—The appellants relied upon a settlement in the respondent parish, derived from the pauper's father, who whilst residing in that parish served there for two years the office of pinder. He was appointed at a court baron held for the manor of Fordham Biggen, on the 5th of September, 1787; the appointment being entered on the court rolls in the following words: "And lastly, the said homage did elect John Porter pinder for the town of Fordham for the year ensuing, and until another person be chosen in his stead. And the said John Porter came into court and was duly sworn to execute the said office." The first entry on the court rolls of the manor of Fordham Biggen which can be found of the appointment of any officer, is at a court baron held on the 1st of November, 1693. From that period to the year 1810, when the parish of Fordham was inclosed, there were four courts leet with courts baron, and a great majority of courts baron without a leet, at which the pinders and other officers of the manor were appointed and sworn in. In the other instances of courts leet and courts baron being held together (except one where the pinder was appointed by the homage only) the pinders and other officers of the manor were elected by the jury of the leet. From 1739 to 1794 there were eight consecutive courts baron, at which certain persons were in like manner as the pauper's father elected pinders by the homage and sworn in, and there was not one instance on the court rolls of any such appointment at a court leet held as such only. There are in all five manors in the respondent parish, of which the manor of Soham and Fordham is the most extensive; but there is no paramount manor. There were previous to the inclosure of the parish three commons in the manor of Fordham Biggen, over which the inhabitants of Fordham had common rights. There were also two pounds, one belonging to the manor of Fordham Biggen, the other to the manor of

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Soham and Fordham. The only question for the opinion of the court was, whether the pauper's father was legally placed in the office of pinder under the above-mentioned appointment by the homage of the court baron, 1787, so as to acquire a settlement in the respondent parish. The case stated as above was argued in Easter term, 1832, when this court sent it back to the sessions to find whether the town of Fordham were co-extensive with the parish of Fordham, and more or less extensive than the manor of Fordham Biggen. At a subsequent session the justices found that the town of Fordham was co-extensive with the parish of Fordham, and was more extensive than the manor of Fordham Biggen, and it confirmed the order of removal subject as before to the opinion of this court. During the argument, *Patteson*, J., asked, "What business the homage had to appoint? The lord of a manor may have such a right, or the jury of a court-leet." The Court asked the counsel in support of the settlement if they were prepared to maintain the legality of this appointment, and Lord *Denman* said, "The office conferred is one professedly running through all the town; if such an office cannot be conferred by the homage of this manor, how can the settlement be supported?" and then *per Curiam*: "The rule for quashing the last order of sessions must be discharged." Order of sessions confirmed.

Master of a workhouse held not to be a public officer.

Rex v. *Mersham*, 7 *East*, 167. Removal from Boxley to Mersham confirmed. The parts of the case upon which the question was decided were, that the pauper at a vestry meeting offered his proposals to become master of the workhouse; that at a subsequent vestry meeting, at which twelve of the inhabitants were present, he was informed by the parish officers that he was appointed master of the workhouse of the parish of B. at a salary of 16*l.* per annum. No time was ever mentioned for which he was to hold his situation. No appointment was made in writing, nor any entry in the parish books. After serving for four years, he was dismissed at a quarter's notice. Lord *Ellenborough*. "The principle on which this mode of gaining a settlement has been given is undoubtedly notoriety to the parish, but a settlement can only be gained in this mode upon the terms of the act of parliament; viz. by executing 'a public annual office or charge in the parish:' which brings us back to the question, whether that which the pauper was appointed to execute were a *public office or charge?* And it appears to me that he cannot be considered as a public officer. An *office* must be derived either immediately or mediately from the crown, or be constituted by statute; and this is neither one nor the other, but merely arising out of a *contract* with the parish, which the parish officers with the consent of the parishioners are by the statute enabled to make with any person for the maintenance and employment of the poor. It might as well be said that a nurse employed to look after the pauper, or any other employed in like manner to do any part of the parish business, was an officer. The question might admit of a different consideration if any distinction had been established between an office and a charge, but I can find none either in any case or in the sense of the statute. The determination of the appointment at a quarter's notice repels the presumption that it was an *annual* office or charge; therefore, as far as we can collect the intended duration of the employment from the acts of the parties, it appears that the parish might put an end to it within the year if they thought proper; upon the whole therefore it appears neither to have been an office nor a public office, nor a public annual office within the statute." *Lawrence*, J., said, "It was clearly no *office*; but only an *employment* arising out of a contract, between which and an office there is a great distinction. (*Rex* v. *Milborne*, p. 930.) And he agreed in the definition of the word *charge*, that it must be taken to mean something of the same kind with *office*, though it may not commonly be known under the name of an *office*. *Le Blanc*, J. "If this were to be deemed a public annual office or charge within the act, it would extend to every case where a person had a duty to perform which from its nature must be known to the parish in general. But there is a difference between an employment created by the parties themselves, which they may put an end to whenever they please, and that which exists

Time of determination evidence of contract.

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or is created by law. Now this man was in the former situation. It was in the option of the overseers and parishioners to have such a person in such an employment or not; and they could put an end to the employment altogether whenever they pleased. It was created by themselves, and depended upon their contract. I cannot therefore call this an office or charge within the meaning of the act of parliament." Both orders confirmed.

Governor of a workhouse is not an annual officer. Appointment to be governor for a particular parish, in a workhouse belonging to an incorporated district, is bad.

Rex v. *Hambledon*, 4 *B. & C.* 459; 6 *D. & R.* 554. Order of removal of Birdseye from Witney to Hambledon confirmed. Case:—In 1786 the parishes of Brumley, Chiddingfold, Dunsfold, and Hambledon, were incorporated under the 22 Geo. III. c. 83. The parishes of Haslemere, Shalford, Saint Martha, Hascomb, and Elstead, afterwards took the benefit of the same provisions; and all the parishes before mentioned became incorporated parishes for the purposes of that statute. About 1787, a very large house of industry was erected by contribution of all those parishes upon the waste of the manor in Hambledon, as the most convenient situation for the purposes of the incorporation. To this house paupers from all the united parishes were sent, and were maintained separately at the expense of the parishes to which the paupers belonged. For the management of this house, and the employment of all classes of paupers therein, a governor was from time to time appointed, under the powers of the statute. In 1820 the pauper was appointed governor of the house of industry by this order. Form:—"Surrey sessions. We, two of his Majesty's justices of the peace for the county of Surrey, acting for the hundred of Godalmin, in the said county, do hereby appoint John Birdseye, of Hambledon, to execute the office of governor of the poor *for the parish of Hambledon*, within the said hundred, for one year, to be computed from the week of Easter now last past, to which he has been recommended at a public meeting, holden the 29th day of March last, pursuant to the directions of the statute passed in the 22 Geo. III. for the better relief and employment of the poor. Given under our hands and seals this 6th day of April, 1822. G. W., O. J. M." Under this appointment he served the office of governor for three years in succession, upon the same terms, and during that time resided in Hambledon. *Bayley*, J. "The last objection is decisive of the case: (namely) the appointment for one parish is clearly bad. But it seems to me that the other objections are fatal also. It has been decided that the situation of master of a workhouse is not a public office, unless it is so constituted by an act of parliament (*Rex* v. *Mersham*, p. 932); consequently, previous to the 22 Geo. III. c. 83, no service in such a situation could have conferred a settlement. It is true, that statute calls it an office, but the 39 s. provides that nothing contained in the statute shall alter or affect the settlement of any person; therefore it leaves the office just what it was before, and a settlement cannot be gained by service under it. Upon all these grounds, therefore, it seems to me, that the order of sessions ought to be quashed." *Holroyd*, J., and *Littledale*, J., concurred.

Governor of a workhouse, if found by the sessions to be a public annual office, gains a settlement.

Rex v. *Ilminster*, 1 *East*, 83. Removal from Honiton to Ilminster confirmed. The case originally stated was, that the pauper was appointed governor of the workhouse in Ilminster, under the annual salary of 20*l.* He served for five years, and regularly received his salary: at the end of that time he was dismissed: at the time of his appointment he was put by the parish officers into possession of certain apartments in the workhouse appointed for that purpose, and which had been occupied by the former governor. Upon the first amended case these words following were added after the word *officers*, "(*in conjunction with two of the principal people of the town, who acted as inspectors of the accounts and conduct of the overseers*)." Lord *Kenyon*, after the case had been argued the first time, intimated a strong opinion against the settlement, considering the appointment of the pauper merely in the nature of a servant to the parish officers, by whom he might have been dismissed at any time. In the second amended case it was stated, that the said office of governor "was a public

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A female organist at a chapel, appointed by a select vestry at an annual salary, paid half-yearly, has not an office contemplated by the statute.

annual office." And the court then said, that by this finding, "that it was a public annual office," they had precluded any further discussion (*a*).

Rex v. *St. George, Hanover Square*, 2 *Nev. & M.* 505; 5 *B. & Ad.* 571. Catherine Seaman was removed from St. George, Hanover Square, to St. Peter, Paul's Wharf. Order quashed. Case:—The parish of St. George, Hanover Square, is governed by a select vestry, consisting of 101 persons. In 1827 a chapel was erected in North Audley Street, in that parish; and on the 21st of January, 1828, the vestry of that parish took into consideration what name should be given to the chapel, then nearly finished, and resolved that it should be called St. Mark's Chapel, and that advertisements should be published, stating that the vestry would meet on the 11th of February to appoint an organist for the chapel. On the 11th of February, 1828, an election took place at the board room in Mount Street, by the select vestry, of an organist to the said chapel, on which occasion there were about forty candidates, and the election fell upon the pauper, as appears by the following minute:—"11th of February, 1828. The vestry, pursuant to their resolution of January 21st, proceeded to the election of an organist for St. Mark's Chapel, and appointed Miss Catherine Seaman to that situation, to commence when the organ was in readiness for use, at a salary of 60*l.* per annum." In May, 1828, the organ being completed, she entered upon her duty, and continued to perform it, and to reside in the respondent parish, and received her salary from the vestry through the vestry clerk half-yearly (with the exception of the first payment, which was 25*l.* only from May to Michaelmas, 1828), until the 31st of March, 1832, when she was discharged by the vestry, as appears by the following entry in their minutes: "At a meeting of the vestry held on the 31st of March, 1832, much discontent having been expressed by the pew-renters from time to time to the Rev. Allen Cooper, the minister of St. Mark's Chapel, of the total inefficiency of the present organist, resolved that she be removed; and that the Rev. Mr. Cooper be requested to look out for and recommend a competent person to succeed her, upon the same salary as is now enjoyed by her; it being understood that the person to be appointed shall continue to pay her her salary up to Midsummer next." *Denman*, C. J. "The principle on which this kind of settlement rests is notoriety; but that must be attained by serving an office within the meaning of the statute. The question is, whether the present be a case in which that has been done. I think it comes within the objection which prevailed in *Rex* v. *Mersham* (p. 932). According to the argument which has been urged, a settlement would be gained in every case where the party had executed an annual office which was notorious. But I think an office created by the parties themselves, who agree upon the employment, and which they may put an end to at pleasure, does not come within the meaning of the statute." *Parke*, J. "I am of the same opinion. If a settlement was gained in this case, it might be said that the fiddlers and bassoon players in a country church, or even the pew-openers, executed offices within the statute." *Taunton*, J. "The office of organist does not necessarily give notoriety; for when persons hear the organ, it does not follow that they know who plays it." *Patteson*, J., concurred. Order of sessions quashed.

A tithing-man going out of office, nominated his shepherd, Miller, to serve as tithing-man the following year. Miller was chosen at a court-leet holden October 5th, 1824, and was ordered to be sworn into office within one month, under the penalty

Rex v. *Corfe Mullen*, 1 *Bar. & Adol.* 211. J. Miller was removed from Sturminster Marshall to Corfe Mullen. Order confirmed. Case:—The pauper having obtained a settlement by hiring and service in the parish of Corfe Mullen, went to reside in the tithing or chapelry of West Holme, a place maintaining its own poor, as shepherd to Mr. Kemp. On the 5th of October, 1824, a court-leet for the hundred of Hasler was held, in which hundred the tithing or chapelry of West Holme is situated. At that court Kemp, the tithing-man for the preceding year, appeared, and acted in his office of tithing-man. On the same day, at the same court, Kemp nominated the pauper as a fit person to serve the office of tithing-man for the

(*a*) It will be observed that this position is denied in *Rex* v. *Clixby* (p. 927).

2. *What Office will gain a Settlement.*

tithing or chapelry of West Holme, and he was appointed by the jury for one year. The entry from the books of the court-leet appeared as follows: —"October 5th, 1824. Tithing-man of West Holme. George Kemp appears, and Joseph Miller is chosen into the office for the year ensuing, and he is directed to be sworn in before a magistrate within one month, under the penalty of 5*l.*" But Miller not being present, the steward gave him notice of the appointment as follows:—"Hundred of Hasler to wit. At a court-leet held this day for the said hundred you were chosen tithing-man for the tithing of West Holme, and you are hereby required to be sworn into your office before a magistrate for the county of Dorset, within one month after the date hereof, under the penalty of 5*l.* Given under my hand and seal in the said court, the 5th day of October, 1824. E. Castleman, Steward." When this notice was shown to the pauper he refused to receive it, or to pay the usual fee to the person who served it. The pauper was never sworn into office, but executed all its duties. He was not a householder either at the time of his appointment, or at any time while serving the office; but occupied part of a house, rent-free, found for him by his master, Mr. Kemp, in West Holme, and resided there while serving the said office. On the 4th of October, 1825, another court-leet for the hundred of Hasler was held, when the pauper was present, and acted as the tithing-man of West Holme, and paid the essoign pence and lawday silver, as is customary with other persons serving the office. At this court another person was appointed tithing-man for the year ensuing. The entry of this appointment in the books of the court-leet was exactly in the same form as the entry of Miller's in the preceding year. One objection was, that the pauper did not serve the office on his own account, but as deputy to Kemp. *Bayley*, J. "The sessions have not found so, and we cannot infer it. In *Rex* v. *Allcannings* (p. 923), the facts expressly appeared on the case." It was urged, that the pauper here was not of the description of persons liable to serve the office. *Parke*, J. "That might have been an objection to the appointment, but he has been appointed and served. A similar objection was noticed in *Rex* v. *Allcannings*, but only as tending to show that the pauper served as a deputy." *Bayley*, J., delivered the judgment of the court: "The question in this case was, whether the pauper obtained a settlement in the tithing of West Holme, by serving the office of tithing-man for that place. He was appointed to the office on the 5th October, 1824, and we think we must infer from the special case, that he accepted the office on that day, and executed all its duties until and upon the 4th October, 1825, which, as the law does not regard the fraction of a day, constitutes one 'whole year.' There is no doubt that the pauper acted on his own account, and the objection that he was not compellable to serve the office is of no weight. The pauper was never sworn into his office; and the only remaining point in the case is, whether that circumstance was necessary to enable him to gain a settlement?" He then read the 3 & 4 Will. & Mary, c. 11, s. 6, (p. 922): "The words of this section, in their ordinary sense, require nothing more than the execution of the office *de facto* during one whole year; there is nothing in the context to induce us to come to a conclusion that the legislature meant to use the words in any other than that sense; and this construction is consistent with the supposed object of the statute, which appears to have been to substitute the notoriety of the execution of the office for the notice in writing required in most other cases, as explained in the judgment of Lord *Tenterden*, in *Rex* v. *Holy Cross, Westgate* (p. 937). But it is said, that this statute and that of 9 & 10 Will. III. c. 11, are in *pari materiâ*, and are to be construed together; and that the latter statute may be considered as giving a parliamentary exposition of the former: and if so, that no one can be 'legally placed' in an office, unless he takes the oath under which it should be executed. We do not, however, think that the latter statute is to be deemed to alter or affect the construction of the former, as the latter relates to a particular class of persons, namely, certificated paupers alone; and it is impossible to say that the legislature did not mean to superadd, with reference to that class

of 5*l.* He never was sworn in, but executed the office; while he did so he was not a householder, but lived in part of a house found for him by his employer. His successor was chosen at a court-leet, October 4th, 1825; Held, that he *executed on his own account*, a public annual office *for one whole year*. Question whether or not he was *legally placed* in the office, did not arise, he not having been a certificated person.

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of persons, another circumstance, namely, that of being legally placed in the office, as a condition of their obtaining a settlement. It becomes, therefore, in this view of the case, unnecessary to decide whether the pauper was 'legally placed' in the office, according to this latter statute, not having taken the required oath. There can be no question that he executed the office *de facto*, nor indeed can there be any that, for some purposes at least, he executed it *de jure*. Swearing in may be rendered necessary, either to enable the party to serve the office, or to impose a greater sanction on his discharge of it. We think, in this case, the latter is the object. A month is given for taking the oath; yet the year commences from the appointment. Can it then be said that the party is not in office till he is sworn? In one of the cases which have been cited, the swearing in of a tithing-man at the end of half a year was considered as taking effect *ab initio*. It is laid down in an anonymous case, 1 *Ventr.* 267, that a churchwarden (and no distinction can be drawn between his case and that of a constable) may execute his office before he is sworn, though it is convenient he should be sworn. And it may be observed, that a mandamus to swear such an officer in is referred to by the court immediately afterwards in that case; which must therefore be issued, not on the ground that the oath is essential to the due execution of the office, but because it is fit and proper for the interest of the public that the office should be executed under its sanction. But on the 3 & 4 Will. & Mary c. 11, alone, we think it clear that the pauper gained settlement in West Holme by the execution of the office *de facto*." Order of sessions quashed.

A person may be in office before he is sworn in.

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3. *Of the Time of Serving.*

Serving a part of the year only is not sufficient.

A person executing an office is removable when chargeable.

3. Of the Time of Serving.

Rex v. *Fittleworth*, *Burr. S. C.* 238; 2 *Bott*, 252. A certificate man was elected and sworn a tithing-man. He executed the office a little more than five months, and then became chargeable, and was removed. *Lee*, C. J. "The question is, whether a person coming into a parish under a certificate, who is made a tithing-man, and exercises his office in part only of the parish, and for half a year only, gains a settlement? To this three objections have been made: 1st, that the order of removal is bad, because at the time when he was removed he was in the execution of a public office, from whence they had no power to remove him; and it has been compared to the case of a servant, whom the justices cannot remove: but for this they have not cited any authority; and if a servant should become chargeable to a parish, I think he may be removed. This act of the 8 & 9 Will. III. describes the time when a certificate man shall be removed, that is, when he becomes chargeable, without any limitation; so that the justices by this act had certainly power to remove the pauper. The second objection is, that this office did not extend to the whole parish: but it is stated in the order that he exercised it in the parish; which is complying with the very words of the act of parliament, which says that he shall execute it *in* such, and not *through* such parish. As to the third objection, which is the chief, I do not know that any case has been determined as to that purpose. That of *Garsington* was never determined, and besides differs essentially from the present case, as Sir *John Strange* has shown. The 3 & 4 Will. & Mary differs in words from this act, yet it would be odd to place him on a different footing from other paupers, who are to gain settlements by the exercises of annual offices, and that is for and during a year; which must be the construction of this act, otherwise the bare placing a certificate man in office would gain him a settlement immediately. As to the case of Mr. Lloyd about the taking of a tenement, there are no words about his living a year, and it is the credit he gets by the taking that fixes him in the parish; but in the present case he gains it by the execution of the office; and though the words of the 3 & 4 Will. & Mary have no relation by words to this act, yet I should think it ought to have the same construction." *Wright* and *Dennison*, Js., of the same opinion.

Serving office for

Cold Ashton v. *Woodchester*, *Burr. S. C.* 444; 2 *Bott*, 253. There was

a custom to serve the office of tithing-man for half a year only at a time. By Lord *Mansfield*, C. J. "This cannot be an annual office to gain a settlement. In this case the pauper had served the office of tithing-man in Cold Ashton for half a year, and twenty days after for another half year.

3. *Of the Time of Serving.*

half a year at a time only, gains no settlement.

A pauper was legally sworn in as borsholder at a court-leet, and executed the office a few days, when he was irregularly discharged from office by two magistrates, and another person appointed: but he acquiesced in this, and did not in fact execute the office: Held, that this did not confer a settlement.

Rex v. *Holy Cross, Westgate*, 4 *B. & A.* 619. Order of removal of Edward Best from Holy Cross, Westgate, in Canterbury, to Holy Cross, Westgate, in Kent, confirmed. Case:—The city of Canterbury is divided into six wards, and two of the twelve aldermen of the city are appointed for each ward; a court-leet is held annually by the two aldermen, at which a constable and borsholder for the ward are chosen. In October, 1817, and for some time previously, the pauper resided and carried on business in St. Mary Northgate, Canterbury, which is in the ward of Northgate, that ward containing the parishes of St. Mary Northgate and St. Alphage. On the 21st of October, 1817, the annual court-leet was held for the ward of Northgate, at which the pauper was duly chosen borsholder of the ward for the year ensuing, and upon being sent for, he attended at the court and was regularly sworn in; the staff of office was delivered to him by the former borsholder. A day or two afterwards a dispute arose between some persons, and he was desired to preserve the peace; in consequence of which he fetched his staff and put an end to the dispute, but he did not do any other act as borsholder than that. After he had been sworn in a few days, he was desired to attend the monthly meeting of the magistrates, and he attended with his staff; he was called into the council chamber and informed by the then mayor that as it was a question as to what parish he belonged, he must leave his staff there for the present, and that he should know further about it in a few weeks; he left his staff accordingly, and not having heard anything more, he did not act, nor was he called upon afterwards to act as borsholder. The steward of the leet notified the pauper to the magistrates as the sworn borsholder for the ward of Northgate, and he appeared so in the list of peace officers entered in their record book. The succeeding court-leet for the ward of Northgate was holden on the 20th of October, 1818, and the pauper resided during the whole of the year in St. Mary Northgate. The duties that were required to be performed by the borsholder of the ward of Northgate during the remainder of the year were performed by another person, who resided part of that time within the ward, and part in the borough of Staplegate, adjoining to the ward, but not within the jurisdiction of the city of Canterbury; but that other person was not chosen or sworn in as borsholder of the ward, nor did he attend the sessions in that character, nor was his name enrolled in the list of peace-officers. *Abbott*, C. J. "At the time of passing 3 & 4 Will. & Mary, c. 6, it was possible for any individual to gain a settlement by a residence for forty days in the parish. The object of that act was to add to this the necessity of delivering to the parish officers a notice in writing, which they were required to read in the church, and to register, in order that there might be public notice to all the inhabitants that they might, in case the individual was likely to become chargeable, procure his removal from the parish. But that act contemplated two cases in which no notice in writing was to be given, viz. the serving an annual-office, and the payment of parish rates. Its object was obviously notoriety. Now this is only attained by the actual execution of the office, and not by the appointment to it. Although, therefore, it does appear that the pauper in this case was irregularly discharged from his office, and another person irregularly appointed to succeed him, yet as he did forbear to do the duties of it, I think he cannot within the statute be considered as having executed a public annual office in the parish, and that he did not thereby gain a settlement." Order confirmed.

The pauper must serve for a year.

In *Rex* v. *Yalding* (p. 925), one of the points was, that the pauper had not served for a year, which was held a good objection.

4. *Residence.*

4. Residence.

If a church-yard lie in two parishes, the sexton may gain a settlement in the one in which he resides, although no part of the church lies within that parish.

Rex v. *Liverpool*, 3 *T. R.* 118. Samuel Littlemore removed from Liverpool to Stourton. Order quashed. Case:—The pauper, about sixteen years ago, came to reside in Liverpool, and while he resided there was elected *sexton* by the proprietors of seats in the church or chapel of St. James's, at a vestry held in the presence of the churchwardens, being recommended by the then minister to that office, and executed that office six years, lodging all the while in Liverpool. The boundary between Walton and Liverpool is in the chapel-yard of St. James's; the church and part of the church-yard stands in Walton, and the other part of the church-yard is in Liverpool; but no corpse was ever buried in that part (within the parish of L.) whilst the pauper executed the office, though corpses have been buried there since. The inhabitants of Liverpool, seat-holders, and others, constantly attend the church of St. James's, in proportion of fifty to one of any other parish or place. It was admitted that the office of sexton was such as would entitle the person executing it to a settlement; but it was contended that the office must be executed *in* the town or place, in order to give a settlement. But here he was chosen sexton to the chapel of St. James's, which stands in Walton; and it appears that he never executed any part of the office in Liverpool. The executing of an annual office is equal to giving notice, but the execution of this office in Walton was no notice to the parish of Liverpool. The sexton is appointed to the church, and not to the church-yard; for it appears from the definition of a sexton in *Burn's Eccl. Law* and *Chamb. Dict.* that he is an officer to take care of the vessels, vestments, &c. belonging to the church, and to attend the minister and churchwardens at church; and this office is entirely distinct from that of a grave-digger. Lord *Kenyon*, C. J. "There is no doubt but that part of the office of sexton consists in digging graves; this is different from that of sacrist, which is an office scarcely known since the Reformation, except in some of the cathedrals, whose duty it is to take care of the sacred vestments. And it is as clear that the office of sexton is a public office within the 3 Will. & Mary, c. 11, s. 6. In this case the church-yard lies in two parishes, and the sexton gained a settlement in that in which he resided." Order of sessions confirmed.

Sexton is a public office.

Warden for a borough, which extends itself into several parishes, gains a settlement in the parish in which he lives.

St. Mary v. *St. Lawrence in Reading*, 19 *Vin. Abr.* 379; 2 *Bott*, 156. Mr. *Foley* says the question was, whether the being *warden for the borough*, and serving that office for a year in the borough, which extends itself into several parishes, is such a service of an annual office as will gain a settlement? And by the court it was held to be an office, the serving of which for one whole year was sufficient to gain him a settlement in that parish within the borough in which he lived. *Foley*, 121. But in this report there must probably have been some mistake. A churchwarden is a parochial officer, and his office doth not extend into several parishes. Mr. *Viner*, from a manuscript note which he had of this case, says, "The officer is mentioned there to be warden of the borough (which is most likely), being in nature of a *tithing-man* to execute the process of the justices of the borough. But he is not to execute his office in one parish only, but all over the borough. And it was doubted whether this was a settlement or not; because he was not elected into this office by the parish, neither was the exercise of his office confined to the parish; yet he is a public officer, and his office is partly exercised within the parish, so that the parishioners must take notice of him." And by the court it was held a good settlement, being within the express words of the statute of executing an office in a town or parish.

Constable of a city comprehending several parishes, gains a settlement in that parish in which he lives.

St. Maurice v. *St. Mary Kallendar, in Winchester*, 1 *Burr. S. C.* 27; 2 *Bott*, 158. William West, a certificate man from St. Thomas's, came into St. Mary Kallendar, in Winchester. He was afterwards chosen one of the *constables* for the city of Winchester, which city consists of several other parishes besides that of St. Mary Kallendar, and was legally placed in that office, and executed it in and through all parts of that city for one whole

year; during which time he resided in the parish of St. Mary Kallendar. By the court, unanimously: "He avoided his certificate, and consequently gained a settlement in St. Mary Kallendar by executing this office in that parish, though chosen by the whole city, and not by the parish of St. Mary singly, and though not a mere parish office. For, in the words of the act, he executed an annual office in the parish, being legally placed in such office."

4. *Residence.*

If part of the duties are performed in the parish it is sufficient.

Rex v. *Amlwch*, 4 *B. & C.* 757; 3 *D. & R.* 303; 1 *D. & R. Mag. Ca.* 304. Order of removal of John Owen from Amlwch, in the county of Anglesea, to Llanerchymedd, quashed. Case:—The market town or village of Llanerchymedd lies partly in the parish of Amlwch, the church of which is five or six miles distant, partly in two other parishes, and partly in the *vill* of Llanerchymedd, to which place this removal is made. The vill of Llanerchymedd lies in the middle of the village, and consists of a small plot of land, the property of the parson, on which stand the whole of the church and churchyard. There are also within it twelve or fifteen houses, and a few acres of land. It has of late maintained its own poor, and the inhabitants have been assessed to the land-tax, as in the hamlet of Bryngwallen, which is in the parish of Ceidio. No churchwardens were ever known to be appointed, and no evidence was given of the appointment of a constable, although it appeared that the pauper's father had been seen acting as one for several years. The church or chapel of Llanerchymedd is kept in repair of right, one side thereof by the family who own the Llwydiarth estate, and the other side by the family who own the Chrodden Issa estate. That part of the village which is in the parish of Amlwch is all on the Llwydiarth estate, as are also the hall, and several farms in the vicinity. The chapelry of Llanerchymedd is attached to the rectory of Llanbenlan, in the presentation of the Bishop of Bangor, the parson of which receives the rents of the glebe lands in and near the vill of Llanerchymedd, appoints the curate, and pays his salary. The emoluments of the curate arise partly from his salary, and partly from offerings and oblations, and other payments termed surplice fees. The inhabitants of the vill have no private sitting places in the church; all those on the south side belong to the Chrodden Issa estate; those on the north side belong to the Llwydiarth estate, which is in the parish of Amlwch, and the chief part of the congregation are dwellers on that estate. A proportion of the elements used at the administration of the sacrament at Llanerchymedd church is supplied by Amlwch. The clerk and sexton of Llanerchymedd appear to have been appointed by the Llwydiarth family, *malgré* the minister; his emoluments arise from sweeping the church and washing the surplices, which are not paid by the inhabitants of the vill, and also from offerings and other fees *pertaining to his office*. John Owen, the pauper, was appointed clerk and sexton of Llanerchymedd in March, 1795, and he has executed the office to the present time, dwelling altogether in that part of the village of Llanerchymedd which lies in Amlwch. The pauper's father was settled in the vill of Llanerchymedd. It had been the uniform practice of the minister of Llanerchymedd to attend with his clerk at the houses of the inhabitants of Amlwch, *in the village and its vicinity*, for the purpose of visiting the sick, administering private baptism, and reading a prayer prior to the removal of bodies that were about to be buried at Llanerchymedd church. No limits were assigned as to the distance from the village within which these several services had been performed by the minister and clerk of Llanerchymedd. No marriages of the inhabitants have been solemnised in Llanerchymedd. The witnesses differed in opinion, whether these services rendered to the inhabitants of Amlwch by the minister and clerk were rendered as a matter of right or of indulgence. The sessions were of opinion that the pauper had held an annual office, a part of the duties of which were performed *in the parish of Amlwch*, where he resided, and on that ground quashed the order. *Bayley*, J. "The question is, whether the pauper exercised a public annual office within the parish of Amlwch, within the 3 & 4 Will. III. c. 11, s. 6? It enacts, 'That if any person shall execute any public

4. *Residence.*

annual office in the parish during one whole year, then he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required.' The legislature considered the executing of an office within the parish to be so notorious, as to form an equivalent to the notice required in other cases. The question is, whether the pauper acquired a settlement by executing the office of clerk and sexton in a part of the parish in which he resided? Now it is not necessary in order to acquire a settlement by serving an office, that the duties of the office should be co-extensive with the parish. If it be notorious to the parish that the office is exercisable within it, that is enough. In *Rex* v. *St. Mary, Reading* (p. 938), which was the case of a constable, and in *St. Maurice* v. *St. Mary Kallendar* (p. 938), which was the case of a tithing-man, the duties of the office were performed in several parishes besides those in which the paupers resided. In *Rex* v. *Fittleworth* (p. 936), a certificate man was elected and sworn a tithing-man for a tithing which did not extend through all the parish of Fittleworth, but comprehended that part of it where he resided; and the court said it was not necessary that the office should extend throughout all the parish; the act only required executing some annual office in the parish. It is sufficient, therefore, to give a settlement in a parish, that the duties of the office served extend into that parish. Then, were the duties of any part of the office of clerk and sexton of the vill and chapelry of Llanerchymedd of right to be performed within the parish of Amlwch? Whether the vill and the chapelry are in point of fact co-extensive does not appear; they are not necessarily so; for Llanerchymedd being an extra-parochial place, the duties of the office of clerk and sexton of the chapelry may be confined and limited to the vill. The founder of a chapel may, by consent of the rector, fix the limits of the chapelry; and it was matter of evidence, therefore, whether the chapelry extended beyond the vill. Upon that point there was contradictory evidence; but altogether it seems to me that the justices have arrived at the right conclusion, that the duties of the office were of right performed in the parish of Amlwch; and if that be so, the pauper has acquired a settlement by discharging some of the duties of the office within the parish. The rectory of Llanbenlan, to which Llanerchymedd is attached, appoints the curate, and pays his salary; but the owner of the Llwydiarth estate appoints the clerk, and repairs the chapel. The chapel is appropriated part to the use of the tenants of the Llwydiarth estate, and part to the use of the tenants of another estate. The inhabitants of the vill have no seats. It has been the uniform practice of the minister of Llanerchymedd occasionally to attend with his clerk at the houses of the inhabitants of Amlwch; whether as matter of duty or of indulgence was left in doubt; but in my opinion the sessions have done right in concluding that it was done as matter of obligation. Then was not this a description of office notorious in the parish of Amlwch? The fact of the parish having supplied a portion of the sacramental elements, is a very clear circumstance to show its notoriety. Part of the charges made by the parish officers of Amlwch in their accounts must have been for bread and wine supplied to the chapel of Llanerchymedd, and that affords a strong argument that the chapel was erected for the benefit of the parish as well as of the vill." *Holroyd* and *Littledale*, Js., concurred. Order of sessions confirmed."

The party must reside in the parish where the office is executed

Rex v. *Woodbridge*, 1 *Nev. & M.* 457; 4 *B. & Ad.* 711. Joseph Bird was removed from St. Matthew to Woodbridge. Order confirmed. Case: —The pauper was on the 29th of September, 1820, appointed by the bailiffs of Ipswich a crane porter at the common quay in that town. The business of the crane porters is to unload vessels arriving at the common quay; it is a public annual office and the pauper served it for a year. The quay where the vessels are unloaded is situated in the parish of St. Mary at the quay at Ipswich, but during the whole of the year the pauper resided in the parish of St. Matthew in the same town; and the sessions,

thinking the office was executed in the parish of St. Mary at the quay, were of opinion that no settlement was gained in St. Matthew's. *Denman*, C. J. "The words of the statute are sufficiently explicit to show that a settlement can be gained only by serving an office in the parish where the party resides. The order of sessions must be confirmed."

4. *Residence.*

The office of town crier and bellman will confer a settlement under s. 6 of 3 Will. & Mary, c. 11, and if the town comprises several parishes the settlement will be where the officer has last resided forty days.

Rex v. *St. Nicholas, Hereford*, 10 *Bar. & Cres.* 832. Removal of S. Hall, widow, and her children from St. Peter to St. Nicholas, Hereford. Order confirmed. Case:—T. Hall, deceased, the husband of S. Hall, the pauper, gained a settlement in the parish of St. Nicholas, Hereford, by renting a tenement. He quitted that house 23d of November, 1827, and lived in the parish of All Saints, Hereford, till the 23d of June, 1828, when he removed to St. Peter, Hereford, and resided in that parish till the time of his death, 29th of December, 1828. On Monday the 2d of October, 1826, he was appointed by the corporation of Hereford to the annual public office of town crier and bellman for the city of Hereford, and also sworn in a constable of the city of Hereford. He was reappointed and resworn on the 1st of October, 1827, and 16th of October, 1828, and he executed the office of town crier and bellman in the city of Hereford, of which the parish of St. Peter forms a part, from the time of his first appointment on the 2d of October, 1826, up to the time of his death, 29th of December, 1828; he was also liable and ready to execute the office of constable when called on, but never had acted as constable. There were other persons sworn in as constables, who acted as such in the city. T. Hall resided forty days and upwards, namely, from the 23d of June, 1828, to the 29th of December, 1828, in the parish of St. Peter's, Hereford. Lord *Tenterden* delivered the judgment. "We are of opinion that the pauper did gain a settlement in the parish of St. Peter's, Hereford. The question turns entirely on the 3 Will. & Mary, c 11, s. 6, which enacts, 'That if any person who shall come to inhabit in any town or parish during one whole year, shall on his own account execute any public office in the town or parish during one whole year, then he shall be judged to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required.' Now, the office of crier is undoubtedly an office within the meaning of the statute; it need not be confined to a particular parish; but an office in a city containing several parishes will confer a settlement. By the statute 13 & 14 Car. II. c. 12, a party coming into a parish to settle gained a settlement by forty days' residence. The statute 1 Jac. II. c. 17, s. 3, enacted, 'That the forty days' continuance in the parish intended by the former statute to make a settlement, should be accounted from the delivery of a notice in writing of the house of abode, &c. to the churchwarden or overseer of the poor.' The effect of that statute, therefore, was, to prevent a party gaining a settlement until forty days after the delivery of the notice required to the parish officers. Now, the statute 3 & 4 Will. & Mary, c. 11, after enacting that the forty days shall be accounted from the publication in the church of the notice in writing required to be delivered to the parish officers, substitutes the executing of a public annual office for the notice required in the case of coming to settle upon a tenement; and as in that case a party would be settled in a parish by residing therein forty days after the publication of the notice, by analogy he will gain a settlement by the execution of a public annual office during a year, in any parish where he has last resided for forty days. Here the husband of the pauper did execute a public annual office in the town or parish during one whole year. He comes, therefore, within the very words of the section, and it is a safe rule of construction to adhere to the words of a statute. The seventh section throws some light on the subject. It enacts, 'That if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be deemed a good settlement therein, though no notice in writing be delivered and published.' Now, although the subsequent statute 8 & 9 Will. III. requires that there shall be a service as well as a hiring for a year, yet, it is clear that a party will gain a settlement by a year's service

4. *Residence.* under a yearly hiring in that parish wherein he has resided for the last forty days; and it is immaterial, in that case, whether the party be hired before or after he comes into the parish. By analogy to the case of hiring and service, it appears to us that the husband of the pauper having been appointed to the office before he came to reside in the parish; and having served that office for one whole year for this as well as for the other parishes of that town, and having resided there for the last forty days during which he executed the office, gained a settlement in the parish of St. Peter's, Hereford." Order of sessions quashed.

10. Of Settlement by being Charged with and Paying Public Taxes or Levies of the Parish.

10. Of Settlement by being Charged with and Paying Public Taxes or Levies of the Parish.

By the 3 Will. III. c. 11, s. 6, a person might gain a settlement by being charged with and paying his share towards the *public taxes and levies of the town or parish*. But by the 35 Geo. III. c. 101, s. 4, it was provided that the person must pay such parochial taxes or levies in respect of a tenement of the yearly value of 10*l.* or upwards. The effect of which statute was that this mode of acquiring a settlement was seldom relied on, for in most instances where the tenement was of the yearly value of 10*l.* the occupier could obtain a settlement on other grounds. This was the state of the law from 1795, when the 35 Geo. III. c. 101, was passed, down to 22d June, 1819, the date of the 59 Geo. III. c. 50, by which latter statute this mode of establishing a settlement was revived, as the latter statute required that in order to gain a settlement by *renting* a tenement, such tenement must be *bonâ fide hired for one whole year* at 10*l.* a year, and the rent for a year *actually paid*. But this statute did not affect the right of acquiring a settlement by *payment of parish taxes*, &c., and consequently if a person paid parish rates, &c. in respect of a tenement of 10*l.* yearly *value*, whether he had complied with the provisions of 59 Geo. III. or not, was immaterial, for he was still entitled to his settlement as being charged with and paying public taxes or levies of the parish.

Such the state of the law continued until the 22d June, 1825, when the 6 Geo. IV. c. 57, annexed the same conditions to the acquisition of a settlement by paying rates as it imposed upon settlements by *renting* a tenement. (See *Rex* v. *Penryn*, p. 945).

But the 1 Will. IV. c. 18, s. 1, applies only to settlements by *renting* a tenement; if therefore a person pays parochial rates, and complies with the provisions of 6 Geo. IV., he acquires a settlement, although he does not satisfy the provisions of 1 Will. IV. c. 18, (*Rex* v. *Stoke Damerel*, p. 946).

The second section, however, of 1 Will. IV. c. 18, is applicable to settlements by *rating* as well as by *renting*, as that section enacts that payment of 10*l.* shall be sufficient under the recited act by 6 Geo. IV.; and the latter act does apply to both kinds of settlement.

The 4 & 5 Will. IV. c. 76, s. 66, *has added*, as a condition to the acquisition of a *settlement by renting a tenement*, that the occupier shall be assessed to the poor-rate, and shall have paid the same for one year.

This section also is confined to *renting* tenements, and is not applicable to settlements by payment of rates. (*Reg.* v. *St. Mary, Kallendar, post.*)

Before the 35 Geo. III. c. 101, the annual value of the tenement in respect of which the taxes or levies were charged and paid, was immaterial; and this statute first required that the tenement for which the person was rated should be of the value of 10*l.* a year at the least.

This head of settlement may be considered under the following titles:—

1. *Enactments as to this Settlement.*
2. *Construction and Operation of* 35 *Geo. III. c.* 101.
3. *Of Inhabitancy.*
4. *What are Parochial Taxes or Levies within the Act.*
5. *The Person must be* Charged *and* Pay *such Tax.*

1. *Enactments as to this Settlement.*

1. Enactments as to this Settlement.

Settlement by being charged with and paying public taxes and levies of parish.

The 3 Will. III. c. 11, s. 6, enacts, "That if any person who shall come to inhabit in any town or parish, shall be charged with and pay his share towards the public taxes or levies of the said town or parish, then he shall be adjudged to have a legal settlement in the same, though no such notice in writing be delivered and published as is hereby before required."

No settlement by payment of highway rates.

9 Geo. 1, c. 7, s. 6. No person who, from and after 25th March, 1723, shall be taxed, rated, or assessed to the scavenger or repairs of the highways, and shall duly pay the same, shall be deemed or taken to have any legal settlement in any city, parish, town, or hamlet, for or by reason of his or her paying to such scavenger's rate or repairs of the highway as aforesaid.

The charge must be in respect of a tenement of the yearly value of 10*l.*

By 35 Geo. III. c. 101, s. 4, "No person after 22nd June, 1795, who shall come into any parish, township, or place, shall gain any settlement therein by being charged with and paying his share towards the public taxes or levies of such place, for and on account or in respect of any tenement not being of the yearly value of 10*l.* (*a*)

Payment of duties shall not confer a settlement.

By 43 Geo. III. c. 161, s. 59, it is enacted, "That the payment of any of the duties made payable by this act (viz. the *assessed taxes*), by any person or persons in any parish or place, shall not entitle the person or persons so paying such duties to a settlement in such parish or place."

The tenement must have been hired and occupied for a year.

By 6 Geo. IV. c. 57, s. 2, it is enacted, "That no person shall acquire a settlement in any parish or township maintaining its own poor, by or by reason of settling upon, renting, or paying (*b*) *parochial rates* for any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bona fide* rented by such person in such parish or township at and for the sum of 10*l.* a year at the least, for the term of one whole year; nor unless such house or building or land shall be occupied under such yearly hiring, and the rent for the same to the amount of 10*l.* *actually paid for the term of one whole year at least;* provided always that it shall not be necessary to prove the actual value of such tenement; anything in any act or acts, or any construction of or implication from any act or acts, or any usage or custom to the contrary, notwithstanding."

Proviso.

The 1 Will. IV. c. 18, s. 2, makes the payment of 10*l.* sufficient under 6 Geo. IV., which applies to rating, as well as renting. The first section of this act is not applicable to the payment of rates.

No settlement by renting tenement without paying poor rate.

By 4 & 5 Will. IV. c. 76, s. 66, it is enacted, "That from and after the passing of this act no settlement shall be acquired or completed *by occupying a tenement*, unless the person occupying the same shall have been assessed to the poor-rate, and shall have paid the same in respect of such tenement for one year."

Operation of 35 Geo. III. c. 101.

2. Operation of 35 Geo. III. c. 101; 59 Geo. III.; 6 Geo. IV.; 1 Will. IV.; and 4 & 5 Will. IV.

A settlement may be gained by being rated and paying parochial taxes, without complying with the 59 Geo. III. c. 50.

Rex v. *St. Pancras*, 2 *B. & C.* 122; 3 *D. & R.* 343. Removal of Kitty, wife of William Buchan, from Lambeth to St. Pancras, Middlesex. Order confirmed. Case:—The husband occupied a house in Thornhaugh Street, in St. Pancras, and resided in the same not exceeding nine months, and subsequent to the 2nd of July, 1819, at the yearly rent and value of 80*l.*; and during such occupation her husband was regularly rated by and paid a poor-rate to the parish of St. Pancras, as occupier of the house. *Bayley*, J. "The question in this case is, whether the right to a settlement by being

(*a*) In the *Ilchester case*, 2 *Peck*, 251, the committee determined that the 35 Geo. III. did not affect the case of an assessment in respect of *stock in trade* for which parish taxes are paid, however small the amount; but a settlement was thereby gained under 3 Will. III. c. 11.

(*b*) A residence of forty days previous to the passing of this act, upon a tenement worth more than 10*l.* a year, by a party charged to and having paid parochial rates, will not confer a settlement unless all the forty days are *subsequent* to such payment. (*Rex* v. *Ringstead.*)

2. *Construction and Operation.*

rated and paying taxes, was still a subsisting right at the time when the pauper was rated and paid, the tenement which he occupied being of the annual value of 10*l.* or upwards? In this case the pauper could not gain a settlement by renting it, because he had not been in the occupation of it for the period of one whole year, as required by the 59 Geo. III. c. 50. In order to decide the question, we must advert to the 35 Geo. III. c. 101, s. 4, by which it has been contended that this head of settlement was entirely put an end to. It is material to consider what was the law upon this subject before the 35 Geo. III. c. 101, passed. A person rated and paying taxes for a tenement, whatever might be its value, acquired a settlement. The parish in such a case was considered as having adopted him as one of their parishioners. In most instances where the tenement was of the yearly value of 10*l.* the occupier would obtain a settlement upon other grounds. In the course of the argument, however, one instance was referred to, in which a party occupying such a tenement would not acquire a settlement unless on the ground of paying rates. I allude to the case of a person living in a house belonging to the king, as a servant of the public. The words of the clause to which I have referred do not in terms import an intention of the legislature to abolish this head of settlement entirely. They are qualified and apply expressly to tenements not being of the yearly value of 10*l.* And before we give a general effect to words which are not in themselves general, we ought to see clearly that such was the intention of the legislature. I think that it would be going too far to give a general effect to the words of this act, when we find that being rated and paying, as applied to a tenement of above the annual value of 10*l.*, was one medium by which a settlement in all cases might be obtained, and in some instances the only medium. *Rex* v. *Islington* and *Rex* v. *Penryn* (*a*) have been referred to in argument, and are certainly at variance with the opinion of the court. In the former, however, the point did not arise, and the opinion of Lord *Kenyon* was quite extra-judicial. The real question was, whether the operation of the 35 Geo. III. c. 101, s. 4, was limited to persons who should thereafter come into any parish, or whether it extended to persons residing there before. In *Rex* v. *Penryn* the question was again presented to the consideration of Lord *Ellenborough*, who certainly gave a distinct opinion that it was the intention of the legislature to abolish entirely this head of settlement. The present lord chief justice merely said 'That it was expedient to do away settlements by paying rates for tenements of very small value.' It does not appear by the report whether my brother *Holroyd* or myself were present. These two authorities naturally drew the attention of the court carefully to consider the words of 35 Geo. III.,

A settlement might have been acquired under 35 Geo. III. by payment of rates.

(*a*) *Rex* v. *Penryn*, 5 *M. & Sel.* 443. Case:—The pauper occupied four rooms at the yearly rent and of the value of 4*l.*, part of a large dwelling-house of the yearly value of 18*l.* and upwards. The other parts of the dwelling-house were occupied by several other tenants, two of whom also paid 4*l.* a year each for their respective apartments. This dwelling-house had but one outer door and one staircase, and each tenant kept the key of his own apartment. For three years the pauper was rated to the church and poor-rates for the whole house, and paid the same, and they were allowed to him out of his rent, except in one instance. He had no concern with or control over the remainder of the house. Lord *Ellenborough*, C. J. "It will be in vain for the legislature to make general enactments, if such enactments are to be explained away, and their operation defeated by nice distinctions. The 3d section was undoubtedly meant to abrogate this head of settlement, and the authorities upon it, which perhaps had been carried to some degree of absurdity. Lord *Kenyon* appears so to have considered the operation of the act; and I am glad that we have his authority for it. If this construction of Lord *Kenyon* had not been felt to be the correct one, I doubt not that we should have had some observation upon it from the learned reporter with whom the act originated, and which is generally known by his name." *Abbott*, J. "This act prevents the removal of any person before he is actually chargeable. This rendered it expedient to do away with settlements by notice or paying rates, for tenements of very small value." The *Rex* v. *Islington*, the other case overruled, is in 1 *East*, 283.

2. *Construction and Operation of the Statute on each other.*

and the state of the law as it existed before the passing of that act. If there had been no case before that time, in which the occupier of a tenement of 10*l.* annual value would gain a settlement by the payment of rates, and on that ground only, then perhaps the words of the statute might be construed to have a general operation, and to annihilate this head of settlement altogether. One instance, however, has been mentioned, and possibly there may be others, where, before the statute 35 Geo. III., a settlement could not be acquired at all by the occupier of such a tenement, unless by the payment of rates (*a*); and that being so, I think that we are not warranted in saying that these qualified words were intended by the legislature to have a general and unqualified operation, so as to abrogate entirely this head of settlement. It might perhaps be imagined when the 59 Geo. III. c. 50 passed, that this head of settlement no longer existed; and we have avoided delay in giving our opinion, that if such were the notion, the error may be remedied during the present session of parliament." Order of sessions confirmed (*b*). See also *Rex* v. *Lower Heyford*, p. 949.

Between the passing of 35 Geo. III. c. 101, and 6 Geo. IV. c. 57, a settlement might have been gained by being charged with and paying rates.

Rex v. *Penryn*, 1 *Nev. & M.* 74; 4 *B. & Ad.* 224. H. Gill was removed from Budock to Penryn. Order confirmed. Case:—In 1815, Henry Gill, the deceased husband of the pauper, took of Edgcome a tenement consisting of three rooms, in the borough of Penryn, at the rent of 6*l.* a year. These rooms originally formed part of a dwelling-house, which before 1815 had been subdivided into five distinct dwelling-houses, of which the three rooms occupied by the pauper formed one. The other houses were occupied by other tenants. It was agreed between Gill and the landlord, that Gill should pay all the rates upon the whole property, the amount to be deducted from his rent. Gill was accordingly rated to, charged with, and paid the church, poor, and highway rates, for the borough of Penryn, between 1815 and 1830, for the whole premises in one entire sum or charge. The aggregate annual value of these premises amounted to 16*l.*, being the rent which the landlord received for the same; but the value of the tene-

(*a*) A servant of the Crown occupying a tenement belonging to the public might gain a settlement by being rated, although he could not by occupation.

(*b*) "The sole object of the legislature in passing the 35 Geo. III. c. 101, was to take away the power of removing poor persons likely to become chargeable, and to make them irremovable till actually chargeable. But in doing this it became necessary to guard against certain evils which this change would produce to parishes. For instance, by the old law, a person coming into a parish, and giving a written notice to the overseers, would, if he resided forty days, gain a settlement. The reason of this being, that if likely to be chargeable, the overseers, availing themselves of the knowledge thereby communicated, might remove him. But when the law was altered, and actual substituted for probable chargeability, it would follow that a person very likely to become chargeable might, if he was desirous of doing so, come in and give notice, and in defiance of the overseers, acquire a settlement by only not demanding relief for forty days. In order to remedy this evil, settlement by notice was abolished by section 3. So again, if a person came to settle on a tenement under 10*l.*, he would by the old law be removable if likely to become chargeable: but if he was rated, and paid rates in respect of it for forty days, and was not during that time actually chargeable, he might become settled in the parish, and demand relief on the forty-first day. For this reason, such persons rated in respect of tenements under 10*l.* were prevented by section 4 from gaining settlements by paying rates. Similar reasons may be given for the two remaining enactments in the 5th and 6th sections. The whole may be thus summed up: Wherever the change of the law from probable to actual chargeability, enabled persons who were likely to become chargeable to obtain settlements by preventing the parish officers from removing them for forty days, those settlements were abolished; but where by the law, as it stood before 35 Geo. III. c. 101, such persons were irremovable, that act did not interfere with their cases. See the judgment of *Holroyd*, J., in *Rex* v. *Idle*, 2 *B. & A.* 149. Applying this principle to the case here decided, we may conclude that the 35 Geo. III. c. 101, did not prevent settlements by paying rates in respect of tenements above 10*l.*; for to such cases the inconvenience above pointed out did not apply. By 13 & 14 Car. II. persons coming to settle on tenements above 10*l.*, and consequently persons paying rates in respect of such tenements, were irremovable even though likely to become chargeable. Their situation therefore was not altered by 35 Geo. III. c. 101." 2 *B. & C.* 128, (note).

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ment occupied by Gill was under 10*l.* a year. In pursuance of the agreement with his landlord, Gill, when he settled his rent, was allowed the amount of the rates which he had from time to time paid. Gill was not answerable for the rent of any of the other tenants, nor had he any connection or control over them. *Denman*, C. J. "The 3 & 4 Will. & Mary, c. 11, s. 6, enacts, 'that if any person who shall come to inhabit in any parish, shall be charged with and pay his share towards the public taxes or levies of the parish, then he shall be deemed to have a legal settlement in the same, though no such notice in writing be delivered as is thereby before required.' It makes no distinction as to the value of the property in respect of which he is to be charged. It would be too much to say that the intention of the legislature was to give a settlement by rating in those cases only where notice was before required to be given to the parish officers. The judgments which have been relied upon in *Rex* v. *Islington* and *Rex* v. *Penryn* (*ante*, 944, n.) were considered with due respect and attention, and overruled in *Rex* v. *St. Pancras* (*ante*, 943). The order of sessions must be confirmed." *Parke*, J. "I am of the same opinion. There is a time when a point even of sessions law ought to be considered as settled." *Taunton* and *Patteson*, Js., concurred. Order of sessions confirmed.

A settlement may be gained by the payment of parochial rates for a tenement not occupied according to the 1 Will. IV. c. 18, if the occupation satisfies the provisions of the 6 Geo. IV. c. 57.

Rex v. *Stoke Damerel*, 1 *N. & P.* 453; 6 *A. & E.* 308. T. Pearce was removed from Stoke Damerel to Plympton Maurice. Order quashed. Case: —It was admitted that the pauper had gained a settlement in Plympton, and that afterwards, and after the passing of 1 Will. IV. c. 18, he rented a house in Stoke Damerel at 16*l.* a year, paid the rent and was rated, and had paid the rates, but during the whole of his tenancy he let a portion of the house of the value of 4*l.* per year to one Knapman. Lord *Denman*. "I certainly believe that the legislature intended to get rid of the settlement by rating, in these acts of parliament; but so Lord *Ellenborough* thought they did by the 35 Geo. III., although in point of fact they did not carry that intention into effect, and that head of settlement re-appeared some years afterwards. When the 6 Geo. IV. c. 57, passed, it cannot be doubted that a person might gain a settlement by the payment of rates, and the effect of that statute was to prevent the occupier of a tenement gaining a settlement by such means, unless the tenement were of a certain description. Then comes the 1 Will. IV. c. 18, in consequence of some decisions of this court, and that act recites the whole of the 6 Geo. IV. as to the means of gaining a settlement by paying of rates or renting a tenement, and enacts, 'that no person shall gain a settlement by renting a tenement, unless the tenement be of a certain description,' omitting in that enacting part the settlement by payment of rates, mentioned in the previous statute. How is it possible then for us to say that the legislature (supposing they had such an intention) have actually carried into effect the intention of preventing the gaining of a settlement by rating? There may be, as my brother *Coleridge* suggested, a reason imagined why they should not have intended it, because certainly the settlement by payment of rates is one of those least susceptible of dispute. It is easily ascertained by a public document whether or not a party was paying rates, and that would avoid all those nice questions which caused so much litigation in former times. But believing, as I certainly do, that the legislature meant to get rid of the settlement altogether by payment of rates, still I cannot see they have taken effectual means for doing so. I think therefore the settlement by the payment of rates, supposing the tenement to be such as described by 6 Geo. IV. continues, notwithstanding the 1 Will. IV." *Williams*, J. "I am of the same opinion. It must be admitted that there is no repeal of settlement by rating; and indeed, in the 6 Geo. IV., it is treated expressly as an existing head of settlement. Supposing the 1 Will. IV. c. 18, had not passed, there is no question but that, consistently with the decisions on 6 Geo. IV., the tenement here held would have been sufficient to have conferred a settlement by renting a tenement, and would have been sufficient also to have conferred a settlement by rating in respect of that tenement. Then the legislature, in consequence, it is presumed, of a decision not anticipated, recite the clause of 6 Geo. IV. c. 57, s. 2, as

to renting and payment of rates, and leave the latter head untouched, providing only for the former. I dare say they thought that this species of settlement was put an end to, but as they have left it untouched, while they touch the other, I must treat it as still subsisting." *Coleridge*, J. "I am of opinion the order of sessions is perfectly right in this case, which seems to me, I must say, a very clear one. The head of settlement by rating was given affirmatively by the 3 Will. & Mary, c. 11, s. 6. Passing over the intermediate statute, that head was restrained by the 6 Geo. IV., and on the passing of that act of parliament no one was to be allowed to acquire a settlement under the 3 Will. & Mary, unless he complied with the regulations of the 6 Geo. IV. It is said now that that statute must be taken to annul the head of settlement by rating altogether. That is precisely the argument that was used unsuccessfully with regard to the 35 Geo. III. And it was afterwards contended, in *Rex* v. *Penryn*, that because a renting of 10*l.* would give a settlement without the rating, that therefore the head of rating was abolished. That is precisely the argument urged to-day; that argument was then urged unsuccessfully; and so it must in common sense be held unsuccessful now. But it is said, if that be not so, still, from the intention of the 1 Will. IV. c. 18, it must be taken at all events, that no such settlement can be gained, unless the parties have complied with all the requisitions of the 1 Will. IV. That would be to make us put the same interpretation on an act of the legislature, in which they have recited both grievances, and have chosen to leave the latter wholly untouched." Order of sessions confirmed.

2. *Construction and Operation of the Statutes on each other.*

Reg. v. *St. Mary Kalendar*, 9 *A. & E.* 626; 1 *P. & D.* 497. S. Gay was removed from St. Maurice to St. Mary Kalendar. Order confirmed. Case:—The respondents called the pauper, who proved that he took a house in St. Mary Kalendar of a Mrs. Page, on the 5th of October, 1835, at the yearly rent of 16*l.*, payable quarterly, and that such tenancy might be put an end to by giving a quarter's notice at any period; that at the end of the first quarter he paid the rent then due; that he then complained of the rent being too high, and said that he should quit; that his landlady then stated that if he would remain, she would take off 10*s.* per quarter from the rent, which was agreed to, and the parties afterwards acted in accordance with such agreement; that he resided in the house till the 26th day of September, 1836, when he with his family removed into a house which he had in another parish, having locked up Mrs. Page's house, in which he left only some few of his things; that his landlady, on being applied to on the 29th of September, refused to accept the key of the house till the 5th of October, on which day he surrendered the key of the premises and paid the remainder of his rent; that he was rated to all the rates made between the 5th October, 1835, and the 5th October, 1836; that he had paid all except the last rate, which was made on the 29th September, confirmed and allowed on the 4th October, and published on the 9th. This last rate he paid no part of, though his name was inserted in it, nor was it proved to have been demanded of him. It was admitted that the pauper had not gained a settlement under 1 Will. IV. c. 18, in consequence of his having taken in lodgers during part of the year; but the respondents contended that he had gained a settlement there by payment of parochial rates; and the sessions being of that opinion, confirmed the order. It was urged that occupation was intended as well as renting, as both are specified in 6 Geo. IV. c. 57. Lord *Denman*. "The meaning was, that a party might rent the house but never take possession, and that should not be sufficient. Here is possession to a certain extent. The distinction that arises is not between occupation and mere holding, but between different modes of occupation." *Coleridge*, J. "Suppose he had gone away without any *animus revertendi*, but had left a person on the premises, would not that have been an occupation? and if so, may he not occupy in the same manner by his goods?" Lord *Denman*. "We will consider this question; but I cannot forbear saying that words which fall from the bench at different times are pressed to an unwarrantable extent. My brother *Littledale's* language in *Rex* v. *Ditcheat* (p. 833) had reference entirely to the

The 4 & 5 Will. IV. c. 76, s. 66, does not apply to settlements by payment of rates. A pauper, therefore, who on the 5th October, 1835, took a house at 16*l.* a year, and was rated and paid his rates in respect thereof, and complied with 6 Geo. IV., acquired a settlement. Leaving some trifling property in the house, and keeping the key of it until the end of the year, when he completed payment of the year's rent, is a sufficient occupation under 6 Geo. IV. c. 57.

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circumstances of the case, though it has been cited in argument as the foundation of a general doctrine. So the time of publishing a rate is material when something is to be dated from the publication, as the notice of appeal in *Reg.* v. *Watts*, (p. 382,) but it is not therefore material, so as to assert rights as that of voting, which depend on the party being rated. We will look into the acts of parliament and the cases." *Cur. adv. vult.* On a subsequent day he delivered the judgment of the court. "The question in this case was, whether the pauper gained a settlement by payment of rates in respect of a tenement. The 6 Geo. IV. c. 57, would defeat the settlement unless there was an occupation for a year. We think that there was such an occupation; for *Rex* v. *Great Bentley* (p. 834) goes farther than the present case. The 4 & 5 Will. IV. c. 76, s. 66, enacts, that from and after the passing of that act 'no settlement shall be acquired or completed by occupying a tenement, unless the person occupying the same shall have been assessed to the poor-rate, and shall have paid the same in respect of such tenement for one year.' It is objected, that as the pauper did not pay rates for a whole year, the above section will prevent his gaining a settlement. It seems, however, not to apply to the case, for it says that no settlement shall be acquired 'by occupying a tenement.' But the settlement now under consideration is by payment of rates, and not by occupying a tenement, so that the new poor law does not interfere with it." Order of sessions confirmed.

The 1 Will. IV. c. 18, dispenses with payment of the whole year's rent in settlements by payment of rates, as well as in settlements by renting a tenement.

Reg. v. *Brighton*, 1 *G. & D.* 54; 1 *Q. B.* 674. Ann Richardson was removed from Petworth to Brighton. Order confirmed. Case:—The pauper was the widow of Joseph Richardson. On the 27th or 28th of March, 1838, Joseph Richardson went into the occupation of a separate and distinct dwelling-house and buildings in Brighton, under a lease for a term of years, and continued with his family to occupy those premises till his death on the 27th of March following. During this time he paid the first three quarters of a year's rent for the premises, amounting to more than 10*l.* (viz. 80*l.*), but the last *quarter of a year's rent was never paid.* He underlet a portion of the premises, but was duly assessed in respect of the whole of them to the poor-rate made on the 17th of July, 1838, (the first rate made after his occupation,) and to another such rate made on the 1st November, 1838, and these two rates were duly paid by him, together with 1*l.* 14*s.* 1*d.* apportioned to him out of a rate made in respect of the premises, on the 5th March, 1838, and assessed upon the then occupiers of the premises previously to his occupation. No other rate was made for the parish in respect of the premises during his occupation. The sessions find as a fact that Joseph Richardson occupied the premises for one whole year. It was contended that the 1 Will. IV. c. 18, was confined to settlements by renting tenements. Lord *Denman.* "I do not find the intention to restrict, and I think the section was meant to apply to both kinds of settlement." *Patteson*, J. "The 6 Geo. IV. provides for the one mode of settlement as well as the other, and the words in the second section are, 'payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement *under the said recited act.*' That would include the settlement by payment of rates." *Williams*, J., concurred. Order of sessions confirmed.

It is not necessary that the person should be *rated* at 10*l.* Rating in respect of a tenement of that annual value is sufficient.

Rex v. *St. Dunstan's* (see this case, p. 808). *Abbott*, C. J. "It is contended against the order that, upon the true construction of the 35 Geo. III. c. 101, we ought to hold that no person shall gain a settlement by being charged and paying rates in respect of a tenement of the yearly value of 10*l.*, unless he is actually rated at that sum in the assessment. Whether that was the intention of the legislature may admit of some doubt, but certainly it is not for us to say that such an effect is to be given to the act of parliament, because the expressions used in the statute are, 'that no person shall gain a settlement by being charged with, and paying his share towards the public taxes of the parish, in respect of any tenement, *not being of the value of* 10*l.*' Then, must not the yearly value be the criterion, and not the sum at which the tenant is actually rated? In this case I think that the fixtures having made the tenement amount to the value

of 10*l.*, we must say that the pauper's husband gained a settlement without any regard to the amount of rate, or the value fixed by the parish officers in their assessment. If we were to lay down a different rule of construction, it might happen that a person could gain no settlement by rating, even though it could be proved to demonstration that the tenement was of the yearly value of 20*l.* or any larger amount." *Bayley*, J. "I do not agree with the construction put upon the 35 Geo. III. c. 101, in argument. The legislature has said, 'not being of the value of 10*l.*,' which only shows that the tenement must be of that value. If it had been said, 'not rated to the value of 10*l.*' I should have acceded to the argument."

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It is not necessary that the party should be a *tenant* to acquire a settlement by rating. The clerk of an attorney occupying a tenement, rent-free, and paying rates, which the attorney reimbursed him, gains a settlement.

Rex v. *Lower Heyford*, 1 *Bar. & Adol.* 75. John Garratt and children were removed from Banbury to Lower Heyford. Order confirmed. Case:—John Garratt had been for many years previous to his death the clerk of Mr. Bignell, an attorney. In September, 1818, Mr. Bignell took certain premises in Caulcott in the appellant parish, consisting of a cottage, garden, orchard, and about thirteen acres of land, for a term of seven years, at the yearly rent of 38*l.*, and in 1819, he allowed John Garratt (who up to that time lived at Bicester) to reside at the cottage as being nearer to Middleton, his own residence, and more convenient for business. Garratt accordingly removed to Caulcott with his family, and lived in the cottage, to which three acres of land were attached, and which Garratt occupied for several years, but he never had anything to do with the remainder of the land. Mr. Bignell always paid the entire rent to his landlord, and Garratt paid no rent; neither was any reduction made in his salary; and Mr. Bignell stated as his reason for this, that Garratt had a large family, and his salary was low, and as an augmentation to it, he, Mr. Bignell, permitted him to occupy the cottage, &c., valued by Mr. Bignell at 20*l.* per annum. Garratt left the premises when required, without receiving any notice to quit. In the books of the appellant parish Garratt was rated as the occupier of the cottage and land, and he paid the rates, although Mr. Bignell was sometimes called upon to pay, and did pay, the entire rate so assessed. The rates, when paid by Garratt, were either repaid to him by Mr. Bignell, or allowed in account. The sessions determined that there was no such renting of a tenement as would confer a settlement, but confirmed the order on the ground that Garratt had been charged with and paid his share towards the public taxes of the parish. *Bayley*, J., now delivered the judgment of the court: "This case depended on the settlement of John Garratt, the father of the paupers. The facts were these: Garratt was clerk to Mr. Bignell, an attorney. Mr. Bignell rented a cottage and about thirteen acres of land in Lower Heyford, and he suffered Garratt to live in the cottage, to which three acres of land were attached, rent-free. For this cottage and land Garratt was rated, and he paid the rates; but Mr. Bignell either repaid him or allowed him the money in account. Whether he was rated for the whole thirteen acres, or only for the cottage and the three, does not appear very clearly upon the case; but if what he was rated for was of the yearly value of 10*l.*, which has not been disputed, it is in our view of the case sufficient. Upon these facts two questions appear to have been made at the sessions, one whether he gained a settlement by coming to settle upon a tenement of the yearly value of 10*l.*, and the other, whether he gained one by coming to inhabit in the parish, and being charged with and paying his share towards the public taxes and levies of the parish; the sessions thought he gained a settlement by the latter mode, and we think their decision was right. It was decided in *Rex* v. *St. Pancras* (*ante*, p. 943), that the 35 Geo. III. c. 101, s. 4, has not entirely abolished this head of settlement, but that it still remains in force where the premises for which the rates are imposed are of the value of 10*l.* a year. The 3 Will. & Mary, c. 11, upon which this head of settlement depends, prescribes the steps where a settlement shall be obtained by *notice*, and, by section 6, provides that if any person who shall come to inhabit in any parish shall be charged with and pay his share towards the public taxes or levies of the said parish, he shall be adjudged to have a legal settlement therein, though no notice has been given. The questions, there-

2. *Construction and Operation of the Statutes.*

fore, in this case are, did Garratt come to inhabit in this parish? and was he charged with, and did he pay, his share towards the public taxes or levies of this parish? and upon these points there is no doubt. It was never contended that he did not gain a settlement upon these grounds. The grounds upon which it is contended that he did not gain a settlement are, that he was not properly tenant of the cottage and land, though he occupied them, but that he occupied rather as servant to Mr. Bignell; that Mr. Bignell was to be considered as the person rated, though it was in Garratt's name; that there was nothing which could properly be called Garratt's share of the rates; and that, though he paid the rates in the first instance, he was either reimbursed or allowed them in account by Mr. Bignell. It is not necessary for us to decide whether Garratt was properly tenant of this cottage and land (though, as the occupation of this cottage and land was unconnected with, and wholly independent of, the service of Garratt to Bignell, there would be no difficulty in the decision), but it is not necessary to decide this question; because the settlement in this case depends, not on the coming to settle on a tenement under the 13 & 14 Car. II. c. 12, in which case the relation of landlord and tenant is essential, but on coming to inhabit, and being charged with and paying his share of the public taxes or levies of the parish, under the 3 Will. & Mary, c. 11, s. 6, in which case the relation of landlord and tenant is not necessary; but all that is requisite is, that the parish shall rate the party, so as to show that they are aware that he is in the parish, and that he should pay upon such rating. That the relation of landlord and tenant is not necessary in the latter case, under the 3 Will. & Mary, c. 11, s. 6, is established by *Rex* v. *Stapleton*, *Burr. S. C.* 649. There the pauper lived with his mother, and was rated for a house and land she occupied. He occupied nothing in the parish himself, and yet it was decided, that by paying such rate he gained a settlement: for the parish, by rating him, had shown that they knew he was inhabiting within the parish, and had recognized him as an inhabitant, and by making the payment, he had performed that part of the condition the statute imposes upon the person charged, viz. paying his share. It was contended there, as it has been contended here, that as he was not occupier, no part of the rate could be called his share; but that argument was overruled. Now that case is much stronger than this; for there the person rated was not the occupier; here he clearly is." After alluding to the other point, (which see, *post*,) he added, "that Garratt gained a settlement by payment of rates, and confirmed the decision of the sessions." (*a*)

Test of occupation as a tenant.

The relation of landlord and tenant not necessary for acquiring a settlement by paying rates.

3. *Of Inhabitancy.*

3. Of Inhabitancy.

The pauper must inhabit the parish in which he is rated.

Rex v. *St. Michael-at-Thorn, in Norwich*, 6 *T. R.* 536. The pauper resided in one, and was assessed to the land-tax in another parish. The two parishes were consolidated by statute, and the poor maintained out of one joint fund. The removal was from a third parish. Lord *Kenyon*. "Though they were consolidated for that purpose, as between them and strangers each parish continues a separate and distinct parish. Then the 3 & 4 Will. & Mary says, that any person who shall inhabit in any town or parish, and be charged with and pay his share towards the public taxes *of the said* town or parish, shall thereby obtain a settlement; but in this case the pauper's husband lived in one parish, and was assessed to the land-tax in another, therefore this does not come within the statute."

The party must reside forty days after he has been rated and paid the rates. If such forty days had not elapsed before the 6 Geo. IV. c. 57, and the party had not

Rex v. *Ringstead*, 7 *B. & C.* 607. Elizabeth, wife of J. Saunders, was removed from Kimbolton to Ringstead. Order confirmed. Case:—After Lady-day, 1825, the pauper's husband hired a tenement in Ringstead, of the annual value of 10*l.* upwards, from Lady-day, 1825, to Lady-day, 1826, and went to settle on it on the 4th of May, 1825, being upwards of forty days before the passing of 6 Geo. IV. c. 57, (22 June, 1825). A poor-rate was made and allowed on the 27th of May, 1825, and was paid a few days

(*a*) What is a sufficient assessment and payment, under 4 & 5 Will. IV. c. 76, s. 66, see *Reg.* v. *Hulme*, p. 958.

afterwards, being less than forty days before the passing of the said statute. The requisites of the 59 Geo. III. c. 50, were not complied with, so that no settlement could be gained by renting a tenement under that statute; on the 2nd March, 1825, a church-rate was made at a parish meeting in Ringstead, and the pauper's husband coming into the parish on the 4th May, his name was inserted in the church-rate, and the rate afterwards paid by him. *Bayley*, J. "I think that in order to gain a settlement in this case by the payment of taxes, the pauper ought to have resided in the parish forty days after he had been rated, and paid the taxes. By the 1 Jac. II. c. 3, the forty days' countinuance of a person in a parish (intended by the 13 & 14 Car. II. to make a settlement) is to be accounted from the time of his delivery of a notice in writing of the house of his abode to one of the parish officers, and by s. 3 of 3 Will. & Mary, c. 11, from the time of the publication of such notice in the manner therein mentioned. It is clear, therefore, that in order to gain a settlement, it was necessary that a party should continue in a parish forty days after the giving and publication of the notice to the parish officers. But s. 6 of the latter statute provides that, 'if any person who shall come to inhabit in any parish shall be charged with, and pay his share of towards, the public taxes of the parish, then he shall be adjudged and deemed to have a legal settlement in the same, although no such notice in writing be delivered and published, as is hereby before required.' By this clause the legislature therefore evidently consider the being charged with and paying parochial taxes equivalent to the giving and publishing the notice in writing required in other cases. As it was, therefore, necessary to reside forty days in a parish after the giving and publication of notice, it follows that, in order to gain a settlement, by reason of having been charged with and paid parochial taxes, a party ought to reside forty days after he has been so charged with and paid such taxes; and if that be so, then on the 22nd day of June, 1825, the pauper had not resided forty days after the making of the poor-rate; and it does not appear that he resided forty days after payment of the church-rate, and it is not stated when that rate was paid. It is no shown, therefore, that he had gained any settlement by having been charged with and paid parochial taxes on the 22nd June, 1825; and the 6 Geo. IV. c. 57, has prevented the gaining of a settlement after that period, unless the tenement has all the qualities there described, which in this case it had not." *Littledale*, J. "The 3 & 4 Will. & Mary, c. 11, s. 6, confers a settlement on any inhabitant who has been charged with and paid his share towards the parochial taxes. The settlement, however, is not acquired until the taxes are actually paid. Before that time the parish need not take any notice of the party. The payment of the taxes with which the party is charged is by the statute made equivalent to the notice otherwise required to be given to the parish officers. Now as a person could not gain a settlement until he had continued forty days in the parish after such notice had been given and published, I think it follows, as a necessary consequence, that no settlement could be gained by the pauper in this case until he had continued in the parish forty days after he had paid the taxes with which he was charged. It does not appear that he had paid any taxes on the 22nd June, 1825, consequently it is not shown that at that time he had acquired any settlement, and the 6 Geo. IV. c. 57, prevented his gaining any settlement after that period." Order of sessions *confirmed*. (*a*)

complied with the requisites of the statute, he acquires no settlement.

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4. What are Parochial Taxes or Levies within this Act.

Not assessed taxes.

Payment of the assessed taxes shall not entitle any person to a settlement. See 43 Geo. III. c. 161, s. 59, (*ante*).

Land-tax held to be a tax within the act.

Rex v. *Bramley*, *Burr. S. C.* 75. John Close, the pauper, inhabited and farmed lands at Armley, for which he was charged and paid two quarterly payments to the land-tax only. By the court: "It hath been a great doubt,

(*a*) So says the report, but it must have been *quashed*, as the sessions confirmed the settlement in Ringstead, but the Court of King's Bench thought that none had been gained there.

4. *What are Parochial Taxes.*

The words "parochial rates," in the 6 Geo. IV. c. 57, applies to the land-tax; and is not confined to rates made for the use of the parish, but extends to all levies collected within the parish.

whether in this respect the legislature did not mean *parochial* taxes. But this hath been long gotten over; and the land-tax has been holden to be within the act, from the notice of inhabitancy that arises by the party's being assessed and paying it."

Rex v. *East Teignmouth*, 1 *Bar. & Adol.* 244. G. White was removed from East Teignmouth to Bishopteignton. Order quashed. Case:—The pauper, a short time before Lady-day, 1825, hired a mill and some closes of land in the parish of Bishopteignton, at the rent of 30*l.* a year, from the said Lady-day, and occupied the premises, residing thereon, with some intervals, during which he was under arrest, till shortly after Christmas, 1826, when in consequence of his rent being unpaid a negotiation took place between him and his landlord, and he gave up his possession and interest in the property. During his occupancy he was assessed to the parochial and other rates, some of which he paid, and among these one half-year's assessment to the land-tax, due on the 12th day of April, 1826, was paid by him in the month of July following. *Bayley*, J. "I think that the decision of the sessions was right. I quite agree that where a variety of language is found in several acts of parliament in *pari materia, primâ facie* the inference is that the legislature had a different meaning, but that does not of necessity follow. We must look not only at the words of the statute, but to the cause of making it, to ascertain the intent; '*qui hæret in litera hæret in cortice.*' The words of the 3 Will. & Mary, c. 11, s. 6, so far as respects this question, are 'that if any person shall be charged with and pay his share towards the public taxes or levies of the said parish, he shall be adjudged to have a legal settlement in the same.' The 35 Geo. III. c. 101, with the accuracy which might be expected from the framer of that act, adopts the words of the 3 Will. & Mary, and enacts, 'that no person who shall come into any parish shall gain a settlement in such parish by being charged with and paying his share *towards the public taxes or levies of the said parish* for or in respect of any tenement not being of the yearly value of 10*l.*' A question had arisen previous to *Rex* v. *Bramley* (*supra*), which was under the statute 3 Will. & Mary, c. 11, s. 6, whether the land-tax was a public tax and levy of the parish. It was said not to be a parochial tax; and it was not so in one sense, because when raised it was not applicable to a parochial purpose; but it was held to be one of the public levies and taxes of the parish, and that construction has been put on the act in several cases. Then, if a settlement might be obtained before the 6 Geo. IV. c. 57, by paying public taxes of the parish, are not such taxes '*parochial?*' within the meaning of that statute, taking the word in a large sense. The argument is, that the words 'parochial taxes' in the latter statute import taxes raised for parish purposes. But that is not of necessity the meaning of the words 'parochial taxes.' They may mean taxes of the parish; and if they may have two meanings, the question is, in what sense they were used in the 6 Geo. IV. c. 57? The title of the act is 'An Act for the amendment of the law respecting the settlement of the poor as far as regards renting tenements and paying *parochial taxes.*' Now these latter words undoubtedly mean taxes of the parish, by the payment of which a settlement might be gained by virtue of the statute 3 Will. & Mary. It then recites, 'that the settlement of the poor has been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they had paid *parochial rates.*' It is conceded there is no distinction between the words 'rates' and 'taxes.' The recital therefore refers to the annual value of tenements, in respect of which settlements might have been gained by virtue of the 3 Will. & Mary, by payment of public taxes or the rates of the parish. The statute proceeds to enact, 'that no person shall acquire a settlement by paying parochial rates,' &c. There is undoubtedly a confusion of language; but we may collect from the title and preamble, that it was intended to use the words 'rates' and 'taxes' as synonymous, and the word 'parochial' in the general large sense, 'of the parish.' There is nothing to show that a different sense was intended. If this be so, it concludes the present question; because the land-tax has been decided to be a tax of the parish. I think then the words 'parochial rates'

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in the 6 Geo. IV. c. 57, are not to be confined in construction to rates or taxes raised for the purposes of the parish, but that they are to be construed in the same sense as the words 'taxes of the parish' in the 3 Will. & Mary, c. 11, s. 6, and 35 Geo. III. c. 101, s. 4, and therefore that they import taxes raised within the parish. That being so, then that statute prevents the gaining of a settlement by reason of any person being assessed to and having paid parochial taxes, unless the rent has been paid for the term of one whole year. Here that condition has not been complied with, and consequently no settlement has been gained." *Littledale*, J. "I am of opinion that, construing the word 'parochial' in a large sense, the land-tax is a parochial rate within the meaning of the act of parliament. In common parlance the word 'taxes' is used to denote taxes raised for the general purposes of the state; the word 'rate,' to denote taxes raised for local purposes. But generally speaking, a rate is a levy; and a parochial rate is a levy raised within the district called a 'parish,' though it be applicable to the general purposes of the state. That being the general meaning of the term, there is no ground for saying that it was intended to be used in any other sense in the 6 Geo. IV. c. 57; and if not, then no settlement was gained by the payment of the land-tax; it was the payment of a parochial rate, and the requisites of the 6 Geo. IV. c. 57, had not been complied with by occupying and paying the rent of the tenement during one whole year." *Parke*, J. "The question turns entirely on the construction to be put on the 6 Geo. IV. c. 57, s. 2, by which it is enacted, 'that no person shall acquire a settlement by reason of settling upon, renting, or paying *parochial rates* for any tenement, &c. unless such tenement shall consist,' &c. If the words 'parochial rate' are to be understood of any tax levied within the parish, then a settlement was gained, because the act does not apply. But if it be understood as applicable strictly to a tax raised for the purposes of the parish, then no settlement was gained. Now it is a good rule of construction to interpret the words of an act of parliament in their ordinary grammatical sense, unless it appear clearly from the context that the legislature used them in some other. Here, by looking at the title of the act and the mischief recited, and by comparing the title and the recital with the body of the act, it is manifest that the legislature meant to use the words 'parochial rates' in the sense of rates or taxes raised within the parish. The title of the act is, 'An Act for the amendment of the law respecting the settlement of the poor, as far as regards renting tenements and paying *parochial taxes*. Now before this statute a settlement might be gained by the payment of taxes raised within the parish. The word 'parochial' clearly applied to that term. The mischief recited is, 'that the settlement of the poor had been made in some instances to depend upon the annual value of tenements which they may have rented, or upon the annual value of tenements in virtue of which they had paid parochial rates, and that the ascertaining such value in such respective cases had given rise to very expensive litigation.' I conclude therefore from the preamble, that the parochial rates therein mentioned were intended to include all parochial rates or taxes comprehended in the 3 Will. & Mary, c. 11, s. 6, and that the legislature meant to prevent all discussion and litigation relating to questions of settlement depending upon the payment of such parochial taxes. The land-tax was one of those taxes; consequently, since the 6 Geo. IV. c. 57, no settlement can be gained by the payment of that tax in respect of any tenement, unless all things required by that statute be done." Order of sessions confirmed.

Rule for construing a statute.

Payment of land-tax, in respect of salary, sufficient.

In *Rex* v. *Axmouth* (*post*), it was contended, that since the land-tax redemption acts, (38 Geo. III. c. 60, *sed vide* 42 Geo. III. c. 116, vol. iii.) which perpetuate the tax on lands as a charge upon the lands in the parish, and leave the tax on salaries as a mere personal tax, the rating in respect of the latter no longer satisfied the words of 3 Will. III. c. 11. But the court immediately overruled it, stating, that the tax was still a public tax, leviable and collected within the parish. (See 43 Geo. III. c. 161, s. 59, *ante*.)

Payment of a *watch-rate* in one of the city *wards* does not gain a settlement.

Rex v. *Christ Church, London*, 8 *B. & C.* 660. *S. C.* nom. *Rex* v. *St. Anne's, Blackfriars*, 3 *Man. & R.* 383. Order of removal of Sophia, wife of John Gyles (who was absent from her), from St. Anne, Blackfriars, to

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Christ Church, confirmed. Case:—John occupied part of a house in Christ Church, of the yearly value of 20*l.*, for several months in 1821, and during that time was rated to and paid two quarters' watch-rates for the ward of Farringdon. The city is divided into twenty-six wards, and the ward of Farringdon into seventeen precincts; the house of Gyles, with regard to ward matters, is in St. Ewin's, and not in Christ Church precinct. The watch-rate is made by the alderman and common councilmen of each ward, under 10 Geo. II. c. 22, which enables the mayor, aldermen, and commons of the city to determine what sum shall be raised for watching, and directs the alderman and councilmen of each ward to make an assessment upon every person who shall inhabit or hold any land in the ward. The rate is collected by the beadle of the ward. *Bayley*, J. "The *land-tax* was holden to be within the act, from the notice of inhabitancy that arises by the party having been assessed and paid it. Payment towards *a county bridge gives no settlement*, because a person pays as an inhabitant of the county, and not of the parish. This watch-rate is not a parochial tax, nor is it collected by any officer belonging to the parish: the parish had no notice that the party who paid the watch-rate was an inhabitant of the parish: no settlement therefore was gained." Order of sessions quashed.

Nor of a county rate.

Nor of a highway rate.

We have seen that no person can acquire a settlement by being rated to the repairs of the *highways*. See Statute, *ante*.

County bridge rate not within the statute.

T. 9 *Ann. Set. & Rem.* 1. Paying to a *county bridge* gains no settlement, for there all the county is liable, and the payment is made as one of the county, and not as an inhabitant of the parish or town where the person resides. And see the judgment of *Bayley*, J., *supra*.

Unless altered by 12 Geo. II. c. 29.

But as the 12 Geo. II. c. 29, charges a sum certain upon every *division* in proportion to their poor-rate, towards the repair of bridges and other county expenses, and (with respect to bridges) is charged by the justices upon every individual, the case may be altered since that act was passed, under which it may be considered a parish rate or tax. And there is in this case the same notoriety of his inhabitancy as in the case of the poor-rate.

Church rate.

The *church-rate* is a *parish tax*. (*Rex* v. *St. Bees*, *infra*, and *Rex* v. *Ringstead*, p. 950.)

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5. *The Person must be Charged and Pay such Tax.*

Payment of the sum assessed is sufficient, though the rate be informal.

5. The Person must be Charged and Pay such Tax.

Although the rate be, from the manner of making it, or from the want of authority in those who assume to make it, not strictly legal, or be void for want of form, or on any other ground, yet if the party be rated, and pay to such a rate, he shall gain a settlement: for it would be hard that one of the parish should come and say, that was a void rate, being of their own making, and acquiesced under, and the money paid accordingly. (19 *Vin. Abr.* 386; *St. Giles's, Cripplegate*, v. *St. Mary Newington*.)

Not so, if the name be inserted after the rate is paid.

Rex v. *Edgbaston*, 6 *T. R.* 540. A person's name was inserted in a rate *after payment*, and after it was so introduced, he always refused to pay. He gained no settlement.

A rate too narrowly made is good for the purposes of settlement.

Rex v. *St. Bees*, 9 *East*, 203. Removal of Sarah Tidyman from Egremont to St. Bees, confirmed. Case:—The pauper's husband occupied a house in Egremont till his death. A year after they occupied the house, a churchwarden called at the house for an assessment (generally called in the parish a *couple sess*, but which the pauper understood to be a *church cess*), and told her that her husband was assessed, and she paid 1*s.* 2*d.* as the sum assessed. Some time afterwards she paid 1*s.* more, upon a similar demand made by another churchwarden. And afterwards another shilling was paid, and the assessment was as follows:—

"1791. An assessment upon the householders in the parish of Egremont, at 1*s.* *per couple*, for the ornaments and repairs of the parish church;

	s.	*d.*
"× John Tidyman	1	0

"We whose names are hereunto subscribed (being of the church vestry), do allow of this as a regular assessment; as witness our hands, the 28th of March, 1791." (Signed by the minister and eight other persons, including the two churchwardens.)

The mark × opposite Tidyman's name denoted that he had paid the

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assessment. It appeared from the churchwarden's accounts of that year entered in the vestry book, that the sums received under that assessment were in part laid out in the repairs and ornaments of the church, and the rest in payment of a debt due to the preceding overseers. But that assessment being insufficient, another was made in the same year in aid of it, upon the landholders of the parish, who were never assessed but when the assessment upon the householders proved insufficient. And it was frequently the practice for the select vestry of the parish to make out these assessments in the form of a list of the names of the inhabitants liable to pay; charging the householders at 1*s.* each, and the widowers and widows, householders, at 6*d.* each; which assessments were afterwards submitted to and approved by the general parish vestry. It was contended that the rate was clearly bad, as being made upon the householders only, and not upon the parishioners at large. Lord *Ellenborough*, C. J. "The settlement is given by 3 Will. III. c. 11, to any person inhabiting any town or parish, who shall be charged and pay his share towards the public taxes or levies of the town or parish. Now if a public tax be laid too narrowly, is it less a public tax on that account? This was a *tax*, and it was *public*, and it was *charged* and *paid* within the parish. What else was required to meet the act of parliament?" Order of sessions quashed.

Omission of the sum assessed immaterial, if the amount can be ascertained from the rate.

Rex v. *Corhampton, Doug.* 621. The overseers made a rate for 2*s.* in the pound in this form, "Rent 4*l.* Occupier, Richard Goodiff. Sum assessed ———." The overseers demanded 8*s.* for the rate, declaring he was assessed in that sum for the relief of the poor. Goodiff objected, alleging that he was not a parishioner. The overseers opened the rate-book, and showed him his name therein, and threatened to distrain for the 8*s.* if he did not pay it. Goodiff on this paid the money directly. In the afternoon of the same day, the overseer returned with the vestry clerk, and offered to return the money, saying he had taken it by mistake. Goodiff refused to receive it. The overseer however left it, and went away; on which Goodiff threw the money after him. It was contended that the parish never intended to rate him. The mistake of the overseer (and corrected so soon), in supposing him rated when he was not, could not be binding upon the parish. By Lord *Mansfield*, C. J. "There is no question in the case. The title of the rate is, 2*s.* in the pound; and in the column of rent, Goodiff's rent is 4*l.* This fixes his proportion of the rate. For what purpose was his name inserted, if not to rate him? And besides he has paid it, and against his will; and the overseer shall not have it in his power to say, upon reconsidering the matter, I have thought better of it, and you shall not gain a settlement. *Rex* v. *Warblington* (*Burr. S. C.* 245) was different from this. The payment there was not till a year after it should have been made, and the overseer was induced to receive it by misrepresentation."

Tender of repayment.

The person paying must be the person rated.

Solon Tongham v. *Worplesdon, Fol.* 128. The *landlord was rated* to the poor for the tenement, as being in his hands, and *the tenant paid* part of the rate. By the court: "The tenant doth not gain a settlement, unless he be both rated and pay."

The party must be rated.

Kinfare v. *Kingswinford, Fol.* 129. The pauper rented a tenement and paid all parochial taxes for the same for three years in his own right, but was not rated in the parish books; but the name of Richard Coates, who rented the tenement before the pauper, was kept in the levy books. By the court: "This was no settlement."

Same point.

Rex v. *Sarratt, Burr. S. C.* 73. The landlord, who never occupied the house, was charged to the poor-rate; but the tenant on demand of the overseers paid it. Lord *Hardwicke*, C. J. "The act requires both a charge and payment; and here is only a charge without a payment. The charging is the principal act, as it infers notice to the parish; but both are necessary. The tenant must both be charged and pay."

Same point.

Rex v. *Bramshaw, Burr. S. C.* 98. The landlord of the house, who was also overseer of the poor, was charged to the poor rate; but the tenant on demand of the landlord paid the rate. By the court: "It is a settled point, that a person must be rated as well as pay."

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Rex v. *Lower Walton, Burr. S. C.* 100. The father was rated, and the son who occupied the tenement paid the rate. By the court: "He must both be *rated* and *pay* in order to gain a settlement."

Same point.

A rate continued in the name of a dead person, the overseers knowing the pauper to be tenant, held to be sufficient.

Rex v. *Heckmondwicke, Doug.* 564. The mother occupied a house in Batley, and was rated and paid the taxes till the time of her death; after which, her son occupied the house and paid taxes, but the parish officers continued her name in the rate, knowing at the same time that she was dead, and that the son was the tenant and occupier of the house. By Lord *Mansfield.* "There must be such a rating and paying, as to show manifestly that the parish had notice. Here the rate was continued in the name of a dead person, whom the parish officers knew to be dead. The rate ought to be made on the occupier, and the charge was made on him, and could be on nobody else. This was determined in *Rex* v. *Walsall* (*infra*), where a settlement was gained." Order of removal from Batley quashed.

It is sufficient if a person is rated as "occupier," without his name.

Rex v. *Brightman,* 8 *Mod.* 38; 2 *Burr.* 1062. Where a man lived in a place called Hoscoe's tenement, and paid taxes there by the name of the *occupier* of Hoscoe's; this was adjudged to be a sufficient designation of the party, so as to gain a settlement. (S. P. 2 *Salk.* 478).

Or as tenant.

Rex v. *Painswick, Burr. S. C.* 465. The pauper, Isaac Moorman, took a house in Cirencester, of Thomas Clifford, and agreed to pay the land-tax, and poor-taxes, and all other taxes. The rating was thus: "*Thomas Clifford, or tenant.*" Moorman paid the taxes: and the overseers gave receipts to him in his own name. The landlord lived five miles off. It was urged, that Moorman himself was not rated: being neither expressly named nor even personally hinted at. But the court (Lord *Mansfield* absent) was clearly of opinion, "that the pauper was sufficiently charged, to notify to Cirencester that he was an inhabitant there, and consequently gained a settlement by payment of the rates so charged. It was not necessary that he should be expressly named."

It is enough if there be a description sufficient to charge the tenant.

Rex v. *Walsall, Cald.* 35. The pauper, Joseph Dean, took a farm in the borough of Walsall and paid the poor-rates in his own right, which were charged in these words, "*Late* Lowbridge's *house,* 2*l.* 6*s.* 0*d.*—1*s.* 2*d.*" Other tenements in the borough were charged in the same manner, after new inhabitants had come into them, who severally paid the rates for them: this tenement had been so charged ever since one Lowbridge left it. By *Aston,* J. and the court (Lord *Mansfield,* C. J. being absent): "It is agreed that the person must be both rated and pay; and as to the manner *how* he is to be rated, it is clear that his name need not be inserted in the rate. If the parish have sufficient notice of him, it is enough; paying under a rating is equivalent to notice, and the officers have received the rate of this man for two or three years, and therefore must have known him; and it is stated that he *paid in his own right.* He gained a settlement."

There must be a charge upon the tenant, and if the rate be made in any other way than by name, it must appear that the tenant was notoriously such.

Rex v. *Llangammarch,* 2 *T. R.* 628. The pauper was removed from Llanwslyd to Llangammarch. Removal confirmed. The pauper, in May, 1778, rented a house and land in Llangammarch, at 5*l.* per annum. No agreement was then made between the landlord and tenant about payment of the taxes. The house is called Bryn Frwst, or Waynllwyd, and the land is rated to the poor-tax by the name of Waynllwyd. The pauper lived one year in the house, but paid no taxes for it. In September, 1778, the landlord informed him that taxes were wanted for his land. The pauper desired the landlord to pay them, and he would repay him the same. In fact, no taxes were ever paid by or demanded from the tenant; but it appeared that the landlord paid the taxes, and that the pauper allowed them. The overseer who received the taxes from the landlord for this land knew nothing of the pauper; nor whether or not he resided at this farm at the time. *Rex* v. *Painswick* and *Rex* v. *Walsall* (*supra*) were cited. *Ashhurst,* J. "The circumstance that the overseer did not know the pauper, nor whether he resided at this farm, distinguishes this from the cases cited. The ground of determination in *Rex* v. *Painswick* was the notoriety of the occupancy. For when Mr. J. *Dennison* thought that rating the house only might be sufficient, he added, 'for the parish could not but know who was the occupier.' That, indeed, is the natural presumption; but we cannot presume

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against the facts of the case; and here it is expressly stated as a fact, that the overseer knew nothing of the pauper, or whether he resided at this farm. The reason why a party gains a settlement by paying taxes, is because it is an admission by the parish that he is an inhabitant. There is no foundation for the distinction which has been taken between the knowledge of the overseer, and that of the parish at large; for the overseers are the trustees for, and transact the business of, the parish, and they ought to know the state and conditions of the inhabitants. And, indeed, if we could presume either way, it would rather be, that the parish even did not know that the pauper resided in his farm." *Buller*, J. "The poor's-rate is a tax on the occupier; if the house be rated, it is *primâ facie* a rate on the occupier, but it is not conclusive. If the overseer call on the occupier for the rate, and he pays, that shows that he intended he should pay. But here the overseer did not know that he was an inhabitant, and he went to the landlord and received the rate from him." *Grose*, J., concurred.

The poor-rate is a tax on the occupation.

Rex v. *Folkstone*, 3 *T. R.* 505. The rate for the land-tax was as follows:

Where the names of landlord and tenant are on the rate, the sessions should find which was rated.

Sum assessed.	Proprietors.	Occupier.	Houses.	Quarterly payment.
10*s.* 10*d.*	H. S.	J. King.		2*s.* 6*d.*

The sessions were of opinion that the landlords were the persons intended to be rated. Lord *Kenyon*. "On the rate there is one column of the proprietors, and another of tenants; but the names of the tenants were only inserted in order to show for what property the landlords were rated." *Buller*, J. "Whether the landlord or tenant is rated, is a question of fact which should always be found by the justices: here it is stated, and we are precluded by their opinion from entering into the question." Order of sessions affirmed.

The land-tax is, *prima facie* on the tenant.

Rex v. *St. Lawrence, Winchester*, 4 *Doug.* 190. The pauper, Scullard, occupied a house in Eastmeon, when an assessment was made on the tithing of Eastmeon for land-tax; the rate was:—

Proprietor.	Occupier.	Sum assessed.
William Clark.	C. Scullard.	4*s.*

Scullard paid the rate, and the receipt was—"Received of C. Scullard, 2*s.* for land-tax, for Mr. Clark's house." Lord *Mansfield*. "The occupier is the person who, as it regards the public, ought to be rated. The remedy lies against him. The receipt here was given for the house by way of description, as Mr. Clark's house. Whether the landlord or tenant be rated, is a question of fact." *Buller*, J. "The rate is, *primâ facie*, on the tenant; and if the fact be not found to be otherwise by the justices, it must be taken to be a rate on the tenant." The court quashed the order of sessions, who had quashed the order of removal to Eastmeon.

It may be inferred from the form of rating who is the person rated; and in the case of land-tax, the presumption is (between the public and the tenant), that the occupier is the person rated.

Rex v. *Mitcham, Cald.* 276; 4 *Doug.* 226, S. C. John Heard removed from Mitcham to Moredon. Order quashed. Case:—The pauper inhabited for several years a house at Moredon, which he rented of Mr. Gasson, who was also an inhabitant there, at the yearly rent of 5*l.* clear of all taxes, parliamentary and parochial. Whilst he occupied it, an assessment for the land-tax was made on Moredon, the title of which was, "Surrey, &c., an assessment on the *inhabitants* of the parish of Moredon, for raising a sum by a land-tax," &c., in the following form:—

Rent.	Landlord's name.	Tenant's name.	£	*s.*	*d.*
£5 0 0	Mr. Gasson.	John Heard.	0	9	9½

Heard paid the 9*s.* 9½*d.* to the collector who demanded the same. By Lord *Mansfield*, C. J. "The question is, whether the landlord or tenant is the person charged? The assessment does not say who is, but the names of both landlord and tenant are used. The rate alone then, in this case, is no charge upon either. The answer to this question must, therefore, be gathered from other circumstances. In the first place, who ought to be charged? Undoubtedly the occupier ought. The landlord, it is true, is

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the debtor, but the rate is pointed at the occupier. The parish cannot tell who is the landlord, or who has a rent-charge. It is upon the occupier that the officer of government takes his remedy; and though the landlord is directed to allow the sum levied out of the rent, the parish have nothing to do with the transactions between landlord and tenant: this is a matter between them; but for the sake of the public, the occupier, the ostensible person, is to be considered as the person first liable. The next consideration is, what does the assessment profess to be? It professes to be an assessment on the *inhabitants*, that is, the occupiers: the landlord may or may not be an inhabitant: the tenant must be. Then, of whom is it demanded? Of the occupier. Who pays it? The occupier. We may, therefore, supply from the circumstances that which is omitted in the rate itself; and intend here, that which was expressed in *Rex* v. *Carshalton* (*Burr. S. C.* 809), with which the present decision does not interfere." *Willes*, J. "There are two circumstances which differ this case from that of *Rex* v. *Carshalton*, viz. the title of the rate, and the manner of making it; (*a*) and the court were there of opinion, that the landlord was charged upon the face of it. Here, where the expressions fall short, and we cannot, from the instrument itself, collect enough to found our judgment upon, collateral circumstances point out the tenant as the person meant to be charged." Order quashed. (See *Rex* v. *Endon*, *Cald.* 374.)

Where the collector gave the receipt in the name of the landlord, in the form "so much assessed on the landlord," the presumption is that the landlord was rated. (*Rex* v. *St. James's, Bury*, 4 *Doug.* 200.)

What is a sufficient assessment.

Reg. v. *Hulme*, 7 *Jurist*, 463. The pauper rented and occupied a house at 28*l.* a-year from June 1838 to December 1839, and paid the rent. In the poor-rate made in 1838 the house was entered, but not the name of the tenant. The entry was: Progressive number, 2; No. of assessment, 41; Name of occupier, ——; Name of owner, Trustees of O. H.; Gross estimated rental, ——; Rateable value, 25*l.*; Total amount to be collected, 1*l.* 5*s.*; Date when paid, May 4; Amount actually collected, 1*l.* 5*s.* It also appeared that 1*l.* 5*s.*, the rate charged in that entry, was demanded from the pauper, and paid to the collector of the said poor's-rate by or on behalf of said pauper on the 4th May, 1839. In the rate or assessment for the next year, which was made and allowed on the 16th July, 1839, the name of the pauper was thus inserted in the rate:—No. of assessment, 66; Name of occupier, Joseph Gray; No. of votes, ——; Name of owner, Trustees of Otho Hulme; No. of votes, ——; Description of property, house and shop; Name or situation of property, Temple street; Estimated extent, ——; Gross estimated rental, 28*l.*; Rateable value, 22*l.* 10*s.*; Rate at 1*s.* 6*d.* in the 1*l.*, 1*l.* 13*s.* 9*d.*; Arrears due or if excused, ——; Total amount to be collected, 1*l.* 13*s.* 9*d.*; Amount actually collected, 8*s.* 5*d.*; Present arrears, three-quarters empty; Amount not recoverable or legally excused, 1*l.* 5*s.* 4*d.* But the rate charged by the last assessment was never paid by the pauper. The question was, whether the pauper may be deemed to have been assessed for the house during the first year of the tenancy, or that, by paying the rate for the first year, and being assessed for the second year, the 4 & 5 Will. IV. c. 76, had been complied with. It was contended that the object of s. 66, of that statute, was, that the assessment and payment should relate to the same rate. Lord *Denman*. "There is no distinction between 'charged with' and 'assessed to;' the words in the last statute are 'assessed to,' but it does not appear that the legislature had any object in the alteration; at any rate no sufficient object is declared, though it has been assumed by counsel in argument. It appears that a person to gain a settlement must be assessed to the poor-rate for one year, and have paid the poor-rate for one year; that has been

(*a*) The form of the rate in that case was:—

Landlords rated.	In whose occupation.
A. B.	F. G.
C. D.	H. I.

complied with in the present case." *Patteson*, J. "The whole case turns upon the question whether a different sense is to be given to the words in the different statutes; it is true there has been an alteration, but the cases all support the words in the last statute as well as in the former ones." *Williams*, J., concurred. Order of sessions confirmed.

5. *Must be Charged and Pay such Tax.*

Rex v. *Coppull*, 2 *East*, 25. Removal from Standish-with-Langtree to Coppull confirmed. Case:—The respondents proved by the evidence of the pauper, that his father purchased an estate in Coppull and actually paid the parish rates in respect of it; but the respondents did not produce any rates, and had not given notice for the production of any. *Per* Lord *Kenyon*, C. J. "It is impossible to argue that parol evidence may be given of rates which are not produced, nor any notice proved to produce them, nor any reasonable account given for their non-production. The best evidence was not given which the nature of the case would admit of." Both orders quashed.

The rate itself must be produced as evidence of being charged.

Payment.

Rex v. *Bridgewater*, 3 *T. R.* 550. T. Bastard was the occupier of a house, and the assessment for the land-tax was—Landlord, J. W.—Tenant, T. B.—Assessment, 6*s.* 9*d.* Bastard absconded, and the landlord requested the tax collector to go with him to take a distress for the 6*s.* 9*d.*, otherwise he should lose the money. They went and saw Bastard's daughter, who pleaded her poverty and said a friend would pay it. She then went with them to Mrs. O. who gave a guinea to the collector, who received thereout the land-tax. The court were clearly of opinion, that it was money paid for his (Bastard's) use, for which an action might be maintained against him. The money was advanced by a friend, in order to protect him from a distress, under which *his goods* would have otherwise been taken.

The payment by another may be equivalent to payment by himself.

Rex v. *Openshaw*, *Burr. S. C.* 522; 1 *Blac. Rep.* 463. James Bowden took a house and two closes at Gorton, and the landlord was to pay all taxes and levies but the window-tax. The rating was thus, "Bowden's." The landlord himself for some time paid the taxes; but in the last year the landlord having some disputes with the overseers about his assessments, directed the overseers to call upon his tenant Bowden for a poor-rate and a church-rate, and tell him that his landlord ordered him to pay and he would allow it to him out of his rent. The tenant paid the same, declaring he paid them for his landlord, and the overseer said he accepted them accordingly. But the landlord, not being asked by the tenant to allow it did not allow it out of the rent till three quarters of a year after he left the estate, (which was six days before the order of removal,) when he repaid the money. By Lord *Mansfield*, C. J. "Pray, for whom was the landlord to pay it? Clearly, for the tenant: for it is a tenant's tax. The court has nothing to do with their private agreement." And *per tot. Cur.*—"The settlement is clearly good." The orders were discharged.

Landlord refunding to the tenant the amount of the tax paid, does not prevent the settlement.

Rex v. *Okehampton*, *Burr. S. C.* 5. A tide-waiter resided in Kenton, and had a salary: he was rated for this salary to the land-tax. It was paid for some time by himself, but repaid to him by the collector of the customs; and afterwards was paid by the collector. The question is, whether he paid his share towards the public taxes and levies of the parish? It was said it was not his own money, but the money of the collector. By Lord *Hardwicke*, C. J. "Suppose the landlord has agreed to reimburse his tenant, would not the tenant be settled? This collector did not pay it to exonerate the parish, but to better the man's salary." And by the court: "It hath been settled, that the land-tax is a parish-tax within the act; and his being taxed for his salary makes no difference."

Nor where the salary of a tide-waiter, rated to the land-tax, was paid by himself, but repaid by the collector.

Rex v. *Weobley*, 2 *East*, 68. Removal from Weobley to New Radnor quashed. The pauper resided as an officer of excise in W., and during such residence was rated to the land-tax in that parish for his salary, which was proved by the production of the land-tax assessment; but it appeared by the evidence of the pauper that he never paid such rate himself, or any rate; the same being paid by the collector of excise, and not deducted out of the pauper's salary. Lord *Kenyon*, C. J. "If the rate had been paid by him through the medium or by the hands of another, that would have been

An excise officer was rated for his salary, but the rate was always paid by the collector, and no deduction made from the salary: No settlement.

5. *Must be Charged and Pay such Tax.*

a payment by himself; but here he neither paid it mediately nor immediately. He was not affected by the payment at all. It was not deducted out of his salary, nor was his income diminished by it. I know that the statute in question has been extended by construction much beyond what was apparently intended by the legislature. This being a new case, where the pauper neither in fact paid the rate himself, nor constructively by the hands of his agent, it is better to abide by the letter and true spirit of the act, and to hold that he did not thereby gain a settlement." Order of sessions quashed.

By agreement between landlord and tenant, the tenant was to pay a higher rent and the landlord was to pay the rates; the tenant, although duly rated, acquired no settlement.

Reg. v. *South Kilvington*, 7 *Jurist*, 1108; 13 *L. J.* 3. Thomas Gallantree was removed from South Kilvington to Newsham. Order quashed. Case:—In January, 1840, the pauper, who had previously gained a settlement in Newsham, took a cottage, being a separate and distinct dwelling-house, in South Kilvington, of a Mr. West, at the annual rent of 5*l.*; nothing was said about the rates with respect to the cottage, for which, in two poor-rates made on the 12th November, 1840, and the 22nd February, 1841, the pauper was rated at 2*s.* 9*d.*, being a rate of 1*s.* in the pound on 2*l.* 15*s.*, the amount at which the cottage was assessed, both of which rates the pauper paid. At Candlemas, 1841, Mr. West let the pauper a field, containing 3A. 3R. of land in South Kilvington, upon the terms following: the land was taken from year to year, the rent was 14*l.* 14*s.* a year, and the landlord was to pay all that came against it. The rent at which the pauper agreed to take the field was a higher rent, because the landlord was to pay the rates and all that came against it. The pauper actually occupied the field together with the cottage from Candlemas, 1841, until August, 1842, at the rent of 19*l.* 14*s.* a year, and during the period he paid the landlord the whole rent, and was rated and charged in respect of the field and cottage. The overseers called upon the pauper, and demanded 7*s.* 11½*d.*, the rate of June 1841, the pauper paid 2*s.*, being 9*d.* in the pound on 2*l.* 15*s.*, the amount for which he was assessed for the cottage before he took the land, and referred the overseer to the landlord (Mr. West) for the rest, who, thereupon, in pursuance of his agreement, paid the remaining 5*s.* 11½*d.*, being also 9*d.* in the pound on 7*l.* 17*s.* 9*d.*, the residue of 10*l.* 12*s.* 9*d.*, at which the house and land were assessed; and of the remaining rates of 8*s.* 0¾*d.* and 5*s.* 4*d.*, the tenant respectively paid 2*s.* and 1*s.* 4½*d.*, being, in one instance, a rate of 9½*d.*, and in the other instance a rate of 6*d.* in the pound on 2*l.* 15*s.*, the amount above described as that at which the cottage was assessed before he took the land, and the landlord in pursuance of his agreement paid the remainder; the overseers always, after the above-mentioned reference by the pauper to Mr. West, applying to him for the rates due in respect of that land. The pauper resided in the township during the whole period of his occupation of his land. The only question was, whether the pauper had paid the poor-rate for a year during his occupation of the land, so as to satisfy the 66th section of the 4 & 5 Will. IV. c. 76, or whether he had been charged with and paid his share towards the poor-rate under the 3 & 4 Will. & Mary, c. 11, s. 6. The sessions held that the payment by the landlord, in consequence of the agreement between him and the pauper, was a payment by the latter, sufficient to satisfy either of the statutes. Lord *Denman*. "Whatever the effect may be in other cases, the decision in *Rex* v. *Weobley* makes it clear that this is not a good payment of rates by the tenant." The other Judges concurred. Order of sessions quashed. (*a*)

(*a*) In *Reg.* v. *Bridgwater*, 10 *A. & E.* 66, the parties were duly rated for several years, but had not paid the rate. To prevent their disfranchisement under the Municipal Corporation Act, a person paid the whole in a gross sum. This is not a payment by the party within that statute. In *Hughes* v. *Chatham*, p. 784, n., a party was rated to all poor-rates and assessed taxes, in respect of a house, in his own name, as the occupier; the rates and taxes were paid by the paymaster-general's clerk at the pay office at Chatham. *Tindal*, C. J. "It appears that the tenant was rated to the poor-rate; that it was paid by the paymaster-general's clerk, but that it was so paid as part remuneration for his services. The tenant, being

Rex v. *Axmouth*, 8 *East*, 383. Removal of Martha Clarke from Axmouth to Lyme Regis quashed. Case:—The pauper's husband, deceased, (J. Clarke) was an officer under the custom-house, stationed at Axmouth, with a salary of 50*l.*; he did the duty of the office there, and was charged 8*l.* per annum to the land-tax in respect of his salary of 50*l.* There had been annually an order issued from the treasury, authorising the commissioners to direct the collectors of the outports to reimburse those officers of the customs whose salaries did not exceed 60*l.* per annum the taxes assessed on such salaries, and paid by them. It most frequently happened that Clarke was unable to pay the tax assessed on him, until he had received the same from the collectors of the customs, and the tax collector of the parish was at such times in the habit of trusting Clarke with a receipt, and the collector of the customs upon having this receipt given him, paid Clarke the sum, and Clarke paid the same to the collector of the parish. Lord *Ellenborough*, C. J. "*Rex* v. *Okehampton* (p. 959,) is not to be distinguished from the present. The land-tax being a public tax within the 3 Will. III. c. 11, the officer was both charged to it, and paid it within the parish, and nothing more was wanting to give him a settlement there. *Rex* v. *Weobley* (p. 959,) was distinguished from the other cases by Lord *Kenyon*, because there the officer did not pay the tax mediately or immediately; and, as he says afterwards, because the pauper neither *in fact paid* the rate himself, nor constructively by the hands of his agent. As to his being reimbursed afterwards, all the cases agree that that makes no difference, and that is not contradicted by *Rex* v. *Weobley*." Order of sessions confirmed.

5. *Must be Charged and Pay such Tax.*

Salary of a custom-house officer was rated to the land-tax, paid by the pauper, and reimbursed by the collector: This is sufficient.

And in *Rex* v. *Lower Heyford* (see facts of the case, *ante*, p. 949) *Bayley*, J., said, "The remaining objection, that Garratt had been reimbursed the rate, is sufficiently answered by *Rex* v. *Axmouth* (*supra*), which was cited in the argument. There a custom-house officer was rated for his salary to the land-tax, and paid the rate, but he always either got the amount from the collector beforehand, or was repaid by him afterwards; and the collector was under orders from the treasury to reimburse the officers of his description. This was adjudged to give the officer a settlement; and Lord *Ellenborough*, in delivering his judgment, said, "As to his being reimbursed afterwards, all the cases agree that that makes no difference. We are therefore of opinion that Garratt is to be considered as having been charged with and paid his share towards the public taxes of Lower Heyford, within the meaning of 3 Will. & Mary, c. 11, s. 6, and that the decision of the sessions was right."

Same point.

11. Of Settlement by Acknowledgment; as by Certificate, &c.

11. *Of Settlement by Acknowledgment, &c.*

A certificate is only *evidence* of a settlement, and not a mode of *acquiring* the same.

Settlements of this description are rather evidence of a previous settlement than modes of acquiring a settlement, but nevertheless are usually classed under the head of a settlement. (2 *Nolan, P. L.* 134.)

Parishes upon whom the burden of supporting or relieving a pauper is sought to be cast in any particular instance, and who resist the attempt of the removing parish, are regarded by the courts, and are subjected to the same rules of law, as *individual* litigants. If therefore the defendant parish has previously made any practical acknowledgment of the liability against which it is defending itself, such admission or acknowledgment may be given in evidence, and will in some cases be conclusive, and estop the parish from afterwards controverting the fact, either as to the party himself,

rated, was, therefore, liable for the payment of the rate; it was paid by those to whom the tenant gave an equivalent by his services. We think, therefore, that it was a payment of rates by the tenant within the 27th section of the Reform Act. Whether or not it would have been sufficient within 3 Will. III. c. 11, s. 6, or under 4 & 5 Will. IV. c. 76, is another matter. We think the payment here by the hands of the landlord is effectual, for it has been made within the spirit of the enactment by which the payment of rates is required.—Decision confirmed.

1. *Acknowledgment of Settlement by Certificate.*

or those who claim settlements through him, unless its effect can be explained away, by showing that the acts which are pressed against the parish, as amounting to an acknowledgment that the pauper was settled with them, were exercised towards him as *casual poor*, and not from a sense of his having the more permanent right to relief in consequence of a legal settlement in such parish.

As in all other cases, so in this, the admission of the party sought to be charged, of the justice of the claim, *is the strongest proof in support of it;* and hence it has happened that a notion has prevailed, that a pauper may *gain* a settlement by the *acknowledgment* of a parish that he is settled there; it is necessary, however, to bear in mind, that it is no more than *evidence* that the pauper was previously settled there, and is not in itself a means of *acquiring* this right. The parish which has placed itself in such a position is not in all cases absolutely bound thereby, if it can be clearly shown that the burden ought to be assumed by some other parish.

It is material to consider the *nature* of the acknowledgments which afford evidence of settlement. They are of three kinds, namely:

1. *By Certificate.*
2. *By Relief.*
3. *By Non-appeal against an Order of Removal.*

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1. *Acknowledgment of Settlement by Certificate.*

Of granting certificates.

1. Acknowledgment of Settlement by Certificate.

The practice of granting certificates has been in a great measure put an end to by the 35 Geo. III. c. 101, which renders persons irremovable till *actually chargeable*, yet parish officers retain the power (though they were not *nor are compellable* by mandamus or otherwise to do so, *Rex* v. *St. Ives*, 2 *Sess. Cas.* 153) to certify as heretofore; and *Abbott*, C. J., in *Rex* v. *Idle* (p. 416), recognised the system of granting certificates as still existing, and seems to recommend the continued use of it, observing that "in many cases a labourer who might wish to come into a parish might not be able to obtain employment there, for fear that by so doing he might bring burdens upon the parish. But if he came with a certificate that fear would be removed." And *Bayley*, J., in the same case, spoke to the like effect upon this subject; and as questions may also arise upon old certificates yet existing, the law upon this head cannot properly be omitted. It may be divided as follows:

1. *Of the Enactments relating to Certificates.*
2. *The Form of Certificate.*
3. *Of the Direction of the Certificate.*
4. *Of the Signature of the Certificate.*
5. *Of the Allowance and Attestation.*
6. *Proof of Certificate.*
7. *Of the Delivery of Certificate.*
8. *Persons Protected by Certificate from Removal.*
9. *To what Individuals a Certificate extends.*
10. *Of the Effect of the Certificate.*
11. *Certificate, how determined.*
12. *Removal of Certificated Persons.*
13. *Of Apprenticeship and Service to Certificated Persons.*

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1. *Enactments relating to Certificates.*

Persons going to work with a certificate.

1. *Of the Enactments relating to Certificates.*

By the 13 & 14 Car. II. s. 3, (see 1 sec. *post*, *Removal*,) it is enacted, "That it shall and may be lawful for any person or persons to go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, so that he or they carry with him or them a *certificate* from the minister of the parish and one of the churchwardens, and one of the overseers of the poor for the said year, that he or they have a dwelling-house or place in which he or they inhabit,

1. *Acknowledgment of Settlement by Certificate.*

and hath left wife and children, or some of them there (or otherwise, as the condition of the persons shall require), and is declared an inhabitant or inhabitants there: and in such case, if the person or persons shall not return to the place aforesaid, when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases above said, but it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation as aforesaid, under the pains and penalties in this act prescribed: and if such person or persons shall refuse to go, or shall not remain in such parish where they ought to be settled as aforesaid, but shall return of his own accord to the parish from whence he was removed, it shall and may be lawful for any justice of the peace of the city, county, or town corporate where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a public workhouse in this present act hereafter mentioned, there to be employed in work or labour; and if the churchwardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive such person or persons, and to provide work for them, as other inhabitants of the parish, any justice of peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf."

Persons coming to inhabit in any parish, are to bring with them a certificate under the hands of the churchwardens, &c., of the parish to which they belong. Explained by 9 & 10 Will. III. c. 11, and 12 Anne, stat. 1, c. 18, s. 2. Such witnesses to swear to the execution of certificates, &c. by 3 Geo. II. c. 29, s. 8.

By 8 & 9 Will. III. c. 30, s. 1, it is enacted, "Forasmuch as many poor persons chargeable to the parish, township, or place where they live, merely for want of work, would in any other place, where sufficient employment is to be had, maintain themselves and families, without being burdensome to any parish, township, or place, but not being able to give such security as will or may be expected and required upon their coming to settle themselves in any other place, and the certificates that have been usually given in such cases having been oftentimes construed into a notice in handwriting, they are, for the most part, confined to live in their own parishes, townships, or places, and not permitted to inhabit elsewhere, though their labour is wanted in many other places, where the increase of manufacture would employ more hands; be it therefore enacted, that if any person or persons whatsoever, from and after the 1st May, 1697, shall come into any parish or other place, there to inhabit and reside, shall at the same time procure, bring and deliver to the churchwardens or overseers of the poor of the parish or place where any such person shall come to inhabit, or to any or either of them, a certificate under the hands and seals of the churchwardens and overseers of the poor of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of the poor of any other place, where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person or persons mentioned in the said certificate, to be an inhabitant or inhabitants legally settled in that parish, township, or place, every such certificate having been allowed of and subscribed by two or more of the justices of the peace of the county, city, liberty, borough, or town corporate, wherein the parish or place from whence any such certificate shall come, doth lie, shall oblige the said parish or place to receive and provide for the person mentioned in the said certificate, together with his or her family, as inhabitants of that parish, whenever he, she, or they shall happen to become chargeable to, or be forced to ask relief of the parish, township, or place, to which such certificate was given; *and then, and not before,* it shall and may be lawful for any such person, and his or their children, though born in that parish, not having otherwise acquired a legal settlement there, to be removed, conveyed and settled in the parish or place from whence such certificate was brought.

Not to be removed before actually chargeable. (*a*)

(*a*) In 55 Geo. III., there was a similar provision, as to certificates by a friendly society, but the statute was repealed in 10 Geo. IV., and no similar enactments made,

1. *Acknowledgment of Settlement by Certificate.*

No certificated person to have a settlement in any parish unless he rent a tenement of 10*l.* per annum, or execute some parish office.

The 9 & 10 Will. III. c. 11, recites 8 & 9 Will. III. c. 30, s. 1, and states that doubts had arisen upon construction of the said act, by what acts any person coming to inhabit or reside within any parish, by virtue of any such certificate as aforesaid, may procure a legal settlement in such parish, and whether such certificate did not amount to a notice in writing, in order to gain a settlement; for explaining thereof and of the said act, be it therefore enacted, "That no person or persons whatsoever, who shall come into any parish, by any such certificate as aforesaid, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he or they shall really and *bonâ fide* take a lease of a tenement of the [(*a*) yearly] value of ten pounds, or shall execute some annual office in such parish, being legally placed in such office."

Person bound apprentice, or being a hired servant, to one who came into a parish by certificate, shall not gain a settlement.

By 12 Anne, st. 1, c. 18, s. 2, after reciting 8 & 9 Will. III. c. 30, it is enacted, "That if any person whatsoever, who, upon or after 24th June, 1713, shall be an apprentice, bound by indenture to, or shall, upon or after the said 24th of June, 1713, be a hired servant to or with any person whatsoever, who did come into, *or shall reside in* (*b*), any parish, township, or place, in that part of Great Britain called England, by means or licence of such certificate, and not afterwards having gained a legal settlement in such parish, township, or place, such apprentice, by virtue of such apprenticeship, indenture, or binding, and such servant, by being hired by, or serving as a servant as aforesaid to such person, shall not gain, or be adjudged to have, any settlement in such parish, township, or place, by reason of such apprenticeship or binding, or by reason of such hiring or serving therein; but every such apprentice and servant shall have his and their settlements in such parish, township, or place, as if he or they had not been bound apprentice or apprentices, or had not been an hired servant or servants to such person as aforesaid, any act or acts of parliament to the contrary notwithstanding."

Witness to certificates of settlements to swear that they saw the churchwardens, &c. sign them.

3 Geo. II. c. 29, s. 8. To prevent disputes which often happen, touching the proof of certificates given by the officers of any parish or place, acknowledging any person or persons therein named to be an inhabitant or inhabitants legally settled in such parish, town, or place, by virtue of an act of parliament made in the eighth and ninth years of the reign of his late Majesty King William the Third, and for making such certificates more effectual, be it enacted, "That from and after the 24th of June, 1730, the witnesses who attest the execution of such certificates by the churchwarden or churchwardens, overseer or overseers, signing and sealing the same, or one of the said witnesses, shall make oath before the justices of the peace, who by the said act are directed to allow the same (which oath they are hereby authorised to administer), that such witness or witnesses did see the churchwarden or churchwardens, overseer or overseers, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses attesting the said certificate are of their own proper handwriting; which said justices of the peace shall also certify that such oath was made before them; and every such certificate so allowed, and oath of the execution thereof so certified by the said justices of the peace, shall be taken, deemed, and allowed in all courts whatsoever, as duly and fully proved, and shall be taken and received as evidence, without other proof thereof; and that all certificates given in pursuance to the said act, before the said 24th of June, 1730, shall be also taken and allowed in all courts as evidence, without other proof; provided the same are duly allowed by two justices of the peace, as by the said act is required."

Certificate sufficient proof of execution.

Certificates signed

By 51 Geo. III. c. 80, s. 1 (p. 612 title *Apprentice*), all certificates of

(*a*) It is singular that this word is omitted by *Cay*, *Pickering*, *Ruffhead*, and *Runnington*, the most approved editors of the statutes. See note, *Cald.* 260.

(*b*) The word *or* is here to be read copulatively, *per Lord Ellenborough*, in *Rex* v. *Mortlake*, (*post*). So that *residence* is essential.

the settlements of poor persons, executed by two persons only, acting as churchwarden as well as overseer, shall be considered valid.

1. *Acknowledgment of Settlement by Certificate.*

By 54 Geo. III. c. 107 (p. 613, title *Apprentice*), all certificates of the settlements of poor persons by persons, who, at the time of their executing such certificate of settlement, acting as churchwarden, &c., shall be taken to be valid, as if the same had been executed by persons actually sworn into the office of churchwarden, &c.

by two persons only, acting as churchwarden and overseer, to be valid.

Certificates of settlement valid, although churchwardens, &c., not sworn in.

By sect. 2, "all certificates of the settlement of poor persons, executed by the overseers of the poor of any township, hamlet, chapelry, or place, and the churchwarden or churchwardens, acting for and appointed in respect of such township, hamlet, chapelry, or place, or the major part of them, shall be taken to be valid, as if the said certificates had been executed by such overseers and the churchwardens *of the parish* wherein such township, hamlet, chapelry, or place, is situate, or the major part of them."

The statute does not affect prior settlements. Sect. 3.

Certificates of settlement declared valid, when executed by one churchwarden.

By 1 & 2 Geo. IV. c. 32 (p. 618, *Apprentice*), all certificates of the settlement of poor persons which have been, previous to the passing of this act, executed by one churchwarden or chapelwarden, acting or purporting to act in the capacity of churchwarden or churchwardens for any parish or place in England, for which two had formerly been appointed, shall be taken to be good and effectual."

2. *The Form of the Certificate and Allowance.*

2. *The Form of the Certificate and Allowance.*

The form of certificate.

To the Churchwardens and Overseers of the Poor of the Parish of in the County of

WE the churchwardens and overseers of the poor of the parish of in the county of do hereby certify, own, and acknowledge, that E. F., labourer, is an inhabitant legally settled (a) in our parish of aforesaid. In witness whereof we have hereunto set our hands and seals, the day of in the year of our Lord

Attested by
N. O.
P. Q.

A. B. } *Churchwardens.* (L. S.)
C. D. } (L. S.)
G. H. } *Overseers of the poor.* (L. S.)
I. K. } (L. S.)

Justices' allowance.

WE, R. S. and T. U., esquires, two of her Majesty's justices of the peace in and for the said county of do allow of the above written certificate. And we do also certify that N. O., one of the witnesses who attested the same, hath this day made oath before us, the said justices, that he the said N. O. did see the churchwardens and overseers of the poor of the parish of aforesaid, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names of N. O. and P. Q., who are the witnesses attesting the said certificate, are respectively of their own proper handwriting. Given under our hands this day of

3. *Of the Direction of the Certificate.*

3. *Of the Direction of the Certificate.*

Certificate need not be directed to the parish to which it is delivered.

The statute does not require any particular direction; and, therefore, if the certificate is not addressed at all, the omission will not vitiate. In *Rex* v. *Lillington* (1 *East*, 438), Lord *Kenyon* said, "A certificate need not be directed to the particular parish to which it is delivered. But," he added, "a certificate is not a transferable instrument from one parish to another; for then it would operate as a licence for vagrancy. That is, after it has performed its office in one parish, it cannot be taken to another for the same purpose; and so from parish to parish as often as the certificated person shall choose to remove himself."

But a particular parish must be intended.

Rex v. *Lubbenham*, (*post*), Lord *Kenyon* said, "There must be a particular parish in contemplation at the time of granting the certificate."

(a) A certificate acknowledging the pauper to be an inhabitant, without using the words "*legally settled*," has been held sufficient. (*Rex* v. *Hilperton*.) A certificate acknowledging the paupers to be settled, contained an undertaking to provide for the parties named when requested. This does not enable the parish to remove them before they are chargeable. *Rex* v. *St. Mary, Westport*, 3 *T. R.* 44.

1. *Acknowledgment of Settlement by Certificate.*

Mistake in name.

Rex v. *St. Nicholas, in Harwich*, 2 *Stra.* 1163. The pauper came into St. Nicholas, in Harwich, with a certificate from Woolverstone, *addressed* to the parish of Harwich, near Dover Court. The sessions were of opinion as there was a mistake in the name of the parish in the address of the certificate, that Harwich could not be obliged to receive the pauper. But it was ruled they were, for it is not to be considered as a certificate to any particular parish, but as a general acknowledgment of his being a parishioner of Woolverstone, and is conclusive against them for all the world.

May be to parish of A., or any other parish in city and county of

A certificate was directed "*To the churchwardens and overseers of the parish of Holy Trinity, or any other parish in the city and county of Coventry,*" this certificate was held to be valid. (*Rex* v. *Lillington*, p. 965.)

4. *Of the Signature and Seals of the Certificate.*

A certificate must be signed by a majority of the churchwardens and overseers.

4. *Of the Signature and Seals of the Certificate.*

The 8 & 9 Will. III. c. 30, requires the certificate to be under the *hands* and *seals* of the churchwardens and overseers, or the greater part of them; but more recent statutes (see p. 964, 5) have provided for those cases in which the number of officers in the parish have been deficient.

Rex v. *Tamworth, Burr. S. C.* 770. A certificate must be signed by a majority of churchwardens and overseers, or it is void. Same point in *Rex* v. *Margam* (1 *T. R.* 775).

If signed by one churchwarden and one overseer, where there are four churchwardens and two overseers, it is void.

Rex v. *Clifton*, 2 *East*, 168. "The appointment of one overseer alone for a township is bad in law, and a certificate granted by such overseer cannot avail; for, by the statute of Elizabeth, the churchwardens and not less than two substantial householders are required to be nominated overseers. The statute of Will. III. directs that it shall be made by the churchwardens and overseers, or the major part of them; or, where there are no churchwardens, by the overseers; and a certificate, like the present, is not granted by either one or the other of those descriptions of persons. The 13 & 14 Car. II. requires, at least, two persons to be appointed overseers for a township. Therefore, this latter statute requiring two to be appointed, and the statute of Will. III. having required the certificate to be executed by the overseers, where there are no churchwardens, and there having been but one overseer appointed by the township, by whom this certificate was granted, I am of opinion this was void." *Per Grose*, J.

So if signed by one overseer of a township.

In *Rex* v. *St. Margaret's, Leicester* (8 *East*, 332), a certificate signed by two churchwardens, one of whom was sole overseer, was decided to be a nullity. To remedy which inconvenience the 51 Geo. III. c. 80, s. 1, was passed (p. 612). And see 54 Geo. III. c. 107, p. 613.

A parish certificate purporting to be granted in 1761, by A., the only churchwarden, and B., the only overseer of the parish, presumed to be good.

By custom there may be only one churchwarden.

Rex v. *Catesby*, 2 *B. & C.* 814; 4 *D. & R.* 434. Removal of George Cox from Badby to Catesby. Case:—The respondents produced a certificate, dated the 10th of May, in 1761, stating that W. Goodman, the only churchwarden, and E. Webb, the only overseer, of the parish of Catesby, did certify the parish of Badby, that they did acknowledge Thomas Cox to be settled in Catesby. *Bayley*, J. "Upon the principle established in several cases it seems to me that this is a good certificate. In *Rex* v. *Hinckley* (p. 666), Lord *Ellenborough* and *Le Blanc*, Js., both say, 'That if any intendment can by law be made to support an indenture of apprenticeship, the court must make that intendment.' In that case, the indenture was produced on one side, and there was no evidence to impeach it on the other, and *Le Blanc*, J., says, 'The question then is, whether by any intendment of law such an indenture can be good?' And both judges say, it might be considered good 'by intending that there was a custom in the particular parish to have only one churchwarden.' There are two acts of parliament which bear upon this question, and which contain similar language; the 43 Eliz. c. 2, s. 5, which relates to parish apprentices, and the 8 & 9 Will. III. c. 30, which relates to the granting of certificates. Both these acts require that there shall be the concurrence of the churchwardens and overseers, 'or the major part of them,' to give validity to the indentures and certificates respectively, and therefore decisions upon the one throw a light upon the other; and notwithstanding the 17 Geo. II.

c. 38, s. 3, which gives to the justices a power of appointing an additional overseer when one shall die in the course of the year, I think that this case is to be considered as it would have been prior to the period when that act passed. Generally speaking, there are two churchwardens in every parish; but, by custom, there may be one only (*a*). By law, there must be two overseers originally appointed, and an appointment of less than two is, upon the face of it, bad; but if by custom there may be only one churchwarden appointed, and if there be two overseers duly appointed, death may reduce the number to one, and then the question would be, whether prior to the statute 17 Geo. II. that churchwarden and that overseer might not do the act in question, as constituting the major part of the persons originally appointed. In *Rex* v. *St. Margaret's, Leicester* (p. 966), there was a very plain and decisive objection to the certificate, because in that case there was only one overseer originally appointed, and it was with reference to that fact, that the language of Lord *Ellenborough* and *Lawrence*, J., there is to be applied. They said that the certificate act, 8 & 9 Will. III. c. 30, requires that a certificate shall be granted under the hands and seals of the churchwardens and overseers of the parish, or the *major* part of *them*. It has since been decided in *Rex* v. *Hinckley* and *Rex* v. *Earl Shilton* (p. 666), that though the word in the statute is 'churchwardens,' yet, by custom, if one only be appointed, that one will be sufficient to satisfy the word churchwardens; but it being clear that by law less than two overseers cannot be appointed, there must have been originally two overseers; and in the case of *Rex* v. *St. Margaret's, Leicester*, it was stated as a fact that there was one only. In *Rex* v. *Clifton*, the certificate was stated to be under the hand and seal of J. W., 'only overseer of the poor of the township,' and therefore the court decided, not upon the language of the certificate itself, but upon the fact that originally there had been an appointment of one only. *Rex* v. *Hinckley*, and *Rex* v. *Earl Shilton*, both establish this proposition, that if a certificate or the binding of a parish apprentice be by one churchwarden and one overseer, it is good, and it is only because in this case the certificate describes Edward Webb as 'the only overseer,' that we are at liberty to assume that there was originally a bad appointment. Now let us consider the law of presumption, with reference to that point. Are we to presume that it was *non rite actum*? The statute says, that the justices are to appoint two overseers. Are we then to presume that the justices have deviated from their duty and appointed one only, or are we not rather to presume that two overseers had been duly appointed, and that one of them had died? The law will presume that a party has conformed to the law; and if we are to make any presumption, it is *ut res magis valeat quam pereat*. Between these two, I say, that presumption ought to prevail which assumes that the justices have conformed to the law; and therefore I think we ought rather to support the instrument than destroy it. Upon this principle it appears to me we are at liberty to assume that in this case William Goodman was, by the custom of this parish, the only churchwarden appointed; that Edward Webb was the only surviving overseer, that he duly granted the certificate in the character in which he is described upon the face of the instrument, which he would not have done had he not been regularly and duly appointed; and that we are bound to intend, according to the language of Lord *Ellenborough* in *Rex* v. *Hinckley*, that there had been originally a good and valid appointment of two, there being no evidence to show what the appointment was, or to rebut the inference arising from the face of the certificate itself. For these reasons I am of opinion, that, as against the parish which has granted this certificate, we ought to hold that this overseer was duly authorised to do the act in question, and, therefore, that the order of sessions must be confirmed." *Holroyd*, J. "I think, upon the authorities which have been cited, and likewise upon the principles which

1. *Acknowledgment of Settlement by Certificate.*

Less than two overseers cannot be appointed, but the death of one may be presumed.

(*a*) A *custom* to have *no* churchwarden is bad. (*Rex* v. *Wix*, 2 *B.* & *Ad.* 197.)

1. *Acknowledgment of Settlement by Certificate.*

ought to govern us, assuming that the authorities did not exist, that this certificate was good in point of law, or at least that the sessions might legally draw the conclusion, and intend from the circumstances which appeared in evidence, that it was a good certificate. The certificate was granted on the 17th May, 1761, by two persons who were at that time to be taken as the only existing parish officers. It is submitted to by the parish to whom the pauper is sent, as a good certificate, and now after a lapse of sixty-three years, it is for the first time called in question. If any intendment or presumption can legally be made in favour of the validity of such an instrument, it must be in a case of this description; and I think that the justices had authority in point of law to presume such facts as would make it a good certificate, assuming such facts to have had existence. That such facts might really exist, there seems no doubt, at least upon the authority of the cases cited. It is perfectly clear, that by custom there may be only one churchwarden in a parish. There must be two overseers appointed in addition to the churchwardens; and then, according to the 43 Eliz. c. 2, such persons shall be called overseers of the poor, and are to take charge of them. Now upon the face of this instrument, I think we are to take it, that the person who is called 'the *only* overseer' of the poor, was, in point of law, the survivor of two; for unless there had been two persons appointed, who, together with the churchwardens, were to be overseers of the poor, the statute of Elizabeth would not have been satisfied. Indeed, the description of himself as 'the *only* overseer' would not be correct, unless there had been two overseers originally appointed, and therefore it is a fair presumption, arising from the face of the certificate, that he was the survivor of two. Suppose an issue had been directed to try simply whether he was or was not the overseer of the parish; if it was shown that there had been only one originally, the issue must have been found that he was not the overseer of the parish, and if the *onus* was to be thrown upon those who are called upon to support the certificate (even assuming that it had been submitted to for an hundred years), it could not, by legal intendment, be considered a good certificate. I think, however, that the magistrates were abundantly warranted in presuming, as they have done, that there had been an appointment of two overseers originally, and that if there was by custom only one churchwarden, they had a right to presume the fact in favour of the certificate. If so, then the certificate must be considered as signed by a majority of those who would be the original existing body. Whether it is absolutely necessary for the purpose of executing their functions that the majority of the original existing body should continue to exist or not, is a question which we need not decide, because if that was necessary, the 17 Geo. II. would not have been passed, for then in case the original churchwardens and overseers had been reduced below a majority, as, for instance, if there were originally four, and they were reduced to two, all their functions must be at an end during the residue of the year, until that statute had passed. It is, however, unnecessary to decide that question. In this case the sessions have drawn, as they had a right by law to do, the proper conclusion from the presumption of facts, in holding that this was a legal certificate; and as they have done that, I think we should not be justified in reversing their order. But independently of what they have done, I am of opinion, that according to the authorities of *Rex* v. *Hinckley*, and *Rex* v. *Earl Shilton*, we are bound by law to make every intendment that can reasonably be made in favour of the certificate. Acting upon the maxim, '*res magis valeat quam pereat*,' we ought to conclude that this certificate has been legally granted by persons who describe themselves as 'the only churchwarden and the only overseer,' which the latter person could not have done with propriety, unless there had been two originally appointed; and inasmuch as there might have been originally only one churchwarden by custom, we must presume, particularly after an acquiescence of sixty-three years, that the person who signed the certificate was a majority of the existing body, and consequently that this was a valid certificate." *Little-*

dale, J. "I am of the same opinion. A certificate signed by one churchwarden and one overseer alone, would certainly not be sufficient, unless the law would intend something more. But it appears to me, that upon the face of this instrument we are at liberty to intend those circumstances which are necessary to give it validity. First, with respect to the churchwarden, I think there is no difficulty in intending that he was such a churchwarden as the custom of the parish would authorise, inasmuch as by custom there may be only one churchwarden in a parish. Then, secondly, with respect to the overseer, though a certificate signed by one overseer would be bad, still we are at liberty to assume from the language of this certificate, that there were originally two overseers appointed, but that one had died after the appointment, and before the certificate was granted. It is said, we are called upon to intend death instead of the continuance of life. So we are; and I think we are at liberty to do so, until the contrary be shown. But we are placed in the situation of choosing between two intendments, a particular, and a general intendment; first, that a party should be presumed to live, when once shown to be alive; and second, that everything shall be presumed to be right according to law. Now the question is, which of these two intendments is to prevail? Because it is impossible that both can operate. The intendment that everything is to be presumed to be right according to law, is a general intendment, and, I think, ought to prevail, especially in a case of this description, until the contrary is shown. In *Rex* v. *Clifton*, and *Rex* v. *St. Margaret's, Leicester*, the question of intendment did not arise, because the facts did not warrant it. There the appointment of one overseer was nugatory, being contrary to the statute. But here, after the lapse of sixty-three years, the description of the overseer may warrant us in presuming an original appointment of two overseers, and enable us to intend that one of them had died. *Rex* v. *Hinckley*, and *Rex* v. *Earl Shilton*, are authorities to warrant the court in saying, that everything must be presumed to be rightly done, until the contrary is proved. So in *Rex* v. *Morris* (4 *T. R.* 550), which was the case of an appointment by justices of one overseer for a hamlet in a particular parish, in which the question was, whether only one overseer could by law be appointed, Lord *Kenyon* says, 'This court has invariably made a distinction between orders of justices and convictions, and said, that everything is to be intended in support of the former;' and speaking of the objection there as to the supposed illegality of the appointment of one overseer, he said, 'we are not left to conjecture that no other person was appointed overseer of this place, for it appears on the order of sessions that this was an appeal of one of the overseers.' Now when we apply what that learned judge says to the present case, that everything should be intended in support of the order of justices, I think it will justify our opinion on the present occasion. This certificate is a public document, and though not framed by justices of the peace, yet being the act of the parish officers, the court, for the same reason that it intends everything in favour of an order of justices, will intend everything in favour of an instrument made by parish officers. On the whole, therefore, I am of opinion that this is a valid certificate." Order of sessions affirmed.

1. *Acknowledgment of Settlement by Certificate.*

Conflicting intendments.

Every intendment in favour of an order.

Rex v. *Whitchurch*, 7 *B. & C.* 573; 1 *M. & R. Mag. Ca.* 167. Order of removal of William Bray, &c., from Whitchurch to St. Mary's Bourne, quashed. Case:—A certificate was produced, by which J. Harbutt, W. Piper, W. Arundell and W. Phillpott, churchwardens and overseers of St. Mary's Bourne, acknowledged W. Bray, jun., and his wife, William, Mary, and Elizabeth, their children, to be inhabitants settled in St. Mary's Bourne. Signed, &c., "In witness whereof we have hereunder set our hands and seals, this 7th day of September, 1758 ——, (L. S.), W. Piper, (L. S.), churchwardens; W. Arundell, (L. S.), the mark of W. Phillpott, (L. S.), overseers. Attested by us, T. May, A. Neave." It was directed to Whitchurch, and was duly allowed on the 12th of September, 1758. William Bray, jun., the grandfather of the pauper, resided in Whitchurch till the time of his death, in 1799; William Bray his son, also named in

A certificate granted in 1758, by four persons, as churchwardens and overseers, was signed by both overseers, and by one churchwarden. The churchwarden was nominated at Easter, and sworn in September, the usual time for swearing churchwardens, and there was no proof of his having

1. *Acknowledgment of Settlement by Certificate.*

been sworn when he signed the certificate. The parish relieved the pauper and his family in another parish, at various times, from 1758 to 1827: Held, first, that the execution by two overseers and one churchwarden, was an execution by the major part of the churchwardens and overseers; and secondly, that after such a lapse of time, the court will presume that the churchwarden was sworn before he signed the certificate.

the certificate, had resided there ever since the certificate was granted, and the pauper had resided there from the time of his birth, till the time of this order. It appeared by the visitation books, that St. Mary's Bourne is in the diocese of Winchester, and is a peculiar within the jurisdiction of the chancellor's visitation. Harbutt and Piper were not sworn churchwardens in 1758 till the 15th of September. No churchwardens appeared by the books to have been sworn at the visitation from 1751 to 1758: the visitation book for 1750 was lost. It appeared from the registrar, that it was the course of office to make an entry in the visitation books of the swearing of churchwardens at the time of swearing, whether the swearing takes place at the visitation or afterwards. If it took place afterwards, the registrar always entered it, but he had not looked over the books before his time to see whether there was any entry of such subsequent swearings. At Easter, 1750, J. Longman was nominated churchwarden. In 1757, T. Cowdey and E. Maltin were nominated churchwardens, and Harbutt signed the nomination. At Easter, in 1758, Thomas Harbutt and William Piper were nominated churchwardens. The pauper was on the 7th day of December, 1790, bound by indenture to his grandfather for seven years, which he served in Whitchurch. The father of the pauper, sixteen or seventeen years ago, received relief from the overseers of St. Mary's Bourne, he at that time residing at Whitchurch. He has also constantly for these last two years received relief from St. Mary's Bourne; and no objection was made upon his application for relief, when he required it. The pauper had been occasionally relieved by St. Mary's Bourne, nearly ever since his apprenticeship, whenever he wanted it, and has constantly received relief for the last seven or eight years. The sessions thought the certificate inadequately executed. *Bayley*, J. "The certificate, upon the validity of which the question in this case turns, was granted nearly seventy years ago. It contains the names of four persons, whom it describes as churchwardens and overseers of St. Mary's Bourne. It appears by the visitation book, that the churchwardens were sworn into office three days after the allowance of the certificate; therefore it has been contended, that the execution by Piper being an act done before he was sworn was done without authority, and is not binding upon the parish. Now, though the fact may be, that at the time when he executed this certificate he had not taken the oath of office, still the other parish into which the pauper went, and in which, in consequence of his having the certificate, he was suffered to reside, must have been equally imposed upon, and must have been induced to believe that the certificate was genuine, and had been executed by competent officers. If we were bound in point of law to allow this objection, we must do so, notwithstanding the grievous injustice which would result from it, and though one of the consequences would be, that no prudent person would from henceforth receive a certificate, and the object of the statute would be entirely defeated. But as it seems to me, it is by no means necessary, in order to render such an act as this binding upon the parish, that the churchwardens shall have been previously sworn. The parish may allow him to act as their officer *de facto*, though there may be another, who is officer *de jure*; and if they do hold him out as churchwarden *de facto*, and suffer him to act in that capacity, they cannot be permitted to practise the fraud of afterwards denying the validity of his acts. At present, therefore, I am disposed to think that the fact of the churchwardens not having been sworn until after the execution of the certificate, does not vacate it. It is clear, from the statement in the case, that the parish have all along, almost from the year 1758 down to the time when the present order of removal was made, been acting upon the certificate, as good and valid. It is not then, in my opinion, too much for us to presume that it is so: and I think cases may be put from which we may assume it to be really valid. It may have happened, for instance, that the churchwardens were first sworn at or shortly after their nomination, and were afterwards sworn again at the visitation in September. Piper, the only person respecting whom there is any dispute, may have wished to be,

1. *Acknowledgment of Settlement by Certificate.*

and may actually have been, sworn at Easter, although the administration of the oath was not recorded, and may afterwards, in September, have been required to take the oath again. We may presume this, and I think it is perfectly fair and reasonable to presume it. To the other parish these persons were held out as churchwardens duly and legally appointed; and unless some such presumption as I have suggested is admitted, we must on the other hand be driven to presume, that which a court of law never can presume, that a fraud was contemplated and practised. I am therefore of opinion, that justice requires us to presume that the churchwarden had been sworn when he executed this certificate; and then it follows that the certificate is valid, and it becomes unnecessary to decide upon the other points raised in the case." *Littledale*, J. "I am of the same opinion. If it were necessary to decide the question of law, whether the execution of a certificate is an act which a churchwarden *de facto*, who has not been sworn, has authority to do, I should wish for time to consider that point, upon which I at present entertain great doubts. But I think we need not decide that question, because the lapse of time is quite sufficient to justify us in presuming that everything necessary to be done to make the certificate valid and binding was done. I think that we may fairly presume that Piper, upon his nomination to the office, went before the commissary and took the oath, and that the fact of his having taken it at that time was, from some circumstance or other, omitted to be registered. We cannot presume fraud and illegality, which we must do, if we decide against the certificate upon this objection. With respect to the supposed necessity of both the churchwardens signing the certificate, the statute only requires that the major part of the aggregate body of churchwardens and overseers shall sign, and not that the major part of each of those classes of officers shall sign. Upon the whole, it seems to me that we must consider this as a valid certificate, and therefore that the order of sessions must be quashed."

A certificate was signed by two churchwardens and two overseers on the 16th of April, 1748. On the 27th of May, 1747, *five* overseers were appointed, *two* of whom signed the certificate. A church rate was signed on the 28th of May, 1748, by *four* churchwardens. Five overseers and four churchwardens were appointed in 1746. The court would not presume any facts to make this certificate valid.

Rex v. *Upton Gray*, 10 *Bar. & Cres.* 807. T. Woodman was removed from Upton Gray to Bishop's Waltham. Order quashed. Case:—A certificate was produced by the respondents from the parish chest of their parish, signed by two churchwardens and two overseers of Bishop's Waltham, dated the 16th of April, 1748, by which it was acknowledged to the former parish, that Peter Woodman, the great grandfather of the pauper, was legally settled in the latter parish. The certificate had never been discharged so far as regards the pauper. On the part of the appellants it was proved from the parish books of Bishop's Waltham, that on the 27th day of May, 1747, five overseers were appointed by the said parish; their names were Harris, Edney, Vernon, Stares, and Cowdery, of whom Harris and Cowdery signed the above certificate, dated the 16th of April, 1748. In an indenture of parish apprenticeship, dated the 24th of October, 1747, it was recited that at that time the said five persons, viz. Harris, Edney, Vernon, Stares, and Cowdery, were overseers; and that at the same time four persons named Homer, Barefoot, Hellyer, and Wateridge (of whom Homer and Wateridge signed the above certificate), were churchwardens of the parish of Bishop's Waltham. It was also proved on the part of the appellants, from the parish books, that a church rate for the said parish for the year 1747 was signed on the 8th of May, 1748, by four churchwardens, whose names were there stated to have been Horner, Barefoot, Hellyer, and Wateridge. It was also proved on the same part, from the same books, that on the 6th July, 1748, five overseers were again appointed for the same parish, whose names were there stated to have been Lacy, Parker, Trodd, Edney, and Suet. It appeared also by the said parish books, that from the year 1633 to 1829, four churchwardens had been regularly chosen every year of the said parish. By the proper visitation books for 1746, it was proved that four churchwardens were sworn in for the parish of Bishop's Waltham, for the year ensuing the date of such swearing in. The visitation books for the year 1747 were lost. By the visitation books for 1748, it was proved that on the 19th September, 1748,

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four churchwardens were sworn in for the said parish for the year ensuing that date. By the same books it appeared, that in twelve or thirteen different years, between the years 1683 and 1829, four churchwardens *had not been sworn in* for the said parish, but that in those instances less than four had been sworn in. It was contended that the certificate was bad, having been signed by two out of five persons, whose appointment as overseers was void as to all (inasmuch as by the stat. 43 Eliz. c. 2, s. 1, not more than four overseers can be appointed), and on the ground that the majority of the parish officers had not signed it. The respondents, however, contended that after so long a period (being more than eighty years), it might be presumed, either that a new and valid appointment of Cowdery and Harris as overseers had been made in the interval between the 24th of October, 1747 (when it is recited as above that there were five overseers), and the date of the certificate, 16th of April, 1748; or that at that date there were not four churchwardens sworn in, in either of which cases the certificate would be signed by a majority of the parish officers. *Bayley*, J. "This is an attempt to carry the cases of *Rex* v. *Catesby* (p. 966) and *Rex* v. *Whitchurch* (p. 969) to a most unreasonable extent. In the last of those cases in the certificate, four persons were described as churchwardens and overseers of the parish, but it purported to be signed by three of them only; by one Piper as churchwarden, and by two others as overseers. It was proved by the visitation books that in the year 1758 the two churchwardens were sworn in after the date of the certificate; and it was therefore contended that Piper, the party who signed the certificate as churchwarden, was not at that time churchwarden *de jure*, and therefore that it was not binding on the parish. It appeared further by the visitation books that no churchwardens were sworn in from 1751 to 1758, but the parish who had granted the certificate had, from the year 1758 to the time when the order of removal was made, treated it as valid, for it had relieved the pauper while he was residing in another parish. The sessions having found in favour of this certificate, the court held that it might reasonably be presumed that Piper, after his nomination in 1758, and before he did any act as churchwarden, had gone to the commissary and had been sworn into office before him; and, under the circumstances of that case, such a presumption was not unreasonable, for it was not inconsistent with any other fact. In *Rex* v. *Catesby*, the certificate which the law required to be signed by a majority of the parish officers, purported to be signed by one churchwarden and one overseer. If, therefore, there were two churchwardens and two overseers, it was not valid. The sessions having presumed in favour of the certificate, it was for the court to say whether there could be any state of facts to make it a valid certificate, and they decided that it might be valid on two grounds. By custom there might have been only one churchwarden in the parish, and therefore the sessions might have presumed that one only was appointed; or two overseers might have been originally appointed, and one of them have died before the certificate was granted. Then what is the state of facts here? Can the court say that the justices at sessions have done wrong in refusing to make the presumption which they were called upon to make? It is conceded that the presumption is one of fact, which in an ordinary case it would be for a jury to decide; but it is said that a jury ought to draw such a presumption, whether they believe the fact really did exist or not; and a dictum of Sir W. *Grant*, to that effect has been cited. To that, as a general proposition, I cannot agree. I would not direct a jury to presume that which they believe to be contrary to the fact. Here the fact which we are called upon to presume is not only highly improbable in itself, but wholly inconsistent with other facts which existed about the same time. We are first to presume that the four churchwardens were not sworn in. That would be presuming that they committed a breach of duty when we ought to presume rather that they discharged their duty. It is then said, that we may presume that one of the churchwardens died. Such a presumption, if made at all, ought to have been made by the sessions, and not

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by us. The other ground is still more unreasonable. It is said there was a bad appointment of overseers, and that we ought to presume a new appointment of overseers before the certificate was granted. In the next year, however, it appears that five overseers were again appointed. We must, therefore, presume that the error as to the number of overseers was discovered between October, 1747, and April, 1748, although the ancient erroneous practice was again adopted in October, 1748. I think there was nothing in this case to warrant any presumption of fact necessary to give validity to this certificate, and I cannot say that the sessions ought to have drawn from the facts stated any of the conclusions which it has been insisted they ought to have drawn." *Littledale*, J., concurred. *Parke*, J. "I am of the same opinion. The doctrine attributed to the Master of the Rolls in *Hillary* v. *Waller* (*a*) may be true as applied to the particular subject-matter which he was then discussing. A jury would probably be directed to presume, after a lapse of time, the reconveyance of a legal estate by trustees, without any specific evidence of a deed of conveyance, provided there be no fact to rebut such presumption." Order of sessions confirmed.

(*a*) 112 Ves. 52.

The certificates must be under the distinct and several seal of each churchwarden and overseer.

Rex v. *Austrey*, 6 *M. & Sel.* 319. The case is fully stated in the judgment given by Lord *Ellenborough*. "In this case an order of removal of J. Smith from St. Margaret's, Leicester, to Austrey, was confirmed, subject to a case. The question now remaining for the opinion of the court, arose upon a certificate, duly attested and allowed by two justices, granted to the pauper, purporting to be the certificate of J. S., J. P., and J. B., churchwardens and overseers of Appleby, acknowledging the pauper to be settled at Appleby. In witness whereof (the certificate stated) we have hereunto set our hands and seals, the 4th of April, 1768. This certificate, the case states, is under the hands of S., P., and B., but there are only *two* seals, one opposite to the names of S. and P., styled churchwardens, and the other opposite the name of B., styled overseer. And the question is, whether this is a good certificate within the 8 & 9 Will. III. c. 30? If it is not a good certificate, the order of sessions must be confirmed. The certificate required by sect. 1, is a certificate under the hands and seals of the churchwardens and overseers of the poor, or the major part of them, or under the hands and seals of the overseers of the poor, where there is no churchwarden. The certificate in question being a certificate by the two churchwardens, and by one only of the overseers, and under two seals only, it was objected that it was not a certificate under the hands and seals of the churchwardens and overseers of the poor, or the major part of them. In answer to this, it was contended that if several persons seal and deliver an instrument, by putting their several seals upon one and the same piece of wax or wafer that is put upon the instrument, or using the same as their several seals, and delivering the instrument as their respective deeds, that the seal becomes the several seal of each, and that the instrument becomes the deed of all: and that this reasoning is applicable to the present case as showing that, in law, the seal opposite the names of the two churchwardens, is to be considered as the distinct seal of each, and therefore that the certificate testifying that the three had in witness thereof set their hands and seals thereto, and having been allowed by two justices, and the certificated person having been received under the same, was to be considered in law as being under the hands and seals of the three. In considering how far the cases of deeds are applicable to a case like the present, it is to be recollected that in those cases the parties alone, under whose authority the deeds were executed, are bound by them. But the present is the case of the execution of a power, which binds and operates upon other persons at their peril, and subjects them to indictments as for crimes, in case of their disobedience to the power if it be duly executed. In the execution of powers, all the circumstances required by the creators of the power (however unessential and otherwise unimportant) must be observed, and can only be satisfied by a strictly literal and precise performance. *Hawkins* v. *Kemp* (3 *East*, 440). It is also a general principle of law, whenever a power is given to particular persons to do any written

A certificate is in the nature of a power.

1. *Acknowledgment of Settlement by Certificate.*

act in a particular manner, and under certain particular circumstances,—whether it be to parish officers or magistrates to grant certificates, under which, if duly executed, other persons, especially public officers, are bound to act, or to grant warrants, or make orders,—that their authority must appear on the instrument itself. It must thereby appear, that they are the persons authorised, and that the certificate, warrant, or order, was made in the manner and under the circumstances required; otherwise it is not obligatory, but void: the mere statement that the parties, in witness thereof, have put their hands and seals to such an instrument, does not make it so, unless it really have their hands and seals put to it; nor in the execution of a power has it, as it seems to us, their hands and seals to it, so as to make it a good execution of a power requiring such execution to be under their hands and seals, unless it be apparent upon the instrument itself that it has the hand and seal of each put to it. The statute is to be construed, in a case like this, according to common parlance and understanding, and so as to be a security to persons who are bound to obey the powers given by it at their peril, and not to be construed according to what *may* be brought within its words by nice legal reasoning, applicable merely to deeds, and by which construction persons bound to obey the execution of the power, if it be duly granted, cannot ascertain whether it be so or not, without delay, inquiry, expense, and trouble. In *Thaire* v. *Thaire* (*Palm.* 109, 112), where there was a submission to arbitration, "so that the award be delivered under their hands and seals," it was made a question, whether an award sealed, but not signed, was a good award: the point argued being, whether the sealing, which was virtually a signing, was sufficient; or whether the words of the submission should be intended, in common parlance, an actual writing of their hands? The judges of C. P. were at first divided, but it was finally decided by the whole court, not that a virtual signing would do, but that there ought to be an actual signing under their hands. So, where an act is to be under the hands and seals of the three, a mere virtual sealing by any of the three appears to us not sufficient; but it ought to be under the actual distinct seal of each of the three, that is to say, under a distinct and several sealed impression adopted by each of the three. The necessity and importance of requiring this is still more striking in cases of warrants of imprisonment (where they are required to be under the hands and seals of two justices of the peace), where resistance and death might follow, and where the justification or high criminality of the officer or of the party to be apprehended would depend upon the uncertainty, and upon the subsequent establishment by extrinsic proof, whether the seal, if one sealed impression on the warrant would in any case do, was used so as to be considered in law the seal of both or one: the consequence is, we think the certificate is void, and that the order of sessions must be confirmed."

Persons described as officers of the *parish*, may be proved to have been officers of the *hamlet*.

Rex v. *Samborn*, 3 *T. R.* 609. The certificate stated that T. A. and R. B. of Samborn, churchwarden and overseer of the parish of Great Coughton, acknowledged the pauper to be settled at Samborn, in their said parish of Great Coughton. The hamlet of Samborn maintains its own poor separately from the parish, and has a churchwarden and overseer of their own. T. A. and R. B. were churchwardens and overseers of Samborn at the time of granting the certificate. It was objected that evidence ought to have been received, to show that the persons described in the certificate as the officers of the *parish* were the officers of the *hamlet*. *Buller*, J. "The evidence does not contradict, but it explains the certificate."

A parish is not compellable to grant a certificate.

Rex v. *St. Ives*, 2 *Sess. Ca.* 153. A mandamus was moved for, to compel the churchwardens and overseers to sign a certificate, acknowledging a poor person being settled in their parish, on an affidavit that he had served an apprenticeship there, and that he was capable of getting a good livelihood elsewhere; but the court rejected the motion as a very strange attempt.

5. *Of Allowance and Attestation.*

1. *Acknowledgment of Settlement by Certificate.*

5 *Of Allowance and Attestation.*

Certificate not signed by two justices is null.

Rex v. *Wootton, St. Lawrence, Burr. S. C.* 581; 2 *Bott*, 713. The parish officers of St. Lawrence gave to Thomas Pryor, the pauper, a common printed form of a certificate, acknowledging him to be settled in St. Lawrence. It was signed and sealed by the parish officers, and attested by two witnesses. But the blanks for the allowance of justices were not filled up, and no name of any justice signed thereto. On his return to the parish granting the certificate, they relieved him until the time of his removal. By Lord *Mansfield*, C. J. "A certificate cannot conclude the parish unless properly signed. The certificate act specifies certain checks and guards upon certificates. The justices are not obliged ministerially to allow and sign a certificate; they are not bound at all events to allow and sign it; they have a discretion to allow it, or not to allow it, if it be liable to objection. The act requires a conclusive certificate to be under the checks and guards therein particularised. This certificate wants them; therefore it is no certificate within this act. And it it be not a certificate within the act, it cannot conclude the parish." *Yates* and *Aston*, Js., concurred.

Justices are not bound to allow a certificate.

If the certifying parish is in two counties, the justices of either may allow it.

Rex v. *Austrey* (see case, *ante*, p. 973). The certificate was allowed by two justices of Derbyshire. The certifying parish (Appleby) was situated partly in Derby and partly in Leicester. By the court: "The allowance of a certificate by two justices was not, like the removal of a pauper, strictly an act of jurisdiction, although the justices had a discretionary power to refuse or allow a certificate; yet the allowance was merely a voucher that credence was due to the acknowledgment of the churchwardens and overseers, that the pauper was settled in their parish. For this purpose, the justices of either county might be supposed to have a competent knowledge of the parties, although one end of the parish might be situate in an adjoining county; and, therefore, they might be taken to be within the meaning of the act.

The justices who allow may attest as witnesses.

Rex v. *Boston*, 2 *Bott*, 561. The justices who allow the certificate may also attest as witnesses; but it must appear upon the certificate that they took upon them to act in both capacities.

Attestation presumed from allowance.

Barleycroft v. *Coleoverton*, 1 *Strange*, 402; 2 *Bott*, 710. Order of removal from B. to C., reciting that the pauper had come with a certificate, allowed according to the act, from C. to B., and being now become chargeable they send him back to C. Moved to be quashed, because it is not said the certificate was attested, but only that it was allowed. *Sed per curiam:* "The attestation is by the statute made previous to the allowance; and, therefore, when they say it was allowed according to the act of parliament, we must intend it was attested, for otherwise it could not be so allowed." Order confirmed.

What sufficient statement of attestation.

Rex v. *Ashton Keynes, Burr. S. C.* 725. The certificate was signed by A. B. and P. J., and in the allowance it was certified that P. J. came before the justices, and made oath that he was present with the other witness and saw it signed by the parish officers, and that *his* name was his own writing. The sessions thought this no certificate, because A. B.'s signature was not proved before the justices. But the court were clear that there was sufficient proof of A. B.'s attestation, for P. J. swears that he was present with A. B. and saw the officers sign it, &c., and is above thirty years' old: and it was very unreasonable for the parish to quibble it off in this manner now.

6. *Proof of Certificate.*

6. *Proof of Certificate.*

A parish certificate of more than thirty years' date, produced by the overseer of the respondent parish, is evidence.

Rex v. *Netherthong*, 2 *M. & Sel.* 337. Order of removal from Netherthong to Honley discharged. Case:—A rated inhabitant and overseer of Netherthong produced a certificate, dated in 1756, from Honley to Netherthong, acknowledging the pauper's grandfather and father to belong to Honley. It was objected, that before such certificate could be received and read in evidence some account must be given of it, and whence it

The witness may

1. *Acknowledgment of Settlement by Certificate.*

be examined as to the custody.

came, which the witness was not competent to give, being a rated inhabitant of Netherthong. The sessions refused to permit the witness to give evidence. It was admitted that after *Rex* v. *Ryton* (*post*), the ruling of the sessions could not be sustained; but it was prayed that the case might be remitted to be heard on the merits. Lord *Ellenborough*, C. J. "I remember upon the trial of an action for a false return to a mandamus, a corporator was called to produce some of the corporation muniments, and objection was taken to his admissibility; but Lord *Kenyon* said, 'that he should hold him capable, as a depositary of the muniments, of being brought forward for the purpose of producing them, and that if the party objecting wished to inquire as to the custody he might, and that he would receive the evidence.' If the parties choose to stand on such a point as this, it may be as well that they should abide by it." Order of sessions quashed. The 3 Geo. II. c. 29, s. 8 (p. 964), which directs that a certificate, after it has been allowed, and the oath of its execution certified by the justices, shall be evidence without further proof.

The respondents, to prove the delivery to them of a certificate given by the appellants, produced an old book from their own parish chest, in which was an entry of that fact in the handwriting of a former parish officer: Such evidence is inadmissible.

Rex v. *Debenham*, 2 *B. & Ald.* 185. Removal from Debenham to Kenton quashed. Case:—The pauper had gained a settlement in Debenham, unless it could be shown that his father at the time resided in that parish under a certificate from Kenton. No such certificate could be found in the custody of Debenham. The pauper's father, James Driver, proved that in 1771, having been removed from Debenham to Kenton, Debenham refused to allow him to return unless Kenton would grant him a certificate; to this Kenton consented. An order for granting this certificate was made at the quarterly meeting of the directors and guardians of the incorporated hundreds of Loes and Wilford, (in which Kenton is situated,) as appeared by an entry in the minute book of the proceedings of the hundred-house quarterly meetings, dated 20th March, 1771. And to prove that such certificate was delivered to the respondents in pursuance of such order, a book was produced from the parish chest of Debenham; on the outside of the cover was "Certs. Rec'd. Bonds do. Coppys of Orders, 1756." This book contained memorandums of orders of removal, of bonds and certificates received. The certificates were regularly numbered, and under the title of certificates received was the following entry, dated 1771, "No. 88. John Polkins from Kenton.—No. 89. James Driver do." There were a variety of other certificates subsequently entered. The sessions were of opinion that this book was not admissible in evidence. *Abbott*, C. J. "The principles of the law of evidence in this country are founded on the strongest sense and soundest reasoning. It is of the first importance to preserve them strictly; inasmuch as they are the great safeguards of the subject, in the administration of justice in all cases, from those involving property of the most trifling amount to those where the life of an individual is at stake. I therefore should be extremely unwilling to come to any decision which should break in upon any established principle. It is an established principle, that nothing said or done by a person having at the time an interest in the subject-matter shall be evidence either for him or persons claiming under him. Now the entry in this book is of that description; for it is made by a person having an interest to make it, inasmuch as it is produced as proof of the delivery of a certificate by which the parish, of which the party making an entry is an inhabitant, is to be relieved from the burden of maintaining the individual named in the certificate. I think, therefore, that the safest course which the court can pursue will be to hold, that the sessions were justified in rejecting this evidence. There are, however, in this case, other circumstances from which the sessions may draw the conclusion, (if they shall think fit so to do,) that the certificate was in fact delivered. I think, therefore, that the case should go back to be re-heard upon that point." *Bayley*, J. "I am entirely of the same opinion, that the entry in this book was not evidence, the effect of it being to advance the interest of the person who made it." *Holroyd*, J., concurred. Case sent back to be re-heard.

Rex v. *Ryton*, 5 *T. R.* 259. Where the respondents produced a certificate more than thirty years old, purporting to be granted to their parish by the appellant parish, the Court of King's Bench said that it was sufficient for the respondents barely to produce the certificate to the sessions, without giving any account of it.

1. *Acknowledgment of Settlement by Certificates.*

Production of certificate sufficient.

7. *Of the Delivery of Certificate.*

A certificate of the master must be delivered to prevent his apprentice from acquiring a settlement. (*Rex* v. *Wensley*, *post*).

7. *Of the Delivery of Certificate.*

A certificate may be evidence, though not delivered.

Rex v. *St. Nicholas, Harwich, Burr. S. C.* 171. *Wright*, J., said, "That the neglect to deliver did not make the certificate ineffectual; the parish who gave the certificate is at all events bound by the certificate, and the certificate is therefore good as against them." (*a*)

A certificate from a friendly society to a member, under 33 Geo. III. c. 54, must be delivered to the parish officers. (*b*)

Rex v. *Egremont*, 14 *East*, 253. William Gainsford removed from Egremont to Cockermouth. Order quashed. Case:—The pauper was bound apprentice to J. Raney, April 18th, 1802, for seven years, and served more than forty days of the latter part of his apprenticeship with J. B. in Cockermouth, who came into that parish with a certificate from an amicable society, acknowledging him to be a member of that society. On the certificate was an indorsement signed by a justice, according to the act. The only question was whether the production of the certificate was sufficient evidence under the 33 Geo. III. c. 54, without proof of its having been *delivered* to the churchwardens and overseers of Cockermouth? It was said that this evidence was sufficient, for the 18th section of the act provided that such a certificate so attested and certified "shall be taken, deemed, and allowed in all courts whatsoever as duly and fully proved, and shall be taken and received as evidence without other proof thereof." But that if this were not sufficient, yet the sessions under the circumstances might presume that it had been delivered, as it was produced in court by the parish of Cockermouth. Lord *Ellenborough*, C. J. "To warrant them in presuming any fact, there must be presumable matter. The mere *giving* of the certificate by the society to the member is not made sufficient by the act to protect his residence under it in the parish, without a *delivery* of it to the parish officers. The 17th section says that no members of the society who shall come to inhabit in any parish, *and shall deliver to the churchwardens and overseers* of the poor of such parish a certificate, &c. shall be removable till actually chargeable. But if it remain in the pocket of the certificated person, that is not sufficient to prevent a settlement being gained under it. Here there is an absence of any proof of its having been delivered to the parish officers before the period when the apprentice served his master in Cockermouth, and therefore an exclusion of any presumption of the fact." Order of sessions quashed.

Such delivery not presumed.

8. *Persons protected by Certificates from Removal.*

8. *Persons protected by Certificates from Removal.*

Rex v. *St. Peter and St. Paul, in Bath, Cald.* 213; 1 *Bott*, 483. W. Hill was removed from Lyncombe and Widcombe to St. Peter and St. Paul. Order confirmed. Case:—The parishioners of St. Peter and St. Paul, with the parishioners of St. James, in Bath, purchased a piece of ground in the parish of Lyncombe and Widcombe, and built thereon a house for the reception of their poor. W. Hill, with the paupers belonging to St. Peter and St. Paul, removed to this house, where they have been maintained, without any charge to the parish of Lyncombe and Widcombe. Hill and all the other paupers carried with them regular certificates, which were delivered to one of the officers of Lyncombe and Widcombe. Notwithstanding his certificate, the pauper was removed from Lyncombe and

A certificate given to paupers going into a workhouse in a third parish is good.

(*a*) In this case *Chappel*, J., is reported to have said, "That the delivery to an inhabitant, though it did not appear that he was a parish officer, is sufficient;" but this mode would afford such an opportunity for fraudulently defeating the object of the regulation, that the courts would hardly countenance such doctrine, especially as the statute seems to require a delivery to the *churchwardens* or *overseers*.

(*b*) These no longer exist.

1. *Acknowledgment of Settlement by Certificate.*

Widcombe, though he had not been chargeable to that parish. The sessions were of opinion that the pauper was not an object of the certificate act, and consequently not protected by it. Lord *Mansfield*, C. J., after adverting to the benefit of workhouses (*ante*, p. 41), said, "That the objection to the certificate is not warranted by the act. Whatever might be the leading motive in passing that act, that statute authorises the whole body of the poor, of whatever denomination and with whatever object, to leave their own and remove into any other parish, provided they can obtain the protection of a certificate. Contrary to the spirit and policy of the act, and not obliged by the letter, the court will not make an exception of a case, which the act itself has not excepted. The true policy is certainly to enlarge and not to narrow the district, within which the poor are to be maintained. As to the objection of its being an injury to property, the introduction of a numerous inhabitancy, by increasing the consumption of provisions, must unavoidably add to the value of that land, the produce of which is by such a demand consumed. As to the possibility of a few illegitimate children acquiring by birth a settlement in the parish, within which the workhouse stands, it is impossible to foresee every inconvenience; and all that can be said is, that *de minimis non curat lex*." *Buller*, J. "As to the last difficulty raised, I doubt whether the poorhouse so occupied, and become in this manner the perpetual property of the united parishes, is not, to this purpose, rather to be considered as part of those parishes to which it so belongs, than of the parish in which it is locally situated; upon the same principle, as that of many resolutions in the case of such children born in gaols." *Willes* and *Ashurst*, Js., concurring, both orders were quashed.

A workhouse in a third parish is to be considered as part of that parish whose poor reside therein.

9. *To what Individuals a Certificate extends.*

An unborn child is included in "family."

9. *To what Individuals a Certificate extends.*

Rex v. *Sherborne*, *Burr. S. C.* 182. The pauper's father came to Sherborne with a certificate including his wife and family from Thornford. About two years after, his wife died, and he married the pauper's mother, and three years after this marriage the pauper was born in Sherborne, whilst his father resided under the certificate. When the pauper was sixteen, he was hired and served for a year to an inhabitant of Sherborne. The court held that the pauper did by his birth *come* by certificate into Sherborne, and that he was restrained to the two modes of acquiring a settlement specified in the statute. (No argument was raised as to the second wife). (S. P. *Rex* v. *Bray*, *Burr. S. C.* 259; and *Rex* v. *Buckingham*, *Burr. S. C.* 314.)

A certificate under the friendly society act to a man will include the family.

Rex v. *Idle*, 2 *B. & Ald.* 149. The 35 Geo. III. c. 101, did not repeal the 33 Geo. III. c. 54. And therefore where an unemancipated daughter was delivered of a bastard child in the township of Idle, during her father's residence there under a certificate acknowledging him to be a member of a friendly society established under 33 Geo. III. c. 54, it was held that such certificate extended not only to him but to all members of his family; that the daughter was therefore at the time of her delivery residing in the township under the authority of 33 Geo. III. c. 54, and that by sect. 35 of that act, the settlement of the child followed that of the mother.

A certificate to a spinster "the child she now goeth with" will include the bastard.

A certificate does not extend to children after they become heads of families.

Rex v. *Ipsley* (*ante*, 418). A certificate, which acknowledged "A. C., a spinster, *and the child she now goeth with*," will include the child, although it is illegitimate. But in *Rex* v. *Mathon* (*ante*, 419), it was held that such a certificate, adding *all other children she might thereafter have*, will not extend to an illegitimate child born eight years after.

Rex v. *Darlington*, 4 *T. R.* 797. Sarah, widow of T. Milburn, and seven children, were removed from All Saints to Darlington. Order confirmed. Case:—The grandfather of the pauper's husband came to All Saints with a certificate from Darlington. During his residence there he had a son, Thomas, who lived with him as part of his family, except for one year, when he was a servant in All Saints; after which service he returned to his father, and married, when he had a child, the pauper's husband, who

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lived in All Saints till his death. The pauper's husband, at the age of fourteen, was hired and served for three years in All Saints. Some time before this service the grandfather returned with his wife to Darlington (leaving his son and son's family behind), and died there. Lord *Kenyon*. "By 8 & 9 Will. III. c. 30, the parish to which the certificate is granted is obliged to receive the certificated person, *together with his or her family*. Now what is the fair legal import of the word *family?* It is true that in construing a will, and where it is the intention of the testator that it shall extend beyond *the immediate children*, it may have that operation; but that is not the sense in which it is used in this act. In common parlance the family consists of those who live under the same roof with the *pater-familias;* those who form his fireside. But when they branch out and become the heads of new establishments, they cease to be part of the father's family. I admit that a certificate extends to the son on account of the positive words of the act of parliament, he being part of the father's family; but when he himself becomes the head of a family, then the words of the statute, public policy, and the convenience of mankind, require that he should no longer be considered as part of his father's family, or be protected by the certificate granted to his father. Giving full effect to the certificate, as far as the words of the act and the intention of the legislature go, I think it meets with its boundary line, when it has protected the family of the certificated person, that is, all those who live with the *pater-familias*, and consequently that this grandchild, who was the son of the head of a distinct family, was not prevented gaining a settlement by hiring and service." *Grose*, J. "Grandchildren are not, properly speaking, of the family of the grandfather, but of his son; for when the son becomes the head of a new branch, and has children of his own, he ceases to be a part of his father's family, and his children then form a part of his own family." Orders quashed. See *Rex* v. *Mortlake*, (p. 980).

The family consists of those who live under the same roof with the *pater-familias*, who form his fireside.

Rex v. *Hampton*, 5 *T. R.* 266. In 1755, James Duffell and his wife came to reside in Hampton, under a certificate granted by the parish of Thackham, which acknowledges James Duffell, and Mary his wife to be legally settled in Thackham. Afterwards Mary died, and James married a second wife, continuing to reside in Hampton. He died, and his widow still continued to reside in Hampton, and received the pauper as her apprentice. It was held, that the pauper acquired no settlement in Hampton, as she was, in the words of 12 Anne, s. 1, c. 18, an apprentice to a person who resided in Hampton under the licence of a certificate. *Grose*, J., observed, "That the 8 & 9 Will. III. c. 30, did not mention by name the *wife*, but that she was included in the 'family', and that *Rex* v. *Sherborne* had determined that the certificate includes not only the persons named, but every person of the future family of the person to whom it was granted: and that the widow, therefore, of James Duffell was, at the time of his death, part of his family, and so continued till she married again, or deserted her right." *Buller*, J., differed from the rest of the court, as he thought that "when the husband died she was no longer part of the family." But the order of removal of the pauper to the parish who placed her out as an apprentice was confirmed.

A second wife is part of the husband's family; and an apprentice to her as a widow, acquires no settlement.

A child who was part of the "family" was put out as an apprentice in the certificated parish; after he was of age, he hired himself in the same parish; he ceased thereby to be a part of the family, and acquired a settlement. (*Rex* v. *Morley*, p. 450.)

When a child ceases to be part of the *family*.

Rex v. *Testerton*, 5 *T. R.* 258. Testerton gave Great Ryburgh a certificate for Thomas Wood, the father of the pauper, his wife and seven children, *by name*, of which the pauper was one. The pauper lived with his father at Ryburgh till he was twenty; he then lived as a servant in Ryburgh for a year, and returned to his father. He then served two years more as a servant in Ryburgh, and afterwards returned to his father and resided a year with him, and then married, and has lived in Ryburgh till this order was made, but never with his father since his marriage. His father has been dead about five years. Lord *Kenyon* said, "This case was not contrary to *Rex* v. *Darlington*, (p. 978), for here the pauper is mentioned

If the child is named in the certificate, his children are included.

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by *name* in the certificate itself, and he has never gained any settlement or lived out of the certificated parish since it was given." Order of removal to Testerton confirmed.

Same point.

Rex v. *Batheaston*, 8 *T. R.* 446. E. Gay, the grandfather of the pauper, went to Box with a certificate from Batheaston, certifying him, his wife, and "Edward and Thomas their children." Edward lived with his father till he married at Box, and had the pauper, who was hired and served as a servant in Box. The Court held that the distinction was taken in *Rex* v. *Testerton* between those cases where the certificate is granted to a person and his family generally, and those where the son is mentioned by name in the certificate; that in the former a grandson is not within the protection of the certificate; but that in the latter, where the son is named, his family, until they are emancipated, are within the protection of the certificate, not as the grandchildren of the principal person named, but as the family and children of the person who is also named, and therefore *Rex* v. *Testerton* ought to govern this case" (*a*).

But an unmarried person carrying on business for himself, but living with his father's widow as part of her family, still resides under the certificate (*Rex* v. *Sowerby*, p. 442). When the son of a certificated person marries and lives in a house of his own, he ceases to be under the protection of the certificate, and may gain a settlement in the certificated parish by being rated (*Rex* v. *Heath*, 5 *T. R.* 583).

Persons who *come into* a parish under a certificate must also *reside* there under it, for the purpose of being within the operation of it; therefore, where a son of a certificated person included as one of the father's family, marries and lives separately from the father, his apprentice may gain a settlement in the certificated parish.

Rex v. *Mortlake*, 6 *East*, 397. Removal of Mary Dormer and children from Mortlake to Great Marlow, quashed. Case:—John Dormer and Ann his wife went with a certificate from Hambleton to Great Marlow, and during their residence at Great Marlow had a son William. John and William died there; but William had left his father's family, married, and occupied a separate house at Great Marlow, and had a son named Thomas, who in 1760, several years after the death of John and Ann, was bound apprentice to his father for seven years, and served the same at Great Marlow. Thomas was afterwards married and had a son named Thomas, now deceased, who was the husband of the pauper and the father of the children removed. Lord *Ellenborough*. "The question is, whether William, the son of John, who was once covered by his father's certificate, ceased to be so when he married and lived separately from his father; for if he ceased to be covered by the certificate himself, there seems to be no reason why he might not communicate a settlement to another, as well as gain one himself in the certificated parish. This depends upon the meaning of the word '*family*' in 8 & 9 Will. III. c. 30. *The meaning of the word* is not to be taken in its largest sense, and *has been soundly restrained by the determinations in Rex* v. *Darlington, and Rex* v. *Heath to those who constitute part of the existing household and family of the certificated person*, or, as Lord *Kenyon* expressed it in *Rex* v. *Darlington*, those who form his fireside. That character cannot apply to William after he had married and left his father's house and had become a new *stirps*, having a family of his own. *Rex* v. *Hampton* was decided upon the ground that the second wife continued after her husband's death to be the root and remains of the old family, and not a substantive distinct family, as here. She still continued as the representative of her deceased husband; but here the son had started for himself at the head of a new family by marrying and taking a separate house for himself. He was then in a condition to gain a settlement for himself in the certificated parish. But the words of the statute of Anne are relied on to show that he is not such a person with whom an apprentice bound to him could gain a settlement there; and it is said that they are in the *disjunctive* 'come into *or* reside in'; but upon referring to the certificate act, the 8 & 9 Will. III. c. 30, which speaks of

(*a*) The principle of these cases seems to be confirmed by *Rex* v. *Thwaites*, (p. 981); and the observations of Lord *Ellenborough* and *Bayley*, J., in *Rex* v. *Leek Wootton* (p. 982), if reconcilable with these cases, must be understood in reference to derivative settlements only, and so they seem to have been construed by Mr. *Nolan*, vol. ii. 174.

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persons who 'shall *come* into any parish, there to be, inhabit, and reside', and the 9 & 10 Will. III. c. 11, which speaks of doubts having arisen upon the former statute, by what acts any person *coming to inhabit or reside* within any parish by virtue of any such certificate may procure a settlement, and which enacts that no person who shall *come into* any parish (without more) by any such certificate, shall gain any settlement there except in certain ways mentioned; I say, upon comparing the words of the statute of Anne with the former provisions, I think *those words must be read copulatively*, and that they mean only to designate persons *who may come into any parish for the purpose of residing, and actually reside there under a certificate.*" The other judges agreed.

A certificate granted to T. C., and J., his wife, engaging to receive them, *their child or children born or to be born*, only extends to a son born at the time of granting the certificate, so long as he continues a part of his father's family; therefore, where the son married, and resided with his family apart from his father, in the certified parish: it was held, that his apprentice gained a settlement by serving him in the said parish.

Rex v. *Thwaites*, 1 *M. & Sel.* 669. Removal from Harrington to Thwaites confirmed. Case:—The pauper, Huddleston, was born in Thwaites, but was bound apprentice to R. Cass in Brigham, and served his whole time in that township. T. Cass, the father of R. Cass, resided at Brigham, under a certificate from Sunderland, which had been delivered to the parish of Brigham, acknowledging T. Cass and his wife to be settled within their township, and they promised to receive them, *their child or children, born or to be born* in their township, as persons legally settled. R. Cass was born at the time of the certificate so granted and delivered, and during the time of the pauper's serving him, was a married man, residing with his family in Brigham, apart from his father; but it did not appear that he had gained any settlement there. Lord *Ellenborough.* "This appears very clearly to have been a service under an indenture of apprenticeship to a person, who at the time was not protected by the certificate, and consequently, such a service as coupled with the residence will entitle the pauper to a settlement in Brigham. The certificate engages 'to receive the father and mother *their child or children born, or to be born*'. The parish officers perhaps did not know the name of the son, or probably they were ignorant of the fact that they had any son at the time; but it is clear that they meant only to comprehend the whole of the family with which the parents should migrate. The parents do migrate with their own son into another township, and there the son afterwards separates from them, and becomes himself the head of a distinct family, and so from that time was emancipated. This is a main feature that distinguishes this case from *Rex* v. *Sowerby* (p. 442), where the party continued to reside with his mother, and brings it within *Rex* v. *Mortlake*, (p. 980,) which is also an authority to show that the pauper, by serving the son, under these circumstances, in the certified township, will thereby gain a settlement in that township." *Le Blanc*, J. "It seems to be admitted, that this case falls precisely within the determination of *Rex* v. *Mortlake*, unless it can be distinguished upon the terms of the certificate. The circumstance of distinction relied on is this, that the certificate is in its terms an acknowledgment of 'the child or children born or to be born', and this, it has been argued, is the same thing as if the child had been expressly named by its christian name in the certificate. If this were so, there would be an end of the question; for it has been determined, and that determination has never been shaken, that a child named in the certificate stands precisely in the situation of the father, that is, as one of the principals mentioned in the certificate, and therefore if the son had been named in this case, it would follow that a service with him as an apprentice would not have conferred on him a settlement in the certified parish. No case, however, has been cited to show that anything less than an express mention of the person by name will have the same effect as naming him; or that describing him by the words 'child born or to be born', has ever been held to be equivalent. The current of all the authorities seems to decide this, that if a person, who is not named in the certificate, but only comes within the scope of it, as being the child of a person named, abandon the roof of his parents and become himself the parent stock of another family, such person is not only capable of gaining a settlement himself, but also of being the means of others gaining a settlement by service with him,

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although his father remains protected by the certificate. I am therefore of opinion, that the decision of the sessions was wrong." *Bayley*, J. "The provisions of the certificate act seem to place this case in a clear point of view: it enacts, 'That if any person that shall come into any parish to reside, shall deliver a certificate, acknowledging *the person or persons mentioned* in the said *certificate* to be an inhabitant or inhabitants settled in that parish, every such certificate shall oblige the said parish to receive and provide for *the person mentioned* in the certificate, together with his family, whenever they be chargeable. Therefore, if a certificate be granted to a person by name, the parish is bound to provide for him and his family; but if several members of a family be named in it, the parish must provide for each as distinct and separate members, unconnected with each other. Who, then, are the persons named in this certificate, whom the township acknowledge as their inhabitants legally settled? The father and mother only; for 'their child or children born, or to be born', comprehends nothing more than their family; the children are to be received back as part of the family of the father, and not because they are acknowledged as settled inhabitants of the certifying township. In the cases relied upon, the certificate not only named the parents but the children also. But where children come within the certificate, merely under the description of the family of the person named, *Rex* v. *Darlington*, *Rex* v. *Heath*, and *Rex* v. *Mortlake*, have decided, that they continue under the protection of the certificate so long only as they constitute a part of the family. That is the plain and broad line of distinction." Order of sessions quashed.

The settlement of a son coming into a parish with his father under a certificate, as part of the father's family, not having before gained any settlement of his own, shifts with the settlement of the father in the certificated parish, though such son were named in the certificate.

Rex v. *Leek Wootton*, 16 *East*, 118. Removal of Joseph Bromwich, &c., from Leek Wootton to Milverton, quashed. Case:—In April, 1790, Michael, the father of the pauper, went from Leek Wootton with his family, of which the pauper was one, to reside with his (Michael's) father, Joseph Bromwich, at Milverton, who rented a tenement there at a rent of 6*l.* a year; but the same was of the yearly value of 10*l.* He had no lease thereof, but was tenant from year to year. He made a will, and dying in May following, devised his interest in this tenement to his son Michael, and appointed him his executor. Michael continued in possession and remained in this tenement many years, and paid the last rent due from his father as his executor. In 1791, and while he was in possession of the tenement, Michael applied to Leek Wootton for, and the parish officers there granted a certificate, by which they acknowledged him, his wife, Joseph (the pauper), and several other children by name, to be inhabitants, &c., of Wootton. Joseph was then about twelve years of age, and continued to reside at Milverton with his father on this tenement, five years after the death of Joseph Bromwich the elder, but never gained any settlement in his own right." Lord *Ellenborough*, C. J. "Where there are conflicting decisions upon the construction of a statute, the court must refer to that which is, and ought to be, the source of all such decisions, that is, the words of the statute itself. Some cases have been cited upon this occasion which are certainly of great weight, but which are in contradiction to the prior cases of *Cold Ashton* (p. 990) and *Deddington*, (p. 992); and therefore the court are obliged to refer to the fountain-head of all, the statute, to see which of them most corresponds with the words of it; and, upon the best consideration, I think that *Cold Ashton* and *Deddington* range more strictly within the words of 8 & 9 Will. III. c. 30, and 9 & 10 Will. III. c. 11. The second of these statutes recites the former, which empowers the granting of such certificates to provide for the person mentioned in the certificate, with his or her family; and the legislature evidently meant that the certificate should be entire to protect the *pater-familias* and his family, whether named or not; and the naming of any of the family is mere matter of convenience, in order the more easily to identify them, but is not directed to be done by the legislature, nor are any powers taken away from or given to such children on account of their being named or not named in the certificate. The 8 & 9 Will. III. c. 30, says, that when any person coming to inhabit

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and reside in any parish, shall at the same time bring and deliver a certificate to the parish officers, thereby owning the person or persons mentioned in the certificate to be an inhabitant or inhabitants of the parish certifying; every such certificate shall oblige the parish to provide for *the person* mentioned in the certificate, together *with his or her family*, when chargeable. Now the person to be named in the certificate is the *pater-familias*, with his family, if he happen to have any; and then and not before, it shall be lawful for any *such* person and his or her children, &c., to be removed. I am aware that the word *such* is not in the enacting part of the clause; but I think it must, to complete the sense, be incorporated there, being in the antecedent part of the statute. The scope and object of the act was to protect the residence of a father or mother coming with their family into another parish, without casting a burthen upon it, or enabling them to gain a settlement there except in the two ways mentioned. There is nothing in the act which requires the nomination of the constituent parts of their family, and it is mere artificial reasoning which makes the distinction between such of the children as are, and such as are not, named in the certificate; a distinction which the act itself does not make. Then as the child, though named, was still to be considered only as a constituent part of the family, it brings it to the question, whether he was ousted of his derivative settlement from the father? Upon that point I think that the language of Lord *Mansfield* is founded in reason, and not opposed by the act that the children of all parents must have the settlement of the father until they acquire another for themselves. I think therefore that the pauper in this case continuing part of his father's family at the time, derived the settlement from him, and was not repelled from it by the circumstance of being named in the certificate." *Grose*, J., agreed. *Le Blanc*, J. "The sessions have sent this case for the opinion of the court upon the question, whether the pauper acquired a derivative settlement from his father? We must therefore take it that the son came into the certificated parish as part of his father's family, never having gained a settlement in his own right; though that was not stated in the case. Then coming into the parish as part of his father's family, under the certificate, with only a derivative settlement from his father, the question is, whether while he continued part of his father's family, a settlement gained by his father there will not also be communicated to the son; whether the settlement of the son will not also shift with that of the father? The cases of *Testerton* and *Batheaston* have not decided that the son coming into a parish, and continuing as part of his father's family under a certificate, is not capable of having his derivative settlement shift with his father's settlement; they only decided that a child named in the certificate stood in a different situation from that of a child who was not named; and that the settlement of a son so named, *who had ceased to be part of the father's family*, should not shift with that of his father. Now here the son had gained no settlement of his own at the time, but was living with the father as part of his family; and the cases of *Cold Ashton* and *Deddington* have decided that the settlement of a son so circumstanced, though named in the certificate, shall vary with the subsequent settlement of the father; and that if he comes into the parish as part of the father's family, with a certificate, his being named in it does not prevent the shifting of his settlement with his father's. This case therefore is distinguishable from those of *Testerton* and *Batheaston*." *Bayley*, J. "The true construction of the certificate act seems to be, that a pauper having an independent settlement of his own, and not merely a derivative settlement from the father, shall not, if named in the certificate, gain a settlement in the certificated parish, except in one or other of the ways permitted to the father himself; but if the child come into the parish under the certificate with his father, having only a derivative settlement from the father, what is there to prevent his settlement shifting with that of his father, as in other cases? The act does not say it shall not; and the cases say, that though named in the certificate, he shall be treated as part of his father's family, and his settlement shift

No distinction between children named and those not named.

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with his father's. It is said, indeed, that by the words of the act, the settlement of a certificated person can only be acquired in the certificated parish by two modes, and that this is not one of them. But I think the fallacy of the argument is this, that the children do not come into the parish under the certificate *suo jure*, but only as part of the father's family, and under his protection. The cases of *Cold Ashton* and *Deddington* have decided this point. And if this were not the true construction, this inconvenience would follow, that however young the children might be, coming with their father into the parish with a certificate naming them, if the father gained a new settlement there, he would be settled in one parish and the children in another." Order of sessions quashed.

If a child be intentionally left out of the certificate, it does not extend to that child, although he may not have become the head of a family.

Rex v. *Storrington*, 7 *T. R.* 133. Order of removal of James Ceary from Storrington to Patching quashed. Case:—Soon after 1778, the pauper's father, John Ceary, returned to Storrington with a certificate, acknowledging him, his wife, and two children, by name, to be inhabitants of Patching; but the pauper, then about fourteen years of age, was neither included in a previous order of removal to Patching, nor in the certificate; the parish officers of Storrington having declared, upon the examination of the father before the magistrates, that as the pauper got his own living they had nothing to do with him. The pauper, both before and after his father's removal, supported himself entirely by daily labour, and lodged and boarded with his father, for which he paid. About two years after his father's return with the certificate, and while he continued to reside under it, the pauper being then about sixteen years of age, hired himself for a year to Mr. Brown, of Storrington, with whom he had previously served as a day-labourer, and served the year out, after which he again worked for himself as a day-labourer, and lodged and boarded with his father on the same terms as before, until he married; he continued to reside at Storrington until he was removed by the present order. Lord *Kenyon*, C. J. "In deciding this case I wish not to disturb any of the authorities which have been cited; but my opinion in this case proceeds upon its own particular circumstances. Consider the situation of this family; the father, mother, and two of the younger children, who had been resident at Storrington, were removed by an order of justices to Patching, who gave them a certificate, and they returned to Storrington. Now, before and at the time when this certificate was obtained, the pauper had worked as a day-labourer, and received his wages for his own use; had lodged in his father's house, and paid a weekly sum for that accommodation. The form of the certificate too is material, it was granted to the father, mother, and the *two younger children;* but the pauper was not included either in the order of removal, or in the certificate. If, indeed, he were under the disability of gaining a settlement by 9 & 10 Will. III., to be sure this is not one of the modes allowed by that act. But the question is, whether he is to be considered a certificated person? Generally speaking, *if a certificate be granted to the head of a family, it extends to all the members of that family;* but it is competent to the parties themselves to narrow the extent of a certificate; and the certificate in question seems to have been specially framed for the purpose of excluding the pauper from the operation of it. It is not conceived in general terms, but, after mentioning the father and mother, it goes on to specify the two younger children, omitting the pauper, who was the eldest; and it is a known maxim *expressio unius est exclusio alterius.* Therefore, on the particular circumstances of this case, I am of opinion that the pauper was not resident at Storrington under the certificate, and consequently was not disabled from gaining a settlement there by hiring and service; but I desire to have it distinctly understood that I do not, by this decision, mean to shake the authority of any of the former cases." *Grose*, J. "The question is, whether the pauper's residence in Storrington were, or were not, protected by this certificate; for if it were not, he is now settled in that parish. A certificate protects only three classes of persons:—those who are named in it; those who are part of the family of the certificated person when it is granted; and his children born in the certificated parish after that time.

The parties themselves may narrow the extent of the certificate.

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Now the pauper certainly does not come within either the first or the third class: nor was he part of his father's family, as far as respects the certificate; for the certificate does not mention his name, though it does mention the names of the younger children; and the parish officers declared that he was not included in the former order of removal, which was the occasion of this certificate, because he was capable of gaining a livelihood for himself. All the parties interested considered the pauper to be *sui juris*, when the certificate was granted, and therefore it was not meant to include him; he was not a part of his father's family for the purposes of this certificate." *Lawrence*, J. "As the certificate would not be conclusive of the pauper's settlement, it seems to follow that he gained a settlement in Storrington."

10. *Of the Effect of a Certificate.*

10. *Of the Effect of a Certificate.*

Imperfect certificate not evidence as an admission.

Rex v. *Wootton St. Lawrence, Burr. S. C.* 581; 2 *Bott*, 713. The certificate had not been duly allowed, still it was argued that it amounted to an admission by the parish of the pauper's then settlement; but the court held that if it was not a certificate within the act, it did not conclude the parish, and if allowed as evidence and presumption would lead to great litigation.

A certificate, acknowledging the persons to be man and wife, is conclusive, though untrue.

New Windsor v. *White Waltham*, 1 *Stra.* 186. The pauper went with a certificate from White Waltham, owning him and a woman as husband and wife, into New Windsor, where they had six children. The man died, and the woman swearing they had never been married, the justices adjudged the children to be bastards, and settled where born. But by the court: "The certificate is conclusive as to White Waltham, and *they are not to* be admitted to *dispute* the validity of *the marriage;* and therefore the children must be sent to White Waltham."

Same point.

Rex v. *Headcorn, Burr. S. C.* 253; 2 *Stra.* 1233. Maidstone gave a certificate to Headcorn, acknowledging Richard Burden and Mary his wife, and their four children, to be settled at Maidstone. Afterwards it appeared that Mary was not his wife, but that he had a former wife then living. Maidstone acknowledged the settlement of the real wife, but not of Mary and her children; and pleaded, that it would be hard that they should be forced to take two wives and different children. But by the court: "The parish that certifies must take care for whom they certify; and the certificate is conclusive. The parish of Maidstone have by this certificate expressly acknowledged the said Mary to be their legal inhabitant; and the parish of Headcorn were thereupon bound to receive her. Therefore, the parish of Maidstone are obliged to provide for her and her children by Burden. Maidstone say they were deceived: but it was their own fault or folly if they were so; and they deceived Headcorn; therefore they ought to suffer, and not Headcorn."

Such a certificate will be conclusive, though the first husband was alive.

Rex v. *Ullesthorpe*, 8 *T. R.* 465. Case:—The mother of the pauper married a person who enlisted soon after as a soldier, and had not been heard of by her for forty years, and was never again seen by her. Hearing he was dead, she married the pauper's father; Earl Philton gave a certificate to Ullesthorpe, including the father, Mary *his wife*, and their family. The original husband came home after the second marriage. The removal was of the father, mother, and pauper from U. to E. P., and the order was quashed by the sessions, which order of sessions was quashed by the court without opposition. (And see *Rex* v. *Lubbenham, post*, p. 986.)

Where a certificate included, by mistake, a bastard as a legitimate child, it is conclusive.

Rex v. *Tostock*, 2 *Bott*, 739; *Burr. S. C.* 737. Case:—The pauper, Edward Parkinson, was born at Tostock of Elizabeth Parkinson, spinster, an inhabitant of Tostock; E. Jerman, who was settled in Islame, but resided in Tostock, was the putative father of the pauper; soon after the birth of the pauper, E. P. was married to Jerman; a short time after the marriage the parish officers of Tostock desired Jerman to get a certificate from Islame; whereupon Jerman applied to Islame for a certificate for himself, his wife, and his son, without informing them that the pauper was born a bastard; and they knew nothing of it: Islame granted a certificate, acknowledging Jerman, his wife, and Edward their son, to be inhabitants.

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A certificate is conclusive, although not delivered till after the removal.

Lord *Mansfield.* "This is the case of *Rex* v. *Headcorn* (p. 985), unless you can show that the pauper desiring a certificate as to the son, and that the pauper receiving the certificate, colluded with the parish officers of Tostock, in which case the justices should have found fraud: the certificate is conclusive."

Rex v. *Buckingham, Cald.* 64. Mary Swift, widow, was removed from Fringford to Buckingham. The pauper and her father jointly purchased a tenement for 14*l.* or 15*l.* in Buckingham: each paying a part of the purchase-money. It was surrendered to the father during his life, with the remainder to the pauper in fee: the father was admitted: in the father's lifetime the pauper married Robert Swift, who was settled at Fringford; after the father's death the pauper alone, according to the custom of the manor, was admitted, and she and her husband came to and resided upon the premises until his death: on the 14th June, 1776, Fringford granted a certificate to the pauper, which was delivered to her and kept in her possession, and not delivered to Buckingham till after the removal: the pauper, after the granting the certificate, and before the removal, resided upon the premises upwards of forty days. The certificate was offered as conclusive evidence against Fringford, so as to prevent their setting up any settlement obtained in Buckingham, previous to the granting thereof. But the sessions were of opinion that the certificate, under these circumstances, did not prevent the pauper gaining a settlement at Buckingham by such estate and residence, and confirmed the order. It was moved to quash these orders, on the ground that the detention of the certificate by the pauper till after her removal, granted by the parish removing, and of which they could not be ignorant, would not entitle them to avoid the effect of it when produced at the trial against them, but that they were thereby concluded. No cause being shown to the contrary, both orders were quashed.

A certificate is not conclusive, excepting between the two original parties.

When a question arises between the certifying parish and a third parish, the certifying parish may inquire into the truth of the facts stated in that certificate.

Rex v. *Lubbenham*, 4 *T. R.* 251. Order of removal of Elizabeth, wife of Thomas Hutchins, (then absent,) and H. her daughter, from Lubbenham to Oxenden, quashed. Case:—The pauper, Elizabeth, was married about seventeen years ago to J. Hutchins. Two years afterwards he was convicted of a robbery, and condemned, but reprieved on his enlisting as a soldier: he went abroad, and five years after, Elizabeth (hearing that he was dead) married Ponton at Lubbenham. About a twelvemonth after, Hutchins returned. Whilst Ponton and Elizabeth were residing at Threddingworth as man and wife, they went together to Lubbenham for a certificate to Threddingworth, who granted one, acknowledging Ponton and his wife (without mentioning her christian name) to be settled in Lubbenham, and they returned with it to Threddingworth. Ponton was never married to any other person. H. was born during their cohabitation at Lubbenham, and baptised as the daughter of J. Ponton and Elizabeth. Lord *Kenyon*, C. J. "In the first place, without considering the effect of the certificate, there is no doubt but that the second marriage was void, and consequently that the settlement of the pauper, Elizabeth, continued where her first husband was settled. But it is stated that she afterwards contracted a marriage *de facto* with a person whose settlement was at Lubbenham; and that she and her second husband applied to Lubbenham for a certificate to Threddingworth, which was accordingly granted. And therefore the question is, whether that certificate be conclusive against Lubbenham as to all the world, or only as between the two contracting parishes? Now estoppels in general are not to be favoured; they are to be extended only as far as the positive rules have gone; because the tendency of them is to prevent the investigation of the truth of the case. It is reasonable that a certificate, which is a kind of estoppel, should protect the parish which acts immediately on the faith of it; by the act of the officers of Lubbenham, the parish of Threddingworth were induced to receive the parties into their parish; but there is no necessity for extending the estoppel any farther. In all the cases, except that of *Honiton* v. *St. Mary Axe* (*a*) the question

(*a*) This case is reported in *Salk.* 535, where a certificate was compared to the recognisance of a fine, and thought to be conclusive.

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arose between the parish granting the certificate and the parish to which it was given. That is the only case which extends the doctrine further; and there it is said that a certificate is conclusive on the parish granting it as to all the world. But the reason given by Lord C. J. *Parker*, 'that as all other parties are bound to receive the pauper, so the parish that certifies is concluded as to all other parishes,' is not true; for other parishes are not bound to receive the pauper; there must be a particular parish in contemplation at the time of granting the certificate. Therefore, as the reason, on which that case was decided fails, we are delivered from the authority of it. Then what reason is there why the truth of the case should not be inquired into? No injury is thereby done to the third parish; no imposition is practised upon them; neither is there any hardship in it. It would indeed be a hardship on Threddingworth parish, who acted on the faith of the certificate, and who were bound to receive the parties mentioned in it, if the certificate were not conclusive in their favour against Lubbenham: but that reason does not extend to this parish. Therefore, on that ground, and on the principle that estoppels are not to be favoured, the parish of Lubbenham ought not to be precluded from inquiring into the truth of the case: and according to the truth of the case it appears that the pauper, Elizabeth, was settled at the place of her first husband's settlement. I am therefore of opinion that the order of sessions, as far as it respects the wife, should be quashed; but affirmed as to the child, because the fair conclusion from all the facts stated is, that she was a bastard." *Ashurst*, *Buller*, and *Grose*, Js., delivered their opinions to the same effect.

A certificate is not binding against a subsequent settlement.

Harrison v. *Lewis*, 3 *Salk.* 253. A certificate promising to receive the persons whenever they become chargeable, is not conclusive against a settlement obtained afterwards; for though it be according to the agreement between the parishes, yet a private agreement in this respect shall not alter the law.

An apprentice to a certificated man being assigned to a master in another parish, may gain a settlement in the other parish by service there.

Rex v. *Petham*, 2 *Stra.* 1147. The pauper was bound apprentice to a certificate man in Tenterden, and after living with him there two years was by him assigned over to a parishioner of Lidd, with whom he inhabited and served for the remainder of the seven years. And the court were of opinion he had gained a settlement in Lidd; for the act had not made the binding void, but has only taken away one of the consequences of such binding for the sake of the certificated parish. It never intended to meddle with the case of a legal parishioner's apprentice, and when once there is an assignment to such an one, it is the same as if it had been an original binding: the true construction of the statute is, that *in respect to the certificated parish*, such binding or inhabitation shall give no settlement.

Settlement prevented only in the certified parish.

Rex v. *Sherbourne*, *Burr. S. C.* 182. It was observed by Mr. J. *Denison*, (to which all the court agreed,) "that a certificate provides for the security of that parish only into which the certificate person came to reside by virtue of such certificate; but doth not exclude a certificate person from gaining a settlement in another parish, in the same manner as any other person may do."

A certificated person is at large as to every parish but the certificated one.

Rex v. *Silton*, *Burr. S. C.* 269; 2 *Bott*, 59. The father and mother of John Milbourn, the pauper, came from Silton with a certificate to Wincanton. The pauper was afterwards born in Wincanton, and at twelve years of age was bound out by Silton apprentice to a tailor at Horsington for eight years, and served him there. By the court: "The pauper in this case was a person at large as to every other parish except Wincanton, to whom the certificate was delivered; and, therefore, he gained a settlement at Horsington."

So also in the case of hiring and service in a third parish.

Rex v. *Horsley*, *Burr. S. C.* 385; 2 *Bott*, 646. Horsley gave a certificate to A. Cope and his family, who went with it to Hollingsclough, where his son, the pauper, was born. The pauper, at twelve years of age, was hired and served for a year at Peck; and then returned to Hollingsclough. By the court; "The *Rex* v. *Silton* (*supra*) is in point, only with this

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A certificate extends no further than to the place where first delivered.

immaterial difference, that there the son's settlement was gained by apprenticeship, and here by hiring and service."

Rex v. *Bishopside, Burr. S. C.* 381. Jonathan Joy came from Menwith with a certificate to Bishopside, where he resided for some years. Afterwards he purchased a freehold house for 10*l.* in Dacre cum Buerly, and went to inhabit there, to which place he carried his certificate and delivered it to the proper officer there. During his residence in Dacre, John Thackrey, the pauper, was bound to and served him as an apprentice in Dacre. By the court: "The delivery of the certificate was neither necessary nor proper; it ought to have been left at Bishopside. It is not directed to the officers of Dacre; besides, the master did not go to Dacre under the certificate, but as the owner of a freehold there, to which he had a right to go and inhabit in."

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11. *Certificate how determined.*

11. *Certificate how determined.*

There are various ways in which the operation of a certificate may be determined: as

1. ***By the Acquisition of a Settlement in any mode in a third Parish.***
2. ***By a Settlement in a Certificated Parish, gained—***
   - ***First.*** ***By taking a Lease of a Tenement of the annual value of*** 10*l.*
   - ***Secondly.*** ***By Appointment to and Execution of a Public Annual Office.***
   - ***Thirdly.*** ***By residence of Forty Days on Estate acquired by Devise, Descent, and*** semble, ***Voluntary Gift.***
   - ***But not a*** Purchase ***in its ordinary sense.***
3. ***By Abandonment of the Certificate.***
4. ***By an Order of Removal.***
5. ***By Certificate to another Parish.***

"The parish who grants must get rid of the certificate, and if that can be done only by presumption, it remains good." "The *onus probandi* of a fresh settlement lies on the certifying parish." (*Rex* v. *Warblington*, p. 905.)

1. ***It may be determined by the Acquisition of a Settlement in a third Parish.***

A certificate is discharged by gaining a settlement in another parish.

Rex v. *Great Torrington, Burr. S. C.* 753. By a certificate from Lancrass, Mary Bray came to Bideford, and inhabited there some years. Then she was bound apprentice by the parish of Lancrass, and lived under the indenture at Great Torrington for several years. After the expiration of the apprenticeship, she hired for a year, and served that year in Bideford. The question was, whether by this hiring and service she gained a settlement at Bideford? And it was adjudged (the point being given up) that, "having served an apprenticeship in a third parish, she was become quite clear of the certificate, and therefore was as much at liberty to gain a new settlement in Bideford as any uncertificated person could be."

The like adjudged the same term, in *Rex* v. *Keynsham, Burr. S. C.* 429.

2. ***Determination by gaining a Settlement in the Certificated Parish.***

The legislature has imposed certain restraints on the acquisition of settlements in the certificated parish: but settlements may be gained,—

First. ***By really and bonâ fide taking a Lease of a Tenement of the yearly value of*** 10*l.* 9 & 10 Will. III. c. 11.

A certificate avoided by completing settlement.

Rex v. *Findern, Cald.* 426. A pauper obtained a certificate before he had completed forty days' residence upon a tenement of the yearly value of 10*l.*; by completing such residence the certificate will be avoided, and he may gain a settlement.

Tenement under 13 & 14 Car. II. is a tenement under 9 & 10 Will. III. (*a*)

Rex v. *Croft*, 3 *B. & Ald.* 171. Removal from Croft to Stoney Stanton. Order discharged. Case:—The pauper was bound apprentice to and served Edward Stephens in Croft. The father of Stephens came into Croft under a certificate. After he came to Croft he occupied a house in Croft and

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(*a*) The principal cases relating to this subject are collected under the head of Settlements by Renting a Tenement, pp. 748—766.

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some land in Marston, and in one year, while he was in the occupation of the said premises, he agisted three cows for two or three months in the fields of his landlord. No positive contract for the agistment was proved. The three cows were agisted for above forty days in the year, and the average value of the agistment, reckoned by the year, added to the value of the other tenements, made the whole above 10*l.* per annum; but, if the value of the agistment, taken only for the time that the cows were on the land, were to be added, it would make the whole less than 10*l.* *Abbott*, C. J., delivered the judgment: "Upon the authorities there can be no doubt that the facts here stated must be deemed to be a coming to settle upon a tenement of the yearly value of 10*l.*, within the 13 & 14 Car. II. c. 12. The only doubt was, whether a difference of construction might prevail upon the certificate act, the 9 & 10 Will. III. c. 11, which is expressed in somewhat more precise terms, viz. '*boná fide* take a lease of a tenement of the value of 10*l.*' It is obvious, however, that in construing these words, reference must be had to the former statute, to supply the word 'yearly', which is wanting in this statute; and in like manner the words of the second branch of this clause, 'execute some annual office in such parish, being legally placed in such office', have been construed, with reference to the 3 & 4 Will. & Mary, c. 11, s. 6, to require a service of the office for an entire year (*Rex* v. *Fittleworth*, p. 936). No case has been found in which the 9 & 10 Will. III. has received a different construction from the 13 & 14 Car. II., as to the nature of the tenement or of the taking thereof. On the contrary, it has been decided, that a lease at will is a lease within the certificate act. (*Stra.* 502.) And in *Rex* v. *Shenston* (*Burr. S. C.* 474,) Lord *Mansfield* says, "the two acts are to be considered together, being *in pari materia*."

Lease at will is within the act. (See *Rex* v. *St. Mary, Newington*, p. 954.)

A person who comes into a parish and takes a lease, does not come in under the certificate, and therefore his servant may acquire a settlement. (*Rex* v. *Macton*, *post.*)

The servant of the lessee may acquire a settlement.

Secondly. By executing an Annual Public Office, being legally placed therein (*See* "Settlement by Office," p. 923.)

The words "legally placed therein" are not in the 3 & 4 Will. III. c. 11, s. 6.

Thirdly. By Estate. Estates acquired by operation of Law, &c. (*See* "Settlement by Estate.")

Devise of an estate *pur autre vie* discharges certificate. *Quære*, whether estate conveyed on mere voluntary consideration will discharge certificate.

Rex v. *Cassington*, 2 *Bar. & Ad.* 874. W. Whitley was removed from Handborough to Cassington. Order confirmed. Case:—Robert Whitley, about sixty years ago (before 1771), went to Handborough with a certificate, acknowledging that he, his wife and family were legally settled at Cassington. In 1771, Thomas Whitley, father of Robert, by will devised as follows:—"I give and bequeath to my son Robert Whitley the sum of 5*l.*, and my desire is that my son Robert shall live in that part of my house as he now doth, and at the same yearly rent which he now gives, as long as my son John shall enjoy or own the same: And all other my estate and stock whatsoever I stand possessed of at the time of my decease, I give to my beloved son John Whitley and his heirs for ever." It appeared by the court rolls of the manor of Handborough, that on the 18th of October, 1772, John Whitley, as son and devisee of Thomas Whitley, was duly admitted tenant to the house mentioned in his father's will. It further appeared from the same court rolls, that on the 25th of October, 1773, the said John Whitley surrendered the house to the use and behoof of Robert Whitley of Handborough and his heirs for ever, and at the court Robert Whitley did his fealty and was admitted tenant. It appeared also, that in the year 1773 it was not usual to state on the court rolls the considerations, whether valuable or otherwise, which were given for property surrendered; but they were mentioned in the copies of the court rolls delivered out. The copy was not produced in evidence in this case. Robert Whitley, the pauper's father, resided in the house more than forty days previous to such

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surrender, (and after his father's death and more than forty days after the surrender, and during this occupation the pauper was born. Lord *Tenterden.* "It seems to me that under the will the pauper's father took an estate *pur autre vie*, that is, for John's life, defeasible on his ceasing to enjoy and own the estate. No one could say that John would so cease during the whole of his life, so long therefore as John lived Robert might hold his estate. And it was conveyed to him by the will of his father, and not by his purchase or any act of his own." *Parke*, J. "Robert took an estate for life determinable on certain events. It is immaterial whether the estate be equitable or legal, the certificate is equally discharged. The *Rex* v. *Great Driffield*, (p. 991,) leaves all the cases untouched where the consideration is any other than pecuniary." *Taunton*, J., and *Patteson*, J., concurred. Order of sessions quashed.

So if an estate be devised to the wife of a certificate man for her life.

Rex v. *Shenstone*, *Burr. S. C.* 468. The wife of Isaac Green, a certificate man, had an estate *devised* to her for life by her father; upon which she and her husband entered, and lived thereupon for above six months. The court: "Isaac hereby gained a settlement, notwithstanding the certificate."

Twenty years' possession of an estate by a certificated person gives him a settlement, and a child not emancipated during this time takes a derivative settlement.

Rex v. *Cold Ashton*, *Burr. S. C.* 444. In 1725 D. Harrison, Mary, his wife, and William, their son, went with a certificate from Woodchester to Cold Ashton. In 1728 W. Fido, the father of Mary, died intestate, leaving her and five other children, and being possessed of a tenement in Cold Ashton for the remainder of a term of eighty-two years, determinable on the death of himself and Mary. Upon the death of W. F., D. H. and Mary took possession of the tenement, and have occupied it ever since. No administration of the effects of W. F. was granted to any person. William lived with his parents in the tenement till 1748, when he married the pauper, Mary, and after his marriage he and his wife lived in Cold Ashton, separate from D. H., until the death of William in 1755. There were two questions: First, Whether D. H. acquired any settlement different from that to which he was entitled by the certificate? Second, Whether, if so, the son gained a derivative one? Lord *Mansfield*, C. J. "As to the first question, the case of a certificate man's gaining a settlement by residing on his own estate, is precisely the same as that of a common person not under a certificate, and arises by construction: for it is not within the words of the 9 & 10 Will. III. c. 11, which speaks only of serving an annual office, and renting 10*l.* a year. But residing on a man's own estate was considered as a stronger case than the casual property acquired by renting, because he has a settlement on the statute of the 13 & 14 Car. II., not by the words, but on the principle that he cannot be removed. This construction being made upon the reason, gives a greater latitude to the principle on which the construction is founded; and, therefore, a man who resides on his own estate, though of ever so small a value, is irremovable. And this holds equally in the case of a certificate person who gains a settlement, if, after he comes in by certificate, he is under such circumstances as by his property he cannot be removed. Whether in this case Daniel Harrison had such a property in this leasehold estate when he first entered upon it, is a question that need not now be determined. What I ground my opinion upon is, that he has acquired by the length of possession such a right as he was not removable from. For the statute of limitations doth not operate by way of barring the remedy, only, but it gives a right. He may bring an ejectment after twenty years' possession: and no person could have recovered against him, because such person was out of possession all the time. I except the case of landlord and tenant; for there the possession of the tenant is that of the landlord. This possession gives a title from which the parish officers could not remove him, nor the next of kin. In *Rex* v. *Widworthy*, (p. 865,) they had been satisfied their shares; and here, if they have not controverted it for such a length of time, it is to be supposed they have given up that right. If the case had turned upon the general question, whether the next of kin gains a settlement without administration, I should have desired time to consider

Great difference between *sole* and *several* next of kin.

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of it, and the cases cited. There is a material difference between the party's being sole next of kin, and where in common with others, as in this case; for where one is the sole next of kin, he has the undoubted right of administration. In general it is of more consequence that the law with regard to the poor's settlements should be certain, than what the determination is as to the particular case in question. As to the second point, of a derivative settlement to the son, the word *emancipation* is a loose term in our law, especially in the matter of settlements, and it is used in the books without affixing any precise idea. Indeed, it is a term borrowed from another law, and not properly applicable to ours. The rule I take to be this: Children are entitled to the settlement of their father till they have acquired another. As to the distinction made at the bar, that the son shall not derive a new settlement from his father, because it was acquired by the father himself after the son had left him; this might be material were the fact so, but it is not stated here to-day that was the case, or that he left his father so as to change his derivative settlement. It is stated, that he lived twenty years with his father in this tenement, or, at least, very near it, and we cannot intend that he did not." *Denison*, J., was of the same opinion. (*Forster*, J., absent.) *Wilmott*, J. "As to the father, I do not think it material to say anything about the administration. Had the case turned upon that, it would have deserved consideration. If it be a matter already settled, I shall be for adhering to the rule *stare decisis*, which is a right rule, and more especially in the poor-law. Possession by wrong gives a title upon an ejectment against the legal owner. Here is a legal title, without administration: after such a length of possession, one would be inclined to presume as much as possible. Now, here it is possible that Daniel Harrison and his wife might have some grant or assignment from William Fido in his lifetime; or some other regular and rightful title to the possession which they took of this tenement. So that their possession might, possibly, have been a rightful one. It would be too nice to be computing days to see whether the son was with his father a day over or under the twenty years." And the order of sessions was affirmed.

Emancipation a loose term borrowed from the civil law.

No Settlement can be acquired by Purchase in its ordinary sense.

A certificated person cannot acquire a settlement by purchase in its ordinary sense.

Rex v. *Great Driffield*, 8 *B. & C.* 684. Order of removal of T. Harrison from Great Driffield to Garton quashed. Case:—The pauper's father was bound apprentice to Lyon, then residing in Great Driffield, under a certificate from Kirkburn. During the apprenticeship, Lyon bought a cottage at Great Driffield for more than 30*l.*, and the pauper served more than forty days after the purchase. *Cur. adv. vult.* *Bayley*, J., delivered the judgment. "The question was, whether the pauper's father gained a settlement in Great Driffield by serving as an apprentice to Lyon. It was contended that he did, because the certificate was discharged by the master's having acquired a settlement in Great Driffield by the purchase mentioned in the case; and if so, it was argued, that the subsequent service to the master, after he ceased to reside under the certificate, though by virtue of a binding made to him whilst so residing, was sufficient to confer a settlement on the apprentice. It is unnecessary to decide the latter question, if no settlement was gained by the master by the purchase which he made, and we are of opinion that no settlement was gained." [He then read the 9 & 10 Will. III. c. 11, and said], "*By the words of the statute no settlement can be gained by any act whatsoever; that is, as the context shows, by an act done by the pauper, other than the two which are pointed out by the act.* The purchase of an estate by Lyon is an act done by him other than those mentioned; and according to the plain and ordinary sense of its words, he cannot gain a settlement in the parish. But we are bound to construe every statute according to the plain import of the words, unless we feel ourselves bound by an uniform course of well-considered decisions giving a different effect to the provisions of the statute; or unless it would lead to such consequences that we can safely say that the legislature must have had a different intention from that which the ordinary import of the

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words conveys. It will be found, however, that the decisions are few, and they are founded, in some degree, upon a mistaken supposition, that the point properly arose and was decided in the first reported case, that is, *Burclear* v. *Eastwoodhay*, in which it was held, that where a certificated pauper acquired an estate in right of his wife, his certificate was discharged; and it is stated in the judgment that he did not come to it by an act of his own, but by act of law. Other reasons, it is true, are assigned in the judgment, but it may be supported on that ground, for a settlement acquired by operation of law is not acquired by any act of the pauper, and therefore not prohibited by the 9 & 10 Will. III. In that case, Abraham Hacket came with a certificate into the parish of Eastwoodhay, and afterwards marries one Sarah Smith. Her father surrenders to her a copyhold estate of 20*s.* a year, and so the husband had it in her right. By the court: 'The 9 & 10 Will. III. is not an explanatory act, but new, and must therefore receive a liberal construction. The exceptions in the statute prove this case, being a case more reasonable than either that are there mentioned. If a certificate man by taking a tenement of 10*l.* a year gain a settlement, *à fortiori*, shall he who has an estate of his own, especially in this case, where he does not *come to it by his own act*, which might savour of fraud, but it is cast upon him by the operation of law. If he who serves a parish office gains a settlement by reason of his presumed ability, with greater reason shall he who has ability of his own, visible to all the world. It has been adjudged, that any other person, by descent or purchase of a freehold or copyhold, or by being entitled to a lease for years, gains a settlement, and the parliament never intended to put a certificate man in a worse condition than another person.' The court, therefore, seemed to think that a certificated man might gain a settlement by estate coming to him by purchase. But that was not a case of purchase; and where an act says in distinct terms that a settlement shall be gained by two modes only, we are not at liberty to say he may gain it by any other. There the estate came to the pauper by operation of law; by voluntary surrender of the copyhold to his wife. The next case was *Ivinghoe* v. *Stonebridge*. This case decided that an apprentice to a certificated man gained a settlement in 1709, because it was prior to 12 Anne, prohibiting such settlements. The opinion of the court, that the purchase of an estate made the certificate man a settled inhabitant, was expressly founded on *Burclear* v. *Eastwoodhay*, and was also extra-judicial. These two cases are not of sufficient weight to induce us to say, in the teeth of the words of the act, that a settlement may be gained by purchase, which is an act done. I come now to cases where the estates have been acquired by purchase for money. The first is *Rex* v. *Stansfield*, where a purchase for 47*l.*, paid by the pauper for a leasehold estate in the certificated parish, was held to confer a settlement. It is material to look at the language used by the court in their judgment. Lord C. J. *Lee* says, 'I do not know that the 9 & 10 Will. III. had been taken so strictly as the counsel suppose. A descent or devise, and, I *believe*, a purchase too, has been determined to gain a settlement upon the fact of a person not being removable from his own, and as not being included within the 13 & 14 Car. II.' The present question turns indeed upon the construction of the certificate act. Now, though this person was a certificate man, yet if he had come to this by act of law it would have gained him a settlement; and I *believe* it has been so determined in cases of purchase too. I think the same construction has been made on this act as upon 13 & 14 Car. II. In the following term, in *Rex* v. *Deddington*, it was held, that a purchase by a certificate man for 42*l.* gained a settlement expressly on the authority of *Burclear* v. *Eastwoodhay*. Lord *Lee*, C. J., says, 'The purchase was most plainly neither of the two cases mentioned in the act'; and he observes, 'a purchase was a matter of as much notoriety, or more, than the renting of a tenement of 10*l.* a year; that the construction ought to be agreeable to that put on 13 & 14 Car. II., under which any man is irremovable from a tenement of his own, and that if the construction was different, a person could not gain a settlement by a purchase of 5000*l.* per

Burclear v. *Eastwoodhay.* 1 *Stra.* 163.

Ivinghoe v. *Stonebridge.* 1 *Stra.* 256.

Rex v. *Stansfield,* *Burr. S. C.* 205.

Rex v. *Deddington.* *Burr. S. C.* 120.

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annum.' In *Rex* v. *Cold Ashton* (p. 990), the *estate came to the husband, not by his own act, but by operation of law,* (*a*) and it should also be remembered that though a man may not be removable from his own, it does not follow that he will gain a settlement. In *Rex* v. *Long Wittenham* (2 *Bott*, 531), the estate came to the pauper by her husband's death." [His lordship then referred to the judgments of *Ashhurst* and *Buller*, Js., in *Rex* v. *Warblington* (p. 905), to show their impression as to the construction of 8 & 9 Will. III., and adds], "These two learned judges must have been satisfied that there was a material distinction between a case where the estate was obtained by purchase, and where it was obtained by a voluntary gift. We do not feel ourselves bound by these decisions to put a construction upon the act at variance with the plain import of the words. It is clear these cases proceeded upon a misapprehension of the precise point decided in *Burclear* v. *Eastwoodhay*. The other reasons assigned in giving their judgments do not appear to us satisfactory; they seem to us to turn upon the notoriety of the purchase. There is no question whether a certificated person would be removable during the time of his living in the parish and being the proprietor of an estate, but whether he acquired a settlement; and with respect to the similarity of construction to be put on this statute, as on the 13 & 14 Car. II., it is to be observed that the words are very different; and that looking at the recital in the latter statutes, which applies to poor persons going from one parish to another, and endeavouring to settle themselves where there was the best stock, and at the enactment which authorises the removal of *such* persons only as are mentioned in the recital, it is clear that it never meant to apply to persons who had estates in the parish in which they came to settle. We think also no mischief will follow from the construction which we put on the 9 & 10 Will. III., for though, on the one hand, a certificate man would gain no settlement by the purchase of a large estate; on the other, he would be disabled from burthening the certificate parish, by making a purchase of an estate for a very small consideration, which he might have done prior to the 9 Geo. I. c. 7, s. 5. The other cases of settlements may be supported on the ground that the estate came by operation of law, as in *Rex* v. *Cold Ashton*, or by voluntary conveyance from another, as in *Rex* v. *Upton* (p. 971), which perhaps may be considered as an estate not acquired by any act done by the party. We are, therefore, of opinion that the 9 & 10 Will. III. prevents any settlement by reason of an estate acquired by the act of the pauper, by a purchase in the ordinary sense of that word; but it does not prevent the acquisition of a settlement by reason of an estate devolving on the pauper by operation of law, or acquired by purchase, in the technical sense of that word." Order of sessions quashed. (See the observation of *Parke*, J., in *Rex* v. *Cassington*, *ante*, 989.)

3. *Determined by Abandonment of the Certificate.*

Absence for seventeen years, and dying *without* returning to certificated parish, is an abandonment of it.

Rex v. *Taunton, St. Mary Magdalen, Burr. S. C.* Robert Bagg, grandfather of the pauper, came from St. James to St. Mary, Taunton, with a certificate, in 1702. He afterwards went back to St. James's, and there had a son, Robert, the father of the pauper. The pauper's father afterwards married, and lived in St. James's, apart from his father, and there the pauper was born. The grandfather died in St. James's. The pauper's father died, and the pauper was bound an apprentice by St. James's into St. Mary's, and there served his apprenticeship. And the court held, that the certificate was of no force at the time of the pauper's being put apprentice, but was then at an end. For in so long a course of time, and after such a desertion, we will conclude there was an end of it, and it ought to have been given up to St. James's. It is now of no more effect than if it had never been given. It was absolutely evaded and deserted; and the father and grandfather could not have gone to St. Mary's again without a new certificate. It is a good deal like the case of *Rex* v. *Sudbury* (p. 996).

(*a*) See also *Rex* v. *Wivelingham*, p. 874.

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If the person certified return to the certifying parish, and there have a son, and the son hire himself to a person in the certificated parish, and there marry and have a family, that family is not within the certificate.

Rex v. *Frampton-upon-Severn*, *Doug.* 418; *Cald.* 97. In 1751 Tretherne granted a certificate to Frampton, acknowledging Job Minett and wife to be settled at Tretherne. Under which certificate they lived in Frampton two or three years, when they voluntarily returned to Tretherne, and had afterwards a son, Samuel, born there. Job continued to live in Tretherne for seventeen or eighteen years, when, having a relation in Frampton dead, he went by himself (his wife being dead) to possess himself of the effects, and remained there about six months, when, being taken ill, he was by Tretherne recommended to Gloucester infirmary, and there died. Before he went to Frampton to take possession of his relation's effects, Samuel had been hired for a year, and served the same in Frampton, and so continued for several years until after his father died. Samuel, his wife and child, were the paupers removed from Frampton to Tretherne. It was urged, that in *Rex* v. *Taunton* (*ante*, p. 993), the extraordinary length of time during which the certificate had slept was considered as a waiver of it, and that a voluntary removal of a certificated person will not vacate a certificate, and this without any regard to any interval or length of time. It was also urged, that if a pauper can by length of time desert or annul a certificate, by analogy to the statute of limitations, twenty years at least ought to be required. Here, the certifying parish did not look upon the certificate as at an end, for they recommended the father to the Gloucester infirmary. Lord *Mansfield* said, "The principle has been long settled of abandonment by disuse, at least it is to be found in the *Taunton* case." He then [after adverting to the facts of the father returning for a special purpose, after an absence of seventeen years,] added, "The question is, whether the son went to Frampton under the faith of the certificate? Certainly not. Frampton had never heard of him. He goes there as an emancipated son, in his own right. It shall not be said that he came under a certificate abandoned by his father before he was born, and *quo animo* the pauper returns to the certificated parish must always be considered." *Buller*, J. "It does not appear that the court, in the case of *Spotland* (p. 1003 n.), meant to overturn that of *Taunton*. A mere going away, indeed, shall not avoid a certificate; but what absence shall have that effect is left open." *Willes* and *Ashhurst*, Js., concurred. Order of sessions confirmed.

An adult marrying and separating from his father, ceases to reside as part of the "family" of the father under the certificate.

Rex v. *Heath*, 5 *T. R.* 583. In 1794 the pauper was removed from Mansfield to Heath. Order confirmed. Case:—J. Smith, the grandfather of the pauper, resided at Mansfield, under a certificate, from 1743 to about sixteen or seventeen years ago, when he died. Two years after the certificate, the pauper's father, Richard Smith, was born. Richard continued to reside with his father at Mansfield, until he was twenty-four years of age. He then married, lived in a separate house at Mansfield, and has lived separate from his father ever since. He occupied some lands, but all under the value of 10*l.* He was rated for the land, and paid his rates. The Court thought this case came within *Rex* v. *Darlington* (p. 978), which had decided what was meant by "family." Here the pauper's father ceased to be a part of his father's family, when he married and lived separate from his father. He then became the head of a new family and acquired a settlement. Order of sessions quashed.

If a certificated person go to the certificating parish, and there be hired to different persons for a year respectively, and serve accordingly, and then return to her brother, who is still residing under the certificate, it is no desertion of the certificate.

Rex v. *Keel*, *Cald.* 144; 2 *Bott*, 605. Jane Peak was removed from Bedworth to Keel. Order confirmed. The pauper was born at Bedworth, where her father and mother resided under a certificate from Keel until their death; she remained there after their death until she was about seven years of age, with her brother (who was named in the certificate), and then voluntarily went to Keel, where she remained till she was fourteen, during which time she was maintained by Keel, and then she was hired for a year, and served the same, and also two or three others in Keel, when she voluntarily returned to her brother's house at Bedworth, and was afterwards hired to a person for a year, and served him at Bedworth. The question was, whether the pauper, after she returned to Bedworth, was to be considered as still under the certificate, or that under

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these circumstances it was to be considered as having been abandoned? Lord *Mansfield*, C. J., at first inclined to think that she returned independently and as *sui juris*, rather than to her old home and parish, and under the certificate. But *Willes*, J., thought that "the inquiry here must be, whether the certificate was *functus officio?* The fact is, that the pauper returns voluntarily to the house in which she had before resided under the certificate, which belonged to her brother, who was at that time resident there under the certificate: it certainly was not discharged as to him, and there do not appear to me to be circumstances in the case sufficient to warrant us in saying that it was so with respect to the pauper." Lord *Mansfield*. "I am satisfied. The voluntary return to the house of her brother, who was then resident under the certificate, had escaped me." Both orders affirmed. (*a*)

If the son of a certificated person leave him and go to the certificating parish, and there hire himself to and serve several persons, but gain no settlement there, and then return to the certificated person, it is no desertion of the certificate.

Rex v. *Ingworth*, 8 *T. R.* 339. Order of removal of S. Slaughter from Ingworth to Erpingham quashed. Case:—In 1781, the father of the pauper went with his wife and the pauper, as part of his family, to reside in Ingworth, under a certificate from Erpingham. In 1787 the pauper, then sixteen years old, let himself to J. Brettingham, of Erpingham, and served two years as a yearly servant. He then let himself to W. Clark, of Erpingham, and served him as a yearly servant for a year. He afterwards let himself from three days after Michaelmas following to M. Kemp, of Brickling, farmer, and completed his service. At the expiration of the year he returned to Ingworth, where his father still resided under the certificate, and lived in his father's house about a month, during which time he worked as a day-labourer at Brickling, and paid his father for his board. When he returned to Ingworth, he did not consider himself as going with a view to a certificate. At the expiration of the month he let himself for a year to B. N., of Ingworth, and lived in his service two years. Lord *Kenyon*, C. J. "Although the distinctions in some of the cases on settlements are very nice, whenever we find a case precisely similar to the case in question, we ought to be governed by it. Now it appears to me that *Rex* v. *Keel* (p. 994), is exactly like the present: there, indeed, Lord *Mansfield* at first doubted whether or not the pauper returned to the certificated parish under the certificate; but afterwards he was of opinion that the pauper had returned under the faith of the certificate. If the pauper in this case had gained a settlement in a third parish, the reasoning in support of this order could have applied; but here is no ground for presuming, as in *Rex* v. *Newington* (p. 996), that the parties had abandoned this certificate; for the pauper's father was resident at Ingworth under the certificate when the son returned to him." *Le Blanc*, J., mentioned *Rex* v. *Collingbourne Ducis* (p. 443), the principle of which he said applied to the present case. Order of sessions quashed.

Secus if he acquires a settlement there.

Rex v. *Morley*, p. 450. The son of a certificated person, not named in the certificate, upon the death of his father was bound apprentice in the certifying parish, where he served for some years, and then, with his master's consent, served the remainder of his time, till twenty-one, with a person in the certified parish, where his mother and family resided under the certificate; and afterwards he hired himself to the same person for a year, and served that and three successive years in the certified parish: Held, that he gained a settlement by such hiring and service. The authority of the *Rex* v. *Ingworth*, to its full extent is here denied, as it was observed that the court and counsel both overlooked the circumstance, that the pauper in *Rex* v. *Ingworth* must have been *of age* at the commencement of the second year's service under the last letting.

(*a*) In *Rex* v. *Heath*, Lord *Kenyon* remarked that "in *Rex* v. *Keel*, Lord *Mansfield's* first thoughts were best: he afterwards gave way to what was suggested, but it was generally thought he did so without sufficient grounds." Lord *Tenterden*. "I cannot agree to *Rex* v. *Keel*." *Rex* v. *Bleasby*, p. 439, where the name of J. *Bayley* is inserted by mistake in l. 19, instead of l. 28. J. *Bayley's* judgment begins with the words, "The cases relating to, &c."

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Quitting the certificated parish, without any intention of returning, discharges the certificate.

R. v. *Newington*, 1 *T. R.* 354. John Small was removed from Newington to Mersham. Order quashed. Case:—The pauper's father resided at Newington under a certificate from Mersham, when the pauper was born: the father removed with his family to Hoo, and stayed there two years; and from thence removed with his family to Strood, where he continued four years, when he died: about two years after the death of the father, his widow went to Newington to keep her uncle's house, with whom she continued until his death, and afterwards lived at Newington till she died; she had been relieved by Newington, having gained a settlement there after her husband's death: the pauper within a year after his father's death went to Newington and hired himself for a year, and served the same in Newington, and continued with the same master another year; and then was two years with the minister of Newington, and never gained a settlement elsewhere. Lord *Mansfield*, C. J. "It is admitted that there may exist a case in which a certificate shall be considered as *functus officio*. Then the court ought to draw a line; in doing which it will be material to consider what is the nature of a certificate. It seems to me that a *certificate* given by the parish from which the pauper goes to another parish, *is an indemnity to that other parish from the consequences of permitting him to reside there;* therefore it has done its office the moment that residence is permanently at an end. A temporary absence for a particular purpose will not discharge it; but when the pauper has left the certified parish for years, and neither party has had any reliance upon the certificate, then it has done its duty, and has no longer any operation. In the present case, the pauper had left the certified parish for six years, without any intention of returning, by which it is manifest that the certificate was discharged." The other judges gave their opinions to the same effect; and *Buller*, J., said, "That whenever a pauper *returns* to the certified parish again, they should require from him a new certificate." Order of sessions affirmed.

Secus by a temporary removal.

Same point.

In *Rex* v. *St. Michael's, Coventry*, 5 *T. R.* 526, the certificated man left the certificated parish, and returned to his own parish, together with all his family, and there took a house, and resided there for two years, during which time the pauper was born; at the end of two years he and his family returned to the certificated parish, after which he returned to his own parish, and made it his permanent residence; and the question was, whether this were a desertion of the certificate? Lord *Kenyon*, C. J., acknowledged the law to have been settled by *Rex* v. *Newington* (*supra*), that a voluntary removal from the certificated parish, where the residence there is permanently at an end, will put an end to a certificate. He said that he understood a temporary removal to be where the person goes from the certificated parish to make a visit elsewhere, or on occasional business, leaving his family behind him in that parish, as being the place of his domicile. On the ground therefore that the certificated man left the certificated parish, not for a temporary purpose only, but with a view of making the certificating parish the place of his permanent residence, he considered the certificate to have been discharged. The other judges agreed.

A temporary removal is where a person goes on a visit, or on occasional business, leaving his family behind him in that parish as his domicile.

4. *Determined by Order of Removal.*

Certificate discharged by an order removing the pauper to the certifying parish.

Rex v. *Sudbury*, *Burr. S. C.* 373. Thomas Bladen came by certificate from Sudbury with his wife and children to Uttoxeter. Thomas died there, and his wife and child John became chargeable, and were removed to Sudbury. About a year after, John was bound apprentice to T.B. of Uttoxeter, and served out his time there. *Ryder*, C. J. "The question is, whether the pauper is to be considered a certificate man *now*, since 9 & 10 Will. III. c. 11. We are all of opinion, that the removal of the pauper did restore him as fully as if there had been no certificate at all. The certificate was *functus officio*, after this order of removal to the parish which gave it. It can have its effect but once, and therefore after his removal back again it can have no further effect. The intention of the certificate is to secure the parish in case the pauper should be chargeable. Now this event did fall out, and they were accordingly removed. The law is so far from looking

upon a certificate as continuing after an order of removal, that the pauper cannot return to the place from which he was removed without incurring a penalty. It is said, that the construction contended for would destroy the certificate. But it does not destroy it any otherwise than by satisfying it. And there is no absurdity in its being satisfied as to one, and remaining in force as to another. In *Sowerby* v. *Halifax* the pauper was not removed by *any order*." Order quashed.

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Rex v. *Bridham, Cald.* 500; 4 *Doug.* 245. George Eaurcher was removed from Bridham to Walberton. Order quashed. Case:—The father of the pauper, about thirty years ago, went by certificate from Bridham to Walberton, where the pauper was born three or four years after. His father went to several other parishes after, and to each with a certificate from Bridham. From one of these an order of removal was made for him and his five children (he having only five) to Bridham. The pauper, being then in employ, was not removed with his father, but went to him in Bridham two or three days afterwards, and there lived six months as part of his family, and then being about sixteen years of age, he bound himself to E.N. at Walberton, and served him there the greater part of the time, and particularly the two last months. Lord *Mansfield*. "I think the original certificate was discharged by the following certificate; but if that is doubtful, I am clearly of opinion it was discharged by the order of removal." Order of sessions quashed.

Same point.

An order of removal (unappealed against) to a certificated parish from a third parish is conclusive against the certificated parish, on a removal to the certifying parish. (*Rex* v. *Ealing*, 4 *Doug.* 12.)

So also by an order of removal unappealed against to the certified parish.

5. *Determined by a Certificate to another Parish.*

Rex v. *St. Peter, Derby*, 1 *T. R.* 218. Order of removal of Benjamin Pratt, &c. from St. Peter, Derby, to Chaddesden, quashed. Case:—The pauper, on the 5th November, 1751, was bound an apprentice for seven years to Joseph Pinn, of All Saints, in Derby, to which place Pinn had a certificate from Smalley; the pauper served his master in All Saints about five years and a half; and the master and his family, at Lady-day, 1757, removed to Chaddesden, where he resided till 14th January, 1758, when Smalley granted Pinn, the master, a certificate. Between Lady-day, 1757, and 14th January, 1758, the pauper served his master upwards of forty days in Chaddesden. Pinn never returned to All Saints, but continued at Chaddesden under the certificate; but the pauper returned to All Saints in the summer of 1758, and served his master there upwards of forty days after Smalley had granted the certificate to Chaddesden. The only question was, whether the second certificate to Chaddesden discharged the former one to All Saints, they having both been given by Smalley? The court being of opinion that this question was determined by *Rex* v. *Birdham, supra*, affirmed the order of sessions.

A second certificate to a pauper discharges a former one given by the same parish.

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12. *Removal of Certificated Persons.*

12. *Removal of Certificated Persons.*

In *Rex* v. *Framlingham, Burr. S. C.* 748, *Aston*, J., said, "If several persons reside in a parish under the same certificate, the asking relief by a single one of them would not render the rest removable. The certificate act says that the parish who gives the certificate shall receive and provide for the person mentioned in it, together with his family, whenever he or they shall happen to become chargeable or ask relief; and then, and not before, it shall be lawful for any such person, and his or her children, to be removed to the parish from whence such certificate was brought. And it must be adjudged by the justices that such person has actually become chargeable before they can legally make an order of removal. Now how can the justices be authorised to make such an adjudication upon a person who in fact is not become chargeable, nor ever has asked relief?" (See also *Rex* v. *Kingswood, Burr. S. C.* 392, and *Rex* v. *Haydon*, 2 *Bott*, 717.)

Of a certified family, those only can be removed back that ask relief.

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The chargeability of the son does not render the father removable.

Rex v. *St. Mary, Westport*, 3 *T. R.* 44. T. P. and family were removed from B. to W. They went to reside in B. under a certificate from W., where the eldest son afterwards married, and lived apart in the same parish, and during sickness received (as did his infant son after his death) relief from the parish of B., with the knowledge of T. P., who had never himself, or any part of his family residing with him, asked relief. It was contended that they were irremovable because not chargeable. Lord *Kenyon*. "Although this certificate is not in the usual form, yet as far as it relates to the question now before us, it must be considered as a common certificate: and the single question is, whether these persons who have been removed can, in the fair sense of the words, be said to have been actually chargeable to the parish? Now it is negatived by the case that any of these parties receive relief in person. But it is contended that they were *virtually* relieved, because the son and the grandson both received relief. But it must be observed, that at that time they were not members of the family of the *pater-familias* now removed; they lived apart from him, and formed another family of themselves. Then it has been said that a burthen has been thrown upon the parish by the relief of the son and grandson, and therefore that the grandfather was virtually chargeable, because the 43 Eliz. requires fathers and grandfathers to support their children and grandchildren. But that proposition hastens to a conclusion too soon; for by that statute they are not *in all events* to maintain their children, &c., but only when they are of sufficient ability. Now the justices are the proper judges of that ability; and the grandfathers, &c., are only to be called upon by an order of justices."

A pauper may be removed from a parish where he is residing under a certificate, to a parish in which he gained a settlement before the granting of the certificate.

Rex v. *St. Martin at Oak*, 16 *East*, 303. The pauper, T. Gardener, in 1775, obtained a settlement in Felthorpe, and subsequently a settlement in Drayton. In 1787 Felthorpe granted a certificate to the parish of St. Martin at Oak, where the pauper continued to reside under this certificate, occasionally receiving relief from Felthorpe, until 1812, when he was by order removed to Felthorpe; from this order Felthorpe entered an appeal. The parish of St. Martin then withdrew the order, and the pauper was removed to Drayton. The question was, whether St. Martin at Oak was not bound to remove him to Felthorpe, the certifying parish under the 8 & 9 Will. III.? But the court were clearly of opinion that the act was not restrictive of the power of removal from the parish to which the certificate is granted, to any other parish, but only conclusive upon the certifying parish, as between that and the parish to which the certificate is granted. This was considered to be the object of the act in *Rex* v. *Lubbenham* (*ante*, 986), and in a prior case of *Rex* v. *St. Giles* (2 *Salk.* 530). All the authorities agree that it signifies nothing when the certificate was granted; it is only an estoppel upon the parish granting it as between the two parishes. Order of sessions quashed.

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13. *Of Apprenticeship under Certificate.*

13. *Of Apprenticeship and Service to Persons residing under a Certificate.*

If any person who, upon or after 24th June, 1713, shall be bound by indenture, or be a hired servant to any person who did come into or shall reside in any parish under a certificate, such person shall not thereby gain a settlement. 12 Anne, st. 1, c. 10, s. 2 (*ante*).

Apprentice of an uncertified man serving a certificate man, can gain no settlement thereby in the certificated parish.

Romsey v. *St. Michael's, Southampton, Burr. S. C.* 640. S. Bishop was bound an apprentice to W. Kearley, of All Saints, for four years, and served him there for three years. It was then agreed between them and S. Dagnell, residing in Romsey under a certificate from St. Giles's in Reading, that Bishop should work with Dagnell the remainder of his apprenticeship, for which Kearley was to receive 2*s.* a week. Bishop accordingly served him and resided with him in Romsey. The question was, whether the apprentice gained a settlement by this service in Romsey? Lord *Mansfield*, C. J. "This question is plainer than any argument can make it. The end and

(*a*) See also several cases, *ante*, title, Emancipation, pp. 442, 443.

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intention of the act was to prevent certificated persons from bringing a charge upon the parishes into which they came by certificate. How then can it be imagined that another man's apprentice should gain a settlement by serving him in that parish, when his own apprentice is made incapable of doing so?" And the court were unanimously of opinion that the apprentice gained no settlement in Romsey.

Nor an apprentice to a certificate man serving an uncertificated person in the same parish.

Rex v. *Hinckley*, 4 *T. R.* 371. The pauper, J. Farborough, at nine years old was bound a parish apprentice to D. Palmer, of Hinckley, who was residing there under a certificate from Copson. The pauper, after serving part of his time with Palmer, was assigned by him to J. Hurst, a parishioner of Hinckley, under an agreement that Hurst was to pay 1*s.* a week to Palmer, and which was paid accordingly. He served Hurst in Hinckley above forty days before he left him. Lord *Kenyon*, C. J., delivered the judgment: "The question is, whether any settlement was obtained by the apprentice by his service under his second master, who was a parishioner of Hinckley, in which parish his first master, by whom he was assigned, had been certificated to? The first impression made upon my mind was, that as the last forty days of the apprenticeship was served under a person who was not under the disability of the certificate, such service gained a settlement; but upon looking more fully into the authorities cited, on which I had formed my first opinion, and adverting more particularly to the words of the statute of Anne, I am disposed to think that a settlement was not acquired by the service under the indenture of the second master in Hinckley, although he were not residing there under the certificate. And that opinion which we have formed, proceeds principally on the words of the statute of Anne, and the view with which it was passed. By the general tenor of the certificate act, persons settled in one parish, bringing a certificate with them into another, have a right to remain there until they become chargeable; and the parish to which such certificate is granted cannot refuse to receive them. But the mischief was, that though the certificated persons themselves could not gain a settlement in that parish, yet they were the means of conferring settlements on others, by taking servants and apprentices, which was thought to be a great hardship on those parishes who were bound to receive them under the certificate. Therefore, to provide against that inconvenience, the 12 Anne, c. 18, s. 2, was passed. There has never been any precise determination on this point; and therefore we think it better to abide by the words of the act, from whence the intention of the legislature can best be collected; and the act having expressly provided that persons bound apprentices to certificated men shall not *by virtue of such apprenticeship, indenture, or binding*, gain a settlement in *such parish*, it is necessary that the *binding* should be such as would be capable of conferring a settlement by service under the original master in that place, otherwise no settlement can be gained there by virtue *thereof;* for the legislature intended that no act whatever of this sort done by a certificated man should help to bind the parish. As to *Rex* v. *Petham* (p. 987), where it was held, that the apprentice of a master, certificated to Tenterden, might gain a settlement under an assignment to a second master residing at Lidd, which was a third parish; that does not govern the present, because it does not interfere with the policy of the statute of Anne; for the parish of Lidd had not received the original master by force of the certificate, and therefore had no right to avail themselves of the provisions of that statute, which was intended for the protection of the certificated parish. But here the words of the statute cover Hinckley in the broadest manner, to prevent any burthen coming on that parish on account of their obligation to receive the certificated person. The other case principally relied on (of Romsey parish) has no application to the present question; for though it was contended generally at the bar, that the statute of Anne was confined to apprentices bound by indentures to certificated masters, and claiming settlements by serving under such original masters, yet the court by no means adopted that argument, but decided rather on the ground that no settlement could be gained by the apprentice, through the medium of a certificated person in that parish. Therefore, as

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there has been heretofore no determination on this point, as the statute of Anne was passed for the express protection of the certificated parish, and as the words of the act are very particular and positive in favour of that parish, we see no reason to restrain the meaning of them to a service with the original master." Both orders quashed.

Under the 33 Geo. III. c. 54, s. 24, (similar to 12 Anne, st. 1, c. 18, s. 2,) an apprentice bound to a person residing in a parish under a certificate cannot gain a settlement by such apprenticeship, though the certificate be subsequently discharged, and he afterwards continue to serve his master in the parish for forty days.

The binding to confer a settlement, must be such as would at the time be effectual for that purpose.

Rex v. *Leeds*, 1 *Nev. & M.* 650; 4 *B. & Ad.* 248. N. Bowles was removed from Horton to Leeds. Order confirmed. Case:—The pauper's father was settled in Leeds. In 1809, the pauper being about thirteen years of age, was bound apprentice by his father for seven years to Joseph Fox, shoemaker, who was then residing in Horton under a certificate from a Friendly Society. Four years after the indenture was made, Fox took a farm for a year in Horton at 40*l.*, which he occupied for the year. The pauper continued to serve his master for seven years from the date of the indenture. *Denman*, C. J. "The question was, whether the pauper had gained a settlement in Horton. The pauper was bound apprentice to a master who was at that time residing at Horton under a certificate from a *friendly society*: but before the term of apprenticeship expired, the master gained a settlement in Horton by renting a tenement, and the pauper served him under the indenture of apprenticeship more than forty days after that time. The question turns upon the proper construction of the 33 Geo. III. c. 54, s. 24, by which it is enacted, 'that no person who shall be an apprentice bound by indenture to any person who did come into or shall reside in any parish, township, or place under the authority of this act, and *not afterwards having gained a legal settlement in such parish*, township or place, shall gain or be adjudged to have any settlement in such parish, township or place, by reason of such apprenticeship or binding; but all such apprentices shall have their settlements in such parish, township or place, as if they had not been bound, any act or acts of parliament to the contrary notwithstanding.' The words are copied nearly verbatim from 12 Anne, stat. 1, c. 18, s. 2, which act has received a judicial construction in *Rex* v. *Hinckley* (*ante*, p. 999), by which case we think we are bound. That case differs from the present in one circumstance only, viz., that in that case the pauper having been bound to a certificated man, was afterwards assigned to another person in the same parish, who was under no disability, whereas here the pauper continued with the original master after his certificate was discharged. But the reasons given by Lord *Kenyon* in delivering the judgment of the court, which was evidently much considered, apply to the present case as much as to that; and we cannot decide in this case that the pauper gained a settlement without overruling *Rex* v. *Hinckley*. The words of the statute are plain, that an apprentice *bound* to a man who did come into or shall reside in a parish under a certificate, and not *afterwards* having gained a settlement, shall not by such apprenticeship or binding gain a settlement in that parish, but shall be as if he had not been *bound*. Now the words 'not afterwards having gained a settlement', are grammatically to be referred to the preceding words 'come into or reside', and manifestly point to the situation of the master at the time of binding. If the master be residing under the certificate at the time of the binding, no settlement can by possibility be acquired by the apprentice in the certificated parish, notwithstanding a subsequent removal of the master's disability; but it is otherwise if the binding is after the discharge of the certificate, where the master has gained a settlement in the certificated parish. Lord *Kenyon* says, 'It is necessary that the *binding* should be such as would be capable of conferring a settlement by service under the original master in that place, otherwise no settlement can be gained *there* by virtue *thereof*, for the legislature intended that no act whatever of this sort done by a certificated man should help to bind the parish'. Here according to this opinion the binding was not, at the time it took place, such as would be capable of conferring a settlement, nor could any subsequent circumstances make the binding more efficacious, whatever effect they might have on the service; the consequence is, that the pauper remained as if he had not been bound, and gained no settlement at Horton. The case of *Ivinghoe* v. *Stonebridge* (p. 992), was pressed in argument; but in that

case the service expired before the passing of the statute of Anne, and besides the original binding was not to a certificated person, and was free from all objection. The *Rex* v. *St. Peter's, Derby* (*ante*, p. 997), was also pressed. It is sufficient to say, that in that case the present question was not presented to the court, but it was decided without argument on the sole point whether one certificate was discharged by the granting of another, and the case was also prior to *Rex* v. *Hinckley*. Neither does our opinion militate against the *Rex* v. *Nacton* (p. 763), decided in Easter term last, for that case proceeded entirely on the ground that the master never did reside under the certificate, but came into the parish in a condition to obtain a settlement. Upon the whole, we are of opinion that the *Rex* v. *Hinckley* must govern the present decision, and that the order of sessions must be affirmed."

1. *Acknowledgment of Settlement by Certificate.*

A settlement by apprenticeship can be gained by a party who is one of the family of the certificated person, only by a *binding* and inhabitation after he is *sui juris*.

Rex v. *Manningtree*, 6 *M. & Sel.* 214. Order of removal of W. Finch from Manningtree to Culphoe quashed. Case :—The pauper was born in Manningtree, where his parents were residing under a certificate from Culphoe. When he was nineteen years of age and upwards, he was duly bound apprentice to R. Hobson, of Mistley, for three years, to serve on board his vessel engaged in the coasting trade from Mistley to London. He served his master for two years and then ran away, the vessel then being at Mistley. Eight months previous to this he became twenty-one, during which eight months he slept at his father's in Manningtree for more than forty nights, with his master's consent, his master having no room for him. He slept at his father's the night before he ran away. Whenever the vessel was at Mistley the pauper uniformly slept at his father's. No evidence was offered of a settlement gained by the pauper in any other parish. He was not married, nor had his father done any act to discharge the certificate. The sessions thought a settlement had been gained in Manningtree. Lord *Ellenborough*, C. J. "It has occurred to this court, upon reference to the 3 Will. & Mary, c. 11, which requires a binding as well as inhabitation, in order to confer a settlement, for the words are, 'such binding and inhabitation,' that in a case like the present, where the pauper is to be withdrawn from the effect of a certificate, and placed in a condition to acquire a settlement in the certificated parish, by some act clearly indicative of his being *sui juris*, the binding must be for this purpose after he has attained his full age. It is plain the binding here was before he was of age; and that seems to make an end of the question." *Bayley*, J. "It is clear, I think, that a settlement could not be gained in Manningtree by this pauper by means of a binding and service there whilst he was under age. A settlement in that parish could only be acquired by him after he became *sui juris;* and as it regards a settlement by apprenticeship, the act of binding as well as inhabitancy ought to be one entire act after he was of age, and not an act in part commencing during his nonage. The binding therefore ought to have been after he was twenty-one. In this lies the distinction between this case and *Rex* v. *Morley* (p. 450), because a hiring and service concurred there after the pauper was of age. This decision will not militate with former cases. The court does not say that where a settlement in the certificated parish is not in question this doctrine will apply; if the question here were upon the effect of this binding coupled with a service in a third parish, the court does not pronounce that the pauper would not have acquired a settlement there. For instance, let the binding be in A., the service in B., and let the apprentice sleep in C., in that case the settlement would be in C.; yet if C. be the certificated parish, then, unless the binding and sleeping be entire after the pauper be of age, he does not acquire a settlement in the parish C. This, I apprehend, is the distinction on which the court means to decide the case." *Holroyd*, J. "The son of a certificated person included in the certificate as part of his family, can only gain a settlement in the certificated parish when he is *sui juris*. Under 3 Will. & Mary, c. 11, two things are requisite to confer a settlement by apprenticeship, viz., binding and inhabitancy. By analogy to that statute, when the question regards a settlement in the certificated parish,

1. *Acknowledgment of Settlement by Certificate.*

both these must concur after the party is of full age, so as to make an act *sui juris*. If the apprentice had been bound when he was of age, and had served afterwards, *Rex* v. *Morley* would have been in point." Order of sessions quashed.

Son of a pauper living in a parish under a certificate will not gain a settlement there by apprenticeship, unless both the binding and inhabiting take place after he is of age.

Rex v. *Queenborough*, 2 *Bar. & Adol.* 219. J. Webb was removed from Milton to Queenborough. Order confirmed. Case:—In 1775 the parish of Queenborough granted a certificate for Robert Webb, the pauper's grandfather, and several individuals of his family by name, to the parish of Milton, under which certificate William, one of the persons named, the father of the pauper, has continually from that time hitherto resided in Milton. On the 10th of July, 1810, the pauper, then being about eleven years of age and residing as part of his father's family under the certificate, was bound without any premium, an apprentice to his father's brother, Daniel Webb, an inhabitant of Milton, as a dredgerman, for ten years. His master covenanted in the indentures to find him in board, lodging and clothing, and to instruct him in the business of a dredgerman, and he continued to serve under the indenture until January, 1818, when his master and his family became chargeable to Milton. The master having originally resided under the certificate, and not being then supposed to have acquired a settlement in Milton, was with his family removed to Queenborough, but on arriving there and an explanation taking place, this order was abandoned. The pauper was afterwards, by another order of removal bearing date the 5th of February, 1818, removed to Queenborough, which parish acquiesced in his removal, and received him as their parishioner. The pauper stayed at Queenborough about a week, and then returned to Milton to the said D. Webb, and continued with him there under circumstances which amounted to a service and residence of forty days under the indenture subsequently to his return. He never gained a settlement in any other parish. Lord *Tenterden*. "The binding in this case having been before the pauper attained his full age, is not distinguishable from that in *Rex* v. *Manningtree* (p. 1001), where it was held no settlement was gained in the certificated parish. That case must govern our decision in the present instance, unless we can say that a binding which was not available at the time it was made, can be rendered so by matter *ex post facto*. I cannot think that any subsequent act of the parish can have the retrospective effect of making that binding effectual by relation which was not so at the time when it was entered into. The safest course is to adhere to the decision in *Rex* v. *Manningtree*." *Littledale*, J. "No subsequent act of the certifying parish will make the binding valid for the purpose of conferring a settlement in the certificated parish, which was not so at the time when it was made." *Parke* and *Patteson*, Js., concurred. Order of sessions confirmed.

Apprentice bound and serving twenty-two days before the execution of a certificate, gains no settlement, though he continues three years after.

St. Cuthbert's v. *Westbury*, *Burr. S. C.* 470. A person was bound apprentice to a man residing at Westbury, but whose settlement was at Harptree, a neighbouring parish. After the apprentice had served twenty-two days, the master obtained a certificate from Harptree, and delivered it to the overseers at Westbury; and the apprentice served there further with his master for three years. The question was, "whether the apprentice hereby gained a settlement in Westbury?" By the court: "Before the act, the serving under an apprenticeship to a certificated man for forty days in the parish where the master lived, would have gained a settlement to the apprentice. But the act says, that if any person shall be bound apprentice by indenture to any person *residing under a certificate*, he shall not thereby gain a settlement. Now here is no service for forty days under an apprenticeship to a master who did not reside in this parish under a certificate; therefore the apprentice in this parish did not gain a settlement. But it would have been otherwise if he had served forty days before his master became certificated."

Apprentice to a man who had a certificate, but which was not

Rex v. *Wensley*, 5 *T. R.* 154. The pauper was bound apprentice to R. Hallam, of Chesterfield, with whom he continued two years. Before the pauper was bound to Hallam, the overseer of Chesterfield told Hallam he

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must procure a certificate or they would remove him; he accordingly before such binding of the pauper procured a certificate from Chaddesden, directed to Chesterfield, but nothing further passed between Hallam and the overseers of Chesterfield respecting the certificate, after their first requisition to him to procure one; he therefore not being again called upon, did not deliver the certificate to the overseers of Chesterfield, and it remained in his hands without mention or further notice during the whole time that the pauper served him as his apprentice at Chesterfield; but some time after the pauper left Hallam the certificate was delivered by Hallam to the overseers of Chesterfield. Lord *Kenyon*, C. J. "We cannot depart from the express and positive words of the act, which are decisive of this question. In the construction of some statutes, the courts have thought, from considering the context and the words of it, that some particular words are merely directory; but there is nothing in this statute to show that the words commented upon should be construed to be directory only. The statute says expressly that 'if any person shall come into any parish, &c., he shall *at the same time procure, bring, and deliver* to the churchwardens, &c., of the parish where such person shall come to inhabit, a certificate, &c.; the *act therefore requires a delivery at the time when the pauper goes into the certificated parish;* and it is essential to the interest of that parish that it should be delivered, as the withholding it from them for a time may be the means of introducing frauds. *Rex* v. *Buckingham* (p. 986), only decided, that a certificate, though not delivered, was an acknowledgment by the parish granting it, that the pauper was settled with them when it was given, but it did not determine that it prevented the pauper gaining a settlement in the certificated parish after it was granted. Both orders quashed.

delivered till after the apprenticeship, may gain a settlement by such apprenticeship.

Rex v. *Rustington*, 6 *M. & Sel.* 396. Order of removal of J. Mitchiner from Newhaven to Rustington confirmed. Case:—The pauper was included by name in a certificate given in 1763 by Rustington to Newhaven. While residing under it he was bound apprentice to a lighterman in Newhaven, and served the seven years. During the greater part of the apprenticeship, and on the last night of it, the pauper slept at Newhaven; but in the course of his master's employment he went up and down the Ouse to Lewes in his master's barges. He was frequently detained at Lewes two or three days together, but not more at any one time; and, when so detained, he slept either at an inn in St. Thomas à Becket, by the cliffs near Lewes, or on board in his master's barge, while it lay in the same parish. He slept in that parish more than forty nights in the seven years, but not forty nights in any one year. (*a*) Lord *Ellenborough*. "Had it not been for the certificate, the settlement would have been at Newhaven, because that is the parish where the pauper slept the last night of his service. The certificate prevents this; but why is that to place a third parish in a worse situation? There was nothing like a permanent residence in St. Thomas à Becket to constitute an abandonment of the certificate." *Bayley*, J. "The law on this branch of the settlement is, that an apprentice is settled in the parish where he sleeps the last night of his apprenticeship, if he has slept there altogether during the year for forty nights. According to that law the pauper would have been settled in Newhaven were it not for the certificate. How then is the certificate, which is in the nature of a bargain between two parishes, to vary the case as it regards a third parish, and in the present instance to throw a charge on St. Thomas à Becket, which, otherwise, they would not have to bear? In *Rex* v. *Great Torrington* (p. 988), the certificate was completely discharged by a settlement gained in another parish by apprenticeship. But when was this certificate discharged?" *Abbott*, J. "The *Rex* v. *Spotland* (*b*) certainly gives colour to the argument of to-day, which

An apprentice resided generally, and the last night, in the certificated parish, but he also resided more than forty days in L.: Held, he gained no settlement in L.

(*a*) Residence for forty days during the term would have been sufficient, *Rex* v. *Aldstone*, (*ante*, 684).

(*b*) *Rex* v. *Spotland*, *Burr. S. C.* 527. The pauper, John Hamer, was bound apprentice to a certificated man at Castleton, and after some years removed to Spotland, where he served him forty days, and then married; and till the expiration of the apprenticeship, which was upwards of half a year, the apprentice worked in the daytime with his master in Spotland, but

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would maintain that a settlement was acquired in St. Thomas à Becket, for the two cases are in circumstances very similar. But I cannot help thinking that the court there were under some misapprehension of the terms of the statute, for it also says, 'that the apprentice shall have his settlement in such parish, as if he had not been bound apprentice to the certificated person.'" *Holroyd*, J. "The argument would place a third parish in a worse situation than if a certificate had not existed." Order confirmed.

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12. *Of Settlement by Acknowledgment, viz. by Relief.*

12. Of Settlement by Acknowledgment; viz. by Relief.

It is a presumption of law, that a parish will not extend relief to a pauper, at least when out of such parish, unless it is under an obligation to do so, by the pauper being settled in such parish. Wherever, therefore, such relief has been afforded, it has been considered to be an acknowledgment that the pauper is settled in that parish. Whether the parish institutes any inquiry as to the settlement at the time, or has the means of ascertaining the fact, is not very material, if the relief be given in a manner and under circumstances which fairly lead to the conclusion that it was given because it was felt and believed that the pauper was settled in such parish. At the same time the parish is not thereby absolutely precluded and estopped from disputing the settlement, as the fact of giving relief only shows the *opinion* of the parish that the pauper was settled with them. But relief given to a pauper resident in the parish does not afford *primâ facie* evidence that he is settled there. It is *no evidence whatever* against the parish (*Rex* v. *Coleorton*, p. 1005; *Rex* v. *Edwinstowe*, *post*, p. 1008).

The bare fact of receiving relief while in a parish is no proof of settlement in that parish.

Rex v. *Chadderton*, 2 *East*, 27. Removal of John Buckley from Little Bolton to Chadderton confirmed. Case:—The pauper, when he buried his first wife, applied to, and received relief from, the overseers of Chadderton, and the pauper's mother being with child of a bastard, some few years after his father's death, went from another township to Chadderton to lie in there, and "as the pauper had heard from his mother," who has been dead some years, she was relieved there by Chadderton. This hearsay evidence was objected to, but received. Lord *Kenyon*, C. J. "The hearsay from the pauper's mother is no evidence at all of any fact, and then the only fact applicable to the settlement in C. is, that when the pauper buried his first wife he received relief there from the overseers: but the bare fact of his receiving such relief is no evidence of a settlement, as they might have been relieved as casual poor. If the paupers were in want of relief while they were in C. the overseers were bound to give it, whether the paupers were settled there or elsewhere; and by the 35 Geo. III. c. 101, they could not have been removed till they were actually chargeable." Case remitted.

Hearsay no evidence of the fact.

Not even when relief was given many times.

Rex v. *Chatham*, 8 *East*, 498. Removal of Sally Burgoyne, widow, from Ashford to Chatham, confirmed. Case:—The pauper was married to Robert Burgoyne in Clerkenwell. A considerable time after their marriage her husband went to live at Chatham. Her husband more than once

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lodged with his wife at Castleton. By the court: "The master, who was a certificated man at Castleton, gained no new settlement in Spotland; and the pauper still remained an apprentice to this certificated man. The master may still go back to Castleton, the parish to which he was certificated. Indeed, it hath been determined, that if a certificated person goes to another parish, and becomes chargeable to it, and is by an order of justices removed from thence to the parish which gave the certificate, then the certificate is at an end, it is satisfied, it is *functus officio*, and it can have its effect but once. But here the removal is voluntary, not by force: the certificate subsists, and the apprentice remains part of his master's family. He was so at Spotland; and all along continued to be so. The certificate act says, that the apprentice shall not gain a settlement in the parish to which his master came by certificate. But as this apprentice hath gained an intermediate settlement, he ought to be sent to that settlement which he hath intermediately gained." And the court were unanimous that his settlement was at Spotland.

received relief from Chatham: he was at one time a fortnight, at another a longer period, in the workhouse of that parish, on account of illness; and he died in that workhouse, and was buried at the expense of the parish. During all these times of relief he was resident in that parish. Lord *Ellenborough*. "On subjects of this sort, it is important there should be one uniform rule, as far as is consistent with law: and the rule having been laid down by Lord *Kenyon* in *Rex* v. *Chadderton*, that the bare fact of giving relief to a pauper within the parish was no evidence of his settlement there, because it might be given to him as casual poor, it is proper to abide by it. In that case, indeed, the relief was only administered once; and it becomes necessary to consider, whether its having been administered more than once, or several times, alters the case, and differs this in substance from the other; for each instance in itself might not be evidence of the settlement, and yet it might be difficult to say that several instances might not furnish the conclusion. At the same time, however, it is to be observed, that though the relief were given for any length of time, the inference may either be, that the party receiving was a settled inhabitant, or that his settlement could not be known. But that would bring it to an alternative case, on which the sessions might draw their own conclusion, and the difficulty would still exist. Upon the whole, therefore, it appears to me, as the better rule to adopt, that it does not amount to evidence of the settlement. And there would be great impolicy in allowing it to have any weight; for if the parish officers, by giving relief to a pauper, were to be making evidence against themselves as to his settlement in their parish, it would make them perform their duty to casual poor with great reluctance. And therefore it is more consonant to humanity and policy, and to the rule of law laid down by Lord *Kenyon*, to say at once that it is no evidence of the settlement, than to leave it as a matter of inference in each case." Order of sessions quashed.

12. *By Relief.*

Nor though the relief be continued for a long period, and one of the family be put out apprentice by the parish.

Rex v. *Coleorton*, 1 *B. & Ald.* 25. Joseph Allen was removed from Merevale to Coleorton. Order confirmed. Case:—The pauper's father died when the pauper was seven years of age, and left him residing with his mother in Coleorton, where, after her husband's death, she and several of her children were relieved during a long period while resident in the same parish. During this time, also, one of the children (the pauper's brother) was bound out by the parish of Coleorton into a third parish. But throughout the whole of the above time the mother of the pauper, with her children, received relief from the parish of Thringstone whilst they were resident (as before mentioned) in Coleorton; and the pauper's mother having died in that parish, was buried there at the expense of Thringstone. The sessions were of opinion that the relief by Coleorton preponderated over the relief by Thringstone, and confirmed the order. *Bayley*, J. "If there had been evidence on both sides it would have been for the sessions to draw their own conclusion, and I should not be inclined to disturb it. But if there is evidence on one side, and the sessions act upon what is not evidence on the other, and then send the case to us, it becomes a fit subject for our adjudication. It is decided, and I think rightly, by *Rex* v. *Chatham*, that relief by the parish in which a pauper resides is no evidence of settlement. Lord *Ellenborough* there enters into the question, whether relief, administered in more than one instance, may not require a different consideration, but he concludes by laying it down as the best rule to abide by, that such relief, whether given once or several times, is not evidence. One powerful reason in support of this decision is the reluctance which parish officers would feel against relieving casual poor, if by doing so they were furnishing evidence against their own parishes. It is true that, in the present case, Coleorton has not only relieved the family, but bound out one of the children. The sessions, however, have not acted upon this fact *per se*, but upon the continued relief generally; and in my opinion, the binding is no more evidence against Coleorton than the other circumstances; for parish officers may apprentice out paupers, being within the parish, whether settled or not. *Rex* v. *Yarwell* (p. 1008),

12. *By Relief.* does not militate against our present decision. In that case the sessions formed their own judgment on the facts, and afterwards sent a case to us, not stating upon what point they doubted. We, therefore, would not interfere with the conclusion they had come to. But here was evidence on one side, and none on the other, and the sessions have determined that the no-evidence preponderated." *Littledale*, J. "The court having decided in *Rex* v. *Chatham* that relief in circumstances like the present is no evidence, I think we ought to hold accordingly. The binding out of the child carries the case no farther, as the power of apprenticing does not depend upon the pauper being settled in the parish." *Parke*, J. "If this had been *res integra*, I should have had a difficulty in saying that the relief being continued was not evidence. But the contrary rule is so distinctly laid down in *Rex* v. *Chatham*, that we are bound to abide by it. As to the apprenticing, if the law had empowered parish officers to bind out settled paupers only, we might have sent the case back; but the statute of Elizabeth gives the power generally. The binding therefore is no additional proof, and the evidence on which the sessions decided was altogether illegal." Order of sessions quashed.

Maintenance of a pauper for several years resident in the parish is *no* evidence of his being settled in the relieving parish

The fact of a poor child being first found in a particular parish, is no evidence of his having been born there.

Rex v. *Trowbridge*, (*a*) 7 *B. & C.* 252; 1 *M. & R.* 7. Order of removal of Matthew Acorn, &c., from Trowbridge to Chatham, quashed. Case:—The pauper's first recollections were of his being in the workhouse at Chatham. He supposed he might be then about four or five years old. He never knew his father, and his mother was not in the workhouse with him. He stayed in the workhouse till he was thirteen or fourteen, when he entered on board a man-of-war and served in various ships till 1814. He then went to Trowbridge, and married there. Being out of work at Trowbridge he went with his wife to the workhouse at Chatham, where he stayed more than three weeks, during which time he was maintained there by the parish of Chatham; and on going away was furnished by the parish officers of Chatham with 1*l.* in money, and a pair of shoes for him and his wife to return to Trowbridge. He returned, and remained there about ten years, when, being again out of work, he went to Chatham again with his wife and family, where he again stayed about three weeks in the workhouse; and while there was again maintained by Chatham, and received 1*l.* in money, and a pair of shoes for him, his wife, and each of his children, and provisions to return to Trowbridge; at the same time he was desired by the Chatham overseers not to return to Chatham again without an order or a pass. He then returned to Trowbridge, at which place he was afterwards relieved, and thereupon removed by an order to Chatham. The parish registers of Chatham were searched by the pauper, but no entry was found of his baptism nor of any persons bearing his name. *Bayley*, J. "If the decision in *Rex* v. *Chatham* (p. 1004), has established the principle that relief is *no* evidence of a settlement in the relieving parish, then the sessions could not act upon the evidence of the relief by Chatham, and have come to the right conclusion in holding that there was no proof of the pauper's being settled at Chatham. It does not, however, appear to me in the present case necessary to decide whether the giving relief within a parish may or may not, under certain circumstances, be evidence from which the sessions may conclude that the party so relieved was settled in the relieving parish; because, admitting that there was *some* evidence of a settlement at Chatham, the effect of that evidence was a question for the sessions to decide: and as they have decided it, and the facts of the case do not, in my opinion, shew that their decision was wrong, I think we ought not to interfere to disturb it. The pauper is first found in the workhouse at Chatham. By what means he came there

(*a*) Mr. *Starkie* has remarked on this case, "that the appeal was against an order of removal to Trowbridge, and the justices at sessions quashed the order, but *quære*, whether, though they were not bound to act upon it, they might not have acted on it." Lord *Holt*, in *Banbury* v. *Broughton* (*Comb.* 364), held, "that where a child is first known to be, that parish must provide for it till it find another." (2 *Stark. Ev.* 728, *n.*)

12. *By Relief.*

does not appear. Until they could ascertain that he had a settlement elsewhere, the parish officers of Chatham were bound to maintain him, and relief given under such circumstances is no evidence of his being settled there. It is true the pauper on two occasions returned to Chatham, but how did the officers of Chatham then act? They relieved him undoubtedly, and supplied him with money, provisions, and clothes, for the purpose of returning him to Trowbridge, and at the same time telling him not to come to Chatham again without an order or a pass. I think it is impossible to say, that relief given by Chatham, under such circumstances, and for such a purpose, was equivalent to relief given to the pauper in Trowbridge, or was any admission that he was settled and belonged to Chatham; if it had been, it would have been conclusive against the latter parish; but, as it seems to me, it had no such effect. The mere fact of a pauper being found in a particular parish when four or five years old is not any evidence of his having been born there. Upon the whole view of this case, I am of opinion that the sessions have come to a right conclusion. *Holroyd* and *Littledale*, Js., concurred. Order of sessions confirmed.

But relief given to a family *resident in another parish*, is evidence of a settlement in the relieving parish.

Rex v. *Wakefield*, 5 *East*, 335. Removal of Mary, the wife of G. F., from Alverthorpe with Thornes to Wakefield, confirmed. Case:—Wakefield at various times during forty years past relieved the father of G. F., the husband of the pauper Mary, and different members of his family, some by being taken into the appellant's workhouse, and some in other ways, during the time that they resided in the township of Stanley, and had provided coffins for, and defrayed the expenses of, the funerals of some of the family. G. F., who at the time of the appeal was thirty-eight years old, the husband of the pauper Mary, and father of the other paupers, was born and had always lived in Alverthorpe with Thornes. Lord *Ellenborough*, C. J. "The relief was given by the township of Wakefield to the *father* of the pauper's husband and to different members of *his* family, which must mean the family of the pauper's husband's father: and this, while they were residing in another township. This was evidence of the pauper's husband's settlement in Wakefield at that time; and this is stated to have been done at different times during the last forty years; the particular periods are not material, for no other settlement has been established since; and all things are presumed to continue in the same state, unless something be shown to the contrary. Then the only evidence against this is, that of the birth of the pauper's husband in Alverthorpe, which is no more than *primâ facie* evidence of a settlement there. Then if there were evidence on both sides, the sessions were to decide on it." The other judges agreed, and *Le Blanc*, J., added, "That the place of birth is the weakest evidence of settlement." Orders confirmed.

Such relief may rebut the effect of a certificate.

Rex v. *Stanley cum Wrenthorpe*, 15 *East*, 350. Peter Musgrave was removed from Leeds to Stanley cum Wrenthorpe. Order confirmed. Case:—Joshua Musgrave, the grandfather of the pauper, Elizabeth his wife, and Elizabeth his daughter, came into Stanley with Wrenthorpe with a certificate from Ossett dated the 5th of December, 1727. The pauper and his family had been relieved at different times by the overseers of Stanley with Wrenthorpe, when residing at Leeds, and also whilst residing at Wakefield. Upon this evidence the court confirmed the order. The court (Lord *Ellenborough* absent) were clearly of opinion, that the sessions had drawn the right conclusion.

Such relief for seven years is cogent evidence.

In *Rex* v. *Barnsley*, 1 *M. & Sel.* 377, Lord *Ellenborough* said, "The only doubt is, whether, where the sessions have drawn a conclusion palpably erroneous upon two points, we should send the case down again, or in *ease* of the parties, draw the irresistible conclusion ourselves. The relief given by the parish of Killinghall to the family of J. G. for seven years, is evidence of such preponderating weight that I should think any judge would direct a jury to find upon such evidence (supposing the question legally to come before them), that G. was by some means or other a settled inhabitant of that parish. It does not, indeed, amount to an estoppel; but it is cogent evidence against the parish." (See also *Rex* v. *Woburn*, *ante*, 899.)

12. *By Relief.*

It may be proved that the relief was given under a mistake as to the settlement.

Single instance of such relief not conclusive.

The effect of such relief is a question of the sessions, and Q. B. will not reverse their decision.

In *Reg.* v. *Bedingham* (*post*), a parish was allowed to prove that relief which had been given for twenty years had been given by mistake, under the belief that the pauper had acquired a settlement by the hiring and service set out in the examination under which the order was made, whereas in truth such hiring had been dissolved before the year expired.

Rex v. *Edwinstowe*, 8 *B. & C.* 671. Order of removal of Sarah Dewick, &c., from Mansfield to Edwinstowe confirmed. Case:—The pauper, resident at Mansfield, applied for relief to R., the overseer of Edwinstowe, at a public-house in Mansfield, which is seven miles from Edwinstowe, on a market-day; he gave her 3*s.* and said, if she wanted more she must apply again at Edwinstowe and he would give it her. A fortnight after, the pauper went to Edwinstowe for relief, when she saw B. and the other overseer: they then refused to give her relief, saying, she must throw herself upon Mansfield. *Bayley*, J. "I certainly agree that if there be not any premises to warrant the conclusion to which the justices at sessions have come, we are bound to reverse their decision. I do not say that, from the facts stated in the case, I should have drawn the same conclusion which the justices have done. But it was a question of fact; and it was for them to draw their conclusion from the evidence. Before we reverse their decision, we must see clearly that they were wrong. It is not sufficient that the evidence in support of their conclusion is slight. The question is, whether there was any evidence to warrant the justices in coming to the conclusion? It appears that at the time when the relief was given, the parish officer was at a distance from home. It is possible, however, that he may have known that the pauper was settled at Edwinstowe. If he did not know it, he might have said to the pauper, 'I cannot tell whether you are settled in the parish or not, and I give you this whether you are settled there or not.' But he gave the relief in an unqualified manner, and seems to have acted on the principle, that he conceived there was an obligation on his part to grant relief and a right in her to demand it. It was for the sessions to draw their conclusion from these facts. There was some evidence upon which they might exercise their discretion; and though I might, perhaps, have come to a different conclusion, I think we are not at liberty to reverse their decision." *Littledale*, J. "I concur in the judgment delivered by my brother *Bayley*, entirely on the ground that there were some premises to warrant the sessions in coming to the conclusion to which they have come. The evidence was undoubtedly very slight; but it was for the sessions to draw their conclusion from it, and having done so, I think we ought not to disturb their decision." *Parke*, J. "Upon the evidence stated in this case, I should have come to a different conclusion. But it is for the sessions and not for us to draw the conclusion from the evidence given, and they having done so, I think their decision ought not to be disturbed." Order of sessions confirmed.

Relief may be strong evidence. If the sessions, however, refuse to infer a settlement, Q. B. will not disturb their decision.

Rex v. *Yarwell*, 9 *B. & C.* 894; 4 *M. & R.* 685. T. Ireson, &c. were removed from Yarwell to Stibbington. Order quashed. Case:—The respondent proved by the pauper and his wife that the appellants had, about twenty-eight or twenty-nine years ago, and at three or four times subsequently, the last time being ten years ago, relieved the pauper and his family while they were residing in the respondent parish. When they wanted relief they applied to the parish officers of the appellant parish for work, and as they could not find it for them, they allowed the family 12*s.* a week. It was the pauper's wife who applied for relief upon all those occasions except one, when the application was made by the pauper himself. He had been once examined by the appellants, and stated that he had been an apprentice in their parish. The appellants also, within the last six years, and while the pauper was resident in the respondent parish, paid the expenses of his wife's confinement in a lunatic asylum at Peterborough. *Bayley*, J. "The sessions have sent this case for our consideration, without telling us what question they wish to be answered. They have stated a strong *primâ facie* case, from which they were at liberty to draw the conclusion that the pauper was settled in Stibbington, but they

See *Rex* v. *Coleorton*, p. 1005

were not bound to do so. It was purely a question for them. The pauper might have been examined as to the fact whether he had ever gained, or whether there was a reasonable ground to conclude that he had gained a settlement in the appellant parish by apprenticeship, or otherwise. If he was not examined as to that, the sessions may have refused to act on presumptive evidence of settlement, when the respondents might have proved a settlement actually gained by the pauper in the appellant parish." *Littledale*, J. "I am of the same opinion." *Parke*, J. "If the sessions intend to ask us whether there was *primâ facie* evidence of a settlement in the appellant parish, I should have answered that there was, and that they ought to have acted upon it. If they asked me whether they were bound to do so, I should answer they were not." Order of sessions confirmed.

12. *By Relief.*

Rex v. *Great Salkeld*, 6 *M. & Sel.* 408. (See part of this case, *ante*, 413.) The case also stated, that soon after the order was quashed, the mother returned to Great Salkeld, and was removed from thence to Bongate, but whether by an order or not did not appear. Bongate received her, and told her she must nurse her child, the pauper then at the breast. When the pauper was six or seven years of age and residing with his aunt at Great Salkeld, the mother being in service, the overseer of Bongate went to Great Salkeld and paid the aunt some arrears of relief due from the parish for the maintenance of the pauper, and threatened to take him away that he might earn something for himself: the aunt was reluctant to part with him, and the overseers threatened to diminish her allowance. *Bayley*, J. "If the circumstances were sufficient to raise a presumption of a settlement in Bongate, it was for the sessions and not for this court to draw the conclusion, but I cannot see any ground for such a presumption."

The sessions to draw the conclusion.

In *Rex* v. *Maidstone*, (p. 708,) Lord *Ellenborough* said, "That, however, in the absence of all other circumstances, relief given (out of the parish) might be evidence; yet that the fact of giving relief only shewed the *opinion* of the parish that the pauper was settled with them."

Relief given shews the opinion of parish as to settlement.

The parish giving the relief may shew that it was given under a misapprehension. *Reg.* v. *East Winch*, (p. 602).

Such relief may be explained by the parish.

13. Of Settlement by Acknowledgment; viz. By Non-Appeal against Order of Removal.

13. *Of Settlement by Acknowledgment, &c.*

If the act of relieving a pauper can in any case be regarded as an acknowledgment by the parish giving the relief, that the pauper is settled with them, it seems reasonable that the acquiescence in or submission to an order of removal, by the parish against whom it is made, should be treated as at least equally conclusive. It is an adjudication by a competent legal authority (the magistrates) of the fact that the pauper is settled in the place to which the removal is directed to be made, and although such an adjudication may be disputed upon appeal, yet if the party whose interest it is does not in due form put its correctness in issue, the legitimate inference is, that it cannot be set aside or reversed. Mr. Justice *Buller* says, "There is no proposition in the law of settlements more clear than this, that an order of removal unappealed against *is conclusive against all the world.*" See *Rex* v. *Kenilworth* (*post*). But it is only decisive of the question, *up to the time when it is made; it has no effect prospectively;* the pauper may acquire a settlement elsewhere immediately afterwards, and if he does, upon proof thereof, the order of removal unappealed against is no longer in force. The decisions upon which this plain and simple rule of law is founded, and the requisites of such an order to make it effectual for this purpose, will necessarily be given under the general title *Of Removals*, and need not therefore be inserted here.

An order of removal, unappealed against, is conclusive.

Up to the time it was made.

CHAPTER VII.

OF REMOVALS.

THE authority of the magistrates to remove paupers to the place of their settlement is given by statute, and must be exercised according to the prescribed regulations, some of which relate to the *form* of the order itself. And though so strict an observance of them is not necessary, as the sessions, in case of appeal, are empowered by 5 Geo. II. c. 19, s. 1, to amend defects of this description, yet in matters of *substance*, correctness is essential, as errors of this kind cannot be aided or remedied in like manner. Besides, it will sometimes be doubtful whether the particular defect complained of be one of form only or of substance, the line of distinction not being very obvious in the statute, nor very accurately marked by any of the cases, so as to afford a sure guide upon all occasions. Hence the importance of correctness in both respects becomes apparent.

We propose in this chapter to consider under what circumstances poor persons are removable, the method of proceeding in cases of removal, and the requisites of the order for that purpose.

The general division will be as follows:—

I. *Enactments on the Subject.*
II. *Who may be removed.*
III. *Of the Order of Removal, Suspension, and Execution thereof.*
IV. *Of Persons returning after Removal.*
V. *Order of Removal of one Certificated.*
VI. *Appeal against an Order of Removal.*
VII. *Effect of an Order Unappealed against.*
VIII. *Effect of Quashing or Confirming an Order.*
IX. *Of Amendments by Sessions.*
X. *Power of Sessions in Orders of Removal.*
XI. *Of the Superintendence of the Queen's Bench.*

I. Enactments on the Subject.

1. Enactments on the Subject.

13 & 14 Car. II. c. 12.

Recites inconveniences resulting from poor persons removing from one parish to another, &c.

The first statute that authorised the removal of poor persons to their place of settlement, was the 13 & 14 Car. II. c. 12, s. 1, which after reciting that the necessity, number, and continual increase of the poor, not only within the cities of London and Westminster, with the liberties of each of them, but also through the whole kingdom of England and dominion of Wales, is very great and exceeding burthensome, being occasioned by reason of some defects in the law concerning the settling of the poor, and for want of a due provision of the regulations of relief and employment in such parishes or places where they are legally settled, which doth enforce many to turn incorrigible rogues, and others to perish for want, together with the neglect of the faithful execution of such laws and statutes as have

formerly been made for the apprehending of rogues and vagabonds, and for the good of the poor: for remedy whereof, and for the preventing the perishing of any of the poor, whether young or old, for want of such supplies as are necessary, enacts, "That whereas by reason of some defects in the law, poor people are not restrained from going from one parish to another; and, therefore, do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy, and when they have consumed it, then to another parish, and at last become rogues and vagabonds, to the great discouragement of parishes to provide stocks, where it is liable to be devoured by strangers; be it therefore enacted, that it shall and may be lawful, upon complaint made by the churchwardens or overseers of the poor of any parish, to any justice of peace, *within forty days after* any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of 10*l.*, for any two justices of the peace, whereof one to be of the quorum, of the division where any person or persons that are *likely to be chargeable* (*a*) to the parish shall come to inhabit, by their warrant, to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

1. *Enactments on the Subject.*

Enacts, that *within forty days* after any pauper *coming* to settle in a parish in any tenement under 10*l.* yearly value, justices may by warrant remove him, if likely to become chargeable, to his legal settlement, unless he gives security.

How to be removed, coming to any tenement under 10*l.* yearly value.

(Altered and explained by 1 Jac. II. c. 17, s. 3; 3 & 4 W. & M. c. 11, s. 3.)

The 13 & 14 Car. II. c 12, s. 3, provides, "That (this act notwithstanding) it shall and may be lawful for any person or persons to go into any county, parish, or place, to work in time of harvest, or at any time to work at any other work, *so that he or they carry with him or them a certificate* from the minister of the parish, and one of the churchwardens and one of the overseers for the poor for the said year that he or they have a dwelling-house or place in which he or they inhabit, and hath left wife and children or some of them there (or otherwise as the condition of the persons shall require), and is declared an inhabitant or inhabitants there: and in such case if the person or persons shall not return to the place aforesaid when his or their work is finished, or shall fall sick or impotent whilst he or they are in the said work, it shall not be accounted a settlement in the cases abovesaid, but that it shall and may be lawful for two justices of the peace to convey the said person or persons to the place of his or their habitation as aforesaid, under the pains and penalties in this act prescribed: and if such person or persons shall refuse to go, or shall not remain in such parish where they ought to be settled as aforesaid, but shall return of his own accord to the parish from whence he was removed, it shall and may be lawful for any justice of the peace of the city, county, or town corporate where the said offence shall be committed, to send such person or persons offending to the house of correction, there to be punished as a vagabond, or to a public workhouse in this present act hereafter mentioned, there to be employed in work or labour; and if the churchwardens and overseers of the poor of the parish to which he or they shall be removed, refuse to receive such person or persons, and to provide work for them as other inhabitants of the parish, any justice of the peace of that division may and shall thereupon bind any such officer or officers in whom there shall be default, to the assizes or sessions, there to be indicted for his or their contempt in that behalf."

Persons going to work in harvest.

By the 1 Jac. II. c. 17, s. 3, the forty days' continuance in a parish intended by the above act, was to be reckoned from the delivery of notice in writing, by the person coming to settle, of the house of his abode, and the number of his family, to one of the churchwardens or overseers of the parish to which he shall so remove.

1 Jac. II. c. 17.

The forty days to be accounted from notice in writing.

And by the 3 & 4 Will. & Mary, c. 11, s. 3, it was further required that the churchwarden and overseer should cause such notice to be read on the next Lord's day, immediately after divine service, in the church or chapel

3 & 4 W. & M. c. 11.

Notice to be read in church.

(*a*) By 35 Geo. III. c. 101, "*actually chargeable*," p. 1012.

1. *Enactments on the Subject.* of the parish, and that the forty days to make a settlement should be accounted from such publication.

35 Geo. III. c 101, abolishing the notice.

These provisions as to notices were in effect abrogated by the 35 Geo. III. c. 101, s. 3, which enacts that no person coming into any parish, township, or place, shall from the passing of this act be enabled to gain a settlement therein by delivery and publication of notice in writing.

3 W. & M. c. 11, s. 10.

Overseers required to receive the persons removed, under a penalty.

And the 3 Will. & Mary, c. 11, s. 10, provides a more summary remedy as follows: "That if any person be removed by virtue of this act from one county, riding, city, town corporate, or liberty, to another, by warrant under the hands and seals of two justices of the peace, the churchwardens or overseers of the poor of the said parish or town to which the said person shall be so removed, are hereby required to receive the said person, and if he or they shall refuse so to do, he or they so refusing or neglecting (upon proof thereof by two credible witnesses upon oath before any justice of the peace of the county, riding, city, or town corporate, to which the said person shall be so removed), shall forfeit for each offence the sum of 5*l.* to the use of the poor of the parish or town from which the said person was removed, to be levied by distress and sale of the offender or offenders' goods, by warrant under the hand and seal of any justice of the peace of the county, riding, city, or town corporate, to which such person was removed, to the constable of the parish or town where such offender or offenders dwell; which warrant the said justice is hereby empowered and required to make; the overplus, if any be, to be returned to the owner or owners; and for want of such sufficient distress, then the said justices shall commit the said offender or offenders to the common gaol of the said county, riding, city, or town corporate or liberty, there to remain without bail or mainprize for the space of forty days: provided always, and be it hereby enacted, that all such persons who think themselves aggrieved with any such judgment of the said two justices, may appeal to the next general quarter sessions of the peace to be held for the county, riding, city, town corporate, or liberty, from which the said person was so removed." (*a*)

Distress.

Commitment.

Appeal.

5 Geo. II. c. 19, enables justices to rectify defects in form on appeals.

The 5 Geo. II. c. 19, s. 1, gives the sessions power to amend defects of form in orders of removal, "Whereas in many cases his majesty's justices of the peace by law are empowered to give or make judgments or orders, great expenses have been occasioned by reason that such judgments or orders have, on appeals to the justices of the peace at their respective general or quarter sessions, been quashed or set aside upon exceptions or objections to the form or forms of the proceedings, without hearing or examining the truth and merits of the matter in question between the parties concerned; therefore, to prevent the same for the future, be it enacted, that after the 24th day of June, 1732, upon all appeals to be made to the justices of the peace at their respective general or quarter sessions to be holden for any county, riding, city, liberty, or precinct, within that part of Great Britain called England, against judgments or orders given or made by any justices of the peace as aforesaid, such justices so assembled at any general or quarter sessions shall and they are hereby required from time to time, within their respective jurisdictions, upon all and every such appeals so made to them, to cause any defect or defects of form that shall be found in any such original judgments or orders, to be rectified and amended without any cost or charge to the parties concerned, and after such amendments made, shall proceed to hear, examine, and consider the truth and merits of all matters concerning such original judgments or order, and likewise to examine all witnesses upon oath, and hear all other proofs relating thereto, and to make such determinations thereupon as by law they should or ought to have done in case there had not been such defect or want of form in the original proceeding; any law, usage, or custom to the contrary notwithstanding."

And may proceed to determine them.

35 Geo. III. c. 101.

By 35 Geo. III. c. 101, s. 1 (called Mr. East's act), reciting the 13 & 14

(*a*) See construction of 13 & 14 Car. II. c. 12, and, above, section of 3 Will. & Mary, c. 11, s. 10, in *Rex* v. *Davis*, (*post.*)

Car. II., and reciting also "that many industrious poor persons chargeable to the parish, township, or place where they live, merely from want of work there, would in any other place where sufficient employment is to be had, maintain themselves and families without being burthensome to any parish, township, or place; and such poor persons are for the most part compelled to live in their own parishes, townships, or places, and are not permitted to inhabit elsewhere, under pretence that they are likely to become chargeable to the parish, township, or place into which they go for the purpose of getting employment, although the labour of such poor persons might in many instances be very beneficial to such parish, township, or place: and whereas the remedy intended to be applied thereto by the granting of certificates, in pursuance of the 8 & 9 Will. III. intituled 'An Act for supplying some Defects in the Laws for the Relief of the Poor of this Kingdom,' hath been found very ineffectual," it enacts, "That from and after the passing of this act, so much of the said in part recited act of 13 & 14 Car. II. as enables the justices to remove any person or persons that are likely to be chargeable to the parish, township, or place into which they shall come to inhabit, shall be and the same is hereby repealed; and that from henceforth *no poor person shall be removed* by virtue of any order of removal from the parish or place where such poor person shall be inhabiting, to the place of his or her last legal settlement, *until such person shall have become actually chargeable to the parish*, township, or place in which such person *shall then inhabit*, in which case two justices of the peace are hereby empowered to remove the person or persons in the same manner and subject to the same appeal, and with the same powers, as might have been done before the passing of this act with respect to persons likely to become chargeable."

1. *Enactments on the Subject.*

35 Geo. III. c. 101.

So much of recited act as enables justices to remove persons *likely to be chargeable* to parishes, repealed; and no persons to be removed till they have become actually chargeable.

Sect. 2. "And whereas poor persons are often removed or passed to the place of their settlement during the time of their sickness, to the great danger of their lives; be it enacted, that in case any poor person shall from henceforth be brought before any justice or justices of the peace, for the purpose of being removed from the place where he or she is inhabiting or sojourning, by virtue of any order of removal, or of being passed by virtue of any vagrant pass, and it shall appear to the said justice or justices that such poor person is unable to travel, by reason of sickness or *other infirmity*, (a) or that it would be dangerous for him or her so to do, the justice or justices making such order of removal, or granting such vagrant pass, are hereby required and authorised to suspend the execution of the same until they are satisfied that it may safely be executed, without danger to any person who is the subject thereof; which suspension of, and subsequent permission to execute the same, shall be respectively indorsed on the said order of removal or vagrant pass, and signed by such justice or justices; and no act done by any such poor person continuing to reside in any parish, township, or place, under the suspension of any such order, shall be effectual, either in the whole or in part, for the purpose of giving him or her a settlement in the same: and the charges proved upon oath to have been incurred by such suspension of any order of removal may by the said justices be directed to be paid by the churchwardens and overseers of the parish or place to which such poor person is ordered to be removed, in case any removal shall take place, or in case of the death of such poor person before the execution of such order; and if the churchwardens or overseers of the parish, township, or place, to which the order of removal shall be made, or any or either of them, shall upon the removal or death of such poor person, ordered to be removed, refuse or neglect to pay the said charges within three days after demand thereof, and shall not within the same time give notice of appeal as is hereinafter mentioned, it shall and may be lawful for one justice of the peace by warrant under his hand and seal, to cause the money mentioned in such order to be levied by distress and sale of the goods and chattels of the person or persons so refusing or neglecting payment of the same, and also such costs attending

Justices may suspend the removal of sick persons.

(a) *Rex* v. *Oldland*, p. 114.

Charges incurred by such suspension to be paid by the officers of the parish to which they are ordered to be removed, which may be levied with costs. *See* p. 1016.

1. *Enactments on the Subject.*

35 Geo. III. c. 101.

the same, not exceeding forty shillings, as such justice shall direct; and if the parish, township, or place, to which the removal of such poor person is made, or was ordered to be made, before the death of such person as aforesaid, be without the jurisdiction of the justice of the peace issuing the warrant, then such warrant shall be transmitted to any justice of the peace having jurisdiction within such parish, township, or place as aforesaid, who upon receipt thereof is hereby authorised and required to indorse the same for execution: provided, nevertheless, that if the sum so ordered to be paid on account of such costs and charges exceed the sum of twenty pounds, the party or parties aggrieved by such order may appeal to the next general quarter sessions against the same, as they may do against an order for the removal of poor persons by any law now in being; and if the court of quarter sessions shall be of opinion that the sum so awarded be more than of right ought to have been directed to be paid, such court may and is hereby directed to strike out the sum contained in the said order, and insert the sum which in the judgment of such court ought to be paid; and in every such case the said court of quarter sessions shall direct that the said order, so amended, shall be carried into execution by the said justices by whom the order was originally made, or either of them, or in case of the death of either of them, by such other justice or justices as the said court shall direct; provided that nothing in this act contained shall extend to alter or abridge the power of justices of the peace to pass or punish vagrants in the manner and under the circumstances set forth in an act, passed in the seventeenth year of the reign of his late majesty king George the Second, intituled, *An act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and disorderly persons, and to Houses of Correction* (except so far as regards the power of suspending the vagrant pass, in the manner and for the causes before mentioned)."

If costs exceed 20*l*., appeal may be made to the quarter sessions.

This act not to alter the power of justices to pass or punish vagrants, by 17 Geo. II. c. 5, except as to suspension.

Sect. 5. relates to vagrants, and is repealed by 5 Geo. IV. c. 83 (*post*).

Unmarried women with child to be deemed chargeable.

Bastards to be deemed of the mother's parish.

Sect. 6. "That every unmarried woman with child shall be deemed and taken to be a person actually chargeable, within the true intent and meaning of this act, to the parish, township, or place, in which she shall inhabit, and may be removed as such to the place of her last legal settlement; and in case any order of removal obtained for such purpose shall be suspended for any of the reasons before mentioned, and during such suspension the said woman shall be delivered of any child, which by the laws of this kingdom shall be a bastard, every such bastard child shall be deemed and taken to be settled in the same parish, township or place, in which was the legal settlement of the mother at the time of her delivery: provided nevertheless, that all act or acts heretofore made touching bastard children, or concerning the mothers or reputed fathers of such children, shall be and remain in full force and effect after the passing of this act, as well in cases where by this act the place of settlement of such bastard children is directed to be the same as that of the mothers of such children, as in cases where the place of settlement of such bastard children remains the same as it did before the passing of this act."

Former acts touching bastards, &c., to remain in force. (*a*)

49 Geo. III. c. 124.

Where any order of removal, &c., shall be suspended, any justice for the place may order the same to be executed, &c.

49 Geo. III. c. 124, s. 1. After reciting the 35 Geo. III. c. 101, and further reciting that "it is expedient that the power of putting an end to the suspensions of any such order of removal or pass, and of executing the several other authorities aforesaid, should not be confined to the order of the justice or justices making such order or pass; be it enacted, that in all cases wherever the execution of any order of removal or of any vagrant pass shall be hereafter suspended by virtue of the said recited act, it shall be lawful for any other justice or justices of the peace of the county or other jurisdiction within which such removal or pass shall be made, to direct and order that the same shall be executed, and to direct the charges

(*a*) This constructive *chargeability* is repealed by the 4 & 5 Will. IV. c. 76. (See Appendix.)

to be incurred as aforesaid to be paid, and to carry into execution any such amended orders as aforesaid, as fully and effectually to all intents and purposes as the said respective powers and authorities can or may be executed by the said justices who shall make any such order of removal, or by the justice who shall grant any such pass as aforesaid."

1. *Enactments on the Subject.*

49 Geo. III. c. 124.

Sect. 2. "That when the execution of any such order of removal shall be suspended, the time of appealing against such order shall be computed according to the rules which govern other like cases from the time of serving such order, and not from the time of making such removal under and by virtue of the same."

How time of appealing shall be computed.

Sect. 3. "'And in order to avoid any pretence for forcibly separating husband and wife, or other persons nearly connected with or related to each other, and who are living together as one family at the time of any order of removal made or vagrant pass granted, during the dangerous sickness or other infirmity of any one or more of such family, on whose account the execution of such order of removal or vagrant pass is suspended:' be it enacted, that where any order of removal or vagrant pass shall be suspended by virtue of this or of the said recited act, on account of the dangerous sickness or other infirmity of any person or persons thereby directed to be removed or passed, the execution of such order of removal or vagrant pass shall also be suspended for the same period with respect to every other person named therein, who was actually of the same household or family of such sick or infirm person or persons at the time of such order of removal made or vagrant pass granted."

Order of removal suspended in case of sickness, shall be suspended as to other persons of the family.

Sect. 4. "That whenever it shall happen that any pauper is by age, illness, or infirmity, unable to be brought up to the petty sessions to be examined as to his or her settlement, it shall be lawful for any one magistrate acting for the district where such pauper shall be, to take the examination of the said pauper, and to report the same to any other magistrate or magistrates acting for the said district, and for the said magistrates upon such report to adjudge the settlement of the said pauper, and make and suspend the order of removal, as fully and effectually to all intents and purposes as if the said pauper had appeared before two magistrates."

One magistrate may examine an infirm pauper as to his settlement, and report to petty sessions.

The 5 Geo. IV. c. 83, s. 3, enacts, "That every person being able wholly or in part to maintain himself or herself, or his or her family, by work or by other means, and wilfully refusing or neglecting so to do, by which refusal or neglect, he or she, or any of his or her family, whom he or she may be legally bound to maintain, shall have become chargeable to any parish, township, or place; every person returning to and becoming chargeable in any parish, township, or place, from whence he or she shall have been legally removed by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of the poor of some other parish, township, or place, thereby acknowledging him or her to be settled in such other parish, township, or place; shall be deemed an idle and disorderly person, within the true intent and meaning of this act; and it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses,) to the house of correction, there to be kept to hard labour for any time not exceeding one calendar month."

5 Geo. IV. c. 83.

Persons refusing to maintain their family, or returning after removal, deemed "idle and disorderly."

By section 20 it is enacted, "That every person who, under the provisions of that act, shall have been convicted as an idle and disorderly person, or as a rogue and vagabond, shall be deemed to be *actually chargeable* to the parish, township, or place, in which such person shall reside; and such person shall be liable *to be removed* to the parish of his or her last legal settlement, by the order of two justices of the peace of the division or place in which such person shall reside."

Persons convicted chargeable to parish in which they reside.

The 4 & 5 Will. IV. c. 76, s. 79, enacts, "That from and after the 1st day of November, 1834, no poor person shall be removed or removable, under any order of removal from any parish or workhouse, by reason of his

4 & 5 Will. IV. c. 76.

No person to be removed till after

1. *Enactments on the Subject.*

4 & 5 Will. IV. c. 76.

notice of his being chargeable has been sent to the parish to which the order of removal is directed.

Such person may be removed if order submitted to;

but not in case of appeal, until it be determined.

being chargeable to or relieved therein, until twenty-one days after a notice in writing of his being so chargeable or relieved, accompanied by a copy or counterpart of the order of removal of such person, and by a copy of the examination upon which such order was made, shall have been sent, by post or otherwise, by the overseers or guardians of the parish obtaining such order, or any three or more of such guardians, to the overseers of the parish to whom such order shall be directed: provided always, that if such overseers or guardians as last aforesaid, or any three or more of such guardians, shall by writing under their hands agree to submit to such order, and to receive such poor person, it shall be lawful to remove such poor person according to the tenor of such order, although the said period of twenty-one days may not have elapsed: provided also, that if notice of appeal against such order of removal shall be received by the overseers or guardians of the parish from which such poor person is directed in such order to be removed within the said period of twenty-one days, it shall not be lawful to remove such poor person until after the time for prosecuting such appeal shall have expired; or, in case such appeal shall be duly prosecuted, until after the final determination of such appeal."

Maintenance under suspended order.

Sect. 84. "Provided always, that no charges or expenses of relief or maintenance shall be recoverable under a suspended order of removal, unless notice of such order of removal, with a copy of the same, and of the examination upon which such order was made, shall have been given within ten days of such order being made to the overseers of the poor of the parish to whom such order is directed."

6 & 7 Will. IV. c. 65.

By 6 & 7 Will. IV. c. 65, s. 3, carriages conveying prisoners or paupers are exempted from duties or assessed taxes.

2 *Who may be Removed.*

II. Who may be Removed. (a)

This head may be subdivided as follows:—

1. *Of Removal of Paupers from or to their own Estate.*
2. *Of Removal of the Wife.*
3. *Of Removal of Children.*
4. *Of Removal of Servants.*
5. *Of Removals under 35 Geo. III. c. 101, s. 6, of Women with Child.*
6. *Of Removal of Casual Poor.*
7. *Of the Removal of Poor Persons born in Scotland, Ireland, Isles of Man, Scilly, &c.*
8. *Of the Removal of Poor Persons born in Guernsey or Jersey.*
9. *Of Removal of Soldiers, &c.*

1. *Of Removal of Paupers from or to their own Estate.*

1. Of Removal of Paupers from or to their own Estate.

A pauper resident on his own estate cannot be removed, although he be actually chargeable, and has applied for relief; nor can a pauper be removed to his own estate.

A person resident on his own estate cannot be removed.

A person resident on an estate granted him for lives, in consideration of two pounds two shillings fine and one shilling rent, cannot be removed therefrom, though he have applied for relief, and is thereby actually chargeable. Whether this is an estate within 9 Geo. I., *quære?* (*Rex* v. *Martley*, p. 908.)

A tenant is removable, although he has resided above forty days on a tenement, if

Rex v. *Ampthill.* The facts of this case are stated p. 816. *Bayley*, J., on the question of the power to remove, said, "I am of opinion, that at the time when this order was made the pauper was removable. It is said, that although he had in fact received relief from that parish, yet as he

(a) As to the removal of lunatics, see pp. 128 to 137, and *post*, "*Notice of Appeal.*"

possessed property, he was not actually chargeable. But, I think, that as the parish did not act fraudulently, and as they were compelled to grant him relief by an order of justices, the pauper is to be deemed as actually chargeable, and if so, then he was removable under 35 Geo. III. c. 101, although he had resided on the tenement more than forty days. It is material to consider the history of the law with respect to this power of removal. By the 13 & 14 Car. II. c. 12, s. 1, upon complaint made to any justice of the peace within forty days after any person comes to settle in any tenement under the yearly value of 10*l.*, any two justices of the division where any person that is likely to be chargeable to the parish shall come to inhabit are authorised to remove such person to such parish where he was last legally settled. Under that statute complaint must be made to a justice within forty days after the party has come to reside in the parish. The 35 Geo. III. c. 101, recites this act, and repeals so much of it as enables justices to remove persons likely to be chargeable, and enacts, that 'no person shall be removed from the parish where he shall be inhabiting to the place of his last legal settlement until such person shall have become *actually* chargeable to the parish in which he shall then inhabit;' and then two justices are empowered to remove such person in the same manner, and subject to the same appeal, and with the same powers as might have been done before the passing of that act with respect to persons likely to become chargeable. Now, taking these two statutes together, I think the meaning of them is, that the statute 35 Geo. III. c. 101, takes away altogether the power of removing, within forty days, persons likely to become chargeable, but gives the power to remove persons actually chargeable at any time after they have become so, and before they have actually gained a settlement." *Holroyd* and *Littledale*, Js., both concurred on this point.

1. *Removal of Paupers.*

He has not paid a year's rent, as required by the 59 Geo. III. c. 50.

A pauper may be removed before his tenancy commences. (*Rex* v. *St. Michael, Coventry.*

Wookey v. *Hinton Blewet*, 1 *Stra.* 476. A person settled at Hinton Blewet had an estate *descended* to him in Wookey; whereupon the justices send him thither as to the place of his last settlement. But by the court: "The order must be quashed; for it is no settlement nor inhabitation, though if he should go thither he could not be removed; it may be a great injury to send him away from a good trade at Hinton Blewet to perhaps half an acre of land wherein he has but a term."

If an estate descend to a man in another parish he is not therefore removable thither as to his settlement.

One of the next of kin is removable from the parish in which the intestate held leasehold property. (*Rex* v. *Berkswell*, p. 840.)

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2. Of Removal of the Wife.

2. *Of Removal the Wife.*

A woman cannot be removed from her husband's estate, though he had run away.

Rex v. *Aythorp Rooding*, *Burr. S. C.* 412; 2 *Bott*, 104. William Gates, husband of the pauper, Susannah Gates, being settled at White Rooding, went away and left his wife and children. Whereupon she and her children went and lived for forty days, without her husband, in a copyhold tenement of her husband's at Aythorp Rooding. She was removed to White Rooding. Order quashed. By the court: "There doth not appear any dissent of her husband from her going there, and therefore it is rather to be presumed that she went with his consent. The husband's settlement remains as it was, but nevertheless the wife was not removable from his estate. It is one thing to say, that a person may not be removed; and another, that such person doth not gain a settlement. The husband himself would not have been removable from his own if he had gone thither. A man's right to reside upon his own estate is founded on *Magna Charta*, which says, that a man shall not be disseised of his freehold. A wife hath a natural right to go and reside upon her husband's estate. If she had gone against her husband's consent, it would have made an alteration." And the court were unanimous that the justices could not remove her from her husband's property.

The right of the husband is founded on Magna Charta.

2. *Removal of the Wife.*

Nor from a leasehold tenement of the husband's, above the annual value of ten pounds. *Quære?* (a)

Rex v. *Leeds*, *Burr. S. C.* 524; 1 *Bla. Rep.* 466. Joseph Howe, husband of Anne Howe, the pauper, took a tenement of 10*l.* a year at Blackfordby, and resided there above forty days. Afterwards he took a tenement at Leeds of above 10*l.* a year, and went and resided there for above forty days, leaving his wife at Blackfordby. Then he returned to Blackfordby, and stayed with his wife there twenty-seven days. And on his leaving her and going away to Leeds, she was removed from Blackfordby to Leeds, as to her place of settlement. Order confirmed. It was argued, that her settlement must follow that of her husband; but the court were of opinion that the justices had no power to remove her from Blackfordby whilst her husband's interest there subsisted. The husband himself could not have been removed from his own tenement at Blackfordby, the lease whereof was unexpired. And if they could not have removed the man himself from his own, it follows, that they could not remove his wife so long as it remained his. Both orders quashed.

The wife of a transported convict resident on an estate in which she was jointly interested with her sisters, under their mother's marriage settlement, is irremovable.

Rex v. *Brington*, 7 *B. & C.* 546; 1 *M. & R.* 431. Maria, wife of Edward Chambers, a convict at Van Diemen's Land, was removed from Brington to Badby. Order quashed. Case:—John Elliot, by a marriage settlement in January, 1772, settled a messuage in Brington, and about twenty acres of land, in trust to himself for life, and remainder to his wife; and after other remainders, remainder to the first son and his heirs, remainder to the second and every other son, remainder to the use of the daughters of the said John on the body of Mary, and the heirs of their bodies, as tenants in common. They had four sons and eight daughters, all of whom died without issue in the lifetime of their mother, except four daughters, viz., Elizabeth, Alice, Maria, and Sophia, who survived her. Maria, the pauper, married Edward Chambers, whose legal settlement is now in Badby, where she was living until February, 1826, (her husband being at that time, and continuing at the date of the order of removal, absent from England,) when she went to Brington, the parish in which the property lies, to her sister, who lives in the house mentioned in the settlement, and resided there thirteen weeks, until she was removed to Badby. *Bayley*, J. "The question is not as to the place where the wife is settled; that, without doubt, is in her husband's parish, Badby. This is a case where the party goes to her own estate, of which she has a seisin: the husband had not sole seisin, for when an estate in fee comes to a *feme covert*, the interest of the husband and wife is a seisin in fee, and both in right of the wife. (*Polyblank* v. *Hawkins*, *Doug.* 329.) *Rex* v. *Aythorp Rooding*, (p. 1017,) is not so strong a case as the present: there the property was the husband's, while here it is the property of the wife, descendable to her heirs. There is no distinction between a sole occupation and an occupation in coparcenary. Although no partition had been made, the wife had a right to say that she would occupy her part, and not suffer other persons to occupy it. And there might be good reason for it here; as, by the husband's absence abroad, it might have been difficult to collect the profits without residence. The pauper, therefore, is irremovable, although she could not have gained any settlement by her residence in Brington."

A house in the parish of W. was let to A. and B. his wife, for their joint lives, and the life of the survivor. A. and B. were ejected wrongfully from the house, but their furniture

Rex v. *Matlock*, 1 *Adol. & Ell.* 124. G. Arnalt was removed from Wirksworth to Matlock. Order confirmed. Case:—The pauper was settled in Matlock, and removable thither, unless the power to remove him from Wirksworth was negatived by the following facts. The pauper being a married man, went to live with his father in a cottage built on the waste in Wirksworth; his father paid sevenpence a year rent to the Duchy of Lancaster for the cottage, and the pauper continued to pay the rent after his father's death, until about nineteen or twenty years ago, when all the

(a) This was before the 35 Geo. III. c. 101. Since that statute the man might have been removed, *Rex* v. *Ampthill*, p. 1016; and by parity of reasoning, his wife also.

2. *Removal of the Wife.*

cottages belonging to the Duchy of Lancaster were sold, and the pauper purchased his cottage for 5*l.* 2*s.* 2*d.*, and it was conveyed to him. In 1827 the pauper sold the cottage to a person named Wilson for 40*l.*, and Wilson at the same time demised it to the pauper and his wife for their joint lives and the life of the survivor of them, at a rent of 40*s.* a year. At Christmas, 1831, Wilson demanded a year's rent of the pauper, which he was unable to pay, and Wilson then took possession of the cottage. The pauper denied that there was any power of re-entry in the case of non-payment of rent. A lodger as well as the pauper's furniture remained in the house after he quitted it. About the same time that this transaction happened, the pauper applied to the overseer of Wirksworth for relief, but the overseer refused to relieve him until the lease was destroyed, and Wilson also called upon the pauper, and told him that if he and his wife would consent to give up the lease, they should have 5*s.* a week instead of 2*s.* 6*d.*, and should not be disturbed during their lives. The pauper finally agreed that the lease should be destroyed, and Wilson brought it to an inn in Wirksworth, where it was destroyed in the presence of many persons, the pauper himself assisting to destroy it. It did not appear that the pauper's wife was present when the lease was destroyed, or that she afterwards gave her consent to its being so disposed of. Wilson told the pauper that he should not be disturbed, but on his applying for relief, he was informed that unless he went into the workhouse he could not be relieved. He and his wife accordingly went into the workhouse and remained there for a fortnight or three weeks, when they were removed to the appellant parish, pursuant to the order of removal. It was admitted that the pauper had a freehold estate, from which he could not have been removed, but it was said that it had been destroyed by re-entry. [*Littledale*, J. " We cannot infer a legal power of re-entry unless it be stated."] But he consented to destroy the lease, though the wife did not. [Lord *Denman*. " How could she consent? and if she could not, there was a freehold interest still subsisting. The lodger and the furniture remained on the premises."] Not as the lodger of the pauper. *Littledale*, J. " He is not stated to have become the lodger of Wilson." *Parke*, J. " The case shows a continued occupation of the pauper till he went to the workhouse." *Per Curiam:* " The order must be quashed." Order of sessions quashed.

and a person who had lodged with them remained in the house. Afterwards A. assisted the lessor to destroy the lease. A. and B. are still irremovable from W. though actually chargeable.

St. Michael's, Bath, v. *Nunny*, 1 *Stra.* 544. Order of removal of the wife of a poor person. It was moved to quash the order, because it did not appear the husband was at the time of the removal in St. Michael's, so that it might be they sent the wife away from the husband. But by the Court: " We cannot intend he was not; if he were in the parish from which she was sent, that indeed would vitiate the order; for the wife cannot be removed from her husband: but as neither of these facts appear against the order, to satisfy us that it is bad, we are not to presume it to be so; and therefore it must be confirmed."

The wife cannot be removed without the husband, if he is in the parish.

Absence from her will not be presumed.

Rex v. *Stockton*, 2 *Nev. & M.* 353; 5 *B. & Ad.* 546. F. Carstofen and her children were removed from Stockton to Spalding. Order reversed. Case:—On the 2d of May, 1832, Robert Carstofen, who is a native of Scotland, without settlement in England, and a lunatic, returned from Sunderland in Durham, where he had for some time been residing, to Stockton, accompanied by his wife and children. Almost immediately on their arrival in that township they applied to the assistant overseer for relief, and on the 2d and 3d of that month were relieved by him and ordered to quit the town and return to Sunderland. About the 19th of May the wife again applied to the Stockton overseers for relief, whereupon she and her children were removed to Spalding, by an order reciting the complaint, " that Frances Carstofen, the wife of Robert Carstofen, a Scotchman, having no settlement in England, and who is a lunatic, had come to inhabit in Stockton," and it adjudged " the settlement of Frances and her children to be in Spalding." The maiden settlement of Frances is in the parish of Spalding. She was legally married to Robert Carstofen, and the children named in the order are legitimate. Robert was born in Scotland, and has

In the order of removal of a married woman and children to the place of her maiden settlement, it is not necessary to notice the husband's absence, or that he had no settlement.

Neither will be presumed.

2. *Removal of the Wife.*

not gained any settlement in England: he is a lunatic, and was living at the date of the order of removal. The sessions quashed the order, as it did not contain any statement of the desertion of the wife by the husband, and as the defect was in a matter of substance, which the court had not power to remedy. The respondents tendered evidence to show that the husband was not living with his wife nor in the township of Stockton at the time of the wife's application for relief, and the order of removal being made, but that he had escaped from his family in a fit of lunacy on the preceding 4th of May, when they were all in the parish of Thirsk, in Yorkshire. *Denman*, C. J. "The authorities cited, show that the court will not presume any fact in order to vitiate an order of removal. Here it is perfectly consistent with that order, that it may not have the effect of separating husband and wife, for the husband and wife may not have been living together at the time when that order was made, or he may be living at Spalding, the parish to which she is ordered to be removed." *Parke*, J. "This case falls within *St. Michael, Bath*, v. *Nunny*, (p. 1019). We cannot intend that when the order was made, the husband of the pauper was residing at Stockton, or that he was not at Spalding." *Taunton* and *Patteson*, Js., concurred. Order of sessions quashed.

To make such removal invalid, it must appear that the husband was resident with the wife at the time of her removal.

Rex v. *Ironacton, Burr. S. C.* 153; 2 *Bott*, 111. Mary, the wife of William King, was removed to Ironacton, the settlement of her husband. Order confirmed. It was objected that the wife was removed without the husband. But the court overruled the objection; for "how doth it appear that the husband was not at Ironacton at that time? The court will not suppose it to be wrong, unless it appears so. The intrusion complained of was only by the wife, and they could not remove the husband when he was not complained of."

If a wife be removed (*eo nomine*) to the place of her legal settlement, it is good.

Rex v. *Higher Walton, Burr. S. C.* 162; 2 *Bott*, 112. Order of removal of Mary Bennet, wife of Samuel Bennet, to Higher Walton, the place of her settlement, confirmed. It was urged that it did not appear whether it were this woman's settlement in her own right, or in the right of her husband, and nothing shall be intended. Now if it were not her settlement in right of her husband, the justices had no power to send her thither. By the Court: "It is adjudged to be her last legal settlement; and she could not be settled but where her husband was; and we are not to intend any thing to vitiate the order. Therefore we cannot intend that the husband's settlement was not at Higher Walton." Motion denied.

An order for the removal of a married woman (not stating her to be such) and her children to Y., adjudging that the lawful settlement of her and her children is in Y., was held well, without adjudging that Y. was her husband's settlement.

Rex v. *Yspytty*, 4 *M. & Sel.* 52. Order of removal of Ann Williams from Llandyrnog to Yspytty confirmed. Case:—The pauper is the wife of Griffith Williams, a soldier in his Majesty's service at Woolwich. The mother of the husband proved that he gained a settlement about eleven years ago in Yspytty. This was the only evidence of the settlement of the husband or of the pauper, and no attested copy was produced of the husband's examination upon oath, pursuant to 54 Geo. III. c. 25, s. 69. The order was for the removal of Ann Williams (*not stating her to be the wife of any one,*) Jane, her daughter, aged three years, and Griffith, her son, aged two years; adjudging that their settlement (not that the settlement of her husband) was in Yspytty. *Rex* v. *Bucklebury* (*post*), was cited to show that the order was well enough in point of form, although it did not state that Yspytty was the settlement of the husband. *Contra.* "The evidence of the mother to prove the settlement of the son, when it appeared the son himself might have been called to prove it, was not the best evidence." Lord *Ellenborough*, C. J. "If the respondent parish prove enough to launch a *primâ facie* case of settlement, is it necessary they should prove more? Must they go on to call witnesses at the hazard of having that which is already proved defeated? As to the objection upon the form of the order, it is stated that it is the wife's settlement, and the medium through which she became settled there need not be stated." Order confirmed.

The wife and children of an Irishman could not, when they be-

Rex v. *Carleton, Burr. S. C.* 813. Johanna, wife of Simon Mac Owen, and their four children, were removed from Hoylandswain to Carleton, stating in their order that complaint was made, that Simon Mac Owen,

2. *Removal of the Wife.*

Johanna his wife, and children, came to inhabit in Hoylandswain, not having gained a settlement there; and that Simon was an Irishman, and had done no act in England to gain a legal settlement, and that his wife and children were chargeable to Hoylandswain; which they adjudged to be true, and that the settlement of Johanna and children was in Carleton; and therefore they removed them thither. Order confirmed. Case:—John Tyas, father of Johanna, in 1727, came with a certificate from Carleton to reside in Hoylandswain, and during his residence there, Johanna was born, and continued to live with him there until she was upwards of twenty-one years of age: she afterwards took a house at Hoylandswain, and resided therein till she was married to Simon, who upon his marriage went to reside with Johanna in her house, and continued to reside with her from the time of their marriage in 1766, until she and her children were removed under this order from the said Simon, and from his dwelling-house wherein he then and still continues to reside; Simon maintained himself and family until a little time before the removal was made. It was objected that this would occasion a separation between husband and wife; and amount in effect to a divorce. And the court were clear that the removal was wrong. It was not like the case of the husband being dead, or having left his wife. Here the husband was alive; resided at Hoylandswain; followed the business of a cloth-dresser there; and maintained his family by it for many years, till they were taken ill of this temporary fever, which obliged them to apply for relief. The parish had had the benefit of his labour nine years. This man was settled in a house and carried on business in this place. There might be no business for a cloth-dresser at Carleton at all. Or this man might have no acquaintance there. He might starve there though he could maintain his family at Hoylandswain. Orders quashed.

came chargeable, be removed from him to the wife's parish. (a)

Removal of a woman, as the wife of J. G., to C., is good, for it will be presumed that C. is the husband's settlement.

Rex v. *Hinxworth*, *Doug.* 46 (*n.* 13.); *Cald.* 42; 2 *Bott*, 115. Sarah, called in the order "the wife" of Joseph Griffin, was, on 17th June, 1776, removed from Cheshunt to Hinxworth in the husband's absence, and without having examined him. The order was not appealed against. The husband soon after went to his wife and children at Hinxworth, from whence they were all sent back under a new order, dated 13th October, 1776, to Cheshunt. Cheshunt appealed against this order, and producing the former order, insisted it was conclusive as to the husband as well as the wife and children. The sessions, however, after hearing evidence as to Griffin's settlement, confirmed the new order as to him, and quashed it as to his wife and children. The wife then went back with her children to her husband at Cheshunt. After which a third order, of 20th January, 1777, was made, removing the children again from Cheshunt to Hinxworth. This was appealed against, and confirmed as to all but two of the children, who by reason of their tender years were inseparable from their mother, on account of nurture. The question was to what extent the fresh order was conclusive, Sarah having been thereby removed as *the wife* of S. Griffin. Lord *Mansfield*. "There is nothing in this case. It is admitted that if they had put into the first order, that it was the husband's settlement, that would have been conclusive; and the question is, whether there accrues a necessary implication that upon the face of the order his settlement is there. The general rule is, that the husband's settlement is the settlement of the wife. There are some special exemptions; as where the husband is beyond sea. But the presumption is in favour of the general rule; and if this had been the case of an exception, it ought to have been stated. Hinxworth having neglected to appeal at the time they were aggrieved, their being too late now is their own fault." And the rule was made absolute to quash all the orders but the first. (b)

(a) As to the removal of the wife of an Irishman or Scotchman, see p. 129.

(b) The first order is conclusive that the husband, wife, and children were settled at Hinxworth, at the date of that order, viz., 17th June, 1776. But an order unappealed against is not of more force, than an order confirmed. By the second order in Oct. 1776, the husband is decided to be settled at Cheshunt. Upon

2. *Removal of the Wife.*

If the husband return after the wife has been removed, and that order of removal is quashed, they cannot be removed together to the place of the former removal.

The wife may be removed without her husband (he having no settlement) if they consent.

Rex v. *Leigh*, *Doug.* 46; *Cald.* 59; 2 *Bott*, 116. Order of removal of a married woman from Ewell to Leigh, in the absence of the husband, quashed. The husband afterwards returning to Ewell with his wife, they were removed under a new order to Leigh, which was confirmed; but it was given up as not to be supported, since *Rex* v. *Hinxworth* (p. 1021).

Rex v. *Eltham*, 5 *East*, 113. An order made on *examination of the husband, and with the consent of him and his wife*, removed Mary, wife of Peter Finn, a Scotchman, *who never gained a settlement in* England, and children, from St. George the Martyr, to Eltham. There was an appeal, which was dismissed without a case; and both these orders being removed by *certiorari*, it was objected that the wife was removed by such order from her husband, who was still living, and probably in the very parish whence she and her children were removed, and whose assent to their separation, even if it could be presumed in favour of the order, was invalid. In *St. Michael's* v. *Nunny* p. 1019, the court said, that 'if the husband were in the parish whence the wife was sent, it would vitiate the order': now that fact is to be collected in this case; for he is stated to have been examined before the magistrates, and to have given his consent to the removal. But by *Lawrence*, J. "How does it appear that the husband was living in St. George the Martyr? He might have been before the magistrates without residing there. The order only states that the wife and children were come to inhabit in that parish." Lord *Ellenborough*. "Independent of the mentioned objection, what doubt is there in the case? A Scotchman, who has no settlement of his own, and is desirous to give his wife and children the benefit of hers, being unable to maintain them, consents that she should be sent to her parish, to which she herself is willing to go. Why should he not consent? This is nothing like the contract of separation declared to be illegal in *Marshall* v. *Rutton* (8 *T. R.* 545). Servants, and other persons of that description, members of the same family, who are to subsist by their labour, must frequently separate for that purpose. Here there is neither a private nor a public injury." The court affirmed the orders. (*a*)

Not to her maiden settlement, if the husband has one.

But the wife resident with her husband cannot be removed to her maiden settlement if the husband was born in England, although the place of his birth cannot be ascertained. (*Rex* v. *St. Mary, Beverley*, p. 458.)

Deserted wife of Irishman.

The wife of an Irishman, who has no settlement in England, may, if deserted by him, be removed to her maiden settlement. (See *Rex* v. *Cottingham*, *ante*, 127.)

The wife of a prisoner confined in a gaol for debt, in the parish where she resided, and in which the gaol was situate, cannot be removed without his consent.

Reg v. *Stogumber*, 1 *P. & D.* 409; 9 *A. & E.* 622. An order for the removal of Sarah, wife of George Stafford, a prisoner confined in Bristol gaol, and her five children, from Bedminster, in the city of Bristol, to Stogumber, was confirmed. Case:—G. Stafford, the husband of Sarah, and father of her five children, was settled by birth in Stogumber. Sarah and her children had become chargeable to the parish of Bedminster at the date of the order, at which time the said G. Stafford was confined in the gaol of the city and county of Bristol, which is situate in the parish of Bedminster, in execution for 11*l.* and upwards, under the provisions of the Bristol Court of Requests Act, for 100 days, which expired on the 21st of November, 1837. At the expiration of the said 100 days, G. Stafford was regularly discharged, and returned to his house in Bedminster, to his wife and family, he being the tenant of such house, and

the trial of the appeal against the third order, why was not the confirmed order of Oct. 1776, conclusive as to the settlement of the husband? It was subsequent to the order removing the wife as such to Hinxworth; and in favour of the order, it might have been presumed that the husband acquired a settlement at Cheshunt, between the months of June and Oct. 1776. It does not appear from either of the reports that this point was adverted to, although the children were removed obviously to their father's settlement. It does not appear that the court of King's Bench had any authority to quash the second order.

(*a*) This case, as far as it regards Scotchmen, is no longer an authority. (See *Rex* v. *Leeds*, p. 130.)

having occupied that and other houses in Bedminster for the last fifteen years, and supported his wife and family there by his labour as a sawyer, and which he has continued to do since his discharge from prison and return to them. During the imprisonment of G. Stafford, his wife was at liberty, at the times and in the manner which the rules of the prison permitted, to visit her husband. Lord *Denman*. "It is clear in this case that the parties were residing in the same parish, and that there might have been a *consortium* between them, which it is the policy of the law not to interrupt. No consent on the part of the husband, nor any thing equivalent to it, appears on the face of the case." The other judges concurred. Order of sessions quashed.

2. *Removal of the Wife.*

A married woman pregnant of a child, which will be a bastard, was removable, if the husband was abroad, as an unmarried woman with child.

Rex v. *Tibbenham*, 9 *East*, 388. Rebecca, wife of John Knowles, was removed from Diss to Tibbenham. Order confirmed. Case:—The pauper's husband, John Knowles, being settled at T., had gone to the East Indies four years before, and had never returned. At the time of the removal the pauper was residing in Diss, and pregnant of a child, which was afterwards born a bastard in T. The pauper never received any relief from Diss parish, nor was chargeable in any other manner than as above mentioned. Lord *Ellenborough*. "The first question is, whether a *married* woman, who, in the absence of her husband abroad, is pregnant under such circumstances as that the child, when born, would be deemed by law a bastard, be liable to be removed under the 35 Geo. III.? The act indeed says, "that every *unmarried* woman with child shall be deemed and taken to be a person actually chargeable within the true intent and meaning of the act," and removable: but the legislature plainly had in view that every woman pregnant of a child, which was not protected by the matrimony of its parents, but would, when born, be a bastard, should be removable, whether married or unmarried; for though the mother were married, yet if her child would by law be a bastard, she was in *pari jure* within the scope of this act with an unmarried woman who was pregnant. The next question is, whether the order of removal be good in the form of it? It states the complaint of the parish officers of Diss, that Rebecca, the wife of John Knowles, *is actually become chargeable* to their parish, &c.; and the justices, upon due proof made thereof, adjudge the same to be true. The act says, that a woman under the circumstances I have stated, 'shall be *deemed and taken to be a person actually chargeable*,' &c. Have not then the justices done enough in stating that the pauper was 'actually become chargeable to the parish?' They are to draw the conclusion whether chargeable or not, and it is enough for them to state that conclusion upon the face of the order, without stating the premises upon which it was founded. If that conclusion be disputed the party is to appeal; and such appeal having been made, and the facts stated to us, it is to be seen, thirdly, whether the premises warranted the magistrates in drawing that conclusion. The legislature intended that an unmarried woman, or what is the same for this purpose, a married woman, under the circumstances I have mentioned, being with child, is *primâ facie* chargeable within the law: it raises a presumption of her being chargeable. *But I say* again, as I said in *Rex* v. *Alveley* (*post*), *that if it appears that the woman is a person of substance, and that there is no pretence to say that she is likely to bring a burden upon the parish*, the act did not intend to make such a person liable to be removed. But it is made a presumptive chargeability, so as to put it on the party disputing it to show that she is a person of substance, or, as in *Rex* v. *Alveley*, a person under a contract of hiring and service with another at the time, so as to rebut the presumption. The only cases that materially affect the construction of the clause in question are, first, *Rex* v. *St. Mary Westport*, (p. 998), which was the case of a certificated person who, under the 8 & 9 Will. III. c. 30, was not removable till actually chargeable: and it was held, that one of the family of the certificated person being pregnant of a child likely to be born a bastard, was not removable under that act. The question was again made in *Rex* v. *Great Yarmouth* (*post*), after the passing of the 35 Geo. III., where the residence

The order need not describe how she became chargeable.

If it appears that the woman is not likely to bring a burden upon the parish, she is not chargeable under the statute.

2. *Removal of the Wife.*

Pregnancy of a single woman does not dissolve a contract of hiring.

of a person so circumstanced under a certificate was held to be no objection to her removal. Then came *Rex* v. *Alveley* (*post*), where the principal point decided was, that a single woman being with child did not operate such a dissolution of the contract of hiring and service, as to make her removable against the consent of herself and her master. In that case there is one observation attributed to me which I am not prepared to abide by; viz. that where the act says such a person *may* be removed, it does not say that she *shall* be so. Now I do not think that the use of the word *may* there, as contradistinguished from *shall*, makes any difference in the sense. If the party come within the true intent and meaning of the clause as there described, I think the true meaning of the words '*may* be removed,' is, that she '*shall* be removed'. All the statutes respecting the removal of the poor form together one system of law, and it is a condition precedent, if I may so say, that the persons to be subjected to their operation should be in the condition of poverty. When therefore the clause in question says that an unmarried woman with child shall be deemed to be actually chargeable, &c., for the purpose of subjecting them to be removed, it means that persons so situated shall, *primâ facie*, only be deemed to be chargeable, and it still leaves it open to show that the party is of substance, so as not to be within the scope and view of the poor-laws. Therefore, whether in the form of the order it be said that the woman so circumstanced is deemed to be chargeable, or is therefore chargeable, or that she is chargeable, it is all alike and equally good: and she must be presumed to be in the situation in which she is considered by the legislature. viz. as actually chargeable to the parish where she is inhabiting. and consequently liable to be removed, unless the contrary be shewn. Here then it is sufficiently adjudged in the order that the pauper was actually chargeable, so as to make her removable under the act; and it appearing by the facts stated on the appeal, that though married, yet that her husband was abroad, and could not have been the father of her child, this was a *prima facie* case to bring her within the sixth clause, and to show that she was actually chargeable within the meaning of the act; and nothing being shown to rebut that presumption, it remains presumptively established that the pauper was within the description of persons liable to be removed." The other judges agreed, and both orders were confirmed.

An order of removal made upon complaint that M. S., the wife of W. S., who is absent from her, is come to inhabit, &c, and is now with child, which is likely to be born a bastard, adjudging the said M. S to be actually chargeable, is sufficient.

Rex v. *Sowerby*, 5 *M. & Sel.* 299. Margaret Sykes was removed from Sowerby to Pilling; and the order stated that Margaret, the wife of William Sykes, a soldier in the army, and absent from her, is to come to inhabit in Sowerby, that she is now with child, which is likely to be born a bastard, and that her settlement is in the township of Pilling; and the justices, upon due proof made thereof, and likewise upon due consideration had of the premises, did adjudge the said M. S. to be actually chargeable to Inskip-with-Sowerby, and her settlement to be in Pilling. And then it proceeded to order her removal. The sessions quashed the order for insufficiency of form, because it was not stated in the *complaint that the pauper was become actually chargeable.* The court, without hearing argument, were of opinion that the order of removal was sufficient: for the complaint states the premises from whence the conclusion necessarily arose under the act of parliament (35 Geo. III. c. 101), that the pauper was to be deemed chargeable, and the justices have drawn the conclusion.

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3. *Of Removal of Children.*

A child within the age of nurture, settled in a different parish, cannot be separated from its mother by an order of removal, though the order is made with the consent of the mother.

3. Removal of Children.

Reg. v. Birmingham, 7 *Jurist*, 1014, 13 *L. J. J.* Harriet and Elizabeth Ann, children of James Atkins, deceased, were removed from Aston to Birmingham. Order confirmed. Case:—The examination of Elizabeth Jones, on which the order was made, stated, that in August 1834, she married at Edgebaston church James Atkins, by whom she had the two children, Harriet nearly seven years old, and Elizabeth about four years and a half old; her husband died in December 1837, and in August 1841, she married Joseph Johns her present husband, who is now out of employ and unable

3. *Removal of Children.*

to support her and her children; they are all inmates of the workhouse, chargeable to the parish of Aston; and she consents to the removal of her children from her, and wishes them to be sent to their parish. The sessions were of opinion that the children, although within the age of nurture, might be removed to their own parish, and separated from their mother by her consent, and confirmed the said order. Lord *Denman*. "There are no doubt some cases, where it has been thought necessary by particular statutory enactments to break in upon the principle, that a child within the age of nurture must continue with its mother. This has been done under certain circumstances, and for special reasons. But such is not the case here; the rule has been recognised by all judges, and doubted by none. It does not refer to the will of the mother, but is established for the protection of the child; we ought to crush the first attempt to depart from that important principle." *Williams*, J. "The only question for our consideration is, in whose favour is this rule made? I concur in the principle laid down by my Lord,—the rule is for the protection of the child, and is inflexible." *Coleridge*, J. "I am of the same opinion. This question is raised in the driest way; the consent relied upon on behalf of the order of removal is that of a married woman, which, in questions respecting property, would not be considered of the slightest value. We cannot make a different rule for a child of one week and a child of six years old. Now, look at the serious consequences of removing a child of a week old from its mother to a distant parish, because its mother consents to the removal. We cannot waive a principle which is for the benefit of the child." *Wightman*, J., concurred.—Order quashed.

Legitimate children above the age of seven years, and under sixteen, may be removed to their settlement. *Rex* v. *Stafford*, p. 432.

An order removing nurse children to the settlement of their parents, is good, though it takes no notice of the death of the parents.

Bucklebury v. *Bradfield*, 1 *T. R.* 164. Elizabeth, aged five, John, aged two years and a half, and Sarah Knott, aged one year and a half, were removed from Bucklebury to Bradfield. The order set forth the ages of the paupers, and that it was made *as well upon the examination of* Elizabeth Knott, *their grandmother, upon oath*, as otherwise. Order quashed. Case: —Charles Knott went to Twickenham in 1777, where he married Sarah Slade, who dying in 1784, Charles brought the paupers to Elizabeth, his mother, who was living at Bucklebury in 1785, and told her they were his children, and desired her to take care of them, and he would send money for their maintenance; the paupers remained with Elizabeth about fourteen weeks, but she not receiving any money from her son, and being unable to maintain them, they were removed to Bradfield, who appealed, and Charles was subpœnaed, but did not appear. The appeal was adjourned at the next sessions; he not appearing, the appeal was not heard, but adjourned, when the appeal was heard, and the removants proceeded to support the order by the following evidence: David Knott, the paternal grandfather, had his settlement in Bradfield, and his son Charles was born there. It did not appear whether Charles had gained any settlement subsequent to his derivative settlement, nor was any evidence given to identify the paupers to be the children of Charles and Sarah Knott, except as above. In support of the order it was urged, that the paupers being nurse children, ought not to have been removed without their father or mother, unless the order had stated they were dead, otherwise the children might be settled in a different parish from their parents. Another objection was, that the order was grounded on the *examination of the grandmother*, and not on that of the *father*. And there was no evidence produced at the sessions but the grandmother to identify those children, or that the father had not gained a subsequent settlement. The other side was stopped by the court, who were clearly of opinion that there was no objection to the competency of this evidence; and as to the other point, that it was incumbent on the parish of Bradfield to have shown that the father had gained a subsequent settlement. Order of sessions quashed.

Proof of the grandfather's settlement sufficient *primâ facie* case.

In *Rex* v. *Brington*, p. 1018, the Court of King's Bench presumed that the sessions had quashed the order as to the child that had been removed with its mother, as being within the age of nurture.

When child presumed to be under the age of nurture.

3. *Removal of Children.*

Bastard not to be removed from the mother whilst a nurse child.

If a mother and child have different settlements, it seems that the bastard child, like all other children, shall go with the mother for nurture until the age of seven years. Thus in *Cripplegate* v. *Saint Saviour's*, p. 409, it was agreed by the whole court, that the age of a nurse child, so as to go along with its mother, is until seven years of age. So also in *Skeffreth* v. *Walford*, p. 419. The order was to remove a woman to her settlement, and her bastard child, of two years of age, to another parish, at a distance from the mother, being the place of its birth. It was objected, that the child being a nurse child, it could not be separated from the mother, by reason of the care necessary to nurture so very young a child, which none can be supposed so fit to administer as the mother of it; and therefore it should have been sent with her to the place of her settlement. And the order was quashed by the court for that reason. But it appears to be settled, that although whilst the child continues with its mother as a nurse child, it is irremovable to its place of settlement, yet the parish where it is legally settled shall maintain such child in the other parish where it is resident with its mother.

To be maintained whilst a nurse child by its own parish.

Same point.

Rex v. *Hemlington*, *Dougl.* 9, *n.* 2. Case:—Elizabeth, a single woman, with her child Mary, went under a certificate from Hemlington to Darlington, in which last parish she had two bastard children, and there became chargeable. An order being made for the removal of her and Mary to Hemlington, she took the two children who were born in Darlington with her, they being both under the age of emancipation. Two justices made an order on Darlington for the maintenance of the two bastard children, which order, upon an appeal, was quashed. It was urged that there is no statute which gives the justices any authority to make an order for the maintenance of children on a parish where they do not actually reside. Lord *Mansfield*, C. J., said no authorities have been cited in support of this proposition, and there are many against it; *Rex* v. *St. Giles's in the Fields* (*Burr. S. C.* 2); *Rex* v. *Wangford* (2 *Wils.* 3; *Fort.* 307); and *Rex* v. *Saxmundham* (2 *Bott*, 18), which is directly in point. The practice is also agreeably to those cases. *Aston*, J., cited another case, where it was directly held that the parish where the settlement of the nurture child is shall maintain it. Judgment to quash the order of sessions, and confirm the original order by which the parish of Darlington was charged.

There is no difference between bastards and legitimate children under such circumstances.

Shermandbury v. *Bolney*, *Carth.* 279. A woman with three children, all under seven, being settled in Shermandbury, married a person settled in Bolney. After the marriage the mother and the three children were sent to Bolney. The parish of Shermandbury, before the marriage, allowed 3*s.* per week for three children; and the payment being discontinued after the marriage, on complaint of the parish of Bolney, two justices made an order that Shermandbury should continue to pay the 3*s.* The sessions, and afterwards B. R., confirmed the order of the justices. And the court said, "This case is within the equity of the statute for the relief of the poor, and there is no reason that Shermandbury should be discharged of the children by their mother's marriage. The inconvenience, when the two parishes are at a great distance from each other, is only similar to what is experienced on appeals brought on removals from parishes at a greater distance. As to the method of enforcing the order, it may be done by indictment, or perhaps the parish officers in whose behalf it is made might maintain a special action of assumpsit against those upon whom it was made." (*Vide Rex* v. *Toms*, *Dougl.* 401.) In *Rann* v. *Green* (1 *Cowp.* 474), the court held, that when persons acting under a *private* act of parliament, make an order by authority of such act for the payment of money, the law raises an *assumpsit*, and the same rule must hold in the case of a public act.

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4. *Of Removal of Servants.*

A servant cannot be removed from the master without consent.

4. Of Removal of Servants.

It has already been observed that the justices have no power, upon the complaint of the parish officers, to remove a servant from his master, because that would be to dissolve the contract betwixt the master and his servant, which can only be done upon the complaint of the master or

servant. Therefore if a female servant happens to be pregnant, and the child is likely to be born a bastard, yet if her master is willing to keep her, the parish cannot remove her; whilst, on the other hand, the master, if he pleases, may complain to a justice of the peace that she is less able to perform the service, and the justice (if he sees cause) may discharge her; and thereupon the parish officers, having obtained the order of two justices, may remove her.

4. *Removal of Servants.*

Rex v. *Bleworth*, *Burr*. 302, 304. Where a servant was hired for three years on certain conditions, Lord Chief Justice *Lee* put an end to the argument on the contract by saying, "How could the justices remove him out of the service?" It appears that the man was actually in the service at the time of the removal. And the court quashed the order.

Same point.

In *Farringdon* v. *Witty*, 2 *Salk*. 527; 2 *Bott*, 295, it was determined that excepting on complaint of the master, a servant could not be removed from his master's service, although the parish officers did complain.

Servant not removable from master's service.

Rex v. *Marlborough*, 12 *Mod*. 403; 2 *Bott*, 42. An order of removal was made of a female servant, who within her year of service was pregnant of a bastard. The court: "If one hire a woman for a year, and before the year's end she is got with child, she shall not for that be removed, but shall serve out her time. This, however, is good cause for discharge from her service; and after her discharge she might be removed."

A servant may be discharged for bastardy, and then removed.

Rex v. *Brampton* (*ante*, p. 464.) A female servant may be discharged by her master for being with child, and may then be removed to her settlement.

Same point.

Rex v. *Alveley*, 3 *East*, 563. Jane Hinson, single woman, was removed from Kinver to Alveley, being with child, and *therefore deemed* chargeable. Order confirmed. Case:—The pauper was settled in Alveley, and some time previous to Michaelmas, 1801, hired herself for a year to E. C., of Kinver, for a year. She entered and served till September 2d, 1802, when she being about seven months gone with child, the parish officers of Kinver insisted upon her going before two magistrates to be examined as to her settlement, and accordingly took her away from her service on the evening of that day, and the next morning brought her before the magistrates, who made the order of removal. The pauper's master had made no complaint against her, he did not consent to her being taken away, but objected to it, as did the pauper herself, who was perfectly able to do her work. After her examination had been taken, she returned to her master's service, and on the following day the parish officers removed her under the order from Kinver to A., telling her at the same time that she might return to Kinver. Lord *Ellenborough*. "If the order of removal were good, no doubt it would operate to dissolve the contract. In *Rex* v. *Kenilworth* (*post*), the order of removal being unappealed from, was deemed valid; but this is now under appeal, and may be controverted. And that brings it to the question, whether the order was properly made? Was it not the meaning of the act to prevent the removal of persons until actually chargeable, who were before removable, if likely to become so; but not to make persons removable who were not proper objects of removal before that act? Could it be meant that a person in this situation should be torn away from her parents, whatever her condition in life may be, and however far removed from any probability of being a charge on the parish? Is there any instance to be found in the books before this act, of a woman, under these circumstances, being a person of substance, and yet deemed to be removable? The substance of a person so situated repels the idea of her being chargeable; and the act did not mean to make any one removable who was not so antecedently to the passing of the act. The general provision is, that no person shall be removable till actually chargeable; and the 6th section introduces an exception to that general rule, leaving the person so circumstanced to the operation of the law, as it stood before the passing of the act." [The respondent's counsel observed, that there were no facts stated in the case to show that the woman was not a person who was likely to become chargeable at the time of the order made, or that the removing magistrates had

Such a servant cannot be removed against the consent of the master and servant.

4. *Removal of Servants*

not exercised their judgment upon that fact; on the contrary, they adjudge her to be chargeable, and before the act in question, such a person was removable.] Lord *Ellenborough*. "There is nothing of that sort stated in the case, nor anything in the order itself, to show that the magistrates adjudged her to be chargeable otherwise than as a consequence of law in their understanding of the act of parliament; they adjudge *that she is with child*, 'and is *therefore* deemed chargeable to the parish of Kinver.' But though the act says that such a person shall be 'deemed and taken to be actually chargeable,' yet that must be understood to be *secundum subjectam materiam*, or as the act itself expresses it, 'chargeable within the true intent and meaning of this act,' which I have before explained. It lies upon the respondents to show, that before this passed, the mere circumstance of a single woman in the service of another, being with child, operated as a dissolution of the contract, and made her liable to be removed against the consent both of the master and servant." (See p. 833.)

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5. *Of Removals under 35 Geo. III. c. 101, s. 6, of Women with Child.*

Statutes relating to the removal of unmarried persons with child repealed.

5. Of Removals under 35 Geo. III. c. 101, s. 6, of Women with Child.

By the 35 Geo. III. c. 101, it was provided that no one should be removed who was not actually chargeable; but by the same statute, an unmarried woman, with child, was thereby deemed to be actually chargeable. The 6 & 7 Will. IV. c. 76, s. 9, however, repeals so much of the act as rendered an unmarried woman, with child, liable to be removed. Although the 35 Geo. III. declared such woman to be chargeable, yet a woman able to provide for herself and child, or who is in service, is not within the rule of the statute. *Rex* v. *Alveley*, p. 1027. A married woman, whose husband is abroad, was held to be within the old statute. *Rex* v. *Tibbenham*, p. 1023.

Order adjudging merely that the woman removed was *with child and unmarried*, without drawing the conclusion that she was *chargeable*, is bad.

Rex v. *Holm, East Waver Quarter*, 11 *East*, 381. An order of removal stated, "That E. M., single woman, is *with child and unmarried*, we the said justices *do adjudge the same to be true*." Order confirmed. The objection was, "That it ought to have adjudged that the pauper was *actually chargeable*, and that it was not sufficient merely to state that she *was with child and unmarried*." Lord *Ellenborough*, C. J. "If it were an irrefragable conclusion that being a single woman and with child, the party removed must be deemed to be chargeable within the meaning of this statute, then this order would be good; otherwise the *justices* ought to have drawn that conclusion, in order to show that in their judgment she was a proper object of removal within the poor laws. But consistently with this order, the party might have been a single woman with child, worth 10,000*l.*, or she might have given the most ample security to the parish against any charge which could be thrown upon them. The statute in question first gives the general rule that no persons shall be removed before they are actually chargeable. It then says that single women with child shall be *deemed and taken to be* actually chargeable, within the true intent of the act. But still the *justices* ought to draw the conclusion that she is within that general rule, otherwise every single woman with child, whatever might be her substance, might be removed by the parish officers. Being unmarried and with child, such a person is presumptively chargeable, from the strong probability of the fact that she must be so; but there may be circumstances, such as the substance of the party, or the giving a complete indemnity to the parish, which may exclude that presumption. Now every circumstance of that sort might have existed in this case, and yet the order, as it is framed, be true. In *Rex* v. *Diddlebury* (p. 1029), the justices deemed her to have become chargeable; *but she could not have been deemed to be chargeable if those circumstances had existed in her instance.* It ought to appear by the order that the justices have exercised their judgment upon the matter, and repelled the existence of such circumstances by the adjudgment that she was chargeable, in order to show that she was a proper object of removal within the meaning of the law."

5. *Removals under 35 Geo. III.*

Rex v. *Diddlebury*, 9 *East*, 398. Upon complaint "That Ann Evans, *single woman*, had come to inhabit, &c. &c., and *is, by being pregnant, deemed to have become chargeable* to the said parish of T.," two justices, "upon due proof made thereof, did adjudge the same to be true." Case: —The pauper, being a single woman, settled in D., and becoming *actually chargeable* to T., within the 35 Geo. III. c. 101, s. 6, *by being pregnant with a child who had since been born a bastard*, was removed from T. to Diddlebury, and the pauper appearing to be a *labourer without substance*, the mother of other bastard children, and not a hired servant, was properly removed *as actually chargeable*. This case was argued immediately after *Rex* v. *Tibbenham*, p. 1023, and after giving judgment in that case, Lord *Ellenborough*, said, "That there was little more to add with respect to this, than that the orders should be confirmed. On the facts of the case, as bringing it within the general policy of the poor laws, and the words of 35 Geo. III., there could be no doubt, and with respect to the form of the order of removal, the premises are stated, as in the statute itself, from whence the conclusion is drawn; and therefore all is stated which the statute requires."

But an order stating that A. E., single woman, was, by being pregnant, deemed to have become chargeable, &c. is good.

Rex v. *Great Yarmouth*, 8 *T. R.* 68. Mary Pestile, widow, was removed from Great Yarmouth to Ditchingham. Order quashed for informality, but no case stated. In the order of removal it was recited and adjudged, that the pauper was with child which was likely to be born a bastard; that she was living in Great Yarmouth, not having gained a settlement there; that she was deemed to be a person actually chargeable to Great Yarmouth, and that her place of settlement was at Ditchingham; without negativing her having a certificate from any parish. The question intended to be raised was, whether or not the 35 Geo. III. c. 101, extends to an unmarried woman who is residing under a certificate? *Per Curiam:* "The orders which alone are before the court are scarcely sufficient to raise the question that (it is said) was meant to be agitated; but even if they were, this pauper comes within the words of the statute alluded to, which are general, 'every unmarried woman, &c.;' and also within the reason of the act. This clause seems to have been introduced for the very purpose of remedying what was before an apparent defect in the poor laws; for before that act passed, *a certificated person in this situation could not have been removed, although the child when born would be settled in the certificated parish.* Therefore as the words of the statute are sufficiently comprehensive to include this case, there is no reason why we should narrow or abridge the construction of them, so as to prevent their extending to a case that wanted the remedy." Rule absolute.

An unmarried woman, being pregnant, may be removed, though she be residing under a certificate.

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6. Of Removal of Casual Poor.

6. *Removal of Casual Poor.*

We have before considered the duty of overseers to *relieve casual poor* in the parish where they have sustained any accident or have been suddenly taken ill, and incidentally how far the power of removal, p. 113, and the 13 & 14 Car. II. c. 12, or 35 Geo. III. c. 101, is in such cases taken away or suspended during such illness. If a pauper meets with an accident in a particular parish, that parish is bound to provide for him as casual poor, until he be cured; nor can they relieve themselves by removing such pauper into an adjoining parish, or his proper parish; for no person is removable from the parish where he is, unless under some positive enactment, and such person is not within the statute Car. II. as a person coming to settle.

Paupers meeting with an accident in a parish in which they are not dwelling, are not removable.

Rex v. *Birmingham*, 14 *East*, 251. Mary Hoppins and her children were removed from Feckenham to Birmingham. Order confirmed. Case: —The pauper was resident in the parish of Inkberrow, in Worcestershire, renting a house there, and receiving relief from I. Upon applying, as usual, for this relief to the officers of the parish, it was refused her, and she was desired to go to the officers of Feckenham, an adjoining parish, in which some of her husband's relations had resided; this she did; F. refused relief, and sent her back to I. Upon her return to I. and again

But a pauper who had been sent backwards and forwards from one parish to another, and been occasionally relieved by both, was holden removable.

6. *Removal of Casual Poor.*

applying there for relief, they refused and desired her to apply again to F.; and when she expressed an unwillingness to do so, one of the overseers of I. took her to F., without any order of removal, and told her not to return again to I. Upon her being thus brought to F. the officers of F. relieved her, and at the same time threatened to send her to prison if she returned to I. She remained in F. for eight or ten days, not having previously had any abode there; at the end of that time she was removed by an order of two magistrates from F. to Birmingham. *Rex* v. *St. James, Bury St. Edmund's*, p. 113, was cited to show she was irremovable. Lord *Ellenborough*. "That was a very different case. This was the case of a starving vagrant, in whichever of the two parishes she was, who was going backwards and forwards between them, and would have been starved if she had not received temporary relief from one or the other. She was liable to be removed from either. How then can this oscillation between the two parishes affect the order of removal to her proper parish?" Orders confirmed.

Foreigners.

Foreigners, who have not gained a settlement, cannot be removed, but are to be relieved as casual poor.

Must be maintained where they are found.

Cowred's case, Comb. 287; 2 *Bott*, 17. A Dutchwoman and her two children landed at Harwich from Holland, and, removing to another place, were sent back to Harwich by an order of two justices. *Eyre*, J., (*Holt*, C. J., being absent), said, "You must keep them when you have them for aught I know; for it seems to be a case omitted out of the statute." Order quashed.

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7. *Of the Removal of Poor Persons, &c.*

7. Of the Removal of Poor Persons born in Scotland, Ireland, Isles of Man, and Scilly.

Persons born in Scotland, Ireland, the Isles of Man and Scilly, and becoming chargeable to any parish here, may be removed to their own country if they have acquired no settlement in England. The removal is now regulated by the 3 & 4 Will. IV. c. 40. The 1st sect. repeals the former statutes, and the 2nd gives the power of removal. These have already been considered, p. 121. The other sections of the statute, which were altogether new, relate to the mode of removal, and the payment of the expenses. By s. 3, it is enacted, that the justices of the peace of every county, riding, city, borough, town corporate, division, or liberty, next after the passing of this act, or some adjournment thereof, and from time to time thereafter, at their general or quarter sessions, or adjournment thereof, to direct in what manner, and whether by sea or land, or part of the way by land and part by sea, such poor person, his wife and child or children, removable under the provisions of this act by the churchwardens and overseers of any parish, township, or place maintaining its own poor within such county, riding, city, borough, town corporate, division, or liberty, shall be removed.

Justices at sessions to direct how they shall be removed.

Justices at quarter sessions to make rules, &c. for carrying this act into execution.

4. And be it further enacted, that the justices of the peace of every county, riding, city, borough, town corporate, division, or liberty shall and may and they are hereby required, at the general or quarter sessions of the peace to be holden in and for such county, riding, city, borough, town corporate, division, or liberty, next after the passing of this act, or some adjournment thereof, and from time to time thereafter, at their general or quarter sessions, or adjournment thereof, to make such orders, rules, regulations, and directions, for the more effectually carrying the provisions of this act into execution, as they in their discretion shall think proper; which orders, rules, regulations, and directions shall from time to time be observed and submitted to by all justices of the peace, overseers, churchwardens, constables, and other persons concerned in or charged with the removal of such poor person, his wife, child or children as aforesaid, within such county, riding, city, borough, town corporate, division, or liberty.

Overseers to be repaid expenses out of county rate.

5. And be it further enacted, that in case the churchwardens and overseers of the parish, township, or place maintaining its own poor, on whose

complaint such order of removal shall be made as aforesaid, shall bring or send to the clerk of the peace or town clerk of the county, riding, city, borough, town corporate, division, or liberty in which such parish, township, or place maintaining its own poor shall be situate, such order of removal, accompanied with an affidavit sworn before some justice of the peace of such county, riding, city, borough, town corporate, division, or liberty, (who is hereby authorised to administer the same,) of the amount of the expenses *bonâ fide* incurred and paid by such churchwardens and overseers on account of the removal of such poor person, his wife, child or children as aforesaid, and also a statement of the several items comprised in such amount, such clerk of the peace or town clerk is hereby required to lay the same before the justices of the peace assembled at the quarter sessions, or adjournment thereof, held in and for such county, riding, city, borough, town corporate, division, or liberty, next after he shall have received the same; and the said justices so assembled as aforesaid are hereby authorised and required to order the amount thereof to be paid out of the county rate raised and levied in such county, riding, city, borough, town corporate, division, or liberty: provided, that on the removal of such poor person, his wife, child or children as aforesaid, the orders, rules, regulations, and directions of the said justices, made as hereinbefore mentioned, have been duly complied with.

7. *Of the Removal of Poor Persons, &c.*

6. And be it further enacted, that all such charges and expenses as aforesaid, which shall be properly and reasonably made for the purposes aforesaid out of any such parish rates within the city of London, shall by such parish or extra-parochial place maintaining its own poor, or parish next adjoining to such extra-parochial place, be charged against the said city of London, and being audited and allowed by the justices of the said city of London assembled at any quarter sessions or adjourned sessions of the peace in or for the said city of London, shall thereupon by the chamberlain of the said city of London be repaid to the overseers or guardians of the poor of the said parish or extra-parochial place maintaining its own poor, or parish next adjoining to such extra-parochial place, for the benefit thereof; for which purpose a rate or assessment shall be made by the order and under the authority of such justices of the said city of London, in the several wards of the said city of London, at such time or times as such justices shall think fit, in the same manner and with the same powers and authorities as the rates for the relief of the poor are made in the said parishes and extra-parochial places; and the powers and authorities contained in the several acts of parliament for making and collecting rates for the relief of the poor shall be and the same are hereby extended to this act.

How expenses to be defrayed of removing poor persons within London.

7. And be it further enacted, that in any city, borough, town corporate, division, or liberty which does not contribute to the county rate, or in which no county rate shall be made, raised, or levied, the charges and expenses paid for the purposes aforesaid by the parish or parishes within such city, borough, town corporate, division, or liberty as aforesaid, shall be allowed by the justices of the peace for such city, borough, town corporate, division, or liberty as aforesaid, at any quarter sessions or adjourned sessions of the peace, and paid by the order of such justices to the churchwardens or overseers of the poor of the parish or parishes within such city, borough, town corporate, division, or liberty, for which purposes a general rate or assessment shall be made by the order and under the authority of such justices in the parish or parishes, if more than one, within such city, borough, town corporate, division, or liberty, at such time or times as such justices shall think fit, in the same manner and with the same powers and authorities as the rates for the relief of the poor are made in the parish or parishes of such city, borough, town corporate, division, or liberty; and the powers and authorities contained in the several acts of parliament for making and collecting rates for the relief of the poor shall be and the same are hereby extended to this act for the making, raising, levying, and collecting the said rate.

How expenses to be defrayed when parish is situate in any city, &c. not contributing to county rate.

7. *Of the Removal of Poor Persons, &c.*

8. And be it further enacted, that this act shall continue in force until the first day of May, one thousand eight hundred and thirty-six, and to the end of the then next session of parliament.

Term of act. (a)

SCHEDULE.

Form of Order of Removal.

To the constable of the parish of
in the county of

WHEREAS complaint hath been made by the churchwardens and overseers of the poor of the ["parish, township," *et cetera, as the case may be,*] in the said county of unto us, whose names are hereunto set and seals affixed, two of her Majesty's justices of the peace acting in and for the said county (one being of the quorum), that a person born in Scotland, [*or* "Ireland," *or* "the Isle of Man," *or* "Scilly,"] hath become and is now actually chargeable to the said ["parish, township," *et cetera, as the case may be*]: and whereas upon examination of the said taken upon oath before us (which examination is hereto annexed) it doth appear and we do adjudge, that the said hath not gained a settlement in England, and that he hath a wife named and children, videlicet, neither of which children have gained any settlement in England:

These are therefore to require you the said constable of aforesaid, in the county of aforesaid, to convey the said his wife and family aforesaid, to Scotland, [*or* "Ireland," *or* "the Isle of Man," *or* "Scilly,"] in the manner directed by the justices of the said county of in pursuance of the provisions of a certain act made and passed in the fourth year of the reign of King William the Fourth, intituled [*here set out the title of this act*].

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty

[*Here copy the regulations, et cetera, of the justices at sessions, as applicable to the removal of the party.*]

Form of Examination.

THE examination of taken on oath before us two of her Majesty's justices of the peace acting in and for the ["county, riding, city, borough, town corporate, division," *or* "liberty"] aforesaid, this day of in the year of our Lord one thousand eight hundred and thirty- who on oath saith, that according to the best of ["his" *or* "her"] knowledge and belief ["he" *or* "she"] was born in in that part of the United Kingdom called Scotland, [*or* "Ireland," *or* "in the Isle of Man," *or* "Scilly,"] which ["he" *or* "she"] left about years ago, and hath done no act whereby to gain a settlement in that part of the United Kingdom called England, and hath actually become and is now chargeable to the [parish] of in the ["county, township," *et cetera, as the same may be,*] of [and that he hath a wife named and children, neither of which children have gained a settlement in England.]

Sworn the day and year first above written, before us,

Persons removing poor in pursuance of the above act, to have the power of constables.

By the 7 Will. IV. & 1 Vict. c. 10, every person to whom an order of removal under the above act shall be delivered for the purpose of being carried into execution, may detain in safe custody every poor person mentioned in such order, until such poor person shall have arrived at the place to which he is ordered to be removed; and for that purpose in every county and place through which he shall pass, in the due execution of such order, shall have the powers with which a constable is invested, notwithstanding he may not be empowered to act as a constable in such county or place.

(a) By the 3 & 4 Vict. c. 27, the powers of the above act are continued to the session of parliament next after the 1st August, 1843.

8. Of the Removal of Poor Persons Born in Jersey and Guernsey.

8. Of the Removal of Poor Persons to Jersey and Guernsey.

The 11 Geo. IV. c. 5, repeals so much of 17 Geo. II. c. 6, as relates to the removal of vagrants, and of 59 Geo. III. c. 12, and of 5 Geo. IV. c. 83, as relates to the passing and removing vagrants and poor persons born in *Jersey* and *Guernsey*, and makes provision for the removal of such persons to their native islands. See p. 127.

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9. Of Soldiers, Officers, Mariners, Marines.

9. Of Soldiers, Officers, Mariners, and Marines.

By 3 Geo. III. c. 8, *officers, mariners, soldiers,* and *marines,* who had served since 29th of November, 1748, and not deserted; and by 42 Geo. III. c. 69, the like persons who had served since 16th of July, 1784; and by 42 Geo. III. c. 60, s. 3, and 42 Geo. III. c. 90, s. 75, all *militia-men,* being married men, who had personally served in actual service for five years; and by 56 Geo. III. c. 67, all such persons as aforesaid, who had been employed since 22nd of June, 1802, and also all *fencibles* who had served five years, and been honourably discharged, and also their wives and children, might set up such trades as aforesaid, without any molestation by reason of the using of certain trades, nor should they, or their wives or children, *during the time they shall exercise such trades,* be removable to their place of settlement until they shall become actually chargeable.

In *Rex* v. *Gwenop* (3 *T. R.* 133), it was determined that working as a *husbandman* was not a *trade* within the meaning of the above act, and such persons are therefore removable.

However, 35 Geo. III. c. 101, has rendered these provisions unavailable, as far as respects removals, as that act provides that no person shall be removable *till actually chargeable.*

Militia-men, &c.

By 4 & 5 Will. IV. c. 76, s. 6, so much of 43 Geo. III. c. 47, is repealed as authorised relief to be given to the wives and families of substitutes, hired men, or volunteers of *militia;* and also so much as prevents such families from being removable to their place of legal settlement, or sent to any workhouse, by reason of their receiving any allowance or being chargeable.

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10. Woolcombers not Removable.

10. Woolcombers not removable.

Persons who have served apprenticeship to any branch of the woollen manufactures, and their wives and families, may set up and exercise any trade in any place in Great Britain, &c.

Not removable.

By 49 Geo. III. c. 109, s. 5, it is enacted, "That all such persons who have served an apprenticeship to any branch of the woollen manufacture, or who are by law entitled to use and exercise the same, and also the wives and children of such persons, may set up and exercise such trade, or any other trade or business which they are apt and able for in any town or place within Great Britain, without any let, suit, or molestation of any person or persons whatsoever, for or by reason of the using of such trade: *nor shall any such person, or their wives or children, during the time they shall exercise such trade, be removable from such respective place or places to his, her, or their last legal place of settlement,* by virtue of any law now in being relative to the settlement of the poor, until such person or persons shall become actually chargeable to such parish or place; and if any such person, or the wife or child of any such person, shall be sued, impleaded, or indicted in any court whatsoever within this kingdom, for using or exercising any such trade as aforesaid, then the said person, or the wife or child of any such person, making it appear to the same court where they are so sued, impleaded, or indicted, that they have served a legal apprenticeship to the said trade as aforesaid, or that he, she, or they is or are the wife or wives, child or children, of such person or persons who shall have so served a legal apprenticeship as aforesaid, shall upon the general issue pleaded be found not guilty in any plaint, bill, information, or indictment exhibited against them; and such persons who, notwithstanding this act, shall prosecute the said suit by bill, plaint, information, or indictment, and shall have a verdict pass against him, or become nonsuit therein, or discontinue their said suit,

10. *Woolcombers not Removable.*

such person or persons shall pay unto such persons who have served an apprenticeship to, or who may be entitled to exercise any branch of the woollen manufacture, or the wife or child of such person respectively, double costs of suit, to be recovered as any other costs at common law may be recovered; and all judges and juries before whom any such suit, information, or indictment shall be brought, and all other persons whatsoever, are to take notice of this present act, and shall conform themselves thereto, any statute, law, ordinance, custom, or provision to the contrary in anywise notwithstanding."

III. Of the Order of Removal, Suspension, and Execution of it.

1. *Of the Place from and to which a Removal may be.*
2. *On the Complaint of Whom.*
3. *Of the Justices, their Style and Jurisdiction.*
4. *The Hearing and Examination.*
5. *The Form of Order of Removal.*
   1. *The County.*
   2. *Description of Paupers.*
   3. *That they are Chargeable.*
   4. *Adjudication.*
   5. *To whom Directed.*
6. *Time and Manner of Serving it.*
7. *Of Suspending Orders of Removal.*
8. *Of Superseding Order.*
9. *Of Filing Order of Removal, &c.*
10. *Penalty and Punishment for not Observing Order.*

1. Place from and to which an Order of Removal may be made.

This subject has been partially treated already, p. 406.

There can be no removal from an extra-parochial place where there are no overseers.

The Forest of Dean v. *Linton*, 2 *Salk.* 487; *Fol.* 96, 97; 2 *Bott*, 688. If a place be extra-parochial and hath no overseers, the justices cannot remove from thence, because there are none either to complain or to convey; but the justices ought first to appoint overseers, and then to remove. (But see *Rex* v. *Mereval*, *Burr. S. C.* 661.)

Paupers not removable to or from extra-parochial places.

Bridewell v. *Clerkenwell*, 2 *Salk.* 486; *Carth.* 515; 1 *Ld. Raym.* 549. H. served seven years to a hemp-dresser in the precinct of Bridewell, and afterwards lived in Clerkenwell, without gaining a settlement, and the justices removed him to Bridewell as his last legal settlement, by an order which set forth Bridewell to be an extra-parochial place. *Holt*, C. J. "If a place is extra-parochial, and has not the force of a parish, the justices have no authority to send any man thither; and so it was resolved in the case of Sir *J. Osborn*. Possibly a place extra-parochial may be taxed in aid of a parish, but a parish shall not in aid of that. This is *casus omissus*." Order quashed.

A pauper may be removed to the parish in a hamlet of which he gained a settlement, though such hamlet was not rated to the poor of the parish.

Rex v. *Tamworth*, *Cald.* 28; 2 *Bott*, 633. T. Goff and family were removed from the hamlet of Bolehall and Glascote to the parish of Tamworth, adjudging their settlement to be at Sirescote, in the parish of Tamworth, and ordering the overseers of Tamworth to receive them. Order confirmed. The pauper was hired for a year, and served that year at Sirescote, which is a hamlet consisting of one house only, and between three and four hundred acres of land; but had never contributed to the poor of the parish of Tamworth, nor had ever been assessed thereto; but had been always assessed and paid to the support of the church of Tamworth. No overseers had ever been appointed for the hamlet of Sirescote. The pauper and his family were delivered to the churchwardens of the parish of Tamworth. It was insisted, that the circumstance of the hamlet never having contributed towards those burthens which the law threw upon the whole parish was immaterial, and that this place could never be considered as a

vill within the 13 & 14 Car. II. c. 12, there being only one house, and no overseers, and that this was a part of the parish. On the other side it was contended, that this was a distinct vill, independent of the parish, and to which no pauper could be sent until it had officers duly appointed: that the justices had stated this to be a hamlet, and adjudged that the pauper had therein gained a settlement. By Lord *Mansfield*, C. J. "There is no doubt at all: the place is averred to be within the parish where the hiring and service were had and performed, and it has no township or vill within the stat. of Car. II. where officers are appointed, and therefore the justices could not remove the pauper there; here are no overseers, no separate economy: the adjudication is to Sirescote, as part of the parish of Tamworth." The other judges concurred. Both orders affirmed.

1. *Place from and to which an Order of Removal may be made.*

Rex v. *Saighton-on-the-Hill*, 2 *B. & Ald.* 162. Removal from St. Bridget, Chester, to Saighton-on-the-Hill. Order confirmed. Case:—The pauper, Joseph Gill, being settled in Saighton-on-the-Hill, about twenty years ago acquired a subsequent settlement by renting a tenement in the township of Gloverstone, in the parish of St. Mary-on-the-Hill, in the city of Chester, in which parish there are several townships, each separately maintaining its own poor. Of these townships Gloverstone was one, and was situated in the county palatine, and not in the city. At the time the pauper obtained a settlement in Gloverstone it was a township, having overseers, and maintaining its own poor, which continued to be the case until about ten years ago, when all the houses in the township were taken down for the purpose of enlarging Chester castle. There are now no buildings in the township of Gloverstone, except part of the courts of the county, and some barracks and other buildings belonging to the Barrack Board. No overseers have been appointed for the township of Gloverstone for the last ten years, and there is no place within the township inhabited by persons capable of being appointed overseers. *Abbott*, C. J. "The authority of magistrates to remove paupers exists only and is derived from the express provisions of an act of parliament; and in a new case the best mode for the court is to form their judgment on the very words of the act. There may be many cases where a pauper having no settlement in the place where he may happen to be, may still not be removable from it; either because he has no settlement at all, or because the parish officers are not enabled to discover the place of his settlement. The words of the act are, that any two justices of the peace may, by their warrant, remove and convey persons likely to be chargeable to the parish where he or they were last legally settled. It is, therefore, enough for the court in deciding this case to say, that Saighton is not the parish where the pauper was legally settled, inasmuch as he appears to have subsequently acquired a settlement in Gloverstone, by which the former settlement was extinguished. The justices, therefore, in this case had no authority to remove the pauper; and the sessions have done wrong in confirming their order." *Bayley* and *Holroyd*, Js., concurred.

Where the pauper acquired a settlement in a township which was afterwards extinguished, he could not be removed to a prior settlement.

Reg. v. *Tipton*, 2 *G. & D.* 92; 2 *Q. B.* 215. The facts are given in the judgment delivered by Lord *Denman*:—"The question in this case arises upon the removal of Elizabeth Shaw from Tipton to the township of the borough of Hales Owen. The sessions quashed the order, and stated a case in substance as follows. Previous and up to the year 1832 the parish of Hales Owen consisted of fifteen townships, twelve of which are in the county of Salop, and three in the county of Worcester. The three latter were always independent of the other twelve, and of each other, for the purpose of maintaining the poor. The former twelve, 'from time immemorial (until 1832),' constituted one parish, having one set of overseers, and maintained their poor as such *parish*. In 1832, (*a*) by virtue of a writ of mandamus (on the application of one of the twelve townships, Oldbury), the parish of Hales Owen became divided, and all the twelve townships in the county of Salop have since maintained their poor apart, have had separate overseers, and none have since been appointed for the parish of Hales Owen. About ten years before such subdivision, the pauper was born a bastard, in the parish workhouse in the township of the borough of Hales

Birth in a township, which is *afterwards* made separate, confers no settlement there.

(*a*) *Rex* v. *Salop*, p. 18.

1. *Place from and to which an Order of Removal may be made.*

Owen, and the question is, whether she gained a settlement in the latter township by such birth; and that must depend upon this, how far, before such subdivision, each township ought to be considered as connected with or independent of the parish for purposes of settlement. Generally speaking they are not so connected: any act by which a settlement may be gained has no reference to the township in which it may be acquired, but to the parish only. Whether that settlement was gained in the township of the borough of Hales Owen or Oldbury, or any other of the ten townships constituting the parish of Hales Owen, was before the separation wholly immaterial: it was not a settlement in township A. or B., but in the district, where alone it could be gained, the parish. This point has been, to a certain extent, under the consideration of the court in respect of this same parish and townships. In *Rex* v. *Oldbury* (*post*,), there was an order of removal into that township, Oldbury, and in support of it a former order was produced, removing the pauper into the parish of Hales Owen, against which there had been no appeal. Such latter order was relied upon as conclusive against the *township* of Oldbury, and was held so to be by the Court of Quarter Sessions. This court, however, decided, with some hesitation, that it was not; which decision could only have been upon the ground that a settlement in the *parish* is not a settlement in *the whole*, and also in *every part* or township in it; because, if it had been, the sessions were unquestionably right; for if, as was then contended, the proof of a settlement there given applied to the parish and to every township equally, and to the same extent, the order of removal unappealed against would have been conclusive, and all evidence against it inadmissible. The *decision* in *Rex* v. *Oakmere* (*infra*), cited in the argument, was to this effect, that the birth of a pauper in the forest of Delamere, whilst extra-parochial, gained no settlement in the township of Oakmere, which was constituted such township by act of parliament long after; or, in other words, that the state of things at the time of the birth was to be considered, and then no settlement could of course be gained. So here, by 54 Geo. III. c. 170, s. 3, the settlement of the pauper at her birth was in the *parish* of Hales Owen, that being the 'district on whose account the pauper's mother was received and maintained in the house.' The *locality*, therefore, of the township of the borough of Hales Owen is excluded, and all the townships contributing to the workhouse stand on the same footing. Indeed, independent of the statute, the settlement by birth would have been in the *parish*. That being so, to sustain the order of removal into the *township* of Hales Owen, we must hold that a settlement by birth was gained equally in the *parish* and *each* of the townships composing it, for which we can find no warrant of direct authority or analogy in the law of settlement. It has been suggested, as a difficulty, that, unless we so hold, the parish, by subdivision, will get rid of settlements, and that persons who would otherwise have gained them may have none. A similar result happened under circumstances nearly the converse of the present, in the case of *Rex* v. *Saighton-on-the-Hill*, (p. 1035). There the pauper had gained a settlement in Saighton, and afterwards in Gloverstone, *then a township*. Afterwards, by certain alterations in the castle of Chester, all the houses in Gloverstone were pulled down, and it ceased to exist as a township. The removal was accordingly into Saighton, as the last practicable place of settlement. The court, however, decided that the settlement in Saighton was extinguished by that in Gloverstone, though the necessary effect of the decision was to leave the pauper without any settlement at all. Upon the whole we are of opinion, that the decision of the sessions was right."

Remarks on Rex v. Oldbury.

Rex v. Oakmere.

In *Rex* v. *Hunnington* (p. 407) it was held that no settlement could have been acquired in Hales Owen prior to 1834.

None can be acquired till after the separation.

Rex v. *Oakmere*, 1 *D. & R.* 427; 5 *B. & Ald.* 775. John Bradford was removed from Over Tabley to Oakmere. Order confirmed. The township of Oakmere was before and until the passing of an act of parliament, 52 Geo. III., part of the forest of Delamere, and extra-parochial. By that act, intituled, "An Act for Inclosing the Forest of Delamere," the forest

A district previously extra-parochial, was by act of parliament made a township, from thenceforth

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to maintain its own poor.

A bastard born within the district *previously* to passing the act, is not settled there.

was, in December, 1819, divided into four separate townships, of which Oakmere was one. Since that time overseers of the poor have been duly appointed for the township of Oakmere. The pauper was born many years ago, a bastard, in Oakmere, whilst it was extra-parochial, and part of the forest of Delamere. The question was, whether the removal to Oakmere, as the birth-place of the pauper, could be sustained? The following were the clauses in the act on which the question depended: "And be it further enacted, that the district called or known by the name of Delamere Forest, and all such lands lying contiguous thereto, as are now extra-parochial, shall, as soon as the moiety of the said forest, which is hereby directed to be allotted to and amongst the persons enjoying rights of common thereon, shall have been so allotted, divided, and inclosed, be and be deemed and taken to be a parish, and called and known by the name of Delamere parish, and shall for ever thereafter be and be deemed and taken to be a rectory. And be it further enacted, that the said commissioners shall, and they are hereby authorised and required to, divide the said parish into two or more townships, to be called and distinguished by such names as the said commissioners shall appoint; and when the same shall be so divided, each and every such township shall, from thenceforth for ever thereafter, provide for its own poor, make and maintain its own roads, and have, enjoy, and be vested with such and the like powers, privileges, and immunities, and be subject to the same regulations as are incident to, and as are had, held, and enjoyed by the several other townships within the said county of Chester, by the laws and statutes of that part of the united kingdom of Great Britain and Ireland called England." *C. a. v. Abbott*, C. J. "This case arises on the act 52 Geo. III. for inclosing the forest of Delamere, and the question is, whether the district newly created into a township under this statute, which before was neither in any parish nor township, is to be considered as if it had formerly been a parish or township, with regard to settlements; or only as becoming so from the time of its creation under the act, and as if it had formerly been wholly uninhabited? And we are of opinion that the latter is the true construction and effect of the statute. If the former construction should be adopted, much inconvenience and litigation might ensue. Many parishes wherein paupers have been considered as legally settled and have accordingly been maintained, might relieve themselves from their burden, by removing to this new township not only illegitimate persons born within the district whereof the township consists, but also many of those who had been servants, or apprentices, or had rented tenements of the yearly value of 10*l.* within it. By such removals a heavy burden might be thrown at once upon the new township. It is true, on the other hand, that the new township, having now overseers, may remove persons which the inhabitants of the district could not previously do; but then the inhabitants were not previously under the same legal obligation to maintain the poor who might be found within it as a parish or township; the consequence of which must have been, that such poor would in general find their way without removal into those parishes or townships that were compellable to maintain them, so that the new power of removal would not be likely to afford a relief commensurate with the new burden; and the former want of the power of removal might have the effect of charging this new township with the maintenance of persons under circumstances, in which, if the district had been previously a township, the inhabitants might have taken care to prevent the burden from falling upon them, as by the removal of unmarried pregnant women, or of persons coming to settle on tenements under 10*l.* a year, especially before the 35 Geo. III. c. 101. The latter, indeed, would not acquire a settlement for themselves, but settlements might be derived under them by apprentices and servants. And this is not like the case of a modern appointment of overseers to places that formerly had no such officers, because all such places must have been vills from time immemorial, and, consequently, under a legal obligation to maintain their poor, and

See *Rex* v. *Oldbury, post.*

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possessing a legal right to the appointment of officers; and by such appointment to remove persons under the same circumstances as other townships or parishes might do. The consequence of this opinion is, that both the orders must be quashed."

The parish of C. was divided into seven townships, each maintaining its own poor. A waste salt marsh within the parish, not belonging to any township, was awarded by the commissioners of an inclosure act to pay a quantum of rate to each of the townships, and a settlement having been gained in such waste, the removal of the pauper to the *parish* of C. was bad, there being no overseers of the *parish*.

Rex v. *Cartmel*, 4 *Nev. & M.* 357; 2 *Ad. & Ell.* 262. R. Armer was removed from Burton to Cartmel. Order confirmed. Case:—The settlement relied upon by the respondents was by hiring and service at East Plain, in 1822. East Plain was *before* the act of parliament and award hereinafter mentioned part of a salt marsh formed by the gradual retiring of the sea, but occasionally overflowed by the tide, which salt marsh was part of the waste lands within the parish of Cartmel, and is bounded on the one side by the sea, and on the other by the ancient inclosed lands of the townships of Lower Holker and Lower Allithwaite, both within the parish of Cartmel; but whether East Plain was within or formed part of any of the other five townships hereinafter mentioned in the said parish, no other evidence was given than its local situation as above set forth, and the act of parliament and award hereinafter mentioned. There are in the parish of Cartmel seven townships, viz. Upper and Lower Holker, Upper and Lower Allithwaite, Broughton, Staveley, and Cartmel. Each of them maintains its own poor separately, and has a separate poor rate, and separate overseers. All the lands in the parish (except it be the said salt marsh, which East Plain is part of,) are comprised within one or other of these townships. There are no overseers of the poor for the parish at large, nor have any ever been appointed; neither is there or has there ever been any poor rate for the parish at large, or any parochial funds out of which the poor can be maintained. The notice of appeal against the order of removal was signed by all the churchwardens and all the overseers of the poor of all the said townships respectively, wherein they described themselves as the churchwardens and overseers of the poor of the parish of Cartmel, and the appeal was entered as that of the churchwardens and overseers of the poor of the parish of Cartmel. The pauper was delivered to the overseer of the township of Lower Holker, with whom he still remained. By stat. 36 Geo. III. c. lxiv. (private), "For Improving, Dividing, and Inclosing the Commons, Waste Grounds, and Mosses, in the parish of Cartmel," (which act was made part of the case,) it was enacted, "that the commissioners appointed by the said act should draw up an award, which should specify and direct in what township or division within the said parish of Cartmel the several messuages, tenements, lands, mosses, and hereditaments, which should be exchanged, divided, or allotted by virtue of that act, should lie, or be parcel, and should be charged and pay all such taxes and assessments as should become due and payable in respect thereof." The commissioners in 1809 made their award, which, after allotting East Plain to certain persons, went on to order "that the said allotment or parcel of ground shall from time to time, and at all times hereafter, be subject to, and charged, and chargeable with the payment of such proportion of all rates, taxes, and assessments, parliamentary, parochial, or otherwise, out of the yearly value thereof, to the several townships or divisions within the said parish of Cartmel as are hereinafter mentioned, (that is to say,) to the township or division of Broughton after the rate of two-thirteenth parts or shares of the whole annual value thereof," &c. (the case then proceeded to state the proportions in which East Plain was directed by the award to contribute to the other townships respectively); "such several rates or assessments to be made in proportion as the said allotment bears in value with the estates of other proprietors in the said several townships or divisions." Since the making of the above-mentioned award the poor rates in respect of East Plain have been paid to the several townships within the parish of Cartmel, in the proportions named in the award. Thus, if there be a rate of 6*d.* in the pound on the annual value of lands in the township of Broughton, then East Plain pays to the overseer of the poor for the township of Broughton a

rate of 6*d.* in the pound, or two-thirteenth parts of the annual value, and so *mutatis mutandis* of the other townships. On these facts the appellants contended, that as East Plain was a part of a marsh which was derelict of the sea, and which marsh abutted on the townships of Lower Holker and Lower Allithwaite, East Plain was situate within one or other of those townships, and that the respondents ought to have ascertained within which of them it was situate, and to have removed accordingly; and that a removal to a parish which had no poor rate and no overseers was bad. But the sessions held, that as East Plain, where the pauper gained a settlement, was within the appellant parish of Cartmel, it was for the appellants to show, not merely that there was no poor rate made and no overseer ever appointed for the parish at large, but that East Plain was within some one or other of the seven townships, and they were of opinion that as far as appeared it might be within none of those townships, although it was within the parish of Cartmel. They therefore confirmed the order. Lord *Denman*, C. J. "It is impossible to say how the matter may turn out on further inquiry. The mere fact of the inclosure is not sufficient to guide us; but at all events we must see that no party is called on to do that which he is not bound to do." *Littledale* and *Williams*, Js., concurred. Order of sessions quashed.

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Estoppel.

The removing parish may be estopped from saying that the place does not maintain its own poor. *Reg.* v. *J. Westmorland*, 13 *L. J.* p. 113. *M. C.*

If the place is a township, but described as a parish, and no appeal is had, it is conclusive.

Spitalfields v. *Bromley*, 18 *Vin. Abr.* 468; 2 *Bott*, 890. A pauper was sent to the parish of Stepney, who did not appeal. On removal of the order into the King's Bench, exception was taken, that the removal ought to have been to the township of Spitalfields; for Stepney is divided into four townships, and the poor have been removed from one township to another, in the same parish, and the statute takes notice of townships as well as parishes, and Spitalfields is a hamlet of Stepney. By the court: "If a person is removed to a wrong place, that place ought to appeal, and so Stepney ought to have done if it were a wrong place, or else the order will be conclusive upon them; but this is a matter here out of the record. Justices of the peace are not obliged to take notice of the divisions of parishes into townships and villages which maintain their own poor severally and distinctly; and Stepney here, upon an appeal, might have shown that the person did belong to the township of Spitalfields, which might have been a reasonable cause to discharge the order. Two townships within a parish are the same as two parishes; yet churchwardens are overseers of the poor of the whole of the parish, (though so divided,) and have a superintendency over the whole villages and townships."

Churchwardens are overseers of a whole parish, though it be divided into townships.

Where there is a parish and township of the same name, and the order is delivered to the officers of the township, that township will be concluded if it does not appeal.

Rex v. *Kirkby Stephen*, *Burr. S. C.* 664; 2 *Bott*, 894. The parish of Kirkby Stephen consists of ten different townships, who maintain their respective poor, and have separate overseers. The township of Kirkby Stephen and the township of Wharton are two of them. The pauper, W. Greer, was removed from Newport, by an order directed to the officers of the *parish* of Kirkby Stephen, and adjudging his settlement to be in that *parish*, and removing him to that *parish;* and was delivered to the overseers of the *township* of Kirkby Stephen. But neither the *parish* of Kirkby Stephen, nor the *township* of Kirkby Stephen, appealed from the order; and the pauper remained in Kirkby Stephen, and was maintained by a sister, in the township of Kirkby Stephen, for near a year and a half; when his sister dying, he asked relief of the township of Kirkby Stephen, who thereupon got him removed by an order to the township of Wharton. Order quashed. By Lord *Mansfield* and the Court: "The original order made for the removal from Newport to the *parish* of Kirkby Stephen, must mean the *township* of Kirkby Stephen. The township was as a parish for the purpose of a removal to it; the poor within the parish not being maintained by the whole parish, but by the particular townships to which they respectively belong. The township of Kirkby Stephen ought in this case to have appealed. They could not get rid of this order but

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by appealing. And if they had appealed, the truth might have appeared. And when the facts had appeared to the justices upon the whole truth being disclosed, the pauper might in the end of the inquiry have been sent to Wharton." Order of sessions confirmed.

Distinctive character of churchwardens of a township.

Where there were two churchwardens appointed for a township, and two by the rest of the parish, and distinct rates were made by each of them, the churchwardens of the township might sue their predecessors without joining the churchwardens of the parish as plaintiffs or defendants. *Astle* v. *Thomas*, 2 *B. & C.* 271.

The parish of B. has no overseers but contains several townships, separately maintaining their own poor, one of which is named B., and the other B. P. An order of removal was made to the parish of B., and the churchwarden of the parish of B. placed the pauper in the workhouse of the township of B. The pauper in fact belonged to the township of B. P.: Held, by *Denman*, C. J., and *Littledale*, J., (*Taunton* and *Patteson*, Js., *dubitantibus*,) that the township of B. had a right to appeal, and that the order of removal was bad.

Rex v. *Bishop Wearmouth*, 3 *Nev. & M.* 77; 5 *B. & Ad.* 942. An order of removal from Botchergate to Bishop Wearmouth was confirmed. Case:—The order was made on the 28th of March, 1829, and the execution of it duly suspended; the suspension was taken off on the 12th of September, 1829, and a further order was then made by the magistrates on the churchwardens and overseers of the poor of the said parish of Bishop Wearmouth to pay the sum of 5*l.* 7*s.* 6*d.*, being the expense incurred by the suspension of the said order of removal, to William Kidd or Luke Kidd, upon demand, the said Luke Kidd being the overseer of the township of Botchergate, and father of the said William Kidd. The parish of Bishop Wearmouth consists of seven townships, each maintaining its own poor separately, and having separate and distinct overseers. Two of these townships are called Bishop Wearmouth and Bishop Wearmouth Panns respectively; and in the latter the pauper and his family were legally settled. There are no overseers of the poor of the parish of Bishop Wearmouth. When the order of removal was made, both the magistrates who signed the same, and the overseers of the removing township, knew of the division of the parish of Bishop Wearmouth into townships, each maintaining its own poor, and that the pauper's settlement was in the township of Bishop Wearmouth Panns, though in the order of removal it was declared and adjudged by them to be in the parish of Bishop Wearmouth. The suspended order was not served till after the suspension was taken off; namely, on the 28th of September, 1829. The pauper and his children were taken by W. Kidd from the removing township to the township of Bishop Wearmouth Panns, with directions from the overseer of Botchergate to serve the order on and deliver the paupers to the overseer of the township of Bishop Wearmouth Panns, and to demand from him 5*l.* 7*s.* 6*d.* W. Kidd, accordingly, on the 28th of September, took the paupers to that township, and saw the overseer there, to whom he delivered the order, and demanded from him the above sum. The overseer of Bishop Wearmouth Panns stated that he believed the settlement of the paupers was in his township; but as the order of removal was not directed to the overseers of that township, but to the churchwardens and overseers of the poor of the parish of Bishop Wearmouth, he objected to it on account of its informality. Ultimately, however, he agreed, in order to save further expense and trouble, as he had no doubt of the paupers belonging to that township, that he would waive the objections he had taken to the order, if the overseer of the removing township would consent not to call for the 5*l.* 7*s.* 6*d.* This proposal, however, not being acceded to, W. Kidd (to save expense) took the paupers to the workhouse of a neighbouring and distinct parish, leaving them as boarders; and returned home, taking with him the order of removal. The paupers remained there till the 22nd of October following, when Luke Kidd, the overseer of the removing township, having paid for their board, took them with the same order to the same overseer of Bishop Wearmouth Panns as before, and again attempted to prevail upon him to accept the paupers and pay the money. This, however, he refused to do, for the same reasons he had before assigned, acknowledging at the same time that the paupers belonged to his township; whereupon Luke Kidd took the order to Mr. W. Hills, one of the churchwardens of the whole parish of Bishop Wearmouth, and who resided in the township of Bishop Wearmouth, and informed him of the refusal by the overseer of Bishop Wearmouth Panns to receive the

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paupers. Mr. Hills accompanied L. Kidd to try to prevail on the overseer of Bishop Wearmouth Panns to take the paupers. They found him at his place of business, situate in a distant parish (Sunderland), but he still refusing to receive the paupers, L. Kidd, the overseer of the removing township, served Mr. Hills, the churchwarden of the whole parish of Bishop Wearmouth, with the removal order, Hills being then in the parish of Sunderland; and the paupers were lodged by him in the workhouse of Bishop Wearmouth township, and maintained by that township till the appeal was heard. The questions were, whether the township of Bishop Wearmouth was entitled to appeal, and whether the order directed and served as aforesaid, was, notwithstanding the objection made to it at the time of such service, valid and binding. *Denman*, C. J. "Great pains have been taken to perplex this case by the magistrates and the officers of the removing township. No doubt it was the duty of the magistrates when they ascertained that the parish was divided into townships, and the settlement of the paupers was in one of those townships, to remove the paupers to the township bound to maintain them. If they had done so here there would be no dispute. But the order is to remove to the parish of Bishop Wearmouth generally, which, for the purpose of maintaining the poor, has no existence. Then the officer of the removing township sees the officer of the township to which the removal ought to have been made, and the latter objects to receive the pauper, because the order is to remove to the parish, unless the former will waive some costs; he refuses to do so. The paupers are then taken to the churchwarden of the whole parish of Bishop Wearmouth. He was not overseer of the township of Bishop Wearmouth, and as far as that township is concerned in the appeal, must be considered an entire stranger. He took the paupers with the order to another township which happens to be of the same name with the parish to which the removal was directed to be made. That township, therefore, had the paupers under an order directed to a parish of the same name: it was not bound to receive them, and was a volunteer to a certain extent; and the question is, whether it comes within the stat. 13 & 14 Car. II. c. 2, s. 2, which gives the right of appeal to all persons who think themselves aggrieved by any judgment of the justices. That clause, as it seems to me, ought not to be construed so as to let in any one who, taking a capricious view of the order, may think himself aggrieved by it, when it is clear that he was not intended to be included in it, but must be confined to those who may have reasonable ground for thinking themselves aggrieved. I think, however, that there was in this case reasonable ground for the inhabitants of Bishop Wearmouth to think they might suffer by this order, whereby the paupers were directed to be removed to a parish of the same name as the township, and that therefore they had a right to appeal. They might have a reasonable apprehension that they would be fixed with the pauper if they did not appeal, and, consequently, might think themselves aggrieved by the order. The appeal was heard, and the order of removal was confirmed on proof of a settlement in the township of Bishop Wearmouth Panns, the inhabitants of which, for the purpose of this appeal, must be considered as third persons. The sessions have clearly done wrong in this respect, and the order must be quashed." *Littledale*, J. "The order of sessions must evidently be quashed, because it confirms an order of removal to the parish of Bishop Wearmouth, and it appears clearly that the settlement of the pauper was in a township within the parish. It seems to me that the township of Bishop Wearmouth had a right to appeal. They had just reasons to apprehend that they would be fixed if they did not appeal. They therefore come within the words of the stat. 13 and 14 Car. II. c. 12, s. 2. They had very good reason to think they might be injured by the order; for though the justices thereby directed the paupers to be removed to the parish of Bishop Wearmouth, the officers of the township of that name might suppose that the paupers must be maintained by some one of the townships within that parish, and that their township being of the same name as the parish, was the one intended by the justices. The order was not binding on Bishop Wearmouth Panns.

St. of Car. II. gives a right of appeal to reason and not to caprice.

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because not directed to that township." *Taunton*, J. "The order of sessions is wrong, because the paupers were settled in Bishop Wearmouth Panns, and it was intended to remove them thither: but the sessions have confirmed an order removing them to the parish of Bishop Wearmouth, which does not maintain its own poor. This is not a mere verbal mistake, as in *Rex* v. *Kirkby Stephen* (p. 1039), for the names of the parish and township are not the same, and the thing done was not according to the intention. But I have great doubt whether the inhabitants of the township of Bishop Wearmouth had reasonable cause to think themselves aggrieved. The statute does not give the right of appeal to every person, who, upon any inconsiderate view of his case, may think himself aggrieved, but only to persons who have reason to think themselves aggrieved. I am not satisfied that the appellant township would have been concluded by this order if they had not appealed against it. It never had been served on the officers of that township, nor was it served by the officers of the removing township. My doubt, however, is not so serious as to make me differ from the rest of the court." *Patteson*, J. "For the reasons already given, the sessions ought clearly to have quashed the order of removal. It is to be regretted that the magistrates should have ordered the paupers to be removed to a place where they were clearly not settled. *Spitalfields* v. *Bromley*, (p. 1039,) goes to this extent, that magistrates are not bound to notice the division of parishes into townships; and, therefore, if they do not know that a parish is so divided, and make an order directing a pauper to be removed to the parish, such an order may not be wrong. But if they are informed before they make the order that a parish is divided into townships maintaining their own poor separately, and that the settlement of the paupers is in one of those townships, it is their duty to direct the paupers to be removed to the township bound to maintain them. It seems to me also that the service of the order on the township of Bishop Wearmouth was not good. The order was directed to the churchwarden and overseers of the poor of the parish of Bishop Wearmouth, but there were no overseers of the poor of that parish. It was not served on the overseers of the township of Bishop Wearmouth, but of Bishop Wearmouth Panns. I doubt, therefore, whether the inhabitants of the township of Bishop Wearmouth had any right to appeal, because, not being bound to receive the paupers, they were, to a certain extent, volunteers. At the same time, as the order was served on the churchwarden of the parish, who was in some respect the representative of all the townships within it, and he in fact placed the paupers in the workhouse of the township, the officers of the latter may be considered as having received and maintained the paupers under the order, and may have thought it obligatory on them so to do, and, consequently, that the township might be aggrieved by it. I therefore yield on this point (though not without much doubt) to the opinion of my lord and my brother *Littledale*." Order of sessions quashed.

The right of appeal is not given to persons who think themselves aggrieved, but have some reason for it.

Removal *to the township* of Bingley, the township not maintaining its own poor, but being in the *parish of* Bingley, is informal, and the sessions may amend it.

Rex v. *Bingley*, 2 *Nev. & M.* 103; 4 *B. & Ad.* 567. I. Rushworth was removed from Heslington, St. Lawrence, to the township of Bingley. Order confirmed. Case:—The parish of Bingley consists of several townships, of which the township of Bingley is one. The parish maintains its own poor collectively; and there are no separate overseers for the township of Bingley. The question was, whether the order of removal to the *township* of Bingley could be supported. *Cur. adv. vult. Denman*, C. J., said (after referring to *Rex* v. *J. Carmarthen* (*post*) as in some degree analogous,) that "the present order was informal, but might have been amended at the sessions; and that being so, the court thought that the case should go back to the sessions, that the amendment might be made."

Removal to a village, a part of a parish, is void.

Rex v. *Swalcliffe*, *Cald.* 248; 2 *Bott*, 786. An order of removal to Ascott, a large populous village, part of the parish of Witchford, but maintaining its poor in common with Witchford, is a mere nullity, and not conclusive, although unappealed from.

Removal to the parish of *Poole*, that being the

Rex v. *Topsham*, 7 *East*, 466. This was an order of removal from Topsham to "*the parish of Poole, or town and county of Poole*," and addressed to *the churchwardens and overseers of* "*the parish of Poole, or town and*

county of Poole." There was in fact no such parish as the parish of Poole, but the town and county of Poole consisted but of one parish, and the name of that parish was St. James's in Poole. It was held, that it was no objection to the description of the *parish of* Poole, omitting the mention of its tutelary *saint*, there being but one parish in the town and county of Poole, and Poole being the common name of the place. And that the parish officers of Poole had themselves considered this description sufficient to call upon them to appeal to the sessions against the order, by whom the objection to the misnomer had been overruled.

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common name, is sufficient.

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2. On the Complaint of whom.

2. *On the Complaint of whom.*

By the 13 & 14 Car. II. c. 12, s. 1 (p. 1010), the justices are empowered to make an order of removal, "*upon complaint made by the churchwardens or overseers of the poor of any* parish, to any justice of peace, within forty days after any such person or persons coming so to settle as aforesaid, in any tenement under the yearly value of ten pounds, for any two justices of the peace, whereof one to be of the quorum, of the division where any person or persons that are likely to be chargeable to the parish shall come to inhabit, by their warrant to remove and convey such person or persons to such parish where he or they were last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he or they give sufficient security for the discharge of the said parish, to be allowed by the said justices."

The complaint must be by the churchwardens or overseers.

The necessity of proceeding according to this provision of the statute has been long established.

Rex v. *Hareby, Andr.* 361; 2 *Bott*, 811. An order of removal did not set forth any complaint made. The court: "The complaint is the foundation of the jurisdiction of the justices; and therefore the order must be quashed."

Order of removal must set forth the complaint of the parish officers.

Western Rivers v. *St. Peter's*, 2 *Salk.* 492; 3 *Salk.* 254; 2 *Bott*, 803. Exception to an order of removal, in that it was said to be upon complaint only and not of the churchwardens or overseers. By the court: "This exception is fatal; for no one can disturb a man coming into a parish but they that have authority to do it. A complaint from one not concerned is nothing: it may be the parish is willing to keep him."

Same point.

Words of surplusage may be rejected. Therefore, if the order purports to be made on the complaint of the guardians and overseers, and either of them have no authority, their names may be rejected. *Reg.* v. *Goodall*, 6 *Jur.* 86.

Complaint of unauthorised person rejected as surplusage.

Spalding v. *St. John Baptist, Fol.* 267; 2 *Bott*, 639, &c. The order was, "To the churchwardens of Spalding, and to the churchwardens, &c. of St. John Baptist: whereas complaint hath been made by you ——." It was moved to quash the same for the uncertainty, because it did not say by which. But by *Parker*, C. J. "Sure that is well enough; for it is upon complaint of the right, if both complain."

"Complaint by you," where sufficient.

An order was made on the examination of J. L., *one* of the overseers of the poor. One ground of appeal was, that it did not appear on the face of the examination, that it was made by the majority of the overseers. The complaint is sufficient. *Reg.* v. *Bedingham*, (*post.*)

One overseer may complain.

The jurisdiction of the justices depends on the complaint of chargeability being made, not on the *fact* itself. *Reg.* v. *Buckingham*, (p. 1051).

The *complaint*, not the fact, material.

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3. To what Justices.

3. *To what Justices.*

Rex v. *Great Yarmouth*, 6 *B. & C.* 646; 9 *D. & R.* 682. R. Lenny was removed from Woodbridge to Great Yarmouth, on the complaint of the churchwardens and overseers of Woodbridge. G. Thomas, one of the magistrates who signed the order, was one of the churchwardens of Woodbridge. *Bayley*, J. "I think there was no objection to this order of removal, on the ground of interest in the magistrate. The 16 Geo. II. c. 18, authorises justices to act (in the case therein mentioned), notwith-

The removing justice must not be one of the complaining churchwardens.

The justices may act, though rated inhabitants.

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standing they may be interested by reason of their being rateable. It is impossible to say that a churchwarden or overseer has any other interest in the removal of a pauper, except in his character of a rated inhabitant. He may, indeed, in the character of churchwarden, become liable to costs: but that responsibility can only attach to him, in consequence of his improperly removing the pauper. It is, therefore, against his interest to make any order of removal as far as costs are concerned; for, by so doing, he subjects himself to a responsibility which would not otherwise attach to him. But, I think that it is a fatal objection to this order, that the person who was the complainant heard and adjudicated upon the complaint. I cannot consider him as divested of the character of churchwarden at the time when the order was made. It purports to be made on the complaint of the churchwardens and overseers; and the 43 Eliz. c. 2, commits the management of the poor to the churchwardens and overseers. From the nature of the thing, the complaint must have been made by the churchwardens and overseers. Then, if the churchwardens made the complaint, the person who was one of the complainants heard and adjudicated upon it. Upon that ground, I think the order of removal was bad, and that the order of sessions confirming it ought to be quashed" *Holroyd*, J. "I also am of opinion that the order of removal is invalid, on the ground that the same person cannot, in point of law, be the complainant and the person hearing the complaint. The 16 Geo. II. c. 18, enacts, that magistrates, who, by reason of being rateable to the relief of the poor in any parish, are virtual parties to the complaint of chargeability upon which an order of removal is founded, shall be competent to act in the making of such order. In this case, the parish officers are not only virtual but acting parties to the complaint. Now, it is quite inconsistent that the same person should be a party to and a judge in a suit. The two characters are incompatible with each other. In this case, therefore, as one of the parties who made the order was churchwarden of the removing parish, and appears to have adjudicated upon a complaint to which he was a party, I think the order of removal was bad." *Littledale*, J. "I am of the same opinion. The 16 Geo. II. c. 18, which enabled justices having an interest in the removal of a pauper, by reason of their being rateable in the parish, contemplated those cases only, where there was one set of persons to complain and another to adjudicate, viz. churchwardens and overseers, as persons distinct from the justices to whom the complaint is made." Order of sessions quashed.

The justices' authority must appear. (*a*)

It must appear upon the face of the order, that the parties making it are justices of the peace; thus in *Walton* v. *Chesterfield* (5 *Mod.* 322; 2 *Bott*, 775), an order was quashed, because it was only "whereas complaint hath been made unto us," without reciting their authority as justices.

Complaint may be to one justice, but the order of removal must be by two.

Rex v. *Westwood*, *Sett. & Rem.* 107; 1 *Stra.* 73; 2 *Bott*, 782. On complaint to one justice, two justices adjudge and remove; and it was held to be well. Otherwise, where one justice sets his hand to the order in the absence of the other.

One justice may order a pauper to be brought up; but two must be present at the examination.

Ware v. *Stanstead Mount Fitchet*, 2 *Salk.* 488. Exception to an order, for that it was said, it appears upon examination *before us or one of us*. By

(*a*) In *Morrell* v. *Marten*, 3 *M. & G.* 581, it was held, that a plea by a constable merely showing the warrant of distress was bad, and that the jurisdiction of the parties ought to have been alleged. It was a distress for a highway rate; and C. J. *Tindal* observed, "The cases are express, that if a person be assessed to the relief of the poor who is not by law liable, and his goods are taken by warrant of distress, an action of trespass will lie against the overseers levying under the distress. *Nicholas* v. *Walker*, p. 12; *Milward* v. *Caffin*, p. 333; or against the magistrates who issued the warrant. *Amherst* v. *James*, p. 16; *Weaver* v. *Price*, p. 355; and the ground of these decisions appears from what is said, *Nicholas* v. *Walker*, viz., that magistrates have but a particular jurisdiction to make warrants, to levy rates well assessed."

the Court: "The examination ought to be before both, because both are to make the judgment of removal." And *Gould*, J., said, "The statute directed and the practice was, to make *complaint* to one justice, and he grants his warrant to bring the pauper before two justices, and then they two examine and remove." (See 49 Geo. III. c. 124, s. 4, p. 1015.)

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Where it is doubtful, if an examination was taken before one or two justices, it will be presumed to have been before two, especially if the ground of appeal does not deny the fact.

Reg. v. *Silkstone*, 2 *G.* & *D.* 396; 2 *Q. B.* 520. Case:—One of the examinants stated that the witness remembered the birth of the husband of the pauper in Cawthorne, and that she was present when he was born. At the foot of this examination was written, "Sworn before *me*, the day and year first above written, and *I* do hereby certify that the above examination was read over and explained to the said examinant, previously to her being sworn thereto, who appeared perfectly to understand the same. W. Bennet Martin, H. Watkins." One ground of appeal was, that this examination is illegal, for though signed by two justices, it purports to have been taken before one justice only. The sessions considered the jurat to be defective, and that there was no examination disclosing any legal evidence of the birth settlement in question, and discharged the order. The order of removal and the examination itself were returned to the certiorari. During the argument it was observed, that although the examination had been returned to the certiorari, it was no part of the case. Lord *Denman* said, "We must refer to the examination, for the objection refers to it, and says it is bad." He afterwards added, "This question has arisen entirely from the magistrates having neglected to comply with the usual practice in the manner of drawing up the examination. The ground of appeal is that, though the examination is signed by two justices, it '*purports*' to be taken by one only. The objection is very clearly taken, and it was pointedly relied upon at the trial of the appeal. Does the examination then purport to be taken by one justice only? I think, when we consider that the taking of the examination was a judicial act, which could not legally be performed unless by two magistrates, and that the examination and jurat cannot be said to do more than make it doubtful whether they state the examination to have been taken by two magistrates or one, that we may safely call in aid the presumption of 'omnia rite,' &c., and hold the examination good. I think the sessions were wrong, and their order must be quashed." *Williams*, J. "The question for our opinion is stated at the end of the case, and is whether the jurat was such as to require the sessions to reject the examination. I certainly feel some reluctance in agreeing with the rest of the Court. I do not see the utility of sustaining examinations, when nothing but a departure from the ordinary practice, which is so easy to follow, has exposed them to objection, and I am unwilling to get to the apices juris for the sole purpose of setting up a blunder. The case no where states that the examination was in truth taken before two magistrates, and, if evidence had been tendered of the fact, I doubt whether it could have been received to contradict the jurat. Upon the face of the examination itself, the jurat being one way, and the signatures the other, it was left in doubt whether one or two magistrates had taken the examination, and upon this evidence I doubt whether the sessions did not come to a right conclusion. But I cannot help seeing (and on that I found my judgment) that it was understood between the parties that all had really been rightly done; that the examination, though wrong in form, was right in fact, and that the appellants went to trial relying upon a mere flaw in the examination. For the objection being that the examination is bad because it '*purports*' to have been taken before one justice only, may be thought fairly to imply that the examination was really taken before two. I think that the examination, which is ambiguous, may be sustained on this ground." *Coleridge*, J. "I agree with my brother *Williams*, in regretting that due care has not been taken in drawing up this examination, and I go the length of saying I do not wonder at the decision of the sessions, for any one might infer, on looking merely at the body of the examination and the jurat, that the examination was taken before one justice only. But we are bound to give these proceedings the benefit of such legal presumptions

Examination referred to, though not part of the case.

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as can fairly be applied to them. Now here the examination and jurat will bear the construction that the magistrates who signed the examination were both present when it was taken, and the personal pronoun, which is used in the singular, may apply to each magistrate separately. In this state of things, I think the presumption that all has been done rightly may fairly be called in to determine the right construction to be, that the examination was taken before both magistrates, for otherwise it must be imputed to the single magistrate, who did take the examination, that he assumed an authority which the law does not allow; and to both magistrates who have signed the examination, that they have been guilty of misrepresentation and fraud, in making it appear that they were both present when the fact was not so." *Wightman*, J. "The examination has the signature of two magistrates. It is impossible to say to which of them the first person singular really applies, if it applies to one only; but it may apply severally to each of them. A promissory note in the form 'I promise to pay,' &c., signed by two persons, has been held to be the note of both the parties signing. (*a*) I think the pronouns 'I' and 'me' in this examination and jurat, are not to be applied to the magistrate first signing alone, or to either alone, but to each magistrate who has affixed his signature." Order of sessions quashed.

Examination must be by the justices who remove.

Rex v. *Wykes, Andr.* 238; 2 *Bott*, 818. One justice took the examination, and other two justices removed upon that sole examination, and in the order set forth that the party was examined *before themselves;* for which, and for not summoning the party before them, an information was granted against the two justices.

Rex v. *Hamstall Ridware*, 2 *Bott*, 503; (p. 667.) Whether it be necessary that two justices shall be together at the time, depends upon the circumstance whether the act to be done be judicial or merely ministerial.

The justices of one county cannot make an order of removal on an examination taken by the justices of another county.

Rex v. *Coln St. Aldwin's, Burr. S. C.* 136; 2 *Bott*, 673. The order of removal was made by two justices of Wiltshire, on an examination of the mother of the child removed taken before two justices of Middlesex, which had been transmitted to the justices of Wiltshire with an affidavit verifying that it was duly taken. In the order the justices of Wiltshire for themselves adjudged, "that it appears to them upon due examination and inquiry upon oath into the premises." *Lee*, C. J. "It is plain that these *Wiltshire justices* have grounded their adjudication upon the examination transmitted to them from the *Middlesex justices*. What they examined and inquired into upon oath, was the conveyance of the child out of one parish into the other. Now the examination on which they relied being taken by two justices of another county, and the person examined by those justices remaining still alive, for aught that appears to the contrary, it is plain this deposition ought not to have been received as evidence to ground their adjudication upon; though it might, perhaps, have been used as concurring evidence. I have often heard it declared here, and by *Eyre*, J., particularly, that both justices ought to be present at the *vivâ voce* examination of the witnesses." *Page*, J. "I remember a case where it was determined that both justices must be present; and that it is not sufficient for one justice to examine the matter and transmit it to the other, and that other to sign the order without examining into the matter itself. If the woman was alive, she ought to have been examined by these justices themselves. But even supposing that she was not alive, yet still I do not know that they could regard that Middlesex examination. It does not appear that the Middlesex justices had any jurisdiction, for no complaint appears to have been made before them; and if not, they could have no jurisdiction. The justices having set forth, though they were not bound to do it, the grounds of their adjudication, the court will judge of the sufficiency of them." *Chapple*, J., said, "That the justices founded this, their adjudication of the place of settlement, wholly upon the transmitted examination, which they ought not to have admitted at all."

Both justices ought to be present at the examination.

(*a*) See *March* v. *Ward*, 1 *Peake's N. P. R* 130; and *Chitty & Hulme on Bills of Exchange*, (*9th ed.*) 529.

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Examination taken and order signed by two justices separately, is not void but only voidable on appeal.

Rex v. *Stotfold*, 4 *T. R.* 596. M. Shaw and family were removed from Stotfold to Chilvers. Order quashed. Case:—The pauper was born at Stotfold, but his father's settlement was at Chilvers Coton, and the pauper had never gained any settlement in his own right, except as follows: He and his family were in 1776 removed from Sandon to Stotfold in the usual form, and were delivered to the parish officers of Stotfold, who received them, and did not appeal. The pauper and his family have ever since, till the present removal, occasionally resided in and been relieved by Stotfold. It was then proved by the respondents (but which evidence was objected to by the appellants, but overruled by the court), that the order of removal from Sandon to Stotfold, and the examination on which it was founded, were in fact taken and signed by the two justices *separately, and not in the presence of each other*, and that one of them, though a magistrate for the county of Hertford, took the examination and signed the order at his own house, situate in that part of Royston, which lies in Cambridgeshire, Royston lying partly in each county. Lord *Kenyon*, C. J., said, "That he was not then prepared to state from his papers the reasons at length upon which their judgment was founded, but that he had thoroughly and attentively considered the question; and that the result of his deliberations and of the rest of the court was, that the former order was only *voidable*, not absolutely *void;* and therefore that it was necessary for the parish who wished to avoid it, to have appealed against it in a regular course of proceedings; that it would be extremely inconvenient to permit a parish to set aside an order of removal at any distance of time, which had been acquiesced under for years without any dispute; and that a distinction had always prevailed between void and voidable instruments; a strong instance of which was, that on the construction of the statute Westminster 2, c. 1, which, though it enacts that all fines contrary to that act shall be *ipso jure* null, has been held to mean only voidable by some legal proceeding." Order of sessions confirmed.

An order of removal obtained and served may be abandoned, and a new order procured.

Reg. v. *St. Pancras*, 7 *Jurist*, 193; 3 *Q. B.* 347. This was an appeal against an order of Mr. Maltby, a metropolitan magistrate, for the removal of Eliza Stenson and child. Order confirmed. Case:—On the 27th May, 1842, the appellants received by the post an original order from Mr. Hardwick, another metropolitan magistrate. The examination accompanied the order; and no notice of appeal was given. On the 14th June, an original order by Mr. Maltby, dated the 13th June, 1842, was received by post by the appellants. Annexed to this second order was the examination on which it was founded; and the only variance between the two examinations was, that, in the first, the service through which a settlement was claimed was said to have expired in October, 1832, while in the latter it was correctly stated to have expired in October, 1833; in all other respects the parties removed, the orders and examinations were exactly alike. Below the latter examination was a notice, of which the following is a copy: "To the churchwardens and overseers of the parish of St. Pancras in the county of Middlesex. Order of removal of Eliza Stenson and child, dated 26th May, 1842. It appearing to us that the examination upon which the former order of removal above mentioned in the case of Eliza Stenson and child was made, in some respects was erroneous, we do hereby forego and abandon the said order of removal bearing date the 26th May, 1842, and shall abstain from the execution thereof. Given under our hands this 13th day of June, 1842." Signed by the churchwardens and overseers. No notice relating to the first order of the 26th May, 1842, was given to the appellants previously to the making of the second order of the 13th June, 1842. Against the second order a notice of appeal was on the 1st October last duly served on the respondents. It was contended that, at the time of making the second order, the first order was a valid and subsisting order. The question whether Mr. Maltby had jurisdiction to make and did make a valid order on the 13th June, 1842, when the order of Mr. Hardwick of the 26th May, 1842, had been served, and at the time of making the second order, not countermanded abandoned, discharged, or superseded. Lord *Denman* delivered the judgment of the court. "At the

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instance of the respondents in this case, an order of removal of a certain pauper was first made by Mr. Hardwick, which was served, with the examination, upon the appellant parish; but there was no notice of appeal against that order. The respondents afterwards discovered a defect in the examination, and brought the pauper before another magistrate, Mr. Maltby, and he, upon a new examination, made a second order of removal. The respondents, at the time of serving this order upon the appellants, gave notice of their abandonment of the former order. Against this latter order there was an appeal, on the single ground that the former order was at the time of making the second in full force and undischarged. Upon the argument we were pressed with the objection, that, while one order remained unabandoned, it was not lawful to procure another. This doctrine is entirely new, and was not supported by any authority; and on consideration we think that it is not entitled to any weight. Such an order is merely a warrant to the overseers of the parish procuring it to remove the pauper; and they may abstain from carrying it into execution, on the ground that the examinations will not support it, or indeed from any other reason. If the doctrine contended for on behalf of the appellants was true, the existence of any other order unappealed from and unabandoned would be a bar to the party who had procured it from proceeding to obtain another. Even if the former and latter orders were inconsistent, we should not be prepared to go the length contended for; but the only difference between the two in this case is, that, upon obtaining the latter, a fact which was omitted in the former was supplied, and that the second order was justified by a more perfect examination. It has been frequently suggested from this place, that a party discovering a defect in the examinations should abandon the order founded upon them, and procure better evidence in support of another. That recommendation has been followed by the respondents in the present instance, though they would have acted better and more in the spirit of the recommendation, if they had given notice of their abandonment of the first order both to the appellants and to the justice who made it. But such neglect does not affect the justice who made the second order with want of jurisdiction; and if he had jurisdiction to make the order, the sessions were wrong." Order confirmed.

When the examination is defective the order should be abandoned.

To be justices of the peace.

Reg. v. *Uplin, Sett. & Rem.* 27. The order was quashed, because it did not say that they were justices of the peace but only justices of the county.

And to be *for* the county, &c.; *in* the county not sufficient.

Rex v. *Owlton*, 2 *Sess. Ca.* 76; 1 *Salk.* 474. Exception was taken to an order for saying "unto us, two of his Majesty's justices of the peace *in* the county aforesaid;" for that by this it appears only that they lived in the county, and not that they were justices *for* that county: and the court held this to be a fatal exception, and quashed the order.

Justices of the borough *or* town and parish sufficient.

Rex v. *Andover, Cald.* 373; 2 *Bott*, 801. Exception was taken to an order, that the magistrates stated themselves to be "two of his Majesty's justices of the peace for the borough *or* town and parish of Andover," &c. Order quashed *for irregularity upon the face of it.* It was contended that the order was uncertain; they may be justices for the town and not for the borough, or for the borough and not for the town; but certainly not for both, nor does it appear for which. *Buller*, J. "Whether for one or the other enough appears to support the order; for both town and borough are coupled with parish. And they sufficiently appear to be justices of either of those places for which they were empowered to make this order." Lord *Mansfield*, C. J., and *Willes*, J., concurring, (*Ashhurst*, J., absent,) order of sessions quashed.

It need not appear that they are justices of the division.

Anon., 2 *Salk.* 473; 2 *Bott*, 795. It was objected to an order, that it did not appear thereby that the justices were of the *division*, which is required by the statute. But this objection was overruled, for that the statute therein is only directory.

What is a sufficient description of the justices as justices for the county.

Rex v. *St. Mary's, Leicester*, 1 *B. & A.* 327. Removal from Wing in the county of Rutland to St. Mary's in the borough of Leicester. Order confirmed. Both orders being removed by certiorari, a rule was obtained to show cause why they should not be quashed for a default of jurisdiction in the magistrates making the original order, apparent on the face of it, in

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not stating them to be justices of the peace of the county of Rutland. The order was: "County of Rutland. To the churchwardens and overseers of Wing in the said county, and to the churchwardens and overseers of St. Mary's, in the borough of Leicester, in the county of Leicester. Rutland to wit. Upon the complaint of the churchwardens and overseers of Wing in the said county, made unto us whose names are hereunto set and seals affixed, being two of his majesty's justices of the peace in and for the said county, and one of us of the quorum, that Mary Bacon, &c., are come to inhabit," &c. (*pursuing the usual form of such orders*). Lord *Ellenborough*. "If this court is put under the painful *necessity* of overruling *Rex* v. *Moor Critchell* (*a*), in order to do justice in this case, I have no hesitation in so doing. The words 'justices of the peace in and for the said county,' in that case immediately follow the words 'the county of Wilts aforesaid,' and in plain grammatical construction can have reference to the county of Wilts only. For the word *said* must have reference to the last antecedent, and I wish that the very able and learned judge who decided that case, instead of lamenting that such an objection had there been taken, had applied his powerful mind to the objection itself, and I have no doubt that it would have vanished before that mind exerting its proper vigour on the subject. Here there is first, 'County of Rutland,' in the margin, then come the words 'parish of Wing in the said county;' that must mean the county of Rutland, if we are to give the word *said* any meaning at all. Then immediately follow the words 'justices of the peace for the said county;' that must, therefore, also have a reference to the county of Rutland. The grammatical construction and plain meaning of the instrument direct us to that conclusion alone." *Bayley*, J. "It is impossible to doubt in this case to what county the magistrates who made this order belonged. *Rex* v. *Moor Critchell* is undoubtedly a very strong authority, and perhaps not distinguishable from this case; but that case does not convince me. I think the court ought there to have come to a contrary conclusion. In that case the words 'said county' could only mean, in grammatical construction and common sense, the county of Wilts. Now here, '*said* county' must mean Rutland and not Leicester. Besides, in this case, after the direction of the order, there are found in the margin the words 'county of Rutland, to wit,' which make the case much stronger. Then, if there be no doubt to which county the word *said* refers, the objection cannot prevail." *Abbott*, J. "The *Rex* v. *Moor Critchell* was a decision, not establishing any general rule of law, but turning upon the construction of the terms of that particular instrument, and has not, I believe, been since recognised or acted upon. Even if this case were precisely similar to that, I should say that the court there had not adopted the true construction, nor that which was warranted by the ordinary rules of criticism or language. Here, however, there is a distinction; the county here is named, for the second time, in the margin, and we may therefore begin to read the instrument from that part; if so, there will be no doubt; for the county of Rutland is the only county named to which the word *said* can have any reference." *Holroyd*, J., concurred. Order affirmed.

The order is void if the jurisdiction does not appear.

In *Rex* v. *Chilverscotten*, 8 *T. R.* 178, *post*, there was no county named in the margin, and the order was held to be void, though unappealed against. (See *Rex* v. *Countesthorpe*, p. 682; and *Rex* v. *Hinckley*, p. 681.)

One of the justices must be of the

Orders formerly have been quashed for not setting forth that one of the justices was of the *quorum*; but now, by 26 Geo. II. c. 27, no order shall

(*a*) *Rex* v. *Moor Critchell*, 2 *East*, 66. The order was, "Wilts, to wit. To the churchwardens, &c., of Donhead, St. Mary, *in the county of* Wilts, aforesaid, to remove; and to the churchwardens, &c., of Moor Critchell, *in the county of* Dorset, to receive, these:—Whereas, complaint hath been made by you, the churchwardens, &c, of Donhead, St. Mary, in the county of Wilts, aforesaid, unto us, whose hands and seals are hereunto subscribed and set, *being two of his Majesty's justices of the peace in and for the said county, &c.*" It was contended that the order was bad for a default of jurisdiction in the magistrates making the order, apparent upon the face of it, in not stating them to be justices of the peace of the county of Wilts. Lord *Kenyon* held the objection to be fatal.

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be set aside for that defect only. But if neither of the justices be, in fact, of the *quorum*, it seems (except in the cases hereafter mentioned, by 7 Geo. III. c. 21; 4 Geo. IV. c. 27) that such order will not be good; for the statute requires that one of them shall actually be of the *quorum*, though it dispenses with the necessity of setting that forth in the order. And there are many towns corporate whose charters have no *quorum*, but only constitute certain of the chief officers justices to keep the peace. That is to say, they have the power which the justices of the county at large have, by the first assignment in the commission of the peace. The power of hearing and determining, which they have now by the second assignment in the commission, and which only implies a *quorum*, is a separate and distinct authority, and was superadded to the former some years after the institution of the office of the justices of the peace. (See tit. "Justices," Vol. III.)

quorum, though the fact need not appear on the order.

Justices of a franchise, &c.

And by 7 Geo. III. c. 21, if in any city, borough, town corporate, franchise, or liberty, they have *one* (and no more than one) justice actually of the *quorum*, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments done or executed by two or more justices, qualified to act within such city or other place, shall be valid, although neither of the justices shall be of the *quorum*.

Cities, &c., having *two or more* justices of the *quorum*.

And further, by 4 Geo. IV. c. 27, reciting the last-mentioned statute, "'And whereas it is expedient that the provisions of the said act should be extended to such cities and other jurisdictions as have two or any other limited number of justices of the *quorum* qualified to act within the same:' be it therefore enacted, That from and after the passing of this act, in all cases where the number of justices of the peace for any city, borough, town corporate, franchise, liberty or other local jurisdiction, is limited, and any one, two or more of such justices only are of the quorum, all acts, orders, adjudications, warrants, indentures of apprenticeship, or other instruments, which shall be made, done or executed, either in or out of the general quarter sessions or petty sessions, or any adjournment thereof, by virtue of any charter or grant, or by virtue of any act of parliament made or to be made, by any two or more justices of the peace acting within the same, though neither of the said justices be of the *quorum*, shall be valid in law, to all intents and purposes, as if the said justices had been of the *quorum*; any grant, charter, law or custom to the contrary thereof in anywise notwithstanding."

The sessions may examine into the jurisdiction of the removing justices.

Albrighton v. *Skipton*, 1 *Stra.* 300; 2 *Bott*, 797. Upon an appeal from an order of removal made by two justices, one of the *quorum*: the sessions, reciting that they had perused the charter of Albrighton, and it not appearing thereby that the two justices were either of them of the *quorum*, therefore they quashed the order. But by the court: "The order of sessions must be quashed; not for want of any power in the sessions to look into the jurisdiction of the two justices, for that they certainly have; but because that want of jurisdiction is not sufficiently alleged; since they might have a jurisdiction, though it did not appear upon the charter of Albrighton. The sessions should have said in general, that it appeared to them that the two justices were neither of them of the *quorum*, and that would have been good cause to quash the order of the two justices."

Where magistrates take the examination, but they refuse to make an order, the court of Q. B. will not grant a mandamus commanding them to make it. Nor will they order justices to alter the examination of a pauper according to the facts, so as to make it evidence of a settlement.

Reg. v. *Rogers*, 7 *Jurist*, 375. John Jones became chargeable to the parish of Llanfihangel, and on the 3rd November an overseer of that parish took the pauper before the justices, when the pauper was examined, and stated, "I, in the year 1837, occupied a messuage farm and lands in Llanfihangel, of the late Rev. G. A. Barker, for five years, the rent I did not pay, but paid all levies and taxes for the same; I served the office of overseer for the parish of Llanfihangel, and in that year I paid from 12*l.* to 15*l.* for parochial rates." After the pauper had been sworn, the justices adjourned the case till the next petty sessions, on the 1st December, when the justices determined on not making the order for the removal, as the pauper had gained a settlement in Llanfihangel by paying rates and taxes, and serving the office of overseer. Another application was made on the 12th January, but the magistrates still declined. On a rule for a

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mandamus, *Williams*, J., said, "It seems to me, that I cannot interfere in the manner proposed. I cannot at all agree in thinking that the duty of the justices was merely ministerial, or imagine how it can be called so. If, indeed, the magistrates had neglected or refused to take the examination of the pauper at all, or peremptorily declined to enter into the consideration of the case, that would be a question of a very different nature. But here an examination had been actually taken on the 3rd November, and on the 1st December the magistrates decided on not making the order for removal. Now, it is plain, that here the magistrates had entered on their duty; and I cannot set them right by mandamus, where the result arrived at would probably be exactly the same. There is the case of *R.* v. *Barnstaple*, (1 Barnard. 137), where, on an application to the Court of King's Bench for a mandamus to be directed to the overseers of the poor of Barnstaple, commanding them to make an equal rate, the court observed, that, although they would not grant a mandamus to make an equal rate, they might well grant a mandamus to make a rate in general, on an affidavit being produced that a rate is wanting. But there, as well as here, the court will presume, that if the magistrates began their duty, they would perform it in a satisfactory manner." It was then submitted, that a mandamus to compel the justices to make such an addition to the examination as would make it sufficient evidence of a settlement might be granted. *Williams*, J. "Indeed I think not. I cannot interfere."

The jurisdiction of magistrates does not depend upon the *fact* of chargeability, and Q. B. will not revise the conclusion of the removing magistrates, however erroneous it may be, when once their jurisdiction appears. The court, therefore, will not issue a certiorari to bring up an order of removal, upon affidavits setting out the examination, although it may contain no evidence of inhabitancy or chargeability, if the order itself states a proper complaint of such inhabitancy and chargeability. Where the parish of "All Saints, Poplar," appealed against an order of removal made upon it by the description of "Poplar" only, the court refused a certiorari applied for on the ground of such misdescription.

Reg. v. *The Justices of Buckinghamshire*, 2 *G. & D.* 560. On a rule to show cause why a certiorari should not issue to remove an order for the removal of Maria Bavin, &c., from High Wycombe to All Saints, Poplar, the examinations on which the order was made, the notice and grounds of appeal, and an order of sessions, confirming the order of removal, it appeared by affidavits, that the sessions refused to grant a case, on the alleged insufficiency of the examinations. The order of removal commenced thus:—"To the overseers of the poor of the parish of High Wycombe, in the county of Bucks, and to the overseers of the poor of the parish of Poplar, in the county of Middlesex, and to each and every of them. Whereas complaint hath been made unto us whose names are hereunto set and seals affixed, being two of her majesty's justices of the peace acting in and for the said county of Bucks," &c. The order was made on the examination of Maria Bavin, at present residing at Great Marlow, in the county of Bucks; and she stated, "I have been in Marlow workhouse three weeks last Wednesday with my two children;" and on the examination of the master of the workhouse at Great Marlow, who said, "Maria Bavin and her two children came into the house three weeks last Wednesday; they are chargeable to the parish of High Wycombe, in the county of Bucks." Neither examination contained any further statement respecting Great Marlow. One objection was, that the residence and chargeability of the paupers in High Wycombe did not appear upon the examinations, so as to show the jurisdiction of the removing justices. Another was, that High Wycombe did not appear to be in the county of Buckingham, except by the address." Lord *Denman*. "On the main question now raised, our opinion will not interfere with the judgment of this court in the case of *Reg.* v. *Bolton* (*a*). When properly considered, the fair meaning of what was there said is, that, if justices act in a case not properly brought before them, such a state of things may be shown to this court on affidavit. So, in the present case, if the magistrates had acted without any complaint having been made to them by the parish officers of High Wycombe, the case in which they assumed to make their order would not have been properly before them. The fact of such a complaint was essential to their jurisdiction; and, if they had acted without such a complaint, it would be the duty of this court to interfere. But if there be a complaint made to the magistrates, and it need not that I know even be in writing, and the complaint states the chargeability, inhabitancy and settlement of the pauper, they have jurisdiction to enter on the inquiry. One fact on which they must then decide is the chargeability, another is the residence, and a third is the settlement of the supposed paupers. The

(*a*) 4 *P. & D.* 679.

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evidence given in the present instance enabled the magistrates satisfactorily to themselves to adjudicate on all these facts. The recent cases which have been referred to decide that we shall not grant a writ of certiorari, with a view to determine whether sufficient appears on the face of the examinations to justify the conclusions drawn from them by removing justices, after they have once rightly entered upon the subject of their inquiry. The examinations are what the justices have acted on, not in entertaining, but in carrying through their inquiry. In this point of view, the decisions of this court last term, in the cases of *Reg.* v. *Rotherham* (*a*) and *Ex parte Tollerton* (*b*), do not interfere with the case of *Reg.* v. *Bolton*. As to the objections made to the order of removal, they are of a very unsubstantial character. High Wycombe is sufficiently shown to be in the county of Bucks by words of reference, and perhaps even such words of reference were unnecessary. As to the other objection it has often been held that a parish may appeal although misdescribed in the order appealed against. The parish of 'All Saints, Poplar,' has appealed and has been heard upon the merits, without, so far as it appears, even taking this objection. In conclusion, I must observe that although on objections like these, where no case has been stated, we cannot review what has been done below, yet we are extremely desirous that there should be a fair trial of all points which arise before the court below. We have taken great pains to exact on the one hand from respondents a full statement in their examinations of their grounds of removal, and from the appellants on the other hand an equally full statement of their grounds of appeal. These statements being required, it is most desirable that the justices should, in disposing of such questions as arise before them, exercise reasonable intendment, with a full desire to do justice between the parties. Where they have disposed of such questions, we are bound by the late decisions to say that the examinations on which an order has been made cannot be removed. *Patteson*, J., concurred. *Coleridge*, J. "In this case the order of removal is clearly good on the face of it. It is alleged, however, that the magistrates had no jurisdiction to make it, and that in order to satisfy ourselves that such was the fact, we must either bring up the examinations by certiorari, or hear the objection to those examinations as disclosed in the affidavits used. As to the first method, we have already refused to accede to the proposition. As to the other course, undoubtedly there are cases in which we may inquire on affidavits, as was said in the case of *Reg.* v. *Bolton*, whether magistrates have jurisdiction. But on the making of a complaint by parish officers, as stated in the order, magistrates have jurisdiction. On the complaint being made, they are to inquire into the chargeability and residence of the paupers. The magistrates here state that they have done so. If they have decided wrongly, they have only come to a wrong conclusion on the evidence laid before them. The case is that put by the Lord Chief Justice of the Common Pleas in the passage cited from *Brittain* v. *Kinnaird* (*c*). On the principle there laid down, the court would not receive an affidavit to show that that which a magistrate had adjudged to be a boat was in fact a seventy-four gun ship." *Wightman*, J., concurred. Rule discharged.

(*a*) 2 *G. & D.* 523.
(*b*) 2 *G. & D.* 533.
(*c*) 1 *B. & B.* 432.

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4. Of the Examination.

The order of removal must be made on the due examination of witnesses, and such examinations must together disclose every fact necessary to give the Justices *jurisdiction* to remove the paupers, as well as every ingredient of the settlement on which the complaining parish relies. All must be stated with convenient certainty, and supported by legal testimony. The examinations therefore must show that the paupers are chargeable to the parish applying for the order of removal (*Rex* v. *Black Callerton*, (*d*) *Rex* v. *Brixham*). It is not sufficient to state that the paupers are chargeable, the facts must be stated, (*Reg.* v. *High Bickington*,) and that they were inhabiting the parish at the time of the order, (*Reg* v. *Rotheram*).

The examinations must show that the parties are chargeable.

(*d*) The cases are referred to here shortly. They will be found at length immediately after this analysis of them.

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Whenever residence in a parish is necessary to complete a settlement, that fact must be stated distinctly, and not left to inference. The following are instances of insufficient statement of residence:—"I was hired by A. of K.; I agreed to go on Mop-day; I did go on that day, and served her for a year in that parish, and then left." (*Reg.* v. *Stoneleigh.*) "I was bound an apprentice to W. T., of Dalton; I went to, and served, and resided with him three years." (*Reg.* v. *J. Yorkshire.*) (*Barnsley* v. *Dalton.*) "I rented a house and land, and occupied it for twelve months, and thereby gained a settlement." (*Reg.* v. *J. Yorkshire* on a notice of appeal.) "My indentures were assigned to G. W., of Flockton, with whom I went and resided for three or four years." (*Reg.* v. *Flockton.*) "Sixteen years ago my husband and I went to live in a house in Strood; we occupied it till his death, seven years ago; I occupied it till 1841, when I came to the house I now reside in." (*Reg.* v. *St. Margaret, Rochester.*)

Residence essential to settlement, and must be stated.

As a settlement by *hiring* and *service* can be acquired only by an unmarried person not having a child; the pauper saying, "I was single and unmarried" is insufficient. (*Reg.* v. *Wymondham.*) (*Rex* v. *Sherburn*), *Rex* v. *Leeds*, 2 *Q. B.* 545. It must appear that the party was hired for a year, that the service was for a year, and the date of the service should be given, so that it may appear *that it was completed before* the 14th August, 1834. (*Rex* v. *North Bovery*) (*Rex* v. *Bridgwater*, *post*, notice of appeal). If facts are disclosed, which would justify the inference that there was a hiring, it is sufficient. (*Reg.* v. *Pilkington.*)

It must state that the person hired had no child, and that he was hired and served for a year,

A settlement by *birth* cannot be proved by such evidence as "I was born illegitimate at S." (*Rex* v. *Rishworth*) or, "I have heard my father say I was born at A." (*Reg.* v. *Eccleshall*) (*Rex* v. *Lydiard, St. Laurence.*)

Insufficient statement of place of birth. (a)

On the examination as to settlement by *apprenticeship*, the indentures must be produced and proved (*Rex v. Flockton*) or the non-production legally accounted for (*Rex* v. *Mildenhall*). A statement that the pauper was bound apprentice by "a covenant Indenture" is sufficient to show that it was not a parish indenture. (*Rex* v. *Cumberworth-half.*)

Statement as to settlement by apprenticeship,

If the service relied on was with a second master, the consent of the original master must be stated. "When I was bound it was agreed that I should serve the last forty days in L., and I did so with A. H." is not a sufficient statement of consent. (*Rex v. Lydiard, St. Laurence.*)

and of service under it.

Many facts must now concur to entitle a party to a settlement by renting a tenement; each fact must appear, and some description of the premises, by which they may be ascertained; and the time of the tenancy must be stated. An examination which did not give the name of the landlord (*Reg.* v. *Recorder of Pontefract*); and one which did not allege that it was rented for a year (*Rex* v. *Middleton Teasdale*), or occupied for a year under the yearly hiring (*Reg.* v. *Pontefract*), are defective. "I took a house for a year, I paid rent for the whole time of my tenancy," is not a sufficient statement of the payment of rent. (*Reg.* v. *Leeds.*)

Renting a tenement.

If the complaining parish relies on relief given to the party when not resident in the relieving parish, a distinct statement is sufficient, although it may be inferred from the same examination that such relief was given in reference to a settlement supposed to be acquired by hiring and service, and the examination as to which is clearly defective. (*Reg.* v. *Camrose.*) An examination stating that the examinant's father was twice relieved by K., as I have been informed, is some evidence, so that the sessions cannot refuse to hear the case. (*Reg.* v. *J. Yorkshire*) (*Keighley* v. *Wilsden.*)

Relief.

If the evidence relied on be that of a former order of removal of the same parties, or those from whom they derive a settlement, the examination not disclosing either that the paupers had been removed, or that such

Former order

(a) The statute relating to the removal of persons born in Ireland, &c., gives the *form* of the order, wherein it is merely stated, that "to the best of my knowledge and belief, I was born in" &c.

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order had ever been served, is defective. (*Ex parte, Overseers of Ackworth.*) And the order must be produced, or its absence accounted for. (*Reg.* v. *Mildenhall.*)

Evidence must be legal.

The judges have frequently intimated their opinion that the justices should not receive any but the legal evidence of the facts, (*Reg.* v. *Rishworth*) although it seems that the admission of some illegal evidence will not vitiate the remainder, (*Rex* v. *Tetbury*) if there be still sufficient to justify the removal. It is not a valid objection that the justices received the evidence of a convicted felon, unless they were at the time aware of the fact. (*Rex* v. *Altemein.*) The examination may be used as evidence against the parish obtaining it. (*Reg.* v. *Stow.*)

Omitting to send all the examinations.

Further it is necessary for the complaining parish to send to the parish ordered to receive the pauper, copies of all the examinations taken. (*Reg.* v. *Black Callerton.*) The omission of this is a good ground of appeal. (*Rex* v. *Outwell.*) So also the omission to send a notice of chargeability. (*Rex* v. *Brixham.*)

Having thus briefly analysed the cases, we proceed to set them out, nearly in the order in which they have been cited, premising only that in the Appendix will be found a collection of precedents suited to the different kinds of settlement. In framing them it has been wholly impracticable to adapt them to every possible case, but they will, perhaps, be found sufficient, if the justices will bear in mind what in each case constitutes a legal settlement, and then take care that all essential ingredients are disclosed in the examinations.

It is a good ground of appeal that the chargeability does not appear on the examination.

Reg. v. *Black Callerton*, 10 *A. & E.* 679. H. Hope was removed from Quarrington to Black Callerton. Order confirmed. Case:—The pauper was removed under the usual order. Notice in writing of the chargeability, a copy of the order, and copies of the examinations were duly served, but the examinations did not contain any statement or proof that the pauper was chargeable to or had been relieved by Quarrington. One ground of appeal was, that it did not appear by the copy sent to them of the examinations taken at the time of making the order, that the pauper was at the time of making the order chargeable to Quarrington. Lord *Denman.* "The preliminary objection is not to be got over. If we do not require that the chargeability shall appear on the examination we shall give occasion to speculative removals." *Patteson*, J. "It is argued that the statute requires only three things to be sent before the pauper is removable:—notice of chargeability; a copy or counterpart of the order; and a copy of the examination upon which the order is made. That the word 'examination,' though in the singular number, means all the evidence, and must necessarily include the proof of chargeability, without which the order could not be made." *Williams*, J. "Proof of chargeability is the foundation of the order of removal. It must, therefore, appear on the examination sent to the appellant parish. Order quashed.

It is not sufficient to state that the pauper is chargeable. The facts must be stated.

Reg. v. *High Bickington*, 8 *Jurist*, 377. Ann Ford was removed from Atherington to High Bickington. Order confirmed. Case:—The evidence on the face of the examination, touching the chargeability of the pauper to Atherington at the time of the removal, was as follows;—Ann Ford said, "I and my children are inhabitants of Atherington, and are chargeable to the said parish." John Pincon, relieving officer, said, "I am one of the relieving officers of the Barnstaple Union, and administer the relief ordered for the paupers of the parish of Atherington: the said Ann Ford and her children (naming them) are now chargeable to the said parish of Atherington." One ground of appeal was, that the examination contains no legal evidence that Ann Ford and her children were chargeable to Atherington at the time of the application for or making the said order of removal. Lord *Denman.* "We think that to say a person is chargeable is no proof of chargeability: there are no facts stated. The appellants have a right to say, show us in point of the fact how the pauper has been relieved." *Patteson*, J. "If the relieving officer meant to say he had given relief to the pauper, it would have been very easy for him to have done so." Order quashed.

Reg. v. *Brixham*, 8 *A. & E.* 375. E. Thomas was removed from Formsham to Brixham. Order confirmed. Case:—A copy of the order and of the examinations were duly served, but no notice in writing of the pauper being chargeable to or relieved by Formsham was sent to the overseers of Brixham. On this ground they appealed against the order. Lord *Denman*. "The course pursued by the appellant was the only one by which the enactment could be taken advantage of, unless we were to multiply distinctions in a manner not desirable: s. 79 clearly makes the notice of chargeability necessary to give effect to the order of removal." *Patteson*, J. "The notice is necessary to make the pauper removable. I should be disposed to uphold this enactment as strictly as possible." The other judges concurred. Order quashed.

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Notice of chargeability must be sent, the omission is a good ground of appeal.

Reg. v. *Stoneleigh*, 2 *G. & D.* 535; 2 *Q. B.* 530. T. Heritage, &c., were removed from Kenilworth to Stoneleigh. Order confirmed. Case:—On the examination, T. Heritage stated, "I am about the age of thirty-six years, and was born, as I have been informed and believe, in a farm-house belonging to Mr. Boultbee, near his house at Springfield, but in what parish I do not know. On Kenilworth statute-day, about eighteen or nineteen years ago, I was hired by Mr. W. Cattell, Mrs. Whitmore's bailiff, in my father's garden at Kenilworth, to serve the said Mrs. Whitmore, who lived at Wainbody Wood, in the parish of Stoneleigh, for twelve months, as cow-boy, at the wages of 50*s.* certain, and 5*s.* to be left to Mrs. Whitmore. Mr. Cattell asked me to come as soon as I could, as they were busy at Michaelmas, and I said I would go on Warwick Mop-day, which was held on the 12th of October. *I did go on that day, and I served the said Mrs. Whitmore in the said parish of Stoneleigh, from that time to the 12th October following*, when I received my wages and left." One ground of appeal was, that the examination is defective, because it discloses no legal settlement, or legal evidence of any settlement in Stoneleigh, inasmuch as it does not state that the pauper resided in the parish of Stoneleigh, during the hiring for forty days or any other period. Lord *Denman*. "The examination is bad. The court is bound to see that both examinations and grounds of appeal in stating a settlement set out most distinctly all the requisites necessary to constitute it. I believe that the course this court pursues of requiring sufficient evidence of a settlement before a pauper is removed, will in the end be productive of great benefits to parishes." Order quashed.

An examination, in stating a settlement by hiring and service, stated that the pauper *went to and served in the appellant parish for a year, as cow-boy, at the wages of 50s.* This is not a sufficient statement of residence.

Reg. v. *J. of W. R. Yorkshire*, 7 *Jurist*, 1063. J. Haley and family were removed. The examination of the pauper: "I am about thirty-six years of age, and was born at Wakefield. When I was about sixteen years of age, I was bound parish-apprentice by the churchwardens and overseers of the poor of Wakefield, with the consent of two justices of the peace for the said riding, to William Townsend, of the township of Darton, in the said riding, linen-weaver, to serve him until I attained the age of twenty-one years. I went to and served and resided with the said William Townsend from the 29th March, 1822, for above three years and a half, when, as work became scarce, my master proposed to give me my indentures for ten shillings; but as I had not as much money, he gave me my indentures and kept my box for the ten shillings. After I was twenty-one years of age, I went to my master and paid him the ten shillings and took away my box. After my indentures were delivered to me, I went to work at Mr. Holdsworth's dyehouse, where I remained about six months at weekly wages. I afterwards got work as I could for a few days in a place, but never did any act to gain a settlement after my apprenticeship. I now produce one part of the indentures, which were duly executed by the churchwardens and overseers of the poor of Wakefield, and allowed by J. P. Haywood, Esq. and William Wood, clerk, two justices of the peace for the said West Riding. I have made diligent search for the other part, but cannot find it; the indentures were duly entered in the register kept by the churchwardens and overseers of the poor of Wakefield. I was married at Barnsley new church, about eleven years ago, to Christiana Bramah, my now wife, by

A statement that the pauper was bound to W. of D., and that he served and resided with T., is not a sufficient statement of a residence in D.

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whom I have one child born in wedlock, namely, Ann, aged eleven months, and I am now poor, and actually chargeable to Barnsley aforesaid; my examination is now taken upon the complaint of the overseers of the poor of Barnsley aforesaid, caused by my so being chargeable to them as aforesaid, without having acquired any legal settlement in Barnsley." Darton appealed. One ground of appeal was: that the examination is defective, insufficient, and bad, because it does not state the date of the alleged indenture of apprenticeship, nor that Haley served and resided with William Townsend in the township of Darton. The sessions decided that the examination was not sufficient to entitle the respondents to give any evidence in support of the order, and discharged the order, and refused to assign the special reasons for discharging it. On a rule for a mandamus, *Patteson*, J., said, "I quite agree as to the effect of the word "of". It no doubt means residing in, in the common case of an affidavit, when coupled with the name of a place: but yet, giving full scope and effect to that argument, there is still here this defect, that it does not say then residing or being of the township of Darton. In fact, it does not say where the master resided. It is quite consistent with the statement in the examination, that he resided with Townsend elsewhere than in Darton. He may have removed before the pauper went to him. In a case this morning, the mischiefs arising from such a decision were adverted to, but I confess I do not very well see where the mischief is; and here, where the examination is so palpably hit by the grounds of the appeal, they might have corrected their mistake. They have themselves to blame if they proceeded with the order. It would have been exceedingly easy to have quashed the order after such a defect as this had been pointed out to them. If parties choose to persist they must take the consequences. I think the sessions were very right." Rule refused.

"of," effect of the word.

Reg. v. *Flockton*, 2 *Q. B.* 535. J. Chambers, &c., were removed from Barnsley to Flockton. Order confirmed. Case:—The examination whereon the order was made was that of J. Chambers: I am fifty-six years of age, and was born at Hoylandswaine; the place of my father's settlement is at Denby, which he gained by apprenticeship; when I was about eleven years of age, I was put out a parish apprentice to Thomas Burton of Denby, tailor; after residing with him for a few months, my indentures were assigned to George Walker of Flockton, collier, with whom I went and resided with between three and four years, when I left him and enlisted for a soldier. The grounds of appeal were first, that the order and the examination are bad on the face thereof respectively; secondly, that Chambers never was put out a parish apprentice to Burton and assigned to G. Walker of Flockton, as stated in his examination, nor was he ever an apprentice to Burton by indenture duly bound, nor did he ever serve as such; that the pauper never was legally assigned as an apprentice, either by the assignment of his indenture or otherwise, to Walker of Flockton, nor did he ever serve as such an apprentice in Flockton; that the said pauper never did act to gain a settlement in Flockton. The sessions held that the order was good and the examination sufficient on the face thereof, and proceeded to hear the appeal. The indenture and assignment were not produced, but secondary evidence was given of their contents; evidence was also given showing that the indenture and assignment had been produced before the removing justices, and had been subsequently lost. Lord *Denman*. "I think this case is governed by *Rex* v. *Middeton in Teasdale*, (*post*) and I feel bound by that authority. *Rex* v. *Staple Fitzpaine* (*post*), does not apply; both general and specific grounds of appeal were stated there, which distinguishes it from this case. There is no sufficient residence stated in the examination, and *Rex* v. *Toke* does not assist the respondents." *Patteson*, J. "I cannot distinguish this from *Rex* v. *Middleton in Teasdale;* in that case, under the general statement that the examination was bad on the face of it, this court was of opinion that the appellants were at liberty to show that the examination did not give sufficient information of the settlement; so, here, the examination does not go far enough, unless we admit

An examination stating that the pauper's "indentures were assigned to G. W. of F., with whom the pauper went and resided with," does not sufficiently show residence in F.; and this defect may be heard upon a ground of appeal stating that the order was bad on the face thereof. Semble, that, on a settlement by apprenticeship, it must appear by the examination, that the indenture of apprenticeship was produced, or the non-production accounted for before the removing justices.

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that the pauper resided. As to the word 'of' in *Rex* v. *J. W. R. of Yorkshire*, (p. 1055,) it was contended that it meant residing at. Suppose it does; the examination here states that 'the indentures were assigned to George Walker of Flockton, with whom the pauper went and resided with,' it does not state where the pauper went to reside, or where he continued to reside; at any rate it only carries the residence to the time of the assignment of the indentures, and no further. It is not necessary to go into the other ground of objection as to the indentures not having been produced; they may have been there. If the want of production of a document is an objection, it would be better that it should be pointed out by the statement of grounds of appeal. However, I decide upon the other question, that it does not sufficiently appear upon the face of the examination that there was any residence in the appellant township. *Williams*, J. "I decide this case entirely upon the authority of *Rex* v. *Middleton in Teasdale*. The general objection, bad on the face of it, is sufficient where there is a bad examination. Here no sufficient reason is shown, which is clearly fatal. 'Of Flockton,' does not necessarily mean that the person resided at Flockton. My brother *Patteson* seemed to doubt, in *Rex* v. *Toke*, whether 'of' was sufficient in that case. 'George Walker of Flockton' is matter of description, not of residence; he might have ceased to reside the next day. So, in cases of settlement by renting a tenement, occupation of a house is not sufficient; it is also necessary that there should be residence." Order quashed.

An examination stating "My husband and I went to live at a house in the parish of S. My husband and I occupied it from that time until his death. I continued to occupy the same house until March 1841, when I came to the house I am now residing in;" does not show that the pauper or her husband resided forty days in the parish of S.

Reg. v. *St. Margaret, Rochester*, 2 *Q. B.* 533. Rachel Smith was removed from St. Margaret, Rochester, to Strood. Order quashed. Case:—The examination of Rachel Smith was: "I am now resident in St. Margaret, Rochester, and am chargeable to the same; by reason of illness and infirmity I am unable to be taken to a petty session to be examined as to the place of my settlement. On or about the 2nd of June, in 1822, I was married to W. Smith, a bargeman, at the parish church of St. Margaret aforesaid. About sixteen years ago my husband and I went to live at a house in Caroline-place, in the parish of Strood, which I hired of Mr. Edmund Aldersley, of Strood, coal merchant, for 11*l.* a year; my husband and I occupied it from that time until his death, which happened about nine years back. I have seen my husband pay rent to Mr. W. Payne for this house many times; he paid it quarterly to Mr. Payne at the house. I continued to occupy this same house until March, 1841, when I came to the house I am now residing in. After my husband's decease I paid the rent, during the eight years I occupied it, to Mr. Payne." The grounds of appeal were: That it does not appear, upon the examination, that R. Smith or her husband resided for forty days in the house in Caroline-place, in Strood, nor either of them resided for forty days in Strood. On the appeal, the appellants insisted that the examination was insufficient on this ground, and the sessions decided in favour of the objection, and quashed the order. Lord *Denman*. "We consider this case to be already decided in *Rex* v. *J. W. R. Yorkshire*." (p. 1055.) Order of sessions confirmed.

An examination disclosing a settlement by hiring and service, should state that the pauper at the time of hiring was unmarried, and not having child or children.

Reg. v. *Wymondham*, 2 *Q. B.* 541. An order removing J. Girdlestone, his wife and family, from Barford to Wymondham, was confirmed. Case:—The material examination was that of the pauper, therein described as a labourer, and who deposed that, previously to Michaelmas-day in or about the year 1820, whilst he was single and unmarried, he let himself to and was hired by J. Davey, of the appellant parish, for a year from that Michaelmas-day, and served the said J. Davey under that hiring one whole year in the appellant parish; he then deposed to a hiring and service with the same person for the two subsequent years, and that he was single and unmarried during the whole of the said three years of his service; and that he slept during the whole of the said three years in the appellant parish; and that he was married to his present wife about the year 1830, and had by her the four children named in the order of removal. The ground of appeal was, that the examination was defective and bad upon the face of it, in not stating that at the time of his respective hirings the pauper had not any child

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or children. Lord *Denman.* "Undoubtedly the objection may be regarded as carrying to the very extreme the doctrines which this court has laid down, respecting the sufficiency of the examination; but we adhere to the rule established by recent precedents, and confirm the order."

Stating that he was eighteen years old; and unmarried, is insufficient.

Reg. v. *Sherburn,* 2 *Q. B.* 545. A. Sidebottom was removed from Mecklefield to Sherburn. Order confirmed. Case:—The examinations on which the orders were made, were that of William Wilson, who said, "I am 46. I lived as a servant in husbandry with Mrs. Margaret Garthwaite, late of Sherburn, farmer, for several years up to her death. At Martinmas, 1825, she asked me who was a likely servant in husbandry for her to hire, and I pointed out Joseph Sidebottom to her as a likely lad. He came to my mistress's house a day or two after Martinmas, 1825, at the same time that other husbandry servants usually entered on their places, and he continued in her service until Martinmas, 1826. During the whole year, he lived at Mrs. G.'s house, in Sherburn, and slept with me all the year in her house there. He served Mrs. G as a servant in husbandry. J. S. lived in servitude at Mr. Pollard's, at Sherburn, when I pointed him out to my mistress, and he came from P.'s to Mrs. G. Joseph Mason, in his examination, said, "I am 28 years old. I remember Joseph Sidebottom, late of Mecklefield, labourer, long servant with Mr. Pollard, of Sherburn; he went about Spring and remained till Martinmas. On Martinmas morning, I remember J. S. cleaning his horses, and then going to Mrs. Garthwaite, of Sherburn, to get hired, as he told me; he returned in half an hour, and told me she had hired him. He left P.'s on that day, and went home to his parents at Mecklefield, and after staying with them three or four days, he returned to Mrs. G 's house. I was about 11 years old when J. S. went to live with Mrs. G.; he lived with Mrs. G. until Martinmas-day, or the day following Martinmas, in the next year, and then left. He served her as a servant in husbandry; we were companions, and I used frequently to go along with him with the horses to pasture. He was then *about* 18 *years old, and unmarried.*" Richard Chadwick was examined, and said, that he remembered J. S. in Mrs. G 's service, and he *was then unmarried.*" The appellants objected that the examination did not show that the said J. S. was at the time of the alleged hiring an unmarried person without child. The court overruled the objection and confirmed the order. During the argument it was urged that such particulars ought not to be required to be stated directly. *Patteson,* J. "Could not a witness who had known him for many years affirm directly that he was unmarried, and without child or children, at a particular time?" Lord *Denman.* "It is clear there is a deficiency in these examinations; and it is too much to expect that, after deciding as we did in *Reg.* v. *Wymondham* this morning, we should at half-past three pronounce a contrary decision." Orders quashed.

What is a sufficient statement of hiring and service.

Reg. v. *Pilkington,* 8 *Jurist,* 267. A pauper on examination stated, "When I was about 15 years of age, I went to work at Messrs. C. & D.'s factory. There was a custom in the mill requiring the workpeople to give a fortnight's notice before leaving the employment. I remained in their employment better than two years; I worked under the custom as to giving notice. The works consisted of two mills; and when I wanted to leave the first mill, in which I had been working for about a year, to go to the other, I was compelled to give a fortnight's notice. The second mill was under a similar custom; and after I had worked in the latter better than a year, I had a dispute with the overlooker, and wanted to leave at once, but was not allowed The overlooker afterwards gave me a fortnight's notice, at the end of which time I left." In addition to the above facts, it was proved at the sessions that the pauper went to work at the first mill as a piecer; that the practice of such mills is, that the piecers assist certain spinners, to whom they are attached. The whole wages are paid to the spinner in proportion to the work done, and he pays the piecers. Subject to the rule as to a fortnight's notice, the spinner engages and dismisses his own piecers without the interference of the master. The pauper was thus engaged by one E. At the second mill, the pauper engaged himself as a

spinner to one M., who had the sole management of it, spinning by commission for Messrs. C. & D., but the mill was under their superintendence and control. The pauper was to be paid according to the work done. Lord *Denman* delivered the judgment. "In this case the question was, whether the grounds of appeal stated any valid objection to the examination. There was a minute criticism of some of the expressions contained in it, but we think there is no valid objection to the examination. It may be very true, that, when the settlement depends upon a single fact known to the pauper, such as residence, or being unmarried and without child or children, it is reasonable to expect his examination should contain a specific statement of that very fact; but it is very different as to the legal consequence of a fact. Hiring is a most difficult question of law. The justices of the peace may possibly have asked the pauper whether he was hired or not; the answer may have been, 'I do not know what you call *hired*, but I will tell you what took place on the occasion.' And then he may possibly state facts, as on the present occasion; and if those facts which are stated amount to a hiring for a year, the justices may properly adjudicate that the settlement was gained, and remove the party upon it: they must form their opinion upon the effect of such statement. If it amounts to any evidence, these facts appear sufficient. In the second place, the sessions found a settlement on the evidence of the hiring and service, subject to our opinion, whether the objections are well founded or not. The first objection was, it was doubtful whether this was a general hiring; but we think the facts of the case furnished evidence of such a hiring. Then it was doubtful whether the pauper was hired by the owners of the mill, or by the person called the spinner, who immediately employs the pauper and others in his situation. The sessions found the hiring and service by and to the owners of the mill, subject to our opinion. The question was as to the effect of that finding. The court of quarter sessions have either done right or done wrong in sending that question to us. They have done right, if they ask our opinion whether the fact stated will warrant the finding which they have made of the party being hired; but they have done wrong, if they refer to us the mere question of fact, and ask our opinion, as a jury, upon it. We are not to assume they have done wrong; we, therefore, must conclude they have put the question to us in this way: whether the facts which led them to the judgment which they have formed are such as are sufficient to found the judgment they have come to. We think those facts sufficient. The case of *R.* v. *Sparsholt* was that which was most referred to, as shewing we were to form our opinion, or to send the case back to the sessions to be re-heard on such a question; but, in that case, the order of removal was confirmed. What was done by the justices was itself right. We do not take upon ourselves to say they have done anything wrong where there is a sufficient foundation for the judgment." Order confirmed.

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A pauper's examination stating, "I was born illegitimate at S.," is insufficient.

Reg. v. *Rishworth*, 1 *G. & D.* 597; 2 *Q. B.* 476. An order for the removal of E. Bottomley from Rishworth to Stayley Bridge was quashed. Case:—The material part of the pauper's examination was, "I am twenty-eight years of age, and was born illegitimate at Stayley in Cheshire." The grounds of appeal were, "that no legal evidence of a birth or settlement in our township of Stayley is disclosed in the examination, upon which the order is made, such evidence being only hearsay. That the order and examination are bad upon the face thereof." The sessions decided, that the examination was not sufficient to let the respondents into evidence of a settlement by birth in Stayley. Lord *Denman*. "This appeal depends upon the sufficiency of the examination. Distinct notice has been given of the particular objection to it. In the first place, does this examination shew the order of removal to have been made upon hearsay evidence within the cases lately decided? Of that there can be no doubt—the pauper speaks to that which cannot be within her own knowledge, viz. to the fact of her having been born illegitimate at a particular place. The question therefore comes to this, are those cases rightly decided? On that

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point also I have no doubt, though I am glad the matter has come before us again, because the conclusion we came to was new, and may be attended with some inconvenience; but I think the balance of inconvenience is the other way. The Poor Law Amendment Act has not introduced any change into the kind of evidence upon which removals may be made; but, by requiring the examination to be handed over to the parish removed to, has laid open the evidence, and made it necessary for us to determine whether an order resting upon no legal evidence is good. I think an order of removal and any other order of justices is invalid if not founded on legal evidence. The parish to which the pauper is removed has a right to say, 'Why have you sent us a pauper to maintain when there is no legal evidence that he belongs to us?' If any kind of hearsay evidence is receivable, I do not see why it should not be enough for the pauper to say, 'I have heard that I am settled' in such a parish; for even then some ingenious suggestion may be offered that under certain possible circumstances the statement was legal evidence. Undoubtedly the practice has hitherto prevailed of removing paupers upon very loose evidence, but still, whatever the practice may have been, when once such proceedings are brought into court they must be tested by legal principles. There may certainly be some difficulty in bringing documents, subscribing witnesses and so forth, before the removing magistrates, and, perhaps, the legislature would act wisely if it made some provision on the subject. But if the examination is to give no information, the chance is taken of an appeal. With regard to costs, if previous information is given to the appellants, then they should pay costs if they go on perversely; but why should they pay the costs, that have been referred to, of the preliminary *ex parte* inquiry before the removing justices? It seems to be supposed that there is some inequality if the appellants are to give the grounds only of appeal, and the respondents to give the examination. But the examination is that upon which the respondents themselves act, and they can furnish it without inconvenience. They are required by the terms of the statute to furnish the examination, and the appellants to furnish the grounds only of their appeal. We think we do a benefit to the public by adhering to our former decisions on this subject, and by declaring that for the future there must be no doubt that an order of removal is to be obtained on legal evidence." *Patteson*, J. "I have no doubt that the evidence on which the present order has been made was not legal evidence. Even if there were no distinction between the admissibility of evidence of the time and of the place of birth, yet here the pauper's evidence of the time of her birth would be inadmissible, it would not do at the sessions, it would be nothing. As to the general question, the strongest objection on the score of inconvenience, relates to the production of title-deeds, indentures, and subscribing witnesses. There is certainly no provision in the statute for the costs of bringing such evidence before the removing justices. But then the probability of an appeal is lessened by requiring such legal evidence; as an opportunity is thereby afforded to a parish of exercising a sound discretion whether to appeal or not. Suppose, in the case of a settlement by apprenticeship, the pauper to say, 'I was bound apprentice to such a person in such a parish:' are the appellants to hunt out the indenture and the subscribing witnesses? Obviously the onus would be thrown on the wrong party. Whether the inconveniences of our decision are so great as to render it expedient for the legislature to interfere, I do not know, but I am satisfied that our decision is the only one we could come to on legal principles. If, after the objection is pointed out to their order the respondents feel that they are wrong, they may probably, after notice to the other parish, be able to abandon it and get another made on legal evidence. I believe in one case in the crown paper the question will arise whether such an order can be abandoned. I do not see how the act is to be carried into effect without requiring legal evidence in these cases." *Coleridge*, J. "I am of the same opinion, and agree with my lord that it is well this question has been again brought before us, and trust that henceforth all doubt

The order must be founded on legal evidence.

Difficulty of bringing witnesses and documents before the justices.

Reg. v. *St. Pancras*, p. 1047.

will be at an end. Three points have been raised. First, it is said, this case is distinguishable from the cases which are supposed to govern it; secondly, that the evidence here was legal evidence; thirdly, that the former cases ought to be reconsidered. 1. As to this case being distinguishable. In one of the former cases the examination was certainly open to the farther objection pointed out; but still the decision is not put on that objection, but on the objection we have now to dispose of. The other case is not distinguishable; there the evidence was hearsay in terms, and here it must of necessity have been so in fact. 2. Was there legal evidence in this case, of the place of birth: *Rex* v. *Erith*, (*a*) which was a well considered case, decides that hearsay evidence of the place of birth is inadmissible. 3. Were the former cases rightly decided? My opinion on this subject may be entitled to some weight, because I always felt the inconvenience that would result from those cases. But I am satisfied, by the reasoning of my lord and my brother *Patteson*, that those cases were rightly decided, and, though inconvenience may be the result, that the inconvenience would have been greater if we had decided otherwise. And the act in some measure remedies the inconvenience by suspending the actual removal for twenty-one days, during which the objection to the examination may be pointed out. By our decision we merely carry out the old law, for an order might always have been quashed if bad on its face, and, if it had been the practice to set out the grounds in the order itself, the order might always have been set aside, if those grounds were insufficient. The only change is that now the examination must be sent with the order, and thus the grounds are open to immediate objection." *Wightman*, J. "I am unable to distinguish this case from the two former cases, and think that, if we had decided otherwise than we have, the object of the act would be defeated. That object appears to have been the prevention of litigation and expense, by compelling in the outset a mutual disclosure between the contending parishes. In the present instance, the weakness of their adversary's case became known to the appellants by the new system of sending the examination with the order of removal. Independently of the distinction laid down in *Rex* v. *Erith* that the same hearsay evidence that would be sufficient to prove the time, is insufficient to prove the place of birth, the evidence in this case would not be admissible to prove the time. For in all cases the declarations as to time of birth have been made by those who would know the fact, and here it is proposed to allow the evidence of a person who could not know the fact. Order of sessions confirmed.

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(*a*) 8 *East*, 539.

Hearsay evidence of relief and birth insufficient of themselves.

Reg. v. *Ecclesall Bierlow*, 1 *G. & D.* 160; 11 *A. & E.* 607. W. Chappell, &c., were removed from Dodworth to Ecclesall Bierlow. Order confirmed. Case:—One of the examinations was that of W. Chappell, the father of the pauper, who said: "I am sixty-two years of age, and was born at Doncaster, but the place of my father's settlement was at Ecclesall Bierlow, *as I have heard him say*, and believe to be true, and *I have heard my father say* that he has had relief from the overseers of Ecclesall Bierlow, and I never did any act in my own right to gain a settlement." Another was that of W. Chappell, the pauper, who said: "I am thirty-two years of age, and was born at Cawthorne in the said riding, but the place of my father's settlement, as *I have heard him say*, and believe to be true, is at Ecclesall Bierlow in the said riding. I have heard the above examination read over to me, and I believe the same to be true, and that I never did any act in my own right to gain a settlement." The grounds of appeal were that the settlement of W. Chappell was not in Ecclesall Bierlow; that the settlement of the grandfather of the pauper was not in Ecclesall Bierlow, nor had the grandfather relief from the overseers of Ecclesall Bierlow, as in the said examinations mentioned, nor otherwise. That the order is bad and inoperative, and *the examinations on which it is made are defective*, and insufficient to support the same. On the appeal the appellants insisted that *the examinations contained no legal evidence* of the pauper's settlement being in the appellant township; and that, even if

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there were any such evidence, it was confined to the relief given to the grandfather by the appellants, and that it ought to have appeared on the examinations where he was residing when such relief was given. The sessions decided that these objections did not afford a sufficient ground for discharging the order, and proceeded to hear the appeal, and, having heard it, confirmed the order. If the court should be of opinion that these objections ought to have prevailed, then the order and the judgment of sessions be quashed. Lord *Denman.* "I have no doubt whatever that the magistrates should have the usual kind of legal evidence before making an order of removal. Their order is a warrant to the parish officers to remove the pauper, and should not issue except on legal evidence. It is said that the pauper is a party before the magistrates, and that his hearsay statement is in the nature of an admission. I do not think that he is a party, and, even if he were, his statement of what he had heard some one else say would not be evidence against him. The objection pointed out is a good ground of appeal, and we must give effect to it." *Patteson*, J. "Whatever the case may have been formerly, it is clear that since the 4 & 5 Will. IV. c. 76, the litigating parties are the two parishes. The argument that the pauper is a party, and that nothing can be stronger than his bare admission, goes too far, for, if he had stated positively that he was settled in A., that would not do; the ground of settlement would still have to be stated, and to be supported by legal evidence. It is said that inconvenience will ensue from our requiring legal evidence, as an indenture of apprenticeship or other evidence may have to be sent for from a great distance. But, if the case goes to the sessions, the sessions must have legal evidence; the witnesses must be produced at some time or another. The appellants have clearly pointed out the objection, and it must prevail. If a removing parish think their evidence will not do, they should abandon their order, and apply for another when they can get better evidence." *Williams*, J. "The object of the sections that have been commented on, of the new act, are decisive to my mind. They were intended to prevent litigation, by making the case of each party known to the other. Now an order of removal made upon hearsay evidence is, for this purpose, as if made upon no evidence; for the legal evidence, which must afterwards be adduced at the trial, would come upon the appellants by surprise." *Wightman*, J., concurred. Order of sessions quashed.

The evidence should be legal.

The statement of an apprenticeship by a *covenant* indenture, shows that it was not a binding by the *parish.*

Reg. v. *Cumberworth Half*, 8 *Jurist*, 57. William Burdett was removed from Denby to Cumberworth Half. Order confirmed. Case:—The examination of the pauper, upon which the order was made, stated, "my settlement is in Cumberworth Half, which I gained by apprenticeship with Amos Burdett, of Gelfal, in Cumberworth Half. When I was about fourteen years of age, I was put out an apprentice by *covenant* indenture to the said Amos Burdett for seven years, to learn the trade of a clothier, and I went to and resided with the said Amos Burdett in Cumberworth Half, under the said indenture, for five and a half years, when my brother purchased my time out for two guineas, which was paid by my mother, and the indentures were destroyed: the appellants objected, that the examination was insufficient on the face of it, and the order ought to be quashed. Because the alleged indenture was not shown to have been produced before the justices, nor was its loss shown, to let in secondary evidence; and that the secondary evidence was insufficient, as it did not appear by the examination whether W. Burdett was a parish apprentice, or by whom he was bound, or who were the parties to the indenture; and that, if he were a parish apprentice, that it did not appear by the said examination, whether the binding was allowed by justices, or that the money given or contracted for in relation to such apprentice was inserted in the indenture, or that the indenture was duly stamped. The sessions overruled the objections, and held the examination good. Lord *Denman.* "The first (*a*) question is, whether the examination is good. The court had much doubt in

(*a*) See notice of appeal as to second point.

the first instance, but I think the words 'covenant indenture' are sufficiently descriptive of the indenture of apprenticeship." *Patteson*, J., (who had not heard the argument.) said, "He thought the words 'covenant indenture' were sufficient to distinguish this from a parish indenture." *Coleridge*, J. "I had a different opinion in the first instance upon this point. But when it is considered that parish indentures were introduced by the 43 Eliz., that in that statute they are put in contrast to an indenture of covenant, it is very reasonable that a covenant indenture should mean something different from parish indenture; and, moreover, from the examination, this indenture seems to have been put an end to without any application on the part of the master, either to the overseers or justices." *Wightman*, J., concurred. Order confirmed.

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Reg. v. *Lydeard St. Lawrence*, 1 *G. & D.* 191; 11 *A. & E.* 616. E. Winter, &c., were removed from Spaxton to Lydeard St. Lawrence. Order confirmed. Case:—One of the examinations upon which the order was made, was that of W. Winter, now confined in gaol for felony, who said, "I am now about twenty-five years old; I was born in the parish of Lydeard St. Lawrence, as *I have heard and believe;* I have done no act whereby to gain a legal settlement on my own account; about January last I was removed by an order of removal from the parish of North Cadbury, in the said county, to the parish of Lydeard St. Lawrence, in the said county, the last legal place of settlement of my father, W. Winter, as *I have heard and believe.*" W. Winter, the father, was also examined, and said, "My son, W. Winter, hath not, to the best of my knowledge and belief, gained any legal place of settlement on his own account; my parents were legally settled, as *I have heard and believe*, in Lydeard St. Lawrence; I was born in Lydeard St. Lawrence, as *I have heard and believe;* I was bound apprentice by indenture with John Hurley of Fitzhead, shoemaker, but *it was agreed* in the indenture of apprenticeship that I should serve the last forty days of my apprenticeship in Lydeard St. Lawrence, and *I served* the last forty days of my apprenticeship in Lydeard St. Lawrence with Aaron Hurley, my master's father; I have had relief from the overseers of Lydeard St. Lawrence; my son was removed in January last by an order of removal from North Cadbury to Lydeard St. Lawence, as the last legal place of his settlement; I was examined before the magistrates as to the place of settlement of my son, when the order was made." The grounds of appeal were, because the paupers were not legally settled in Lydeard St. Lawrence, as set forth in the respective examinations of W. Winter and his father. Because it does not appear by either of the said examinations, in what manner Elizabeth Winter and Emma became settled in Lydeard St. Lawrence. Because it is not true that W. Winter, the father, was bound apprentice by indenture with John Hurley of Fitzhead, shoemaker, nor that he served the last forty days of his alleged apprenticeship in Lydeard St. Lawrence with Aaron Hurley, his master's father, under any indenture of apprenticeship, or with the consent of John Hurley. Because it does not appear in the examinations that W. Winter, the father, at any time served Aaron Hurley *by the consent* of John Hurley, or in any other manner, under any indenture of apprenticeship, nor when or by whom or for what time William Winter, the father, was bound apprentice by indenture with John Hurley, as in the said examination of the said W. Winter, the father, is alleged, and which said John Hurley in the same examination is described as of Fitzhead, shoemaker, and there is no person of that name and description now, or at or about the date of the said order, residing at Fitzhead, nor any person of the name and description of Aaron Hurley, father of John Hurley, now, or at or about the date of the said order, residing in Lydeard St. Lawrence, and the said examinations are too general, and are wanting in sufficient particularity in each of these last-mentioned respects. Because no examination, or any copy thereof, has ever been sent to the overseers of the said parish of Lydeard St. Lawrence, *proving or setting forth upon oath of any credible witness when or where the said W. Winter, the son, was born, nor his age.* The court found that

A pauper's statement of what he has heard as to the place of his birth is insufficient.

One ground of appeal was that it was not proved upon the oath of any *credible* witness where or when the pauper was born. This notice sufficiently pointed to the hearsay evidence, and not to the competency of the witness, who was a felon.

Where residence of apprentice with another master is relied on, the master's consent must appear in the examination.

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the father, W. Winter, resided and served the last forty days of his apprenticeship in Lydeard St. Lawrence with Aaron Hurley, his master's father, with his master's consent, under a valid indenture of apprenticeship, bearing date the 6th of April, 1789, produced by the respondent parish from the custody of W. Winter, the father. The court also found that W. Winter, the son, was born in Lydeard St. Lawrence. The question was, whether the respondents could go into either of these grounds of removal under the above examinations. The appellants objected to any evidence being received on these points, but the court received it, subject to the opinion of the Court of Queen's Bench. Lord *Denman.* "The first question is, whether the examination sufficiently states that the pauper's father served the second master with the consent of the first. I am of opinion that such consent is not properly stated, and that the objection, of which due notice has been given, must prevail. The second question is to the sufficiency of the examination in setting forth the place of the pauper's birth-place. It is said that the only objection made, and intended to be made, to the examination in this respect, is that, with reference to the pauper, who speaks as to his birth-place, being a felon convict, and so incompetent from infamy, the fact in question is not proved on *credible* testimony, and that the objection, therefore, to the evidence, as being in itself hearsay, comes by surprise upon the respondents. I think the word 'credible' by no means confines the notice of objection to the competency of the pauper, and that the appellants were entitled to go into the objection, that the evidence as to the birth settlement is entirely hearsay. That objection also must prevail, and the nature of the fact to be proved does not make this an excepted case. Early recollection may be evidence of the place of birth, but early recollection is not the evidence set forth, but merely hearsay and belief. It is remarkable, too, that the father, who was before the magistrate, and who might have given strictly legal evidence of the fact, is not examined as to it. I do not think the inconvenience of requiring magistrates to make orders of removal on legal evidence will be so great as is suggested. They may summon within their jurisdiction, and with respect to witnesses out of their jurisdiction we will do our best to assist them. In the sense in which the sessions ask our opinion, I think they were not at liberty to go into the facts of this case." *Patteson,* J. "I am of the same opinion. The appellants have given sufficient notice of their objections, and the removing parish might have abandoned their order, and drawn up a proper order on better evidence. If they obstinately go to the sessions with a bad order they have no ground of complaint. They knew the consent of the original master was necessary to make good the service with the second master, and they should have gone back and got the fact supplied, if it could be. As to the other notice of objection, I had no notion that it referred to the pauper, being a convict; I took it to refer to the hearsay evidence, and think it a good notice. The date of the indenture of apprenticeship is not given. I do not know that it must always be stated, but it is often a material fact, and in this case it might show (though the fact is highly improbable) that the father was bound after the son's emancipation; I do not know why the date should be kept back. I think it is much better to be strict in these matters, and trust that we shall bring parties at last to some regularity in their proceedings." *Williams,* J. "As soon as it was decided that an order of removal is not to be made upon hearsay evidence, this case was disposed of. It is new to me that evidence of the place of birth is to be a case excepted from the rules of hearsay evidence. With regard to the other objection, assent to the second service is the very point in that part of the case, and should have been stated. I abide willingly by the rule in *Reg.* v. *Middleton Teasdale* (*post*), and think that the act meant to require every particularity." *Coleridge,* J. "I am of the same opinion. I understand the objection to the evidence and birth settlement to point to the circumstance that the evidence was entirely hearsay. It is said the magistrates may remove on hearsay evidence, because the examination is *ex parte,* and because they

Magistrates may summon witnesses.

Semble. Reception of hearsay evidence not to vitiate an order,

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If there is other sufficient evidence.

An examination stating that the pauper's father rented a close of land situated at Lindley, is insufficient; and the examination stating that the pauper occupied a cottage and land belonging to R. R., situate at L., at the yearly rent of 9*l.* is insufficient, because it does not state that the pauper rented it for one year, or that he occupied under such yearly hiring within 6 Geo. IV. c. 57, s. 2.

have no process for compelling the attendance of witnesses generally. But I think they must act on legal evidence, and, if the want of process causes inconvenience, it may be obviated by the legislature. I do not mean to say that the reception of hearsay evidence would vitiate an order of removal, if there was other legitimate evidence." Order of sessions quashed.

Reg. v. *The Recorder of Pontefract*, 2 *Q. B.* 548. W. B. Clapham and wife were removed from Pontefract to Leathley. The examination of the pauper was: That he is sixty-three years of age or thereabouts; that the examinant's father, Jacob Clapham, late of Leathley, blacksmith, deceased, was duly settled at Leathley, which settlement he gained in the year 1813 or 1814 by renting of W. Fawkes, Esq., a blacksmith's shop at Leathley, at the yearly rent of 1*l.* 11*s.* 6*d.*; a cottage also situate at Leathley, of Mr. Milnthorpe, then of Leathley, farmer, since deceased, at the yearly rent of 2*l.* 15*s.*; and also a close of land situated in Lindley in the said county, at the yearly rent of 6*l.* 6*s.*; that his father was tenant of the above-mentioned premises for one whole year, in 1813 or 1814, or thereabouts; that during the whole of that period his father resided and slept in Leathley, in the cottage taken by him of Mr. Milnthorpe. He further stated, that he also gained a settlement in Leathley in his own right, for, in or about the year 1828, he occupied a cottage and close of land belonging to the Rev. Richard Ridley, situate at Leathley, at the yearly rent of 9*l.*; the above-mentioned blacksmith's shop at the yearly rent of 1*l.* 11*s.* 6*d.*, all which premises he occupied for three years, paid the several rents as they became due, and resided and slept the whole of the time in Leathley in the cottage. Deponent also, in the year 1828, rented of Joseph Pawson the eatage of the burial-ground for one year, at the rent of 12*s.*, which rent he also paid. The grounds of appeal were: That the examination is defective and insufficient, inasmuch as it does not disclose the name of the person of whom J. Clapham rented the close of land in the examination of W. B. Clapham described to be situated in Lindley; that with respect to the settlement alleged to be gained by W. B. Clapham in his examination, the examination is defective and insufficient, inasmuch as it is not therein stated that W. B. Clapham rented or occupied the cottage, close of land, and blacksmith's shop, under a yearly hiring; nor does it appear that W. B. Clapham ever *bonâ fide* rented a separate and distinct dwelling-house or building, or land, or both, in our township at and for the sum of 10*l.* a year at the least, for the term of one whole year, nor that he occupied any such house or building or land under such yearly hiring, and actually paid the rent for the same to the amount of 10*l.* at the least for the term of one whole year. The appellants objected to the appeal being heard upon the above grounds. The recorder refused to hear the appeal, quashed the order. On a rule *nisi* for a mandamus to hear the appeal, it appeared that the township of Lindley was small, that it adjoined the township of Leathley, and that it contained not more than twenty-five families. Lord *Denman*. "The first objection is, that the examination does not disclose the name of the person from whom the pauper's father rented the close of land mentioned in the examination. It seems that the sessions have adjudged that the examination is in this respect insufficient, and have done what they were required to do by *Rex* v. *Bridgewater*. We are bound by that decision and ought not to disturb it. With respect to the other objection, the examination does not follow the 6 Geo. IV. c. 57, s. 2, as it does not allege that the pauper rented for one whole year, or that he occupied under such yearly hiring. Cases have been put where the examination would be made out in evidence, and yet there would be no yearly hiring. We under these circumstances think that the examination is insufficient." *Patteson*, J. "I am entirely of the same opinion. The objection to the examination with respect to the settlement of the pauper's father is fatal; it is not stated from whom he rented the close in Lindley. As to the settlement gained by the pauper himself, the objections are clearly pointed out by the grounds of appeal. The words of 6 Geo. IV. c. 57, s. 2, require a little

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consideration. The word 'rented' is somewhat ambiguous; it might apply to a contract for taking for one whole year as well as to an occupation for a year without any hiring for a year; but it is clear, upon reading further on, 'under such yearly hiring,' that rented for a year must mean taken for a year. This may have been a tenancy at will, which would not be a taking for a year. The objection is clearly pointed out, and I think the sessions were right." *Williams*, J. "I think the first objection is wholly unanswerable. We cannot go into the dimensions of a township on affidavit, for that would make the examination good for one township and insufficient for another. There is an absence of a material fact from the examination. I quite agree with the rest of the court as to the meaning of the word 'rented' in the statute; coupling that word with what follows, it is clearly equivalent to a taking for a year." *Wightman*, J. "I am of the same opinion on the first point as to the derivative settlement from the father. On the second point the statute requires two things; that the tenement shall be *bonâ fide* rented for the term of one whole year, and that it shall be occupied under such yearly hiring. Here it is merely stated that the pauper occupied a cottage and close at a yearly rent of 9*l.*, which is not at all in the terms of the statute." Rule discharged.

An examination, stating, "I took a house for a year; I paid rent for the whole time of my tenancy," is not a sufficient statement of payment of rent.

Reg. v. *Leeds*, 8 *Jurist*, 447. M. Redmayne was removed from Preston to Leeds. Case:—The pauper in his examination, stated, "In the month of May, 1820, I became the tenant of a house in Kirkgate, in the town of Leeds, in the West Riding of the county of York. I took the house for a year, at, I believe, 19*l.*; but I am not certain whether it was 1*l.* more or less. I entered on, and resided in, the house in the said month of May, and continued to reside upon it with my family until the month of October, 1821, when I left it. *I paid rent for the whole time of my tenancy.*" One ground of appeal was, that the examination did not state that the rent was actually paid for one whole year. The sessions overruled the objection, and confirmed the order. Lord *Denman*. "We cannot find a settlement here. It is very unfortunate that the payment of the rent is not more fully stated in the examination, and that such an omission should have so serious an effect." *Patteson*, *Williams*, and *Coleridge*, Js., concurred. Order quashed.

An examination disclosing a settlement by relief is not impaired by a defective statement of the settlement.

Reg. v. *Camrose*, 2 *Q. B.* 330, *n.* In the examination it was stated that the pauper gained a settlement by hiring and service in the appellant parish, but did not show that the pauper was at that time unmarried and without children, and was otherwise defective. It was proved, that the appellants gave relief whilst the pauper was resident in another parish; and it was contended that the fact of relief must be supposed to have been grounded on the defective settlement. The sessions quashed the order. *Per curiam.* "The relief is an admission that there was a good settlement, and the examinations do not show the contrary. If the relief is to be coupled with the hiring and service here stated, it does not follow, because the examinations are imperfect, that the settlement by hiring and service may not in reality have been very good." Order of sessions quashed.

Statement of relief is some evidence, and the sessions should hear the case.

Reg. v. *York hire, W. R.* (*Keighley* v. *Wilsden*) 2 *Q. B.* 331. Sarah Hartly, a widow, and two children were removed from Keighley to Wilsden. The pauper in her examination stated that her husband's father died about twenty-four years ago at Hauden, in the parish of Bingley; that when he was lying ill Mr. C., the overseer of Keighley, came over to see him several times at Hauden, and gave him relief once. The sister of the pauper's husband was examined, and stated, "My father belonged to Keighley. I never gained any settlement for myself before I was married, which is about twenty-eight years ago. Better than thirty years ago I had an illegitimate child. When I was pregnant I lived with my father at Hauden, and E. S., the overseer of Bingley, sent me to the overseer of Keighley, and I went with his knowledge and consent to my cousin's, J. L. of Keighley, and lay in there, and I afterwards went with the overseer of Keighley to filiate before the justices. I received pay for my child from the overseer of Keighley till my child died. It lived about nine months."

The examinations contained no evidence of the time of the pauper's marriage further than the age of her eldest child. The sessions thought the examinations defective, and quashed the order, and on a rule for a mandamus, Lord *Denman* said, "there is certainly some evidence," and made the rule absolute (*a*).

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Ex parte Ackworth, 3 *Q. B.* 397. This was an application for a mandamus to erase an entry made at the sessions, or to hear the appeal. The principal facts are stated, *post*. In giving judgment, *Patteson*, J., said, "It appears that the examination on which the order of removal was made disclosed no sufficient ground of removal. It professed to set out a former order of removal from the respondent to the appellant township, and showed that former order to have been suspended by the justices who made it, but failed to show either that the suspension had ever been taken off, or that the order had been acted on after it was so suspended. The appellants, when the case came on for trial, took this objection, and the sessions thought the examination bad, as it undoubtedly was, and they quashed the order, "not on the merits."

Where a former order is relied on, the examination must show that it was acted on.

Reg. v. *Mildenhall*, 2 *G. & D.* 86; 2 *Q. B.* 517. Matilda Roper and children were removed from St. Mary, Nottingham, to Mildenhall. Order confirmed, subject to a case on the sufficiency of the examination. M. Roper in her examination stated, "That she was born, as she heard and believed, in St. Mary, Nottingham, and that she was there married to William Roper, who died two years ago. About seven years ago, my husband's father, William Roper, a labourer, was, I believe, removed by order of justices from the parish of St. Mary aforesaid, to the parish of Mildenhall, in Suffolk, and I have not heard of him since." Barnett, clerk of the board of guardians of St. Mary, Nottingham, stated, "That William Roper, the father of Matilda Roper's husband, was removed by order of justices from the parish of St. Mary aforesaid, on the 11th day of June, 1834, to the parish of Mildenhall aforesaid, against which order there was no appeal." One ground of appeal was that the *order of removal* in the examinations mentioned, was *not produced*, or *shown* to have been *lost or destroyed*, and that the order was made on inadmissible evidence appears on the face of the examinations. It was contended, that the strict rules of evidence ought not to be applied to the preliminary investigation before the justices, and that sufficient appeared on the examination to justify the admission of secondary evidence, as the document might have been in the possession of parties out of the jurisdiction of the justices. Lord *Denman*. "There is no presumption as to the custody of this document, nor any reason shown why it could not have been produced." The other judges concurred. Order of sessions quashed.

The examination must also show that the order was produced before the magistrates, or evidence given to show that it could not be obtained.

Reg. v. *Tetbury*, 1 *G. & D.* 166, *n*. Lord *Denman*. "We have not yet said, and should be unwilling to say, that an order of removal would be vitiated, because *part* of the evidence taken has been improperly admitted by the removing justices." See *Reg.* v. *Lydeard St. Lawrence*, (p. 1063.)

Some inadmissible evidence will not vitiate the examination.

Reg. v. *Alternun*, 1 *G. & D.* 261; 10 *A. & E.* 699. C. Bray, and three children of Thomas Bray, were removed from Gwennap to Alternun. Order confirmed. Case:—The only examination which accompanied the order of removal, and which related to the chargeability, was the examination of Thomas Bray, the father of the paupers, who was described in the examination as a prisoner in the gaol at Bodmin. One ground of appeal was, "because the examination of T. Bray, on which the order was made, is insufficient, illegal, and without effect, and ought not to have been taken by the same justices, T. Bray, at the time of the taking thereof, being a convicted felon in the gaol of Bodmin, and now suffering his punishment there." The appellants in support of this objection tendered in evidence the record of Bray's conviction. The sessions rejected this evidence, and confirmed the order. Lord *Denman*. "My first impression was certainly

It is no objection to the examination, that the witness was a convicted felon, it not appearing that the justices making the order knew that fact.

(*a*) This decision has been reversed in *Reg.* v. *Kesteven* (*post*). The sufficiency of the examination being a question for the sessions.

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opposite to that I have now formed. I think the justices were bound to take the examination of the witness, though a prisoner at the time, unless it was brought to their knowledge that he was then a felon convict. He might have been a prisoner without being a convicted felon, and the fact that he was so, ought not to invalidate the examination, unless it appear, which is nowhere found in the case, that the justices knew the fact. Our decision is not at variance with the cases of *Reg.* v *Black Callerton*, and *Reg.* v. *Middleton in Teasdale*, which were both cases of examinations defective on the face of them, the former showing no chargeability, the latter no settlement whatever, and therefore nothing to show the jurisdiction of the justices to make the order. Here everything is shown necessary to give the justices jurisdiction, and they were bound to make the order. If the witness had been called at the sessions, a valid objection to his competency might certainly have been made. *Reg.* v. *The Justices of Norfolk*, 5 *B. & A.* 484, (*post*,) was decided on another question, the right of the sessions to refuse to enter an appeal when the order had been superseded with the consent of the removing parish." *Littledale*, J. " The fact of the witness being in prison might have suggested to the justices to make an inquiry whether he were a convicted felon or not, but it does not appear in the case that they made such an inquiry, or were in any manner made acquainted with the fact. The examination is perfect as far as it went, and the case is the same as it would be if the justices had proceeded on the testimony of persons, who, it was afterwards found out, were interested." *Patteson*, J. " The case does not state that the magistrates knew of the conviction, nor do the appellants state that they did, in their grounds of appeal. The examination is good on the face of it: though it states the witness to be then in gaol, he might have been merely committed to take his trial. *Reg.* v. *Black Callerton*, is a different case, the examination omitted a fact material and necessary to give the justices jurisdiction. I think proving at the sessions that the witness was a convicted felon is not enough; it must be shown that the magistrates knew it." *Coleridge*, J. " I think this case stands clear of all the decided cases. The examination states enough to show the jurisdiction. The chargeability and all the requisite facts appear upon the face of it. The general presumption is in favour of the competency, and the incompetency must be proved. Unless clear proof was given of the conviction and judgment, the witness was competent at the time this examination was taken. The case is like that put by my brother *Littledale*, of the examination of an interested witness." Order of sessions confirmed.

All the examinations taken by the justices must be sent.

Reg. v. *Outwell*, 9 *A. & E.* 836; 1 *P. & D.* 610. An order for the removal of Penelope Bott and children, from Outwell to March, was quashed. Case:—The magistrates who made the order took the examination of the pauper, John Bott, the father of pauper's husband, and C. Smith, who stated a settlement gained by pauper's husband by apprenticeship in the appellant parish. Before making the order, they also took the examination of W. Clarke, which referred to the hiring of some land in the respondent parish by the husband; but they made the order upon the examination of the paupers, John Bott and W. Smith only, and these were the examinations sent with the order. The land as to which W. Clarke was examined was the same tenement, by the hiring of which the sessions adjudged the pauper to have gained a settlement in the respondent parish. The grounds of appeal were, that the person who acted as overseer in obtaining the said order, was not duly appointed. That a copy of all the examinations touching the settlement of the paupers, taken by the justices previous to signing the order, was not sent to us with the counterpart thereof. That the paupers are settled in the parish of Outwell. It was contended on the part of the respondents that, as the notice of appeal did not deny the settlement set out in the examinations of the paupers J. Bott and W. Smith, it must be taken to be admitted, and they need not give any evidence of that settlement; and the court were of that opinion. It was then objected by the appellants, that the examination of W. Clarke ought to have been sent with the duplicate order of removal to the appel-

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lant parish. But such objection was overruled by the court, and the appellants proposed to give evidence of a settlement in the respondent parish by renting a tenement. The respondents objected to the terms of the notice of appeal being too general, and that such evidence could not be given. The court, however, received the evidence and quashed the order, subject to the opinion of this court as to whether the examination of W. Clarke ought to have been sent with the order of removal; and whether, under the terms of the notice of appeal, evidence of the settlement in Outwell could be given. *Littledale*, J. "It appears to me that the removing parish ought to have sent the examination of the witness Clarke as well as of the others, because Clarke spoke to the hiring of a tenement in the respondent parish, which, as it afterwards appeared by the opinion of the sessions, conferred a settlement. It is true that the other witnesses proved a settlement in the appellant parish, and that the justices acted upon their evidence; but I think it requisite, within the principle of the provision of the legislature, that the whole of the examination should be sent." *Williams*, J. "I have had some doubt in this case, but on the whole I think it is better to construe the rule strictly, and to decide that the act is compulsory on the removing parish to send the examinations of all the witnesses. From what is stated, I must conclude that the evidence of Clarke had an important bearing on the question of the pauper's settlement, although not on the particular settlement which was established to the satisfaction of the justices." *Coleridge*, J. "Except for the doubts entertained by one of my learned brothers, I should have thought this a very plain case. These clauses are most beneficial to the public, and, having the laudable object in view to prevent needless litigation, should not be frittered away. What are the words of the act? 'That no person shall be removed under any order of removal till twenty-one days after a notice in writing of his being so chargeable or relieved, accompanied by a copy of the order of removal of such person, and by a copy of the examination on which such order was made.' *Examination is nomen collectivum*, and without anything to explain it must mean the whole examination. The purposes of justice also require that the whole should be sent; for, if we were to decide that a portion only was sufficient, the inconvenient practice would be introduced of discussing at sessions what evidence was material, and what not. Besides which, the parish obtaining the order might be exposed to the temptation of withholding important examinations. But it is said that the removing parish is only bound to send the evidence on which the order of removal is made, and not to furnish evidence against itself; but I cannot bend to that argument, for the legislature may have intended, by requiring the copy of the examination to be sent, that the parish to which the pauper is removed may be put into possession of all the evidence elicited, in order to shape its future proceedings. It is then contended that, as section 83 enacts that, if either of the parties shall have included in the order or statement any frivolous grounds of removal or appeal, the justices may award costs, the clause shows that any ground of settlement but that on which the order is made ought not to be sent, as leading to unnecessary expense. But the order alluded to there is the order of justices, and the statement is the statement of the grounds of appeal, the examination of the witnesses not being alluded to at all. Which then is more likely to increase the expenses of an appeal, the withholding evidence and keeping parties in the dark as to the facts, or sending the whole examination, which may, indeed, prevent the appeal altogether? We do much better in holding that the removing parish has no discretion as to which of the examinations are to be sent." Order of sessions confirmed.

An examination, on which an order of removal was founded, is admissible as evidence against the parish to which the pauper was

Reg. v. *Sowe*, 2 *G. & D.* 537. Frederick Benton, &c., were removed from St. Mary, Warwick, to Sowe. Order confirmed. Case:—It appeared upon the hearing of the appeal that the magistrates had admitted as evidence upon the present removal the order and examinations which had been taken by two justices on the removal of Mary, the wife of Samuel Benton, a brother of the present pauper, which order had been executed, and

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removed, on the removal of another member of the same family.

had not been appealed against. The examinations, taken in 1835, were those of Samuel Benton the younger, and Samuel Benton the elder. Samuel Benton the younger stated, that he is about the age of twenty-four years, and that he was born, as he hath been informed and verily believes, at Birmingham, where his father and mother then lived, but belonged to the parish of Sowe; and that he had not done any act to obtain a settlement in any parish. Samuel Benton the elder stated, that when he was about the age of thirteen, he was hired by Mr. Joseph Cator, a farmer of Sowe, at Bulkington Statutes, about a fortnight or three weeks before Michaelmas, 1800, for a year, at the wages of 4*l.*, and received a 1*s.* earnest; that he went into and remained in Mr. Cator's service the whole of his time, and received his full wages and left at Michaelmas, 1801; that he was married to Rebecca, his present wife, by whom he has had six children, and among them the said Samuel Benton the younger, and Frederick, and has obtained no settlement since he left the said Mr. Cator's service to the best of his knowledge and belief. These documents were again produced and admitted on the appeal, and it was also proved that the paupers had been received without appeal by the parish officers of Sowe. The grounds of appeal were, that the order was bad and inoperative; because the examinations on which it is grounded are insufficient and defective, and disclose no legal evidence to support the same; because from the said examinations it appears that the family of one Samuel Benton the younger, were, in 1835, removed from St. Mary to Sowe, and such order and the examinations on which it was made were improperly admitted as evidence on the making of the order in this case, inasmuch as it is not shown or set forth in the examinations in this case, that the pauper, Frederick Benton, derived his settlement from Samuel Benton the younger. Because the order for the removal of Samuel Benton the younger, and the examinations on which it is grounded, were not legal evidence in this case, and ought not to have been admitted as evidence by the removing justices. The appellants objected that the order of removal of Mary Benton, and the examinations on which the same was founded, were not admissible evidence before the removing justices of the settlement of the pauper, F. Benton, against the appellants. The recorder of Warwick was of opinion that the order and examinations were admissible evidence. Lord *Denman.* "It is impossible to say that this evidence was not admissible. Whether it was or not is the only question submitted to us by the case." The other judges concurred. Order of sessions confirmed.

Summons.

One justice may issue his warrant to summon the pauper to be examined concerning his settlement. Witnesses may also be summoned for the like purpose, (p. 1063.) And it is very advisable that the overseers and churchwardens of the parish, to which it is proposed to remove the pauper, be summoned to attend the examination. (See forms, Appendix.)

Due examination or consideration sufficient.

Munger-Hunger v. *Warden*, 2 *Sess. Ca.* 40; 2 *Bott*, 817. Exception was taken to an order, for that it was said to be made upon *due examination*, without saying *upon oath.* But by the court: "This is sufficient; for if it is said to be made upon due examination, it shall be understood to be upon oath, though the statute directs the examination to be upon oath."

Rex v. *Fisherton Delamore*, *Sess. Ca.* 45. "*Upon due consideration*" was held sufficient, for that implies *due examination.*

If two justices take the *examination* of a pauper relative to his settlement, but do not remove him, and the pauper afterwards *dies* or becomes *insane*, *Quære*, whether two other justices may remove his family on it? (See *Rex*

Rex v. *Eriswell*, 3 *T. R.* 707. Order of removal of John Sharp from Icklingham, All Saints, to Eriswell, confirmed. Case:—Examination of the pauper in 1779 was taken before two justices, upon the overseers of Icklingham taking him to be examined as to his settlement; his examination was taken upon oath before those justices, and signed by the pauper; by which examination it appeared that he had gained a settlement by hiring and service for a year in Eriswell, and had done no act to gain a settlement elsewhere. No proceedings were had in consequence of this examination until this order of removal was applied for and made. [N.B. The two justices who made the order of removal were *not the same* two justices who took the examination.] The pauper, from the time of the

examination being taken, continued to reside at Icklingham for about five years, without being chargeable to that parish, when he became insane, and so continues. His examination was offered in evidence, and objected to, but received. The evidence, exclusive of the said examination, was not sufficient to warrant the determination. The judges gave their opinions at great length. *A hhurst* and *Buller*, Js., were for confirming, and Lord *Kenyon*, C. J., and *Grose*, J., were for quashing the orders; but there not being a majority of the court of opinion that the rule for reversing the orders should be made absolute, they consequently stood confirmed.

v. *Warminster*, p. 1072.)

One justice may take the examination of an infirm person.

Where a pauper is too infirm to be brought before the justices at their petty sessions, a justice is authorised by the 49 Geo. III. c. 124, s. 4, to take the examination, and report to another justice. (See statute, p. 1015).

Such an order of removal need not state the special circumstances of taking the examination.

Rex v. *South Lynn, All Saints*, 4 *M. & Sel.* 354. Removal of E. Smith, widow, and her children, from St. Margaret's to South Lynn, All Saints. Order confirmed. Case:—The order was founded upon the examination of the pauper, taken before one justice, and reported to the other, pursuant to 49 Geo. III. c 124, s. 4. The pauper, being at the time of her examination sick and unable to travel, the justices suspended the order. The question was, whether this order was void, as it omitted to set out that the examination was taken before one justice only, and was reported to the other justice, so as to show the particular jurisdiction and authority of the justices under the statute? Lord *Ellenborough*. "The justices have no jurisdiction at the common law, but only what is given to them by statute; and the argument is as if this were a proceeding contrary to the common law. It seems to me that the statute in question does not make it necessary for the justices to state the proceedings had under it in their order." *Le Blanc*, J. "The statute enacts, that in case the pauper is by age or other infirmity unable to be brought up to be examined as to his settlement, it shall be lawful for one magistrate to take his examination and report it to another, and for those magistrates, upon such report, to adjudge the settlement; but I do not find that the statute makes any alteration in the form of the order." *Per curiam:* order confirmed.

The respondents cannot use the examination of a pauper upon an appeal against the order of removal, though the pauper cannot be found.

Rex v. *Nuneham Courtney*, 1 *East*, 373. The pauper absconded between the notice of appeal and the then sessions, and could not be heard of; the respondent offered in evidence an examination in writing of the pauper, first taken upon oath on the 4th of June, 1799, by one magistrate, upon the complaint of the overseers of Burcot, and to the truth of the contents of which examination the pauper made oath before the justices at the time they made the present order. But no person was present belonging to Nuneham Courtney; whereupon the appellants objected to the admissibility of this evidence; but the court overruled the objection. But the Court of King's Bench, without hearing counsel, expressed a decided opinion against the admissibility of such evidence, and quashed both orders. (See *Reg.* v. *Sowe*, p. 1069).

Neither the hearsay of a pauper who is dead, nor his examination in writing, taken on oath, are admissible evidence.

Rex v. *Ferry Frystone*, otherwise *Ferry Bridge*, 2 *East*, 54. Order confirmed Case:—The pauper, Catherine Hill, deposed, "That she was the widow of John Hill, and that she had heard John in his lifetime say that his settlement was at Ferry Bridge, which he said he gained by hiring with and serving one J. Hawkeshead, a bricklayer, in Ferry Bridge, for a year" The following examination was also given in evidence. The examination of John Hill, late in the Royal Artillery, now residing at Kilnwick, taken upon oath this 15th day of April, 1788, who saith, "That his legal settlement is at Ferry Bridge; that he acquired the same by servitude; namely, by being hired for one whole year, and serving the said year with J. H, bricklayer, of Ferry Bridge; and that he hath not gained any legal settlement elsewhere since, to the best of his knowledge and belief." (Signed and attested.) No proceedings were had in consequence of this examination until the order was made. Ferry Frystone and Ferry Bridge were the same township. Lord *Kenyon*. "The point upon which the court were divided in opinion in *Rex* v. *Eriswell*, (p 1070,) has been since considered to be so clear against the admissibility of the evidence, either

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as to the hearsay of the pauper or his examination in writing, that it was abandoned by the counsel at the barin *Rex* v. *Nuneham Courtney* without argument. It is true there was no evidence there that the pauper, whose examination had been admitted in evidence, was dead; but our opinion against the general doctrine laid down by the two judges who supported the reception of the evidence in the former case was pretty broadly hinted; and to be sure, that point may now be considered to be at rest." *Per curiam:* both orders quashed.

Although the pauper is dead.

Rex v. *Abergwilly*, 2 *East*, 63. It was also settled that an *ex parte* examination in writing of a pauper, touching his settlement, cannot be received in evidence of such settlement, though he be dead.

Soldiers billeted, and having wife or child, may be examined as to their settlement.

1 Will. IV. c. 15, s. 69, (*a*) (the Mutiny Act), enacts, "That any justice in the United Kingdom, within whose jurisdiction any soldier in the regular army or the permanent staff of the militia, [and by c. 14, s. 55, "any marine"] having a wife or child, shall be billeted, may summon such soldier before him in the place where he is billeted, (which summons he is hereby directed to obey) and to take his examination in writing, upon oath, touching the place of his last legal settlement in England, and such justice shall give an attested copy of such examination to the person examined, to be by him delivered to his commanding officer, to be produced when required; which said examination, and such attested copy shall be at any time admitted in evidence as to such last legal settlement, before any justice, or at any general or quarter sessions, although such soldier be dead or absent from the kingdom: provided that in case any soldier shall be again summoned to make oath as aforesaid, then on such examination, or such attested copy thereof, being produced by him or by any other person on his behalf, such soldier shall not be obliged to take any other oath with regard to his legal settlement, but shall leave a copy of such examination, or a copy of such attested copy of examination, if required.

Attested copy thereof to be evidence.

No other copy but the attested one is evidence.

Rex v. *Clayton Le Moors*, 5 *T. R.* 704. The examination of the pauper, taken under the Mutiny Act, was the evidence relied on. The witness stated that the paper produced was a true copy examined by himself with another paper, which witness saw in the office of W. Addington, London. W. A. was the name of the justice who signed the original. He saw W. A. subscribe his name to the paper produced. He did not know the pauper, nor was he present at the original examination. The sessions refused to receive it. Lord *Kenyon*. "It is not necessary to say here whether or not the original is evidence; it is sufficient for the determination of this case to say that the copy of the examination tendered in evidence is not the copy which the act directs to be received in evidence." Order of sessions confirmed.

The original examination is evidence.

Rex v. *Warley*, 6 *T. R.* 534. It was determined that the original examination is evidence; and Lord *Kenyon* added, that "On this question it was impossible to doubt; the proposition attempted in this case is, that the attested copy is of more weight than the original examination; but it is fair to conclude that the legislature, when they made the inferior species of writing evidence, also intended to make the superior evidence."

The examination must be authenticated.

Rex v. *Bilton with Harrowgate*, 1 *East*, 13. An examination under the act was produced. The witness stated that he received it from the overseer of the respondent parish, but he was not called. No proof was given that the persons who signed it were magistrates, or that the signatures were the signatures of the said persons; and it was held that the examination must be authenticated before it could be received, and does not prove itself *primâ facie*, though the paper is in the form prescribed by the statute.

The examination under the former

Rex v. *Warminster*, 3 *B. & Ald.* 121. *Abbott*, C. J. "It has been

(*a*) The terms of the annual Mutiny Act seldom vary. The words "although such soldier be dead or absent from the kingdom," were not contained in the similar statute of 1 Geo. IV. c. 19; and in the last-mentioned statute the words were "any non-commissioned officer or soldier."

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contended that the words 'at any time' do not mean at a time when the pauper was either absent from this country, or when he was dead. I cannot however find anything in the act from which I can infer that it was the intention of the legislature to restrain those words to the life of the pauper, or during his residence in this country. On the contrary it seems to me that it may have been the intention of the legislature to preserve the memorial of the evidence of the settlement of a person whose life is exposed to more than ordinary risk. I think therefore the examination ought to have been received in evidence." Order of sessions quashed.

acts are receivable in evidence, though the soldier is dead or absent.

It is now expressly provided that the examination and attested copy shall be evidence, although such soldier be dead or absent from the kingdom, p. 1071.

Rex v. *All Saints, Southampton*, 7 *B. & C.* 785; 1 *M. & R.* 663. E. Carden was removed from Romsey Extra to All Saints, Southampton. Order confirmed. Case:—The pauper was the widow of Richard Roe Carden, deceased; and to establish his settlement the respondents duly proved the following paper:—

The examination is not admissible unless on the face of it it appears that the soldier was quartered within the jurisdiction of the justices. *Quære*, whether this fact must not proceed *aliundè?*

"Town of Romsey Infra, in the county of Southampton. } The examination of Richard Roe Carden, a private soldier in his majesty's 25th regiment of foot, taken on oath before us, two of his majesty's justices of the peace for the said town, the 6th day of April, 1782, touching the place of *his last legal* settlement. The said examinant on his oath saith, that he was born in the parish of Romsey Infra, as he hath heard and verily believes, where his father was a settled parishioner; that about fifteen years ago last harvest, he hired himself as a covenant servant for a year to David Pallant, of the parish of All Saints, in the town and county of Southampton, Esq., at the wages of 4*l.*, and in consequence thereof he entered into the service of the said David Pallant, and served him there till about Christmas following, when this examinant went with his master and his family to London, where he stayed with him about three months, when he returned with his said master to the said parish of All Saints, and continued in his said master's service there during the remainder of the said year, and at the expiration thereof he received his full year's wages, and that he hath never done any act since to his knowledge whereby to gain a settlement; and that he hath a *wife* named Elizabeth, and *one child*, named Moses, aged two years and upwards.

(Signed) Richard Roe Carden.

Sworn the day and year above mentioned, before us,

(Signed) { William Biggs, mayor, Thomas Dawkins."

It was objected, that it did not appear on the face of it that at the time the examination was taken, the soldier was quartered in the town of Romsey Infra. The court however found the paper to be a due examination under the Mutiny Act. *Bayley*, J. "In this case I think there is not enough to make the examination evidence. The Mutiny Act gives a special power in certain cases; but for the statute this examination would be extrajudicial. By that statute, if any non-commissioned officer or soldier shall have wife, child, or children, two justices may summon him where he is quartered, to make oath of the place of his last legal settlement, who shall obey such summons, and make oath accordingly: and the justice shall give an attested copy of such affidavit, to be delivered to the commanding officer, to be produced when required, which attested copy shall be at any time admitted in evidence as to such settlement, before any justices, or at any sessions; and if he be summoned again to make such oath as aforesaid, then on such attested copy of the oath by him formerly taken being produced, he shall not be obliged to take any other or further oath with regard to his settlement, but shall leave a copy of such attested copy of examination if required. The justices therefore have no jurisdiction, except in the case of a soldier, nor unless the soldier is quartered within their jurisdiction. In the *Banbury Peerage case*, it was resolved, in 1809, by the judges, on a question put to them by the House of Lords, that a bill in equity, or depositions, cannot be received in evidence against a party not claiming under the plaintiff or defendant in the chancery suit. Here the facts constituting the

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jurisdiction, namely, that the examinant is a soldier, and quartered within the jurisdiction, must be shown either *aliundè* or *ex visceribus*. I think it should have been made out *aliundè*. In *Rex* v. *Warminster*, (p. 1071,) it was proved *aliundè* that the party was a soldier, and quartered within the jurisdiction. Here it merely appears upon the face of the examination, and you would make the examination proof of facts giving the jurisdiction. But even these facts are not represented to have been stated on oath; they are merely introduced as part of the description of the examinant. We are asked to supply by construction and intendment that which must at least have been proved before the justices. In *Rex* v. *Gouche* (*a*) the court said, that they would presume jurisdiction; but that decision was overruled in *Rex* v. *Halling*, (*b*) and *Rex* v. *Hulcott*, (*c*) in the last of which cases Lord *Kenyon* upon full consideration says, 'As it does not appear on the face of this order that the justice had jurisdiction, the pauper was not legally discharged from her service. There is no material distinction in principle between this case and cases of orders. If it were sufficient to state the jurisdiction upon the face of an order, there would be no difficulty here. If that be not sufficient, there must be proof *aliundè* to make the examination evidencè.' Here the facts necessary to give the jurisdiction are not all stated upon the face of the instrument, nor are they proved *aliundè*." *Holroyd*, J. "The distinction between courts of special and general jurisdiction is laid down in *Miller* v. *Seare*, (*d*) and though that case is overruled (*e*) as to the point there decided, that an action would lie against commissioners of bankrupt for a wrongful commitment, that distinction is well established. The rule, *omnia præsumuntur ritè esse acta*, does not apply to the facts which constitute the jurisdiction. In a plea of justification all the facts which show the jurisdiction must be stated, and they must also be proved. Here those facts neither appear on the face of the document nor are shown *aliundè*. It is therefore not necessary to decide whether it would have been sufficient if the facts had appeared on the face of the document. The case referred to, with regard to wages in husbandry, (*e*) is directly in point." Order of sessions quashed.

The pauper himself ought to be summoned and heard.

Rex v. *Wykes*, *Andr.* 238; 2 *Bott*, 819. A person ought to be summoned, and be heard before he be removed; for he may produce a certificate, or give other sufficient security, or show cause otherwise why he ought not to be removed; especially as he himself perhaps by the removal is likely to be the greatest sufferer; and therefore natural justice requires that he be not condemned unheard.

But it is not necessary in all cases that the pauper himself should be examined.

But in *Rex* v. *Bagworth*, *Cald.* 179; 2 *Bott*, 644, objection was taken to the order, that it did not appear to have been made upon proper evidence; that it was made only upon examination *of the premises;* that the *pauper himself* must be examined; and was so holden in *Rex* v. *Wykes*. But by the court: "It cannot be necessary in all cases that the pauper should be examined. In that of an infant of tender years it would be impossible. There is no such general rule. The case in *Comberbach*, 478, is in point: in that case *Holt*, C. J., says, 'If it can be, 'tis fit it should be so, but not absolutely necessary.'" See *Rex* v. *Everdon*, p. 1084.

The sessions cannot quash an order because the pauper was not examined.

Rex v. *Tavistock*, 3 *D. & P.* 427. The sessions, on an appeal, quashed an order, on the special ground that the pauper had not been *adduced* and *examined* before the removing magistrates, though he was in every respect competent to, and capable of being examined. The case, however, did not state that the pauper had not been summoned, and the Court of King's Bench quashed the order of sessions, and directed the appeal to be re-heard.

It is the duty of justices to examine him.

It is not essential to the validity of an order that the pauper should be examined, but if it is possible the justices are bound to examine them; and if they corruptly omit to summon him for that purpose, they are liable

(*a*) 2 *Salk.* 441; 2 Lord *Raym.* 840.
(*b*) 1 *Stra.* 8.
(*c*) 6 *T. R.* 583.
(*d*) 2 *Bla. Rep.* 1141.
(*e*) *Doswell* v. *Impey*, 1 *B. & C.* 163; 2 *D. & R.* 350.

to an information, or to an action at the suit of the pauper, if he is removed illegally. *Ib.*

4. *Of the Examination.*

Justices may commit a pauper who refuses to be examined.

Rex v. *Jackson*, 1 *T. R.* 653. A rule was obtained for an information against justices of Kendal, for committing a pauper to prison, whom they were examining relative to his settlement, for *not answering a particular question.* Under which commitment he continued in prison for thirteen days, which it was contended was so manifestly illegal, that they must have known they were exceeding their authority, and therefore that it must be intended that they acted from corrupt motives. But it appearing on reading the affidavit on both sides, that no corrupt motives were to be imputed to the defendants, the rule was discharged. *Ashhurst*, J., said, "He would not then decide whether magistrates have, or have not, a power to commit a pauper for refusing to answer proper questions put to him in the course of his examination. They certainly have a right to examine a pauper touching his settlement; and yet that would only be a shadow of a right, unless they had likewise a power of enforcing that examination, by committing the pauper for refusing to be examined." *Buller*, J., said, "With regard to the power of commitment, he did not know how justices were to act, unless they had such a power. This commitment, 'until he should answer,' he thought right; and though the pauper continued in prison under the commitment thirteen days, that will not make the case stronger against the defendants. The party committed for refusing to be examined is to clear himself, and when he will answer must give notice to the magistrates. This is like the case of a commitment by the commissioners of a bankrupt, where the party committed must send word when he will submit and answer the questions." Rule discharged.

Examination of *prisoners to* their settlements made evidence.

By 59 Geo. III. c. 12, s. 28, it is enacted, "That it shall be lawful for any justice of the peace, to take in writing the examination on oath of any person having a wife, or child, who shall be a prisoner in any gaol or house of correction, or in the custody of the keeper of any such gaol or house of correction, or who shall be in the custody of any constable, or other peace officer, by virtue of any warrant of commitment, touching the place of his or her last legal settlement; and such examination shall be signed by such justice taking the same, and shall be received and admitted in evidence as to such settlement before any justices, for the purposes of any order of removal, so long only as the person so examined shall continue a prisoner."

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5. *The Form of the Order of Removal.*

5. The Form of the Order of Removal. (*a*)

We have seen what are the principal requisites of these orders. We will now notice some of the formal parts, premising only that every fair presumption will be made to support the order, as that a husband was not resident with the wife, when she only was removed. *Rex* v. *Stockton*, p. 1019.

1. *The County and Date of Order.*

1. *The County and Date of Order.*

The county must appear in the order.

It must appear distinctly in the order in what county it is made; and to name the county in the margin, without any statement in the body of the order, that the place is in such county, or in any words of reference, as *in the said county*, or *in the county aforesaid*, will not be sufficient. (*Sett. & Rem.* 151; 2 *Sess. Ca.* 181.) *Rex* v. *St. Mary, Leicester*, p. 1048.

Rex v. *St. Stephenson*, 1 *Barnard.* 177, 196. There was an order of removal by the justices of the town of Bedford, from the parish of St. Peter's in Bedford, to the parish of St. Stephenson, in the county of Bedford, and it was only said in the margin *the town of Bedford*, without mentioning in what county. It was moved to quash this order; and insisted, that it was necessary to mention what county this Bedford lay in,

(*a*) See the Forms, *post*, Appendix.

5. *Form of Order of Removal.*

because the appeal must be to the justices of that county where it lies. And the court was of this opinion, but did not quash the order, by reason of a flaw in the certiorari, by which it was removed.

Distinction between orders and indictments.

Rex v. *Holbeck, Leeds, Burr. S. C.* 198; 2 *Bott*, 864. The borough of Leeds was in the margin, and the direction was, to the churchwardens, &c. of Holbeck, in the said borough. And by the court: "That is well enough, and the distinction is, betwixt orders and indictments. In orders, the margin is to be considered as a part of the order, and a clear plain reference to it is sufficient; but in indictments, the county must be expressed in the body, and a reference to the margin is not sufficient.

2. *The Description of the Paupers.*

2. *The Description of the Paupers.*

The name of the person, if known, (*a*) must be stated in the order, and where children are included they must be separately named, and their ages stated; and if omitted it seems that the order is bad, although it specially adjudges their place of legal settlement. If the order state the age of any child removed with his parent at more than seven years, it may set forth that the child has not gained a settlement in his own right, or adjudge the place removed to is his settlement.

Pauper to be named, if known; if not, say whose name is unknown.

Southwell v. *Needwell, Sett. & Rem.* 57; 2 *Bott*, 760. "Whereas a certain woman hath intruded, these are therefore to require you to convey:" Objection, it is not said who this woman was. *Parker*, C. J. "You must either name her, or say a certain woman unknown."

An order cannot remove more parties than complained of.

Rex v. *Newington, Sett. & Rem.* 45; 2 *Bott*, 760. "Whereas J. S. hath intruded into the parish of A. and is likely to become chargeable; these are therefore to require you to remove him *with three children*." The court quashed this order, for the justices have removed more than is complained of.

An order to remove a man *and his family* is bad.

Johnson's case, 2 *Salk.* 485; 2 *Bott*, 837. Order to remove a man, his wife, and *family*, from Brood to Sandhurst, not good, because too general; for some of the family might not be removable, they might have a settlement in Brood, though Johnson had not.

Beaston v. *Scisson*, 1 *Stra.* 114. Order for removal of Thomas Block and his family; upon the first reading quashed as to the family, because too general.

Children should be described by name, and *semble* age.

Flixton v. *Royston*, 1 *Sess. Ca.* 11; *Fol.* 278. Order to remove Jane Smith and *her five* children, quashed as to the children, for the uncertainty; because it neither tells the names nor ages of the children; for she might have more children than five, and some of those five might have gained settlements.

Not necessary to state the age of the children. *Quære, Rex* v. *Withernwick, post.*

Ringmore v. *Petworth, Sett. & Rem.* 41. The order was, "Whereas such a person and his three children are likely to become chargeable, and their last legal settlement was at Ringmore." It was moved to quash the same, because the children's ages were not set forth. But by the court: "It is not necessary in this case; for the order says, they were last legally settled in Ringmore, and then no matter what their ages are."

Hobey v. *Kingsbury*, 1 *Stra.* 527. Two justices adjudging the settlement of the husband to be at Kingsbury, and that he is likely to become chargeable to Hobey, send him, his wife, and son of *one year old*, to Kingsbury: and whether this was good as to the wife and child was the question: And it was held to be well enough. Order confirmed.

Must adjudge the settlement of a child of ten years.

Rex v. *Middleham, Fol.* 271. Order to remove a child, of the age of ten years, to Middleham, because Middleham was the place where his father was last legally settled, quashed by the court; because there was no adjudication that Middleham was the place of the child's last legal settlement, and at that age it might have gained a settlement.

The order must set forth the ages

Rex v. *Trinity in Chester*, 2 *Sess. Ca.* 74; 2 *Bott*, 867. This rule was laid down: Every order that concerns the removal of a father and his

(*a*) In *Rex* v. *Maidstone*, 12 *East*, 550, one of the paupers was described as "an infant male child, not baptised."

children ought to show the ages of the children; for they may have gained a settlement in some other right, as by being apprentices or servants; therefore their age ought to be set forth, that it may appear to the court, that by reason of their infancy they have not gained any settlement in their own right, but have only a relative settlement from their father. Seven years is an age that the court will presume a child could gain a settlement at, in his own right: but if it appears upon the order that the child was above seven years old, the order must set forth that such child hath not gained a settlement in his own right.

5. *Form of Order of Removal.*

of children, unless their settlement is adjudicated.

Rex v. *Bowling, Burr. S. C.* 177. The order removed the father and children (without setting forth their ages) from Bradford to Bowling, and adjudged Bowling to be the place of the father's last legal settlement. By the court: "The established rule is, that where the children are sent in consequence of their father's settlement, either *the ages of the children must be set out* (to show that they are of such tender years as not to have gained a settlement for themselves); or there must be an express adjudication of their having gained no other settlement. Therefore it is bad as to the children."

Same point.

Reg. v. *Newcastle,* 1 *Q. B.* 428. Case:—The point raised by this case was, whether two members of the same family, having distinct settlements, could be removed by *one* order. The 79th section of the Poor Law Act was referred to. Lord *Denman.* "The phrase 'no person' necessarily includes the plural, and negatives all mankind. And in a subsequent part of the interpretation clause, it is provided, that, if in describing any person or party, a word importing the singular number only is used, the same shall be understood to include several persons as well as one person." He added, "It is not expedient to change the ordinary course of proceeding, but if we are called upon to say whether an order for the removal of two persons, having different settlements, is necessarily bad in point of law, we think it is not." Order of sessions confirmed.

An order for removing two persons with distinct settlements is not necessarily bad.

Chewton v. *Compton Martin,* 1 *Stra.* 471. An order made by two justices for the removal of two different families, was quashed by the sessions; and in support of the decision of the sessions, it was argued that the removal of one might be legal, and of the other illegal; and then upon an appeal to the sessions against the order generally, there would be great difficulty as to costs, the 8 & 9 Will. III. c. 30, giving costs to the parish in whose favour the appeal is determined, because it could not be said that the order is reversed, because it stands good as to part, and it cannot be said to be confirmed, because it was not held good as to the whole. *Eyre* and *Fortescue,* Js., were of opinion that the order was ill, giving this further reason, that the party removed had a right to appeal, for it may be that he was removed from his own estate, and then, upon his appeal, it will consequently draw over the other matter, in which, perhaps, the parties on all sides acquiesce. Order of sessions confirmed.

Contra.

Reg. v. *Graffham, Sett. & Rem.* 16; 2 *Bott,* 808. The order sets forth, that Henry Tate and his wife do *endeavour* to intrude into the parish; and quashed by the court; for that he cannot be removed out of the parish, unless he hath come into it.

"Endeavour to intrude" not sufficient.

3. *Of the being Chargeable.*

3. *Of the being Chargeable.*

Whenever it is necessary to prove that a pauper has become chargeable, a certificate that he is so chargeable, signed by the chairman, sealed with the seal of the board, and countersigned by the clerk, shall be sufficient to show to what parish, and at what time, he so became chargeable, unless the contrary be proved. 5 & 6 Vict. c. 57, s. 17. See form, Appendix.

Evidence of chargeability.

We have already had occasion to consider some of the circumstances that render a person chargeable. And by the 56 sect. of the 4 & 5 Will. IV. c. 76, all relief given on account of the wife or child under the age of 16, not being blind, or deaf and dumb, shall be considered as relief given to the husband or father; and relief given on account of such child of a widow shall be considered as given to the widow. And by the 57th sect. the

Relief to wife or child, when it renders parent or husband chargeable.

5. *Form of Order of Removal.*

husband is liable for the maintenance of the children, legitimate or illegitimate, of his wife, born before his marriage, and is chargeable with all relief, or the cost price thereof, until the child is 16 years of age, or the mother dies.

Formerly, relief to an unemancipated child made the father chargeable.

Before this statute, relief to any unemancipated child was considered as relief given to the parent. And in *Rex* v. *Mile-End* (p. 125), the judge declined to give an opinion as to the effect of this statute upon relief given to a child above the age of 16 years. As a general rule, a statute will not be so construed as to operate as a repeal of the previous law, unless its provisions are inconsistent with it. But it may be observed that there was no distinct authority for the position, that relief given to an unemancipated child rendered the parent chargeable, and the object of the statute might have been to introduce a sensible and definite rule on the subject; and unless this was the object, the section will be of little importance, and will be applicable to those cases only (which are of rare occurrence) where the child receiving relief has been *emancipated* under the age of 16. If this section should be considered as declaratory, one effect will be, that relief given to a child under the age of 16, if the child is blind, or deaf and dumb, will not render the parent chargeable.

The order must adjudge the pauper to be chargeable to the removing parish.

Rex v. *Bradford, Sett. & Rem.* 40. *Likely to become chargeable,* (*a*) but not said to what parish. Quashed.

St. Nicholas, Gloucester, v. *St. Peter's, Bristol,* 2 *Sess. Ca.* 73. Upon an order of removal of Mary White, the reciting part of it was, "Whereas the pauper was likely to become chargeable to the parish of St. Nicholas;" but in the adjudicating part it was only said, that she was likely to become chargeable, without saying to the parish of St. Nicholas. The court allowed this to be a good exception, and said they would not take these orders to be good by intendment; for the court will not intend a jurisdiction in the justices, where they do not entitle themselves to it on the face of the order.

Same point.

Rex v. *Bourn, Burr. S. C.* 39. The complaint was, that the pauper was likely to become chargeable to the parish of Spalding; and the adjudication was, that the pauper was likely to become chargeable, generally, without saying *to the said parish of* Spalding. And by Lord *Hardwicke,* C. J. "There must be either an express adjudication, or a plain reference to the complaint; because it is the very point upon which the jurisdiction of the two justices is founded. Here the complaint is right; but the adjudication is at large, there being no words of reference. It is only that the pauper is likely to become chargeable. Now this may be to his relations or parents, as well as to the parish." And he cited the case of *St. Nicholas* v. *St. Peter's* (*supra*), as similar to the present; and said that "*Rex* v. *Witham* (*b*) was not finally determined by the court, but was referred to the judge of assize." And he added, "that there was no case that he could meet with, upon the strictest inquiry, where an adjudication at large, without some words of reference to the complaint, has been holden to be good."

Same point.

Rex v. *Ufculm, Burr. S. C.* 138; 2 *Bott,* 870. It was objected, that the paupers were said to be likely to become chargeable, but did not say to what parish. The words were, "and whereas upon due examination and inquiry, it appears to us, and we do accordingly adjudge that they are likely to become chargeable." By *Lee,* C. J., and the court: "The objection is fatal. A complaint must appear 'of the pauper's being likely to become chargeable *to the parish from whence removed;*' and there must be an adjudication of the truth of it. (*c*) For the justices have no authority, without such complaint, and an adjudication of the truth of it. We cannot support an order by implication. There is no necessity, indeed, for any particular set or form of words. But there must be an adjudication of it in

(*a*) These were the words used before stat. 35 Geo. III. c. 101.

(*b*) A contrary doctrine had been held in that case, 1 *Stra.* 142; also in *Maidstone* v. *Dething,* 1 *Stra.* 393, and *Rex* v. *Leofield,* 2 *Stra.* 698, which are not considered to be cases of authority, and are therefore omitted.

(*c*) It must now be shown that the pauper *had actually become chargeable.*

some words or other." Order quashed. Same point in *Rex* v. *Netherton*, *Burr. S. C.* 139, where the order was given up as indefensible. Same point in *Rex* v. *Hucheston*, *Burr. S. C.* 287.

5. Form of Order of Removal.

Notice of chargeability must be sent twenty-one days before removal. The omission to do so, ground of appeal.

By the 4 & 5 Will. IV. c. 76, s. 79, it is enacted, that no person shall be removed or be removable, by reason of his being chargeable or relieved, until twenty-one days after a notice in writing of his being so chargeable or relieved, accompanied by a copy of the order and examination, shall have been sent by the overseers removing, to the overseers of the parish to whom the order is directed. And in *Reg.* v. *Brixham* (p. 1055), where no such notice had been sent, the Court held, that the omission was a good ground of appeal. Lord *Denman* said: "The course pursued by the appellants was the only one by which the enactment could be taken advantage of, unless we were to multiply distinctions not desirable. Sect. 79 clearly makes the notice of chargeability necessary to give effect to an order of removal." *Patteson*, J., observed, "I should be very much disposed to uphold this enactment as strictly as possible."

Examination must disclose it.

The chargeability must appear on the face of the examination, *Reg.* v. *Black Callerton*, p. 1054.

An examination which states that it was taken at S., that the mother is of S., and that she and her three children, of the ages respectively of seven, three years, and one year, were poor and chargeable to S., sufficiently shows that they were inhabiting in S., so as to give the justices jurisdiction to remove them.

Reg. v. *Rotherham*, *G. & D.* 523; 2 *Q. B.* 557, n. A certiorari issued to bring up the proceedings of the sessions, upon an appeal against an order for the removal of paupers from Sheffield to Rotherham. It required the return of the order of removal, the examination on which it was founded, and the notice and grounds of appeal. One objection was, that the order of removal ought not to be unconditional, but should have been conditional, or the notice not been given under sect. 79 of 4 & 5 Will. IV. c. 76. *Coleridge*, J. "Your objection is that the order should embody the whole of the proviso." Lord *Denman* added, "That is to say, that the order to remove should, under certain circumstances, be an order not to remove." It was also argued, that upon the examination there was no evidence of the pauper's being an inhabitant and chargeable in Sheffield. *Coleridge*, J. "You seek to make the jurisdiction depend on the truth of the complaint, and not on the fact of there being a complaint. The chief justice, in delivering the judgment of the court, in *Cave* v. *Mountain*, 1 *M. & G.* 257, said, 'If the charge be of an offence over which, if the offence charged be true in fact, the magistrate has jurisdiction, the magistrate's jurisdiction cannot be made to depend upon the truth or falsehood of the facts.'" As to the other point, *Cur. adv. vult*; and Lord *Denman* delivered the judgment:—"This case comes before us upon a return to a writ of certiorari, whereby the sessions was commanded to return their order, confirming the original order of two justices, for the removal of certain paupers to the appellant township, and also the examination whereupon that original order was made, and the notice of appeal to the sessions, upon which nothing turns. The objections founded upon that return consisted of two parts; first, that the original order of removal was defective upon the face of it, for want of showing jurisdiction in the removing justices; and, next, that the examination whereon they proceeded was defective in not showing that the paupers were at the time in the township, and that therefore they had no jurisdiction to remove. Upon the first point (the form of the original order), the court gave sufficient answers to the various objections which were urged in the course of the argument, which we do not consider it necessary to repeat. We then thought, and think still, that the original order is unobjectionable. We shall now only add that we certainly should not be induced, upon slight grounds, to overturn a form of proceeding which we have reason to believe has been established by the usage of very near a century. One objection only was felt as creating any difficulty, and it was this; that it does not appear upon the face of the examination by the removing justices that the paupers, at the time of the removal, were residing in the township,

It is not necessary in the order to refer to the provision of sect. 79 of 4 & 5 Will. IV. c. 76. (*a*)

The fact, and not the truth, of the *complaint*, gives jurisdiction.

Form of order very ancient.

(*a*) So also in *Rex* v. *Tibbenham*, p. 1023, it was determined that where a woman became chargeable by reason of pregnancy, it was sufficient for the justices to adjudge that she was actually chargeable in the common form without referring to the special circumstances.

5. *Form of Order of Removal.*

and that, therefore, there was no jurisdiction to remove. This objection involves consequences more extensive perhaps than may at first sight appear, as to the jurisdiction of the Court of Quarter Sessions, and as to the matters into which this court will inquire, where they (the sessions) have undoubted jurisdiction over the subject brought under our consideration. It raises two questions of some importance; first, whether the writ of certiorari itself did not issue improvidently, so far as it required the return of the original examination and of the notice of appeal, the same forming a portion of the evidence submitted to the sessions upon the hearing of the appeal; and, next, whether, although returned, this court ought to go further than to examine the validity of the original order and of the order of justices, without examining the evidence upon which they proceeded in a matter obviously within their ordinary jurisdiction, and where no case has been stated for our opinion as to the admissibility or effect of that evidence or any part of it. Into these questions, however, we do not feel it necessary to enter, because, giving full effect to the objection and judging the examination as by that objection we were called upon to do, we think it sufficient. The point for consideration is, whether, upon the face of the examination, by fair and reasonable intendment (and by that rule we were desired to consider it), it does not sufficiently appear that the paupers were inhabiting in the removing township at the time of the examination and of making the order. And, first, with respect to the mother. She is stated to be 'of Sheffield,' and her examination is taken by the removing justices 'at Sheffield.' Moreover, she and the other paupers are stated to be 'chargeable to Sheffield.' Now this statement of being chargeable we find to have been considered by this court as material upon this very point of inhabitancy. In the case of *Rex* v. *Binigar*, 7 *East*, 377, it was stated in the order of removal 'that the paupers *lately came* and intruded themselves into the parish, endeavouring there to settle as inhabitants thereof;' and the objection to the order was, that the complaint did not state that the paupers '*then* were,' but '*lately came*,' and so that the justices had no jurisdiction. To this it was answered by the court—'The order states, and the justices adjudge it to be true, that the paupers are *likely to become chargeable* to the parish, which could not be *if they were not in the parish at the time*.' And there is certainly no ground for presuming any change of circumstances, as the examination and order are by the same justices, and bear date on the same day, the 3rd of September. From these circumstances taken together, we think it sufficiently appears that the mother was *then* in the township of Sheffield. Then, as to the children. The helpless infancy of the two younger (three years and one year of age) raises a presumption of law and common sense that they would be with the mother for custody and protection, and the more so in this instance, as from the examination we find that their father was then dead. As to the eldest (seven), though the inference may not be so strong, he is nevertheless of an age up to which the period of nurture is considered as extending. This, therefore, with the weight which we have seen attributed to the statement of chargeability, will, we think, suffice as to him." Rule discharded (*a*).

It may be presumed that infants of tender years are with the mother for custody.

4. *Of Oaths and the Adjudication.*

Oath necessary. Mistake in *Jurat*.

4. *Of Oaths and the Adjudication.*

It must appear that the examinations were taken upon oath and before the two justices; but where the jurat was "sworn before me," and it purported to be before two justices, and was signed by both, the jurat was referrible to each justice, *Reg.* v. *Selkstone*.

It must appear on the copy of the examination that it is taken before two justices. An examination commencing: "The examination of S. S., taken

Reg. v. *Shipston-upon-Stour*, 8 *Jurist*, 492. Sarah Sutton, single woman, and her illegitimate child, William, aged about seven weeks, were removed from Shipston-upon-Stour to Atherstone. Order quashed. Case:—The order of 31st of December was made by William Dickins, and H. Townsend, two justices of the peace. The examinations sent to the appellant parish were, "The examination of Sarah Sutton, taken upon

(*a*) See 2 *G. & D.* 533, and *Reg.* v. *The Justices of Buckinghamshire*, *Ib.* 560.

5. *Form of Order of Removal.*

oath before us, two of her Majesty's justices of the peace in and for the county of Worcester, who upon her oath saith, 'I am about twenty-four years of age, and have not, to the best of my knowledge and belief, gained any settlement in my own right. About seven weeks ago I was delivered of a male bastard child in the parish of Shipston-upon Stour, which has since been christened William.' Taken and sworn before us this 31st day of December, 1842. (Signed) William Dickins, H. Townsend. The mark of × Sarah Sutton." Then immediately followed, on the same sheet of paper, "The examination of Patience Randall, the wife of Thomas Randall, of Shipston-upon-Stour, in the county of Worcester, labourer, taken this 31st day of December, 1842, who upon her oath saith, 'that the pauper, Sarah Sutton, is my daughter; that she was born in the parish of Atherstone-upon-Stour, in the county of Warwick, and is about the age of twenty-four years, and is illegitimate, being born before I was married.' Taken and sworn this 31st day of December, 1842, before us. (Signed) William Dickins, H. Townsend. The mark of × Patience Randall." These two examinations filled the second and third pages of the sheet of paper, the first page of which was occupied by the notice of chargeability and order of removal. The grounds of appeal were: That it does not appear by the examination, that the examination of Patience Randall was taken before two justices for the county of Worcester, nor that she was examined before two justices of Worcester, touching the settlement of the said Sarah Sutton, or before the justices who signed the order of removal. That the order, as regards William, is bad in this, that it adjudicates as to his settlement in our parish absolutely; whereas it should have adjudged that, as an illegitimate child, he should have and follow the settlement of his mother, until he should attain the age of sixteen only. The order was quashed upon these objections. If the first objection is fatal to the sufficiency of the examination, then the order of sessions to be confirmed. Or, if the order is bad only upon the other objection, then the order to be quashed so far as regards William; otherwise the case to be sent back to be heard upon the merits. Lord *Denman*. "There is much more in one of these objections than was at first sight apparent, namely, the question upon the taking of the examinations. The first examination commences as follows:—'The examination of Sarah Sutton, taken upon oath before us, two,' &c., 'who, upon her oath, saith,' &c. Then the jurat is, 'Taken and sworn before us this 31st day of December, 1842: William Dickins, H. Townsend.' Immediately following this, upon the same sheet of paper, there is, 'The examination of Patience Randall, of, &c., taken the 31st day of December, 1842, who, upon her oath, saith;' and the jurat is in the same form as the former. It is not stated in the latter examination, or in the jurat to it, that the examination is taken before persons having authority to administer an oath. It is contended that this is immaterial. I am not sure that this case sets out the examinations; probably they are only copies; but, supposing that to be so, we do not think that the respondents would set out anything less perfect for the purpose than the original examinations. The first examination is right; the second is insufficient,—standing alone, it does not appear to be taken before two justices. It is said to be taken before two individuals, and to be on the same sheet of paper with the first; but it ought not to be left to us to collect, from any conclusion of our own, that the parties had authority to administer an oath. This defect is fatal to the latter examination." *Patteson*, J. "We must take these to be true copies of both the examinations. Now strike out both the jurats, and look at the caption; it would only apply to the first examination. It would appear that the first examination was taken before two justices, but that is not the case with regard to the second. The commencement of the first examination cannot be left out; that is the only place where the fact that these persons were justices appears. Could Patience Randall be indicted for perjury? If she could not, it is quite clear that it does not appear that she has been sworn before

upon oath before us, two," &c. Another examination, on the same sheet of paper, commenced: "The examination of P. R., the wife," &c., "who, upon her oath, saith." The jurat to each examination was in the same form, "Taken and sworn before us this 31st day of December, 1842. A. B., C. D. This latter examination is insufficient.

An order of removal of a mother and her illegitimate child is not bad as to the child, because it adjudicates that the settlement of the child is that of the mother absolutely.

5. *Form of Order of Removal.*

a competent tribunal. If these examinations are to be allowed, because they are upon the same sheet of paper, the next thing would be, that, if two affidavits in the same cause were written on the same sheet of paper, and one was stated to be sworn before A. B., a commissioner for taking affidavits, &c., and the other before A. B., and there was no reference made from the one to the other, this court must hold them both to be good." *Williams*, J. "I was much struck with the remark, that the copy sent need only be a copy of the evidence, and not a copy of the whole examination; but this point is put out of the question by the case. The first examination is stated to be the examination of Sarah Sutton, 'taken upon oath before us, two of her Majesty's justices of the peace,' &c. That is not so stated as to the second, and the particularity of the first may be said to affect our decision as to the second. Now, as is truly said by my brother *Patteson*, there is no sufficient foundation for an indictment for perjury; there is no reference in the second examination to the persons mentioned in the first, nor is there any sufficient statement of the qualification of the persons mentioned in the second." *Coleridge*, J. "I have come to the same opinion after much hesitation, and with considerable regret, but I conceive that it is the only safe conclusion at which the court could arrive. We must treat these documents as the examinations; they must be assumed to be correct copies. It is said, that examinations are to be construed as strictly as orders. That is not quite the case, for we have said, that, as to examinations, the justices are to judge of the language contained in them, whether it is sufficient or not; but, with respect to orders, it is for this court to determine on the construction to be given to them. Still, I think, the rule applies equally to examinations and to orders, as to all which gives jurisdiction to the justices, that ought to appear unequivocally. In this case, if we take Randall's examination alone, jurisdiction does not appear; but then it is said, we must take the other examination, which is upon the same sheet of paper, and that shows the jurisdiction. No doubt, in this particular case, the decision may appear to be hard, but where are we to stop? Suppose it was shown here, by affidavit, that the handwriting to the jurat of each examination was the same, would that be sufficient? The principle is this, that we ought not to allow jurisdiction to be shown by external circumstances." Order of sessions confirmed.

The justices must expressly adjudicate upon the chargeability of the pauper and the place of his settlement.

Suddlecomb v. *Burwash*, 2 *Salk.* 491; 2 *Bott*, 858. Order quashed, because it was only said to be complained by the officers, that the person removed was likely to become chargeable, but not adjudged so by the justices.

The justices must make an express adjudication.

Rex v. *Westwood*, 1 *Stra.* 73; 2 *Bott*, 782. Order quashed, because the justices only say, *We order him to be removed to such a place, as the place of his last legal settlement*, without adjudging that to be the place.

Rex v. *Minchin Hampton*, 2 *Sess. Ca.* 93. Order, "Whereas complaint is made to us, that such a person is now become chargeable; we do adjudge that the last place of his lawful settlement is in the parish of Minchin Hampton." Objected, that here is no adjudication that he is likely to become chargeable; and quashed for this reason.

"Do believe" insufficient.

Stallinburgh v. *Haxlay*, 1 *Sess. Ca.* 131; 2 *Bott*, 848. "On examination we *do believe* the same to be true." Quashed; for a man may believe a thing on uncertain evidence.

So also "credibly informed."

Reg. v. *Waltham Magna*, *Sett. & Rem.* 38; 2 *Bott*, 844. "Whereas such a person is likely to become chargeable, as we are *credibly informed*, these are therefore to require you to remove." Quashed; for that here is no adjudication that he is likely to become chargeable, and this is only the belief of another.

Recital of complaint is not an adjudication.

Bury v. *Arundel*, 2 *Salk.* 479; 2 *Bott*, 584. "Whereas complaint hath been made unto us, that Jacob Duckin, with his wife and children, came

from his place of abode and last legal settlement in Bury to Arundel, we therefore require you to remove." Naught; for there is no adjudication of the justices which was his last legal settlement, but only a complaint that Bury was, which doth not appear whether true or false.

5. Form of Order of Removal.

Egburn v. *Hartley-Wintley*, 1 *Sess. Ca.* 45; 2 *Bott.* 847. An order adjudges that a man was settled at such a place; and therefore they remove his widow thither. Quashed; for that here was no adjudication of the widow's settlement, and she might have gained a settlement after the death of her husband.

Removal of *widow.*

Rex v. *Warnhill*, 2 *Sess. Ca.* 92; 2 *Bott*, 662. Adjudication that the last legal place of the pauper is at Warnhill, in the county of Berks. Quashed; for that is no adjudication of the *settlement.*

His "*legal place*" insufficient.

Anon. 2 *Salk.* 473. It was held that *legal settlement* and *last legal settlement* are the same thing; because by every new settlement the precedent is discharged.

Legal settlement sufficient.

Crowland v. *St. John the Baptist*, 19 *Vin. Ab.* 399, *n.* 2. The justices need not allege *how* he was settled, nor negative the fact that the pauper did not rent a tenement of 10*l.* a year. (*Weston Rivers* v. *St. Peter's*, 2 *Salk.* 492; 3 *Salk.* 255.)

Not necessary to notice the mode of settlement.

Reg. v. *St. Mary Ottery*, *Sett. & Rem.* 32; 2 *Bott*, 346. The justices say that the poor person was last settled there, *according to their knowledge.* By the court: "They should have said, he was last settled there: an order is a judgment, and must be certain and positive: he might have been settled elsewhere and they not know it." Quashed.

"According to their knowledge" insufficient.

5. *To whom Order directed.*

5. To whom Order directed.

St. George v. *St. Olave's*, 2 *Salk.* 493; 2 *Bott*, 665. The order was to convey to the parish of St. Olave, and it was directed, to the churchwardens and overseers of the poor of the parish of St. Olave. Quashed; for they ought and can only order the parish officers where the intrusion is made to make the removal.

Orders to be executed by the officers of the removing parish.

It is not necessary to use the word *churchwardens;* if directed to the overseers it is sufficient. (*Rex* v. *Searle*, 1 *Bott*, 3.)

An order directed to officers of both parishes to remove and receive is bad, because it is entire. (*Comb.* 325.)

Must not be to both parishes to remove and receive.

Rex v. *Alverstone*, 7 *T. R.* 564. The order was directed to the churchwardens. &c. of the parish, township, or division of U., and it was wished to have the opinion of the court whether such description was proper; and Lord *Kenyon* said, that, as at present advised, he saw no objection to it. The order was quashed on another ground.

"To a parish *or* township" may be good.

It is not necessary that the pauper should be *conveyed* by the overseers.

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6. Time and Manner of Serving or Executing the Order of Removal.

6. Time and Manner of Serving or Executing the Order of Removal.

In *Llanwinio*, 4 *T. R.* 474, one of the objections was, that there was an interval of a year between the *signing* of the order and the *execution* of it. Upon which Lord *Kenyon* said, there might be some weight in that objection, if the circumstances of the pauper had been altered, but nothing of that kind is stated here; nor indeed is any question referred to us on this point.

Served a year after, good.

But in *Rex* v. *Lampeter*, (p. 1087), an order of removal had been suspended, and not served till *three years* afterwards, the court held it an unreasonable time, and it was treated as a nullity.

But *three years* after, unreasonable.

To prevent the too *precipitate removal* of a pauper after the order has been obtained, the 4 & 5 Will. 4, c. 76, sect. 79, enacts that no poor person shall be removed under an order of removal until twenty-one days after *notice in writing* of his being so *chargeable* or relieved, accompanied by a copy or counterpart of the order of removal of such person, and by a copy of the examination upon which such order was made, shall have been

Pauper not to be removed till *twenty-one days* after notice of order of removal has been made, &c.

Reg. v. *Brixham* p. 1055.

6. *Of Serving Order of Removal.*

sent, by post or otherwise, by the overseers or guardians of the parish obtaining such order, or any three or more of such guardians, to the overseers of the parish to whom such order shall be directed: Provided always, that if such overseers or guardians as last aforesaid, or any three or more of such guardians, shall by writing under their hands agree to submit to such order, and to receive such poor person, it shall be lawful to remove such poor person according to the tenor of such order, although the said period of twenty-one days may not have elapsed: Provided also, that if notice of appeal against such order of removal shall be received by the overseers or guardians of the parish from which such poor person is directed in such order to be removed within the said period of twenty-one days, it shall not be lawful to remove such poor person until after the time for prosecuting such appeal shall have expired, or, in case such appeal shall be duly prosecuted, until after the final determination of such appeal.

What was a valid service before.

In *Rex* v. *Alnwick, post,* it was held that the service of the order of removal, to render the same valid, must be by delivery of the order itself, or by serving a copy of the order, and producing at the same time the original.

Paupers to be removed under an order may be conveyed by *other persons* than the churchwardens or overseers themselves.

By 54 Geo. III., c. 170, sect. 10, it was enacted, "that it shall and may be lawful for the churchwardens, overseers, or others having the control, ordering, or management of the poor of any district, parish, township, or hamlet, to employ any proper person or persons whomsoever to carry, remove, and deliver any pauper or paupers ordered to be removed by any of his majesty's justices of the peace, competent to make such order; and that a delivery by such person or persons of any pauper or paupers so ordered to be removed shall be as good, valid, and effectual to all purposes whatsoever, as if the same was or were delivered by any churchwarden or overseer whatsoever."

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7. *Of Suspending Orders of Removal.*

7. Of Suspending Orders of Removal.

35 Geo. III. c. 101. Justices empowered to suspend orders of removal of sick or infirm persons. Charges incurred by such suspension to be paid by the officers of the parish to which they are ordered to be removed, which may be levied with costs.

By 35 Geo. III. c. 101, s. 2, it is provided, "that if any poor person shall be brought before a justice, for the purpose of being removed by virtue of any order, or any vagrant pass, and it shall appear to the justice that such person is unable to travel, by reason of sickness or other infirmity, or that it would be dangerous for him so to do, the justice is required and authorised to suspend the execution of the same until it may safely be executed; which suspension of, and subsequent permission to execute the same, shall be indorsed on the order of removal or vagrant pass, and signed by the justice; and the charges incurred by such suspension may be directed to be paid by the parish to which such person is ordered to be removed, in case any removal shall take place, or in case of the death of such poor person before the execution of such order." (*a*)

The statute then provides a remedy for the costs, and gives a right of appeal, where the same shall exceed 20*l.*

The 49 Geo. III. c. 124, s. 1, provides, that when any order of removal or vagrant pass shall be suspended, any other justice of the county or place where such removal or pass shall be made, may order the same to be executed.

And sect. 3 provides against the separation of husband and wife, or other persons nearly connected with each other, and living together as one family at the time of any order of removal made, or vagrant pass granted, during the sickness of any one of such family.

It is not essential that the *pauper*

Rex v. *Everdon,* 9 *East,* 101. An order was made to remove a pauper

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(*a*) This act did not enable a magistrate to enforce reimbursement *from time to time,* but only in the event of actual removal or death. But by the 4 & 5 Will. IV. c. 76, s. 84, the parish will be liable to all costs and expenses, from the time of notice of chargeability being sent, provided only, in suspended order, that notice of the order be given within ten days of the order being made.

7. *Of Suspending Orders of Removal.*

from Everdon to Wappenham, and suspended. By an order reciting the death of the pauper, and that 20*l.* 8*s.* 6*d.* expense had been incurred by the suspension, the same magistrates directed the parish officers of Wappenham to pay that sum to Everdon. Against this last order there was an appeal. Order quashed. Case:—The order of removal was made upon the examination of the pauper's father only, who swore that the pauper, from excessive infirmity and sickness, was unable to be brought before the justices who made the original order *for examination*, and that the said justices at the same time made the order for suspension. The pauper died without having been removed, and she had never been before the justices at any time upon the matter, nor been examined by them when they made the order of suspension. Lord *Ellenborough*, C. J. construed the words, "In case any poor person shall from henceforth be *brought* before any justice or justices of the peace for the purpose of being removed," to mean, *in case a question concerning the removal of any poor person shall be brought before the justices of the peace for the purposes of his removal, &c.* And he said that the language of the act adverted to the case which most generally happens, where the pauper is brought before the magistrate to be examined as to his settlement; but that it appeared from *Rex* v. *Bagworth* (p. 1074), that it was not necessary in all cases, though if it can be, it is fit it should be so, but not absolutely necessary. And that all that the act meant was, not that where any person was brought personally, but where his case was brought judicially before the magistrates, for the purpose of his removal, that they should have power to suspend the execution of the order of removal, if it appeared to them by due examination of the facts, that from sickness or infirmity of the party due removal could not then safely be made. And he added, that in thus straining the words of the act, he did not go further than was done in *Antony* v. *Cardigan* (p. 477), where the description of a person *not having any child* was construed to mean not having any child which could be a burthen to the parish where the father was hired and served. The other judges agreed, and the order of sessions quashed.

should, but *his case* must, be brought before the justices; and pending illness of pauper an order, suspending his removal, may be made in his absence.

Rex v. *Chagford*, 4 *B. & Ald.* 235. On the 2nd December, 1816, two justices removed William Endacott from Chagford to Staverton. This order was suspended. On the first of July, 1817, the parish officers of Chagford, believing the pauper sufficiently recovered to be removed, obtained an order, taking off the suspension, and also for the payment of 22*l.* 17*s.* 1½*d.*, the expense of the suspension. Immediately after this order was made, it was ascertained that the pauper was still too ill to be removed, and on the 7th of July the justices signed a second order of suspension. On the 16th of May, 1819, the pauper's father died at Chagford, and by his death two freehold houses in Chagford descended to the pauper as heir-at-law. (*a*) The parish of Chagford thereupon ceased to relieve the pauper. On the 7th of February, 1820, another order was made for the removal and also for the payment of 60*l.* 9*s.* expenses of the suspension. The pauper was never removed; but on the 18th of February, 1820, the appellants were, for the first time, served with the order of removal, and with the several other orders here mentioned, and on the same day payment was demanded of the expenses incurred by the suspension. The parish of Staverton gave notice, that they intended to appeal against an order made by B. Fulford and G. Gregory, bearing date the 1st of July, 1817, so far as the same order directs the payment of 22*l.* 17*s.* 1½*d.*; and also of an appeal against another order by B. Fulford and G. Gregory, bearing date the 7th of February, 1820, so far as that order directs the payment of 60*l.* 9*s.* The sessions quashed both orders. *Abbott*, C J. "In this case

The power of ordering the charges incurred during the suspension was confined to two cases only, viz., the death or removal of the pauper; and therefore where a pauper, during the suspension, became irremovable in consequence of an estate descending to him, it is not within the act.

(*a*) It is provided by 35 Geo. III. c. 101, s. 2, (p. 1013), that no *act done* by the pauper during the suspension shall give him a settlement; and in *Rex* v. *St. John, Hackney*, (4 *N. & M.* 336), it was determined that residence on a tenement during a suspension was within the restriction.

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we are called upon to put a new construction on this act of parliament, which was passed in order to prevent a grievance, arising from the too great temptation afforded to parish officers by orders of removal, to convey paupers from one place to another during sickness. The second section recites, that poor persons are often passed to the place of their settlement during the time of their sickness, to the great danger of their lives; and it gives a power to magistrates, in order to remedy this inconvenience, of not carrying their order into immediate effect, but of suspending its operation for a time. But then, in order to prevent this from producing any hardship to the removing parish, it provides, that no act done by the pauper during the suspension shall give him a settlement; and empowers the magistrates to order the intermediate charges to be paid by the parish to which the order is made, in case any removal shall take place, or in case of the death of such poor persons, before the execution of such order. This power, however, seems to me to be confined to these two cases only, viz. the removal and death of the pauper. Whether or not it would have been expedient for the legislature to have provided for the present case it is not for this court to say. All that we can do is to determine that the non-removal of the pauper prevents the case from falling within the act. I should have thought, indeed, that as the order of the magistrates, not being within the act, was altogether nugatory, the proper course for the sessions to have pursued would have been, not to have quashed the order, but to have dismissed the appeal. However, as they have done substantially right, I think their order ought to be confirmed." *Bayley*, J. observed, that "a very long period had elapsed, during which this order remained suspended, and no notice of it was given to the opposite party. If that notice had been given, (and there are no words in the act that supersede the necessity of it,) it might have enabled the other parish to have made prompt inquiry, and to have ascertained the fact relative to the settlement of the pauper." *Holroyd*, J., thought the statute could not be construed so as to apply to this case, although probably the legislature would, if it had occurred to them, have provided for it. Order of sessions confirmed.

An order for the removal of J. T., his wife and children, was suspended on account of the husband's sickness, who afterwards died, and the wife and children were removed, *without taking off the suspension.* The order of removal ought not to be quashed.

Rex v. *Englefield*, 13 *East*, 317. An order was made for the removal of J. Timms, E. his wife, and two infant children, by name, from Englefield to Cassington; the order was suspended as to Joseph, until it should appear that he was sufficiently recovered from his illness to be removed without danger; and a third order was made on the 17th March, 1810, which stated that Joseph died on the 7th instant, and that the charges incurred by the suspension amounted to 41*l.* 4*s.* 6*d.*, which they directed the parish of Cassington to pay. After the death of Joseph, his wife and children were removed under the first-mentioned order from Englefield to Cassington; and on appeal against such order, and also the order for payment, the three orders were quashed, because the order suspending the order of removal had not been itself taken off by an order of magistrates on the death of Joseph. A difficulty occurred upon the opening of the case which the court thought could not be got over; upon what ground the sessions could quash these orders, which, upon the face of them, were all good, when the real objection to the removal of the wife and two children, if any, was the want of another order of magistrates taking off the suspension of the original order of removal. The respondents' counsel, indeed, suggested that the death of the husband operated as a natural death to the order of suspension, but the court did not decide the case on that ground, and it was observed, *è contrà*, that the terms of the order of suspension did not apply to the case of death, but it was to operate till the sick person could be safely removed. For the other reason, however, the court quashed the order of sessions, and *Le Blanc*, J., referred to the precedent of a permission to remove after an order of suspension, given in the new (viz. the 21st) edition of *Burn's Justice*, as being best adapted to such a case.

The order must be served within ten

No charges under a suspended order of removal can be recovered, unless

a copy of the order and examination is served on the overseers within ten days of the order being made by 4 & 5 Will. IV. c. 76, s. 84. Before this statute, it was required that the order should be served within a reasonable time.

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Rex v. *Lampeter*, 3 *B. & C.* 454; 5 *D. & R.* 310. An order was made on the 14th May, 1821, for the removal of Gwen Rees, widow, from Lampeter to Llanfairclydoge, but on the same day suspended on account of the age and infirmity of the pauper, which rendered it unsafe for her to travel. The same justices, on the 16th February, 1824, made an order, which recited that the pauper was dead, and that an expense of 12*l.* 13*s.* 6*d.* had been occasioned by the suspension, which they directed the parish of Llanfairclydoge to pay. Both these orders were served on the appellants for the first time on the same 16th February, upon which they appealed against the order of removal, and the sessions held that the order of removal and suspension never having been served in the pauper's lifetime, nor after her death, until the money was demanded, the order of removal had become a nullity. *Abbott*, C. J. "I am of opinion that the sessions came to the right conclusion in this case. The utmost effect of *Rex* v. *St. Mary-le-Bone*, *post*, is this; that the death of a pauper during the suspension of an order for his removal does not render that order a nullity; and that a subsequent order for payment of the expenses is a grievance upon the parish to which the pauper is ordered to be removed, for which an appeal will lie against that order. No question arose in that case respecting the necessity of serving or giving notice of the order of removal, or the order for suspending it; that question arises, for the first time, in the present case. The legislature has not fixed any precise time for the service, but it is evident from the 49 Geo. III. c. 124, s. 2, that such an order *may* be served previous to a removal; and if a suspended order *may* be served, and reason and convenience require that it *should* be served before removal, the service should be within a reasonable time. In this case a period of three years elapsed between the issuing of the original order of removal and the death of the pauper, and during all that period no notice was given either of the original order or of the order of suspension. I am, therefore, of opinion, that the order of removal in this case was not served within a reasonable time, and consequently that the order of sessions must be confirmed." *Bayley*, J., observed, "that by the delay of three years, the opportunity of examining the pauper had been lost, and the expense incurred in supporting the pauper may be thrown upon persons not inhabitants of the parish during that period." *Littledale*, J., concurred.

days to entitle the parish to any charges.

A suspended order of removal must be served within a reasonable time.

Service after the lapse of three years, and after the death of the pauper, is not within a reasonable time.

Rex v. *Penkridge*, 3 *Bar. & Ad.* 538. An order was made on the 21st of May, 1825, for the removal of W. Cooper to Leamington Priors, and suspended. No notice of this suspended order was given to Leamington Priors until the 12th of August, 1826, when that parish was served with a copy of the order of removal, and the order for suspending the same. Against this order the parish of Leamington Priors did not appeal, until the removal of the pauper hereinafter mentioned. By another order on the 24th of January, 1831, indorsed upon the order of removal, the suspension was removed, and an order made for the payment of the expense of 80*l.* 12*s.* 4*d.* incurred by the suspension. This last-mentioned order, and the order of removal, and the order for suspending the same, were served on the parish officers of Leamington Priors on the 16th of February, 1831, the pauper was at the same time delivered to them and payment was demanded of the above-mentioned sum. Leamington Priors appealed against the suspended order of removal and the order of the 24th of January, 1831, at the Easter sessions, being the first sessions after the removal of the pauper and demand of the expenses. The sessions quashed both orders, upon the ground that the first order had not been served within a reasonable time. Lord *Tenterden* now delivered the judgment:—"This was a suspended order, of which no notice was given to the parish of Leamington Priors till fifteen months after it was made, the pauper having been, during that period, in such a state that it was improper to remove

An order not served within a reasonable time, is voidable only by appeal.

The appeal must be to the next sessions after notice of the order. An appeal at the sessions next after the removal of the suspension is too late.

Order made on 21st May, 1835, and served, August, 1826. Sessions held delay unreasonable.

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him. The order of January, 1831, in fact only took off the suspension. The suspended order was by two justices, who were to inquire and adjudicate as to the propriety of removing the pauper. The other order was by justices who were only to direct the execution of the first order and the payment of the charges attending it. The removal, therefore, was under the first order, and there was an appeal against it on the ground that as it was not served for so long a period after it was made it was a mere nullity; and it was argued, that this being so, the appeal to the next sessions after the actual removal of the pauper was in good time. If the first order had by reason of the death of the pauper become inoperative, it would have become a nullity of course; but the objection here taken was, that it was not served within a reasonable time: the sessions have so found, and of that they are the proper judges. It is, however, a question for us whether the order was for that reason absolutely null and void or voidable only. In our opinion it was voidable only, and ought to have been avoided by appeal to the next practicable sessions after it was served. By the omission to appeal to that sessions, the parish to which the removal was to be made lost its opportunity of making that objection to the order. In *Rex* v. *Lampeter*, p. 1087, the appeal was to the sessions next after the service of the order. Besides, that was a case where the order was not served till after the death of the pauper, and it had therefore become a nullity. Here the pauper was living at the time when the order was served, and there might therefore have been an appeal to the then next sessions." The order of sessions quashed.

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8. *Of Superseding an Order of Removal.*

8. Of Superseding an Order of Removal.

The justices who make, have the power of superseding an order of removal. If, however, an appeal has been entered and respited, their power is taken away.

An order may be deserted and given up by consent, without appealing.

Rex v. *Llanrhydd*, *Burr. S. C.* 658. Two justices made an order of removal in May, 1768, from Llanrhydd to Ruthin, and the paupers were delivered to the officers of Ruthin, who maintained them for a while; and for some time after they were maintained at the joint expense of both parishes. Notice of appeal being served on the officers of Llanrhydd, on the morning of the sessions, previous to the filing of the appeal, the officers of Llanrhydd consented to take the paupers back to their custody, without giving Ruthin the trouble of appealing. Afterwards, in January, 1769, two other justices removed the same paupers from Llanrhydd to Denbigh. And upon appeal, their settlement was found to be at Denbigh. But it appearing that the former order had not been appealed against, the court were of opinion, that the order of removal from Llanrhydd to Denbigh ought to be quashed accordingly. Lord *Mansfield*, C. J. "That order was made in favour of Llanrhydd; Llanrhydd gave it up, and consented to take the paupers back, without giving Ruthin the trouble of appealing against it. May not a party give up a judgment intended for his own benefit?" The order of sessions quashed.

The parish in whose favour an order of removal is made, may, by consent, abandon it, without waiting to appeal to sessions; and another order made by them, removing the pauper to a different parish, is good.

Rex v. *Diddlebury*, 12 *East*, 359. By an order, dated August 15th, 1809, M. Davies, single woman with child, was removed from Much Wenlock to Diddlebury. Order confirmed. Case:—Soon after the sessions in July, 1809, two justices, by an order, removed the pauper from Much Wenlock to Long Stanton; she was conveyed by the officers of Much Wenlock, and delivered, with the order, to the officers of Long Stanton, who received her, and maintained her for five weeks. On the 15th of August following, a meeting was had between the officers of Much Wenlock and Long Stanton, who, finding the account given by other witnesses was different from that given by the pauper, on whose evidence the order of removal to Long Stanton had been made, and being of opinion that it could not therefore be supported, they mutually agreed to cancel that order, which they did, with the consent of the magistrates who had made it, and who thereupon made another order, which is the order now appealed

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against, and which was made before any sessions had intervened, to which any appeal against the first order could be made. There was no appeal against the order of removal to Long Stanton. When this case was called on, *Le Blanc*, J., said, "that the point had been expressly decided in *Rex* v. *Llanrhydd*;" and Lord *Ellenborough*, C. J., said, "that the point was so clear upon principle, that it did not want any authority to support it." Against the order, *Chalbury* v. *Chipping Farringdon* (*post*), was cited; and it was urged shortly, that however an order made might be abandoned before execution, it could not afterwards; and being in the nature of a judgment executed, it could only be reversed by appeal." Lord *Ellenborough*, C. J., said, "There are two ways of getting rid of an order; one by the consent of the parish in whose favour it is made, to abandon it; the other, by waiting till the time of appeal, and appealing against it to the sessions, by whom it may be quashed if not supported. Here the parish in whose favour it was made, finding, upon further information, that they could not support it, very sensibly determined to abandon it at once by consent, and acted accordingly. And what objection can there be, as Lord *Mansfield* observed, in the case mentioned, to a party's abandoning a judgment intended for his own benefit? In the case of Salkeld (*Chalbury* v. *Chipping Farringdon*), there was no consent of the party in whose favour the order of justices was made to vacate." *Per Curiam:* Order confirmed.

An order may be superseded although a removal has taken place.

If the costs are paid, no appeal lies against such order.

If the *result* of the sessions is right, the court will not inquire into the *reasons*.

Reg. v. *J. W. R. of Yorkshire*, (*Longwood* v. *Halifax*), 1 *G. & D.* 630; 2 *Q. B.* 705. On a rule for a mandamus to enter and hear an appeal against an order for the removal of Joseph Fox from Halifax to Longwood, it appeared that the order had been made on the 8th of May, 1841, served on the 11th of May, and executed by the actual removal of the paupers to Longwood, soon after the expiration of twenty-one days from the date of the service. After the twenty-one days, and after the actual removal, viz. the 15th of June, notice of appeal was given by the parish officers of Longwood for the then next quarter sessions. One of the grounds was that the order had been made on hearsay evidence. On the 21st of June, the respondents, conceiving the above ground of appeal to be valid, obtained from the removing justices a supersedeas of their order, and on the following day served the township of Longwood with the supersedeas, and stated at the same time that the paupers would be taken back, and the expenses consequent upon their removal would be allowed to Longwood in the account current between the townships. To this course no objection was made. The paupers were taken back to Halifax on the 16th July, and the expenses claimed for maintenance, &c., by the officers of Longwood, were settled in September. On the 31st July another order of removal was obtained upon a different examination, and against this second order an appeal had been entered and respited at the October sessions. On the 30th June last an appeal was entered at the quarter sessions against the first order, and the appellants moved to quash it for the insufficiency of the examination. The respondents opposed it on the ground that the order having been superseded, the sessions had no jurisdiction to permit an appeal to be entered against it. The sessions decided that they had jurisdiction to permit and they discharged it generally, declining to make an entry for want of form. On the same day, after the sessions had returned to other business, and a considerable time after the order had been so disposed of, the respondents suggested to the court that the originals of the order of removal, and of the examination on which the same had been made, ought to have been filed according to a rule of the sessions, which provides that "all appeals shall be entered, and the respective orders or convictions appealed against shall be filed with the clerk of the peace before the sitting of the court on the first day of every sessions," &c. The court on such last-mentioned point decided, that since the original order had not been filed according to the rule of practice, the sessions had no jurisdiction to hear the appeal, and they accordingly directed the clerk of the peace to strike out such appeal and to take the copy order, the notice of chargeability, and the copy exa-

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mination from the file of the court, which was done. Lord *Denman*. "In this case the appellants stated as a ground of appeal against an order of removal, that it was made upon insufficient evidence; and the respondents being convinced that the objection was good, had their order superseded, and agreed to pay all expenses which the removal had occasioned to the appellants. This took place before the appeal was entered. The appellants however entered their appeal and went to sessions. The first question is, whether the sessions could entertain this appeal against an order of removal, which had been thus abandoned after execution. The sessions appear to have thought at first that they could try the appeal, but in the course of the day they struck it out, on learning that one of the rules of practice to be observed on entering such appeals had not been complied with. The object of this application is to make them restore the appeal and hear it, so as to get a decision which may conclude the respondents on their first insufficient order, and shut them out from contesting an appeal against their second and amended order upon the merits. The object is certainly one which we do not view with favour, but still, if the law requires it, we must grant the application. Have then the sessions acted so with respect to the appeal before them that we are called upon to interfere? It is said that we must control them, as they have improperly decided to strike out an appeal because one of their rules of practice had not been observed. But we have nothing to do with the reasons on which the sessions have decided. If they had struck out the appeal in the first instance they would have acted correctly, for the appeal was against an order of removal which had been superseded. Eventually they did strike out the appeal: they were right in doing so, and we will not inquire into their reasons. But it is said that the result itself, which the sessions have come to (without reference to their reasons), is wrong, because an order of removal cannot be superseded after it has once been carried into execution. The words of the old decision, *Pancras* v. *Rumbold*, 1 *Str.* 6, which is relied upon for this point, appear to me much too large, and the case has been decided in *Rex* v. *Diddlebury* (p. 1088), and *Rex* v. *Justices of Norfolk* (*post*). *Bayley*, J., in the last-mentioned case lays it down that, even where the removing parish consents to a supersedeas of their own order before appeal entered, still 'the sessions may exercise a discretion, and enter the appeal or not, so as best to answer the purposes of justice.' But I think even these words are to be qualified by what follows, 'if the parties removing do not choose to pay the expense of maintenance incurred previously to the supersedeas, they may then enter the appeal, for the purpose of compelling them to do so; if they are willing to do it the sessions may refuse to enter the appeal.' Where the costs of maintaining the pauper after removal have not been paid to the appellant parish there may remain something for the decision of sessions to operate upon. I quite agree with the language of *Patteson*, J., in the two cases referred to. It is a beneficial rule to lay down that where a good objection is pointed out to an order of removal, the respondents may bid adieu to it and make another." *Patteson*, J. "This rule is applied for mainly on the ground that the sessions have refused to hear for one specific reason, and that, although their decision may be supported by many good reasons, we are bound to interfere, if the reason they acted on is bad. The question is whether the sessions were right in refusing to entertain this appeal. Allusion has been made to what I said in two of the cases cited, and in *Reg.* v. *Rishworth* (p. 1059.) What I said in *Reg.* v. *Rishworth* I said advisedly, for my observations in the two preceding cases had been made in passing, and I was desirous in the last case to avoid prejudging the question, which I knew would be raised in this case as to the general power of a removing parish to abandon an insufficient order. That question is now before us, and I think we should act very hardly by parishes if we were to say that they cannot cure a mistake by abandoning an order of removal which they find to be bad, and by making a fresh one. Before the Poor Law Amendment Act

When the order has been superseded, the sessions should strike out the appeal.

no communication was necessary between contending parishes respecting an order of removal. Now that communication is required for the purpose of preventing litigation, and it would be prejudicial to that purpose as well as strange, if, after it has been pointed out to the respondents in the course of such communication that their order is bad, they should be obliged to take the case to sessions and to increase costs. When an order of removal is sent under this statute, and notice of appeal against it is given within the twenty-one days after service, it cannot be said that the order is executed. It is true that here there had been an actual removal of the paupers under the order. Why? Because the parish removed to had neglected to give notice of appeal within the twenty-one days. It was the fault of the appellants that the order was acted upon, but still the removing parish, whether bound to do so or not, has in point of fact paid all expenses consequent upon the removal. The general question having now come before us, I do not hesitate to say that the respondents had a right to get their order superseded after the objection stated, and that no court of quarter sessions ought to enter an appeal against an order so superseded. *Coleridge*, J. "This is an attempt either to increase costs or to get rid of the merits, and I am glad that we may, consistently with law, defeat it. The order of removal was not objected to during the twenty-one days which are required to intervene before its execution by the actual removal of the panpers. Then notice of appeal against the order was furnished, and the respondents, finding one of the grounds of appeal to be irresistible, do all they can to set themselves right. They get the order superseded, and offer to defray all expenses which the appellants have been put to. Then behind the backs of the respondents this appeal is entered. If this case stood upon the rule of the sessions with respect to the mode of entering appeals I should hesitate. I am doubtful whether it is a proper rule, and I agree that they cannot make such rules of practice as will vary the general law respecting these appeals. But previously to the discussion on this rule of practice, there was another discussion on the effect of superseding an order of removal actually executed. The sessions decided that they had jurisdiction to try the appeal against an order superseded; they afterwards decided that they had no jurisdiction, because their rules of procedure had not been observed. Now as it cannot be denied that the sessions might alter their decision at any time during the sessions, and they at last came to a right conclusion, it matters not whether they acted on good or bad grounds, their conclusion is right, and we are not bound to facilitate injustice by making this rule absolute. One word on the abandonment of orders of removal. I think the present state of the law makes it quite proper that there should be the right, which has been exercised in this case, of abandoning an order made on an insufficient examination, and I accede to all the observations of my brother *Patteson*." *Wightman*, J. "In *Rex* v. *J. Norfolk*, *Bayley*, J., expressed an opinion that the sessions had discretion, on account of costs, to enter an appeal, if they please, against an order of removal which had been superseded after execution but added, that if the removing parties choose to pay the costs, 'the sessions may refuse to hear the appeal.' Here all expenses have been paid. It is said in this case that the sessions had at one time exercised their discretion, that they decided to hear the appeal, and afterwards rescinded their decision on insufficient grounds. We cannot go into that: for some reason or other they have determined the matter, and we may consider this as an application made to us to hear in the first instance." Rule discharged.

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Rule of sessions requiring the original orders to be filed, is of doubtful validity.

Rex v. *J. Middlesex*, 3 *P. & D.* 459; 11 *A. & E.* 809. On a rule for a mandamus to hear an appeal against an order of removal from Tottenham to St. Pancras, and determine the merits thereof, it appeared that the order was made on the 2nd January, 1839, upon the examination of the pauper, wherein she described herself as Jane Foyster, single woman, and stated that she had gained a settlement by hiring and service in St. Pancras parish. She was removed to that parish on the 25th January following,

After an appeal has been entered against an order of removal, the justices cannot supersede their order.

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and at the ensuing sessions, holden on the 9th April, St. Pancras entered an appeal against the order, and on the 11th April gave the respondent parish notice for the trial of the appeal on the 24th April, pursuant to the practice of the sessions. On the 14th April, the appellants received from the attorney of the respondents a notice that, on examination of the pauper it was discovered that she was a married woman at the time of the settlement mentioned in her examination, and that he therefore should not defend the appeal at the ensuing sessions, and that he should either move to quash the order or abandon it. He also stated that the husband had been settled in the appellant parish, and intimated that he should remove the pauper to the appellant parish on such settlement. On the 23rd April, the appellants received from the respondents the copy of an order of supersedeas, dated 22nd April, by the justices who had made the order of removal, reciting that the examination and declaration of the pauper were founded on mistake, which had since been discovered, as the pauper was not a single woman, but that the pauper was nevertheless settled in the appellant parish, by reason of her husband's being settled there, and rescinding their order. On the appeal being called on at the sessions, held on the 24th April following, the respondents put in the order of supersedeas, and the sessions refused to entertain the appeal as the order was cancelled. Lord *Denman*. "We think the supersedeas was obtained too late in this case after the appeal has been entered, and notice given of trial, the power of the justices who made the original order is at an end and the proceedings are lodged before another tribunal. This distinguishes the case from *Rex* v. *J. Norfolk*, where the appeal had not been entered." *Littledale* and *Patteson*, Js., concurred. *Coleridge*, J. "The supersedeas appears to have been made simply on the ground that the respondents had discovered a better case than that on which they had originally removed the pauper, and which formed the subject of an appeal. I cannot see that the justices had any power to make the order of supersedeas." Rule absolute.

The order cannot be superseded by the removing justices after an appeal has been entered at the sessions.

Reg. v. *Brighton*, 2 *G. & D.* 88; 3 *Q. B.* 342. On a certiorari to quash an order of sessions for insufficiency, it appeared that the order was dated the 17th May, 1841, and that the removal took place in June. At the sessions on the 28th June, an appeal by the parish of Henfield was entered and respited. The appellants gave the respondents notice on the 1st October of their intention to try the appeal at the next sessions. On the 4th October, 1841, the order of removal was superseded by an order of justices, and was served on the appellants on the 8th October. The sessions were held on the 18th October. Notice of trial was proved, and the respondents relied on the supersedeas of the 4th October. The sessions quashed the order of removal and refused a case. *Per Curiam*. "The *Reg.* v. *Justices of West Riding* is not in point; there it was attempted to compel the sessions to quash a non-existing order; here the order was in existence, and the sessions were properly in possession of the appeal. On the question of jurisdiction the *Rex* v. *J. Middlesex* (p. 1091) is quite conclusive. Any hardship that has arisen is the fault of the parties who complain. The dates of the proceedings, the facts of the supersedeas and of the notice of abandonment, raised for the sessions a question of costs, and of the terms on which the appeal should be settled. The respondents might also have applied to the sessions to make a special entry that the appeal was disposed of not upon the merits.

Practice as to costs.

In this case *Coleridge*, J., observed that the Middlesex sessions had adopted a very wholesome practice of not giving the appellants any costs when the appeal is entered before the notice of appeal is given.

Fresh order.

If the removing parish, before any notice of appeal, or entry of appeal at the sessions, give notice of abandonment, they may obtain a fresh order. *Reg.* v. *St. Pancras*, (p. 1047.)

9. Of filing Order of Removal unappealed against. (*a*)

8. *Of filing Order of Removal unappealed against.*

As an order of removal, executed upon the parish to which it is directed, and which is unappealed against, is binding upon such parish as to the settlement of the pauper at that period, and may therefore become an important piece of evidence at some future period, the expediency of preserving the document itself in an authenticated form is obvious. Upon this subject there is a report as follows:—*Anonymous*, 1 *Salk.* 406. Per *Holt*, C. J. "The most regular way for justices to proceed upon the 14 Car. II. in removing a poor person, is to make a record of the complaint and adjudication, and upon that to make a warrant under their hands and seals to the churchwardens, to convey the persons to the parish to which they ought to be sent, and deliver in the record *per proprias manus* into court next sessions, to be kept there amongst the records, to charge the parish; and that record may be well removed by the general certiorari to the justices of the peace: Mr. *Broderick* said he had advised the justices in Surrey to do so." And upon this it is remarked in a former edition of Burn's Justice. (*b*) But how such record shall charge the parish is not perhaps very evident; unless it shall appear likewise that a removal was made in pursuance of such order; otherwise, how shall the parish be charged by an order which possibly they know nothing of, and consequently could have no opportunity to appeal against? It is there said to be usual in some places for the overseers who make the removal to bring the order to the next sessions, and there make oath that they removed the party in pursuance of such order, and if then there appeared to be no appeal against it, the order is confirmed by the court, and filed amongst the records. And although such confirmation is merely void, because the sessions have no jurisdiction therein, unless in the case of appeal, which here is not; yet such confirmation is also superfluous and needless. But an order, not appealed against, is final without more; and as such order is a record of itself, and contains in it the adjudication of the justices, it seemeth that the court (at the next sessions) may record thereupon that no appeal was made, for in that case they are the proper judges whether an appeal was made or not. But still it seemeth that unless it be upon appeal, they have no power to inquire concerning the removal, for that as to them is extra-judicial: but the justices who made the order have a right to see it executed; and therefore they may inquire upon oath, whether the removal was duly made; and if it was, they may record the whole. Which record of the whole proceedings, being delivered in at the next sessions, and the court thereupon recording likewise that no appeal was made, in such case perhaps the parish may be concluded.

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10. Penalty and Punishment for not obeying Order of Removal.

10. *Penalty and Punishment for not obeying Order of Removal.*

By 3 Will. & Mary, c. 11, s. 10, (p. 1012), a penalty of 5*l.* is inflicted upon churchwardens or overseers for refusing to receive a person sent to them by warrant of removal. Such refusal may be punished also by indictment, for the enactment does not apply to all cases.

Rex v. *Davis*, *Say.* 163; 1 *Bott*, 338. Indictment for refusing to receive a pauper sent by order of two justices to the liberty of the Tower. Plea, not guilty. Verdict against the defendant. It was moved in arrest of judgment that 3 Will. III. c. 11, having directed another method of punishment, to wit, a fine to be levied by warrant of distress in a summary way, that should be strictly pursued. *Denison*, J. "If a statute create a new offence, and give a punishment, that rule must be followed: but if the offence was before at common law, and a new punishment only given, it is indictable also. So if one statute give one punishment, and another statute

An indictment will lie for refusing to receive a pauper.

(*a*) The sessions cannot confirm an order unless there is an appeal. *Rex.* v. *Leverington*, *post.* And the *respondents* cannot enter the appeal. *Reg* v. *Anglesea*, J. (p. 1100.)

(*b*) See *Burn's Justice*, 16th edit. tit. "Poor."

10. *Penalty and Punishment for not obeying Order of Removal.*

give another punishment, the prosecutor has his election. This was an offence before the 3 Will. III. Such a parish officer might have been indicted on the 13 & 14 Car. II. c. 12, or what would have become of a pauper in case of disobedience between the passing those acts; but the 3 Will. III. c 11, does not relate to removals from parish to parish, but from county to county; and therefore there is no remedy but by indictment" *Foster*, J. "In all cases where a justice has power given him to make an order, and directs it to an inferior ministerial officer, and he disobeys it, if there be no particular remedy prescribed, it is indictable." And judgment was given against the defendant.

The 13 & 14 Car. II. c. 12, requires in express words that such officer refusing *shall be bound over to the assizes, or sessions, there to be indicted,* (p. 1011.)

Removal without any Order.

Penalty under Gilbert's Act for procuring the removal of sick persons, &c., without an order.

Removal without any Order.

22 Geo. III. c. 83, s. 41. Whereas it frequently happens that poor children, pregnant women, or poor persons afflicted with sickness or some bodily infirmity, are enticed, taken, or conveyed by parish officers, or other persons, from one parish or place to another, without any legal order of removal, in order to ease the one parish or place and to burden the other with such poor persons, for remedy whereof be it further enacted, "That when any guardian or other person or persons shall so entice, take, convey, or remove, or cause to be so enticed, taken, conveyed, or removed, any such poor person or persons from one parish or place to another, which shall adopt the provisions of this act, without an order of removal from two justices of the peace for that purpose, every person or persons so offending shall, for every such offence, forfeit a sum not exceeding twenty pounds, nor less than five pounds.

4. Of Persons Returning after Removal.

4. *Of Persons Returning after Removal.*

Persons returning after removal were prosecuted as vagabonds. *Quære*, now?

If the person removed return of his own accord, without a certificate, the 13 & 14 Car. II. c. 12, s. 3, directs that he shall be punished as a vagabond. Upon this Lord *Tenterden* has remarked, in *Rex* v. *Barham* (p. 841) that "it was insisted that the return of the pauper, after the removal, was an offence against the law; but since the 35 Geo. III. c. 101, this may admit of considerable doubt. Before that act, a person likely to become chargeable was removable, and if he returned after the removal, he returned in the same condition; but as that act renders a person irremovable, unless actually chargeable, he may after his removal return with the means of subsistence; and it is difficult to say that by so returning he commits an offence." This view sanctions the doubts expressed by Mr. Evans, in a note on 17 Geo. II. c. 3, and 5 Geo. IV. c. 83, s. 3, which enacts, that persons returning *and becoming chargeable* to the parish from whence they had been removed, shall be deemed idle persons.

Such persons must have been charged therewith on oath.

Rex v. *Angell, Cas. Tem. Hardw.* 124; 2 *Bott*, 884. The justices of Berkshire held a petty sessions to search after vagrants, and a poor man, residing in the parish of Bingfield, being examined, confessed himself to be settled in the parish of Sunning, whereupon the justices ordered him to be removed to Sunning. On his return from Sunning without a certificate, the defendant, one of the justices present at the petty sessions, did, without any summons, or oath made of his return, commit the man to the house of correction, where he was kept three days. Upon this the court was moved to grant an information against the justice. The court allowed the transactions of the petty sessions in this case to be irregular, because there was no complaint made of his being chargeable or likely to be chargeable to Bingfield; but yet, as that was only a mistake of judgment, the court would not have thought it worthy of punishment; but the sending him to the house of correction, after having convicted him unheard, being contrary to natural justice, they were inclinable to grant an information; but

as no malice appeared in the justice, the court allowed the prosecutor to accept of some proposal made by the justice to make him satisfaction.

4. *Of Returning after Removal.*

The warrant of commitment must be for a time definite.

Baldwin v. *Blackmore*, 1 *Burr.* 595. Baldwin and his wife were removed from Marsden to Banknewton. Afterwards they both of them returned to Marsden, without bringing a certificate: complaint of which being made in writing, and upon oath, to the defendant, a justice, he issued his warrant to bring them before him, who being brought and the facts fully proved upon oath, he committed them to the house of correction, *until they should be discharged from thence by due course of law.* Upon the trial of this cause, there was a verdict for the plaintiff, and 1*s.* damages, subject to the opinion of the court on two questions:—1. Whether there ought not to have been a previous conviction of vagrancy? 2. Whether the wife could be convicted of vagrancy, or be liable to be sent to the house of correction for returning without a certificate, as she only accompanied and resided with her own husband? On the argument of this cause, Lord *Mansfield*, C. J., desired to be informed how the usage had been about sending the wife to the house of correction with the husband: (though it would not indeed, as he observed, alter the law.) Afterwards, this case being mentioned as standing for the opinion of the court, it was said for the defendant, that he had several certificates of its being the practice for justices to commit the wife as well as the husband, for returning to the parish from whence they had been removed, although she so returned with her husband. Lord *Mansfield*, C. J., delivered the resolution of the court. He observed, that "it was manifest the justice had not acted intentionally wrong. And it is plain that the jury were of that opinion, as appears by their giving only 1*s.* damages. The court would gladly therefore have leaned towards excusing him from suffering for what he had honestly done, if they could have found him justifiable by any legal excuse. But there is one fatal objection to his proceeding, which we cannot get over, and which puts all the other points out of the case, and that is, that the warrant of commitment is illegal. The legality of the warrant depends upon two acts of parliament, or at least upon one of them. For there are two acts of parliament, upon one of which two this warrant must be founded, though it doth not appear upon which the justice proceeded. The two acts are 13 & 14 Car. II. c. 12, (a law made before certificates under the late acts existed); and 17 Geo. II. c. 5, [which related to persons returning without bringing such a certificate, and is repealed by 3 Geo. IV. c. 40; see 5 Geo. IV. c. 83, s. 3, tit. *Vagrants.*] Now the warrant is not within the former of these acts; nor is the case itself within it. These persons did not go to any parish, carrying with them a certificate of their being inhabitants of their proper parish. The commitment is, *till discharged by due course of law;* whereas upon this act it should have been to the house of correction, *there to be punished as a vagabond*, or to a public workhouse, *there to be employed in work and labour.* Nor can this warrant be good on the latter act; because the power given to the justice by that act is, to commit such offenders to the house of correction, *there to be kept to hard labour for any time not exceeding one month:* whereas this warrant is quite general: it is an indefinite commitment; not for a precise limited time, as the act directs. Therefore the warrant of commitment is totally illegal; and consequently the plaintiff is entitled to the damages that he has recovered."

The commitment must state to what place the pauper returned.

Rex v. *Elere Cole*, 2 *Bott*, 886. A motion was made to discharge a man out of custody, because 1st, the commitment does not state *to what place* the man returned: 2ndly, nor that he returned without a certificate; 3rdly, that it did not appear that he had been before convicted as a vagrant, which prior conviction alone, under stat. 17, Geo. II. c. 5, gave a power of commitment for a month. The commitment was "for returning from the parish of St. Sepulchre, after a legal warrant of removal from the parish of the Holy Trinity." Lord *Mansfield.* "This commitment cannot be supported; it does not say *to what place* he returned." *Aston*, J. "It is totally uncertain."

4. *Of Returning after Removal.*

The pauper may lawfully return to a tenement of the yearly value of 10*l.*

A conviction of the plaintiff for unlawfully returning, is a good answer to an action, though in fact he did not return in pauperism.

Rex v. *Fillongley*, (p. 797.) The pauper returned to the parish from whence he had been removed, to reside on a tenement of the yearly value of 10*l.* and upwards; the court said he had a right to return, for that an order of removal only prevents a return in a state of vagrancy.

Mann v. *Davers*, 3 *B. & Ald.* 103. Action for false imprisonment. Verdict for the plaintiff, 40*s.* damages. The defendant, who was a magistrate of Suffolk, committed the plaintiff to prison as an idle and disorderly person, under 17 Geo. II. c. 5. The defence was a regular recorded conviction of the plaintiff, and the information stated, that within three months the plaintiff unlawfully returned from the parish of A. to the parish of B., from which parish he had been removed to the said parish of A. by an order, &c. without bringing a certificate from the said parish of A. The conviction then stated, that plaintiff, being brought before the defendant, had confessed himself guilty of the offence. When the plaintiff returned to the parish, he was not in a state of pauperism, but maintained himself by his own labour, and was actually taken up upon the charge upon which he was convicted when he was working in the harvest fields. The question was, whether the conviction was a bar to the action? *Abbott*, C. J. "This information pursues the language of the statute, and in so doing it does all that is necessary to be done. The returning to the parish without a certificate was at least *primâ facie* evidence of his being an idle and disorderly person, and then it was for the defendant to show that he had a lawful excuse for returning. It would be extraordinary indeed if a person who refuses to answer, and suffers the magistrate to convict him, should afterwards be at liberty to bring an action against the magistrate; the defendant here confessed the substance of the charge, and when called upon for an excuse, he does not give one, but suffers imprisonment, in order that he may afterwards bring an action against the magistrate." *Bayley*, J. "The facts of the case induce a suspicion that it was one of considerable hardship on the party who had been removed. We must however consider the situation in which magistrates would be placed, if a party who neglected to make his defence when he had the opportunity could afterwards sue the magistrate. It seems that the parish officer had lodged before the magistrate a complaint, upon which, if established, the party was liable to punishment. The substance of the charge was, that he had returned unlawfully; if he could show any lawful excuse for his return, he might have stated that before the magistrate; he however confesses that he is guilty of the offence charged, upon which the law says that he is an idle and disorderly person, and I am of opinion that he cannot now turn round and bring an action against the magistrate." *Holroyd*, J., concurred. *Best*, J. "This conviction appears to be in the ordinary form; nevertheless I must say that the parish officer acted most improperly in taking a man up as a vagrant who was at work in the harvest field. But when he was before the magistrate, and alleged no fact to show that he was not, as he appeared to be, in a state of vagrancy, the magistrate could do nothing but convict him. Had he stated to the magistrate that he returned for the purpose of working, it would have been a question for the court whether the magistrate should not have used the language of this court in *Rex* v. *Fillongley*" (p. 797.) Judgment for the defendant.

5. *Order of Removal of one Certificated.*

Overseers to be reimbursed on reconveying certificate persons.

5. Order of Removal of one Certificated.

The nature of a certificate, and the provisions as to its form, delivery, and extent, are explained under the title *Acknowledgment of Settlement by Certificate* (*ante*, 961).

It is provided by the 3 Geo. II. c. 29, s. 9, "That when any overseer or overseers of the poor of any parish or place, or other person, shall remove back any person or persons, or their families, residing in such parish or place, or sent thither by certificate, and becoming chargeable as aforesaid to the parish or place to which such person or persons shall belong, such overseers or other persons shall be reimbursed such reasonable charges as

5. Order of Removal of one Certificated.

they may have been put unto in maintaining and removing such person or persons, by the churchwardens or overseers of the poor of the parish or place to which such person or persons is or are removed, the said charges being first ascertained and allowed of by one or more of his majesty's justices of the peace for the county or place to which such removal shall be made; which said charges so ascertained and allowed, shall, in case of refusal of payment, be levied by distress and sale of the goods and chattels of the churchwardens and overseers of the poor of the parish or place to which such certificate person or persons is or are removed, by warrant or warrants under the hand and seal, or hands and seals of such justice or justices, returning the overplus, if any there be; which warrant or warrants he or they are hereby required to grant."

There does not appear to have been any difficulty in understanding or carrying into effect the above provision, as the books present no cases upon its construction. It is probable that the only question which could arise, requiring the judgment of the superior court, would be, whether, when a certificate person has been once removed back to the certifying parish, the latter has the power of sending him into the same parish from which he has been so removed again with a fresh certificate. There is nothing in the statute nor in the reason or policy of the law to prevent it. In many instances if the person finds it expedient to quit his own parish once more in search of employment, he will prefer to return to the place in which he has been before, as most likely to answer his purpose; and this is not likely to operate as a hardship upon the parish to which he so returns, as, should he again become chargeable, the expense of again removing him, and of his maintenance in the mean time, must be borne by the parish from which he is certificated.

6. Appeal against an Order of Removal. (a)

6. Appeal against an Order of Removal.

The law relating to appeals has been classed as follows:—

1. *The Statutes relating to the Appeal.*
   Against an Order of Removal.
   Against suspended Order.
2. *Who may appeal, and to the Sessions of what Place.*
3. *Within what Time the Appeal must be made.*
4. *Entering Appeal after executed Order is superseded.*
5. *Of Adjournment.*
6. *Of Notice of Appeal.*
7. *Evidence.*

1. The Statutes relating to Appeal.

1. The Statutes relating to Appeal.

13 & 14 Car. II. c. 12.

Power of appealing.

The 13 & 14 Car. II. c. 12, s. 2, enacts, "That all persons who think themselves aggrieved by any such judgment of the said two justices, may appeal to the justices of the peace of the said county, at their next quarter sessions, who are hereby required to do them justice according to the merits of their cause."

Overseers to have access to pauper in cases of appeal.

The 4 & 5 Will. IV. c. 76, prohibits the removal of a pauper, where notice of appeal has been given within the twenty-one days, and by the 80th section it provides that in case of appeal, the overseers shall have access to the pauper to examine him as to his settlement, and even if necessary to remove him out of the respondent parish; such removal, however, to be at the expense of the appellant parish. This statute further provides that the grounds of appeal shall be stated in the notice (*post, Notice of Appeal*), and enables the sessions to grant costs either of the appeal or of frivolous statements.

By 35 Geo. III. c. 101. (p. 1013,) Justices may suspend the execution of

(a) As to an appeal against the removal of Insane persons, see p. 131, and *post*.

1. *Statutes relating to Appeal.*

an order of removal, and the charges incurred by such suspension, may be directed to be paid by the parish; and if such costs exceed 20*l.*, the parish has a power to appeal, s. 2.

By 49 Geo. III. c. 124, s. 2. When the execution of any such order of removal shall be suspended, the time of appealing against such order shall be computed from the time of serving the order.

An appeal lies against an order for payment of the charges of suspension after the three days.

Rex v. *Bradford*, 9 *East*, 97. An order was made on the 7th of July, 1807, for the removal of S. Spires from Bradford to Melksham and suspended. On the 16th of September they directed the first order to be executed, and 41*l.* 14*s.* 9*d.* expenses of the suspension to be paid by Melksham to Bradford. On the 17th of September, the pauper was carried to Melksham; and a motion was made to enter and adjourn an appeal against the order for the payment of the expenses, which was agreed to by the court; but they reserved the question, whether any appeal were allowed, and notice of appeal having been given *within three days* after the removal of the pauper. But Lord *Ellenborough* "held the meaning of the clauses to be clearly this; if the party aggrieved by the order, and intending to appeal against the amount of the charges, will give notice of the appeal within three days after demand made, he shall be relieved from the inconvenience of a distress: but though he neglect to do so, he only subjects himself to that inconvenience; for his right of appeal, which is afterwards given, is not thereby taken away; and if he afterwards think proper to appeal, within the time appointed by law for appeals against orders of removal, he is expressly empowered to do so." Order of sessions confirmed.

An appeal lies against an order for costs incurred during the suspension, though the pauper dies before removal.

Rex v. *St Mary-le-Bone*, 13 *East*, 51. On the 3rd of July, 1809, an order was made for the removal of J. Harlow, and suspended. By an order of the 18th of September following, the same justices, reciting that J. H. was dead, directed the expense incurred by the suspension to be paid. St.M. appealed against the order of removal, and the order for the payment of the charges. The sessions dismissed both appeals, and stated, that neither of the orders of removal or suspension thereof were served on the parish officers of St. M. until after the death of the pauper, which happened between the 3d and 11th of July, 1809; after which time the parish officers of St. M. were served with the orders, and 5*l.* 2*s.* 8*d.* given thereby was demanded, at which time they gave notice of appeal to the parish officer of H. against the order of removal, and also against the order of adjudication for the payment of the charges incurred by the suspension. The respondents offered no evidence that the pauper was settled in the parish of St. M., but contended that no appeal could lie against the order of removal, as it had never been executed; and that there can be no execution of an order of removal, but by delivering the pauper to the officers of the parish. Lord *Ellenborough*, C. J. "The appeal is by the 3 Will. & Mary, c. 11, s. 9, given to the party *aggrieved* by the determination of the justices respecting the settlement of the pauper; then, though the grievance grow by a subsequent statute, the party is still aggrieved by the order of removal. Before the 35 Geo. III., there was no grievance to the parish to which the order of removal was made, until it was executed: but that statute attaches a contingent consequence to the order itself in this case, which, coupled as it is with the order for payment of costs, makes it a *grievance*, though the pauper died before any removal in fact took place. Then the appeal against the order of costs is not against the quantum, but against the liability of the parish to pay any costs at all in this case; taking it as a consequence of the order of removal appealed against." Order of sessions quashed.

Time of appeal computed from the valid service of the order. Valid service must be either with the original or a copy producing the original.

Rex v. *Alnwick*, 5 *B. & Ald.* 184. Order of removal, dated the 6th of August, 1814, of M. Walker, from Alnwick to the chapelry of Haydon, at the Michaelmas sessions in 1820, was discharged. Case:—The pauper, at the time of the order, was in such a state of health that she could not be removed without danger, the execution of the order was therefore suspended. About the 6th September, 1814, a copy of the order and indorsement was

served upon one of the overseers of Haydon, by a person sent by one of the overseers of Alnwick, such person not then having the order with him; and on the 4th October, 1815, another part of the original order of removal and indorsement was served upon one of the overseers of Haydon by the overseers of Alnwick. This last had not been executed by the removing justices on the 6th August, 1814, but by them in September, 1815. It however bore date the 6th of August, 1814. The order originally executed was not at any time shown to any of the overseers of Haydon. The suspension was taken off in August, 1819, and an order was then indorsed by the justices for the payment of 161*l.* 17*s.* 5*d.*, the charges incurred by the suspension. On the 5th of September, 1820, the pauper was removed from Alnwick to Haydon, and an appeal against the order of removal was entered at the Michaelmas sessions, 1820. It was contended that the time of appealing against such order was to be computed from the time of serving the order, and not from the time of making the removal. *Abbott*, C. J. "The objection made here to the judgment of the court of quarter sessions, is, that they have allowed this appeal, when, in point of law, the appellants were not entitled to it, not having appealed within the time allowed by law. That question depends entirely upon the validity of the service of the order. Now that service, in order to be valid, must either be by delivery of the order itself, or by leaving a copy of the order, and at the same time producing the original. It is admitted that the service, in 1814, was defective; but then, in 1815, there was a second service. Now, if that was the service of a copy, it is bad, for the same reason as vitiated the previous service. It is, however, contended, that this was the service of a new original order. But if we were to hold that to be so, we should, as it seems to me, give to it an effect not intended by the justices who executed it; for if they had intended it as a new order, they would have given to it a date corresponding with the time of its execution. I think that they never could have intended it as a new order, but only as an authenticated copy of their former order; and that the court of sessions were right in so treating it. In that view of the case, it is clear that both services are defective, and consequently that the appeal was in time, and the order of sessions is therefore right."

1. *Statutes relating to Appeal.*

An appeal is also given against the order adjudicating in the settlement of an insane person, and the costs of maintenance. (See p. 128.)

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2. Who may Appeal, and to Sessions of what place.

2. *Who may Appeal, and to Sessions of what Place.*

Where parishes are incorporated under Gilbert's Act, it is indispensable that the guardian should give notice of appeal, and describe as such.

The proper persons to appeal are the overseers of the parish, but if the parish is incorporated under Gilbert's Act, the guardians only can appeal.

Reg. v. *J. of W. R. Yorkshire*, (*Harnley* v. *Rothwell*,) 7 *Jurist*, 1132. The appellant township is not under the Poor Law Amendment Act, but incorporated under Gilbert's Act, which by s. 7, (see p. 10,) invests the guardians with all the powers and authorities given to *overseers of the poor*, and provides that all notices to be given or made to the overseers of the poor, with respect to the care, or management, or removal of the poor, shall be given or made to the *guardian of the poor;* but in case any orders of removal or notices shall happen, by mistake, to be given or sent *to the churchwarden or overseer*, the same shall be as *valid and effectual as if given to the guardian*. In this case the notice of appeal was not signed by the guardian *as such*, nor had he styled himself as guardian, but had signed with others under the general title of overseers. The justices refused to hear the appeal upon this objection, and on a rule *nisi* for a mandamus to hear the appeal, *Patteson*, J., said, "It seems to me to be perfectly clear there should be no rule. It appears to me the overseers are expressly forbidden to interfere, and that, *quâ* overseers, they have no authority whatever. If a guardian do not sign as guardian, but chooses to sign as overseer only, he makes a blunder, and must take the consequences of his own act. The sessions were perfectly right. He should have signed as guardian, and not as overseer." Rule refused.

2. *Who may Appeal, and to Sessions of what Place.*

Rex v. *Hartfield, Car.* 222; 2 *Bott*, 924. Two justices removed Nicholas Wells from Hartfield to Framfield; from which order Wells, and not the parish, appealed. By the whole court: "The party may appeal as well as the parish." (See also *Rex* v. *Catterall, post.*)

The pauper may appeal as well as the parish.

Rex v. *Bishop's Wearmouth.* A township may appeal, although the order is directed to the parish.

It is not competent for the respondents to *enter* an appeal. *Rex* v. *J. Anglesea*, 12 *L. J., M. C.*

An order directed the removal of paupers to the parish of L., and they were removed and delivered to a hamlet within the parish of a different name. On appeal by such hamlet, the respondents cannot object to a notice of appeal given in the name of such hamlet, they having delivered the pauper to the officers of such hamlet.

Rex v. *Carmarthenshire*, 1 *Nev. & M.* 368; 4 *B. & Ad.* 563. An order was made for the removal of a pauper from Mothvey to Llywell. The order was directed to the overseers of the parish of Llywell, and after adjudging the settlement of the pauper to be in the parish of Llywell, it required the overseers of the parish of Llywell to receive the pauper. The parish of Llywell is divided into three hamlets, viz. Treganmaur, Traganlaes, and Hydach, each of which maintains its own poor, and has separate churchwardens, separate overseers, and separate rates. Appeals have frequently been tried against orders of removal between the three hamlets, at the Brecon quarter sessions. There are no such officers as churchwardens and overseers for the whole parish of Llywell. On the 27th of August, 1832, the pauper was delivered by an officer of the removing parish of Mothvey to one of the overseers of the hamlet of Treganmaur, together with the order of removal. The overseer received the pauper, but at the next quarter sessions, held in October, 1832, an appeal against the order was duly lodged and respited on behalf of the churchwardens and overseers of the hamlet of Treganmaur, and on the 22nd of December, 1832, the following notice of appeal was duly served upon the churchwardens and overseers of Mothvey: "To the churchwardens and overseers of the poor of the parish of Mothvey, in the county of Carmarthen: This is to give you notice, that we the churchwardens and overseers of the poor of the hamlet of Treganmaur, in the parish of Llywell, in the county of Brecon, do intend at the next quarter sessions of the peace to be held in and for the said county of Carmarthen, to prosecute an appeal which was duly lodged at the last quarter sessions, against an order of, &c. to our said hamlet of Treganmaur, in the said parish of Llywell, in the county of Brecon from your parish of Mothvey At the sessions the respondents objected that the notice of appeal ought to have been given by the overseers of the *parish* of Llywell, to whom the order was directed, and not by the officers of the *hamlet* of Treganmaur; and that the notice stated the order to be an order for the removal of the pauper to the *hamlet* of Treganmaur, in the parish of Llywell, whereas it was an order for the removal to the *parish* of Llywell. The justices determined against hearing the appeal. On a rule *nisi* for a mandamus, *Denman*, Lord, said: "We are of opinion that the sessions ought to have heard the appeal. The notice of appeal could not mislead the parish officers of Mothvey, to whom it was addressed. It recited the order of removal sufficiently; the names of the paupers, the removing parish, and the part of the parish of Llywell to which the removals were made under the order, although the order professed to remove to the parish at large. The parish of Mothvey is estopped by its own acts from availing itself of the objection. The removal was by the order to the parish at large; but the service of that order was on the hamlet. Parties who have thus acted upon their own order cannot afterwards say that an appeal against it under such a notice as this shall not be heard." *Littledale, Taunton*, and *Patteson*, Js., concurred. Rule absolute.

Where only one overseer has been appointed in a township, rated inhabitants may appeal.

Two appeals entered at the same sessions.

Rex v. *J. Denbighshire*, 1 *B. & Ad.* 616. By an order of removal of 2d of September, 1829, the overseers of Llangerniew were directed to convey the paupers from that parish to the parish of Machynlleth, and to deliver them to the overseers there, and the latter were required to receive the paupers as inhabitants. Machynlleth was at that time divided into three districts, each maintaining its own poor. Two churchwardens were appointed for the whole parish, and one overseer for each district. The paupers were delivered to the overseer of one of these dis-

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tricts, namely, the township of Uwchygarreg, where their settlement was understood to be. The overseer of the township with the two parish churchwardens (describing themselves as churchwardens of the township) gave notice of appeal. At the sessions the appeal was dismissed on the grounds that there appeared to be only one overseer for the appellant district, and that the churchwardens described as of the township were in fact those of the parish. A fresh appeal was then entered at the same sessions on behalf of T. Owen, D. Pritchard, and W. Jenkins, as inhabitants of a part of the parish of Machynlleth. These appellants were rated inhabitants of Uwchygarreg. Shortly afterwards two overseers were appointed for the same township, and they, with the churchwardens of the parish, then gave the respondent parish two notices of their intention to prosecute the appeal at the next sessions; one notice describing it generally as an appeal against an order, &c., the other, as an appeal lodged at the last sessions by the three inhabitants above named. These last-mentioned parties also gave notice at the same time of prosecuting their appeal; and another notice was given by the attorney for the appellants, describing himself as attorney for the three above-named inhabitants, for the churchwardens and overseers of the township. The appeal was heard at the following sessions, and the order of removal was there quashed upon the merits, with costs, by an order of sessions, purporting to be made between T. Owen, D. Pritchard, and W. Jenkins, inhabitants of the parish of Machynlleth, appellants; and the parish of Llangerniew, respondents. On a rule for a certiorari to quash the orders, Lord *Tenterden* said: "I think the rule ought to be discharged. This is a parish consisting of three divisions respectively maintaining their own poor. The order to receive the paupers was directed to the churchwardens and overseers of the parish, but it seems the paupers were not taken to any regularly appointed officers of the parish, or of any district, or to the inhabitants; but to a single overseer, appointed for one township. An appeal was entered on behalf of the churchwardens and of the overseer for that township. The sessions held, that it could not be entertained, and dismissed it; but without going into the merits. A new appeal was entered at the same sessions in the names of some inhabitants of the parish, that course becoming necessary under the circumstances, and two overseers were afterwards appointed, who gave notice of prosecuting the appeal. Then at the following sessions the magistrates were of opinion that they ought to hear the appeal; they did so, and have decided on the merits; justice has been done, and I think we ought not to disturb their decision." The rest of the court concurred. Rule discharged; but without costs.

Rate-payers cannot appeal against an order of removal, independently of the parish officers. *Semble*, the pauper may appeal.

Reg. v. *Colbeck*, 3 *P.* & *D.* 488; 12 *A.* & *E.* 161. The defendants appealed against an order for the removal of A. Hope and children from Coxhoe to Black Callerton. Order confirmed. Case:—The notice of appeal was signed by Colbeck, Carins, and Reay, inhabitants and rate-payers of Black Callerton, and contained the grounds of appeal. No other statement of the grounds of appeal was sent. One question was, whether, as no notice of appeal had been sent or delivered by the overseers or guardians of Black Callerton to respondents, the appellants were entitled to be heard. Lord *Denman*. "If there is any case in which the court would be justified in straining the words of an act, it would be one where no other remedy could be afforded, as in *Rex* v. *Denbighshire*, (*ante*), where there were not the ordinary parish officers, and where the appeal had been made by rated inhabitants. Whether the decision was right or not I cannot say, but in this case, where there were parish officers, I have no doubt that they were the proper parties to appeal, otherwise every parishioner would be at liberty to appeal, and on separate grounds. The language both of 9 Geo. I. and 4 & 5 Will. IV. c. 76, shows that the parish officers were intended to represent the parish in these matters. It is not to be supposed that they will ever refrain from appealing in furtherance of their private interests, and in opposition to those of the parish." *Littledale*, J. "Nolan lays down (*a*) that the 'party removed may appeal as well as the parish,' and it is reasonable that the

(a) 2 Nol. 488.

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pauper should have the right of appeal, because, although one parish or the other is bound to support him, it may be more convenient to him to be located in one than the other. An opinion of *Holt*, C. J., may be found in *Weston Rivers* v. *St. Peter's* (a), that the pauper may appeal if he is wrongfully removed. But, as to rated inhabitants appealing without the intervention of the parish officers, I think that both general principle and the language of the statutes show that they cannot." *Patteson*, J. "I think the 9 Geo. I. c. 7, s. 8, quite sufficient by itself to show that rated inhabitants cannot appeal, and that *Rex* v. *Denbighshire* is no authority to the contrary. The court refused there to exercise their power by certiorari, when the court below had come to a conclusion which the justice of the case warranted; whether the decision was right is another question, but the ground of it was simply, that justice having been done this court would not interfere. But supposing it to be an authority for the appellants, it is quite clear, since the late act, that the legislature contemplated that none should be appellants but the parish officers." *Williams*, J. "Public convenience clearly requires that the parish officers only should make the appeal; and this more especially since the late incorporation of large districts into unions." Order of sessions quashed.

(a) 2 Salk. 492.

The appeal must be to the quarter sessions of the county from which the pauper is removed.

And 8 & 9 Will. III. c. 30, s. 6, enacts, "That the appeal against any order for the removal of any poor person from out of any parish, township, or place, shall be had, prosecuted, and determined at the general or quarter sessions of the peace for the county, division, or riding wherein the parish, township, or place from whence such poor person shall be removed, doth lie, and not elsewhere; any former law or statute to the contrary thereof in anywise notwithstanding."

Since the passing of the Municipal Corporation Act, the borough sessions have jurisdiction to try appeals against orders of removal.

Reg. v. *St. Edmund's, Sarum*, 1 *G. & D.* 137; 2 *Q. B.* 72. Lord *Denman* delivered the judgment. "The 8 & 9 Will. III. c. 30, s. 6, required that the appeal against any order of removal of any poor person from out of any parish, township or place, shall be tried at the general or quarter sessions of the peace for the *county*, *division*, or *riding*, wherein such parish, &c. doth lie, and not elsewhere, any former law or statute to the contrary notwithstanding. Thus the trial of an appeal against removal from a parish in any city or town, not being a county of itself, took place at the quarter sessions for the county at large, not at those holden for the town, though the charter might contain a *ne intromittant* clause. The Municipal Reform Act, by section 103, enables the crown to grant a court of quarter sessions to towns corporate, and appoints the recorder the sole judge in such court. Then the 105th assigns to it jurisdiction over all offences 'and matters whatsoever, cognizable by any court of quarter sessions of the peace for counties in England,' and to the recorder 'power to do all things necessary for exercising such jurisdiction.' The present case is that of an order of removal, made by two justices of the peace for the city of Salisbury, for removal of paupers from a parish in the city, against which an appeal was tried at the October sessions for the county of Wilts, and there quashed, subject to a case, which stated a very old charter granted to the city, and another much more recent, in the reign of James the First, with a *ne intromittant* clause, and, since the passing of the Municipal Reform Act, the grant of a charter in the usual form, under the 103rd section. The question is, whether the 8 & 9 Will. III., which clearly applied to Salisbury before, has been kept alive for the purpose of this trial, notwithstanding the recent charter. Much learning and great ingenuity were employed in maintaining the affirmative of this proposition, but, while we hold that a positive enactment is not to be repealed by inference, we must also act on the maxim, *Leges posteriores priores contrarias abrogant*, wherever it comes into operation. Here, the quarter sessions of the city, under its former charters, were deprived of the cognizance of appeals against orders of removal, by the 8 & 9 Will. III. But the Municipal Act gives to the city sessions all the jurisdiction, and to the recorder all the power, that formerly belonged, not to the quarter sessions of a town corporate, but to any county quarter sessions. The use of these words, without

reference to the 8 & 9 Will. III., might raise an argument that that act was not in the contemplation of the parliament of 5 & 6 Will. IV., though most probably it was, for the strongest objection to local justices of peace was removed by the appointment of a single judicial officer: but, even if this intention were doubtful, the words are not. They give the recorder the trial of all matters that could be tried by a county session. This appeal is one of those matters, it is therefore given to the recorder, and the words 'not elsewhere,' in the statute Will. III. being contrary, are abrogated. It does not follow that there might not be a concurrence of jurisdictions: but, if there is, the borough sessions were holden earlier than those for the county, and the appeal ought to have been to the former. The rule for quashing the order of sessions must be absolute."

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Reg. v. *J. Salop*, 1 *G. & D.* 146; 2 *Q. B.* 85. Lord *Denman* delivered the judgment of the court. "We have lately held that, under the 105th section of the Municipal Reform Act, the court of quarter sessions for the borough has jurisdiction to try an appeal against the removal of a pauper. This case and some others, which have been since argued, require us to determine whether that jurisdiction is exclusive. The 8th section of 8 & 9 Will. III. c. 30, is cautiously penned, probably to avoid giving offence to the magistrates in limited jurisdictions, but framed in the spirit of jealousy towards them. It found them, when assembled in quarter sessions, empowered to try appeals and other questions in which the members of the court were likely to be interested or prejudiced; and, without naming them, transferred that power to the county sessions, wherein, and not elsewhere, they are from thenceforth to be tried. Now we have lately shown and held that those exclusive words are abrogated by the 105th clause of the Municipal Reform Act, which lodges in the hands of the recorder all the powers and functions (with some specified exceptions) that had been transferred to the county sessions by the act of Will. III. It is possible, though highly improbable, that the legislature may have intended to give a concurrent power of trial to two jurisdictions so differently constituted, and thus to open new sources of litigation as to the manner in which, of two competent jurisdictions, one may possess itself of an appeal cause, to the exclusion of the other, and the still more serious doubts on the validity of trials for crimes which fall within the same provision. It is equally possible, and in a less degree improbable, that the intention to prevent these evils may have been entertained, but not carried into effect; or, finally, that the whole subject may have been overlooked. In any one of these cases we should be bound to discover what the law is, and declare it, without any regard to the consequences of its imperfection. The rules for interpreting statutes have been much discussed in these arguments, but we apprehend that, in applying them to questions on the effect of an enactment, we can never safely lose sight of its object. We have already referred to that of the stat. Will. III. It was to deprive the borough sessions of their power in certain cases, and this is effected by giving it exclusively to the county sessions. Parliament, in William the Third's time, may be supposed to address the borough justices of the peace: 'We cannot trust you with this power. We take it from you and authorise the county justices of the peace to act in your place.' But the parliament of Will. IV. holds the opposite language: 'We wish you to be restored to the jurisdiction of which you were deprived, and have taken effectual means to prevent the abuse which led to the deprivation.' Since, then, the object is directly reversed, and the borough sessions empowered to act, we cannot reasonably doubt that parliament designed to put an end to that power which had been for the first time given to a foreign body for the purpose of supplying the deficiency of judicature which the exclusion had caused. The two enactments are substantially but one. 'Let A. perform the office which we take from B.' But when B.'s office is revived in him, A.'s must cease, as far as the exclusion of B. is concerned, and, that exclusion being manifest, the sole reason for giving A. the office, he is *ipso facto* deprived by the re-appointment of B. The first section of the Municipal Act repeals all former laws that

And they have exclusive jurisdiction to try an appeal against orders made by borough justices.

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are contrary to its provisions, not indeed going further than the principle of the common law, but explaining, perhaps, why it was not thought necessary to repeal, in express terms, the act of Will. III. The 111th clause is generally admitted not to apply to the quarter sessions, and to have been framed with special regard to the altered boundary of boroughs, but it certainly furnishes evidence of the desire felt by the legislature to prohibit the county magistrates from interfering with those who had authority in the borough. Upon the whole, we think that the quarter sessions for the borough of Shrewsbury had exclusive right to try the present appeal, and that this rule for quashing the order of the county sessions must be made absolute." *S.P.*, *Reg.* v. *J. Lancashire; Reg.* v. *J. Suffolk. Ib.*

The quarter, and not the general sessions, is the proper tribunal to try an appeal against an order of removal.

Reg. v. *J. Middlesex*, 7 *Jurist*, 669. On a rule to the justices of Middlesex to enter and hear an appeal, which stood for hearing on the 13th October last, being the adjournment of a general (not being a quarter) sessions commenced on the previous 13th September, when the appeal was originally entered; cause was first shewn, not by the justices, but by the respondents, when an objection was taken to the jurisdiction of the justices to hear such an appeal at a general (not being a quarter) sessions, whereupon the rule was enlarged to allow the justices to be heard. Lord *Denman*. "In this case an appeal against an order of removal was entered at the general sessions on the 13th September, and respited to the general sessions on the 13th October, and the question for our consideration is whether the general or the quarter sessions is the proper tribunal to try such an appeal. There can be no doubt but that we must decide as in *R.* v. *The Justices of London*, (*a*) that the quarter sessions is the proper tribunal. There are other authorities to the same point, though not on the same statute. (*R.* v. *Turnock*, 2 *Salk.* 474; *Purnall's case*, 2 *Salk.* 476; *Taylor's case*, *Palmer's R.* 44)." *Patteson*, J. "The words in 17 Geo. II. c. 38, s. 4, are the same as in 8 & 9 Will. III. c. 30, s. 6, and the court decided upon them that the quarter sessions was the proper tribunal; the other statutes mentioned in the argument all seem to point to the quarter sessions." *Williams* and *Coleridge*, Js., concurred. Rule discharged.

(*a*) 15 *East*, 631.

The appeal must be to the sessions for the county, and not of the corporation.

Rex v. *Wendover*, 2 *Salk.* 490; 2 *Bott*, 953. Two justices of St. Alban's remove a person to Wendover. Wendover appeals to the sessions of St. Alban's. By the court: "The appeal ought to have been to the sessions of the county, and not of the corporation; and as it was, it was *coram non judice*."

Same point.

Rex v. *Malden*, *Sett. & Rem.* 10; 2 *Bott*, 959, *n.* By Lord *Parker*, C. J. "Where there is a town corporate that hath sessions of its own, and the justices within that town make an order there, if the parties will appeal, they must appeal to the county sessions, and not to their own sessions; for then there would be an appeal *ab eodem ad eundem*, there being it may be the same justices sitting who made the order."

An appeal from an order of borough justices must be to the county justices.

Rex v. *East Donyland*, *Burr. S. C.* 592; 2 *Bott*, 959. Two justices for the borough of Colchester removed the pauper from St. Giles's, in Colchester, to East Donyland, in Essex; and on appeal to the quarter sessions of the borough, the justices there confirmed the order, and stated a case. Upon arguing the matter there it was observed, that the appeal ought to have been to the county sessions. Unto which it was answered, that the parties having acquiesced in the jurisdiction, and entered upon the merits, and actually settled a case for the opinion of the court, they were not at liberty now to make the objection. But by the court: "The borough sessions had no jurisdiction to make this order of confirmation, and, therefore, their opinion and their order are both nugatory. The appeal ought to have been to the quarter sessions of the county. As no such appeal has ever been made, the original order stands good, as unappealed from." And accordingly the original order was confirmed.

But by charter the magistrates of a borough may have jurisdiction.

Rex v. *The Justices of Carmarthen*, 4 *B. & Ald.* 291. Two justices of the borough of Carmarthen, on the 23d of May, 1820, removed a pauper from St. Peter, in that borough, to New Church, in the county of Carmarthen. New Church appealed, and in their notice of appeal stated their intention

of appealing to the next quarter sessions of the borough of Carmarthen. At the next sessions (which, it appeared, were the general, and not the quarter sessions) for the borough, held on the 21st September last, the parties accordingly attended, and applied for leave to lodge the appeal; but the magistrates refused the application. A rule *nisi* was obtained for a *mandamus*. It appeared from the affidavits that the borough of Carmarthen was a county of itself, and that by the charter there were annually elected six peers of the borough, who, with the mayor and recorder, were magistrates of the borough, and had the power twice in a year to hold a court of view of frankpledge, and to summon the sessions of the peace within the borough, and to hold the sessions of the peace there, and to do all things relating to the sessions of the peace, according to the custom of England; and that in the said court they had full power to hear, execute, and determine upon all articles, misprisions, trespasses, and offences within the borough, which, according to law, belong to the court of view of frankpledge, or to the office of justices of the peace in their quarter sessions, or otherwise to execute and determine. It also appeared, that the parish of St. Peter was co-extensive with the borough; but that three out of the eight magistrates did not reside in the parish. It was argued, that there is nothing in the charter enabling the magistrates to do acts relating to the poor laws at their general sessions. Lord *Hale* lays it down, that a general sessions is perfectly distinct from a quarter sessions. By 13 & 14 Car. II. the appeal was given to the quarter sessions; but by 8 & 9 Will. III. altered to "general or quarter sessions." Here, too, there are only three justices who can sit to determine this appeal; for by 16 Geo. II. c. 18, all the rest are disqualified. And by 17 Geo. II. c. 38, it was provided, that in limited jurisdictions, where there are not four magistrates, the appeal must be to the county sessions. *Abbott*, C. J., said, "I am of opinion that the true construction of the 8 & 9 Will. III. c. 30, is, that if there be an appeal to the sessions of a town which is a county of itself, where by charter only general sessions are held, it must be made to the general sessions. Here, the magistrates are empowered to hear and determine upon all articles within the borough, which, according to law, belong to the office of justices of the peace in their quarter sessions, or otherwise, to determine. Now this is a very large expression, and comprehends, as it seems to me, a power to decide upon orders of removal. As to the other objection, it appears that there are three magistrates at least qualified to act, and a sessions of the peace may, it is known, be held before two magistrates. The act of parliament to which a reference has been made only applies to corporations or franchises, where there are not more than four justices altogether; and, besides, it does not apply to appeals against orders of removal. Upon the whole, therefore, I am of opinion, that this rule ought to be made absolute. (See *Rex* v. *Essex*, *J.* p. 338.)

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Where such place held only general sessions twice a year, and not quarter sessions: Held, that an appeal against an order of removal might be made to the next general sessions of the peace for such borough.

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3. Within what Time the Appeal must be made.

3. *Within what Time the Appeal must be made.*

Appeal must be to the next sessions.

By 13 & 14 Car. II. the appeal must be to the next quarter sessions after the judgment.

It need not be within the 21 days after the order.

The pauper cannot now be removed until twenty-one days after the order has been sent to the overseers of the parish to which the order has been directed. It is not necessary, however, to give notice of appeal within that time. *Rex* v. *Justices of Suffolk*, *post*.

A party is allowed 21 days to consider of the appeal, and 14 days to give notice.

Rex v. *Justices of Lancashire*, *L. J.*, *Oct.* 1843. An order of removal was made and suspended on the 5th of October. A copy was served on the 14th October. The sessions were held on the 3rd of November. It is not necessary to enter the appeal at those sessions, as the appellants are allowed twenty-one days to consider of the propriety of appealing, and fourteen days to give grounds of appeal.

Not necessary to appeal within the 21 days.

Rex v. *Justices of Leicester*, 4 *Dowl.* 633. *J. Patteson* decided that the statute did not require notice of appeal within twenty-one days.

Rex v. *Justices of Cornwall*, 6 *A. & E.* 894. The order was served on

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the 8th June. The sessions were held on the 28th June. The pauper was removed on the 29th June. The notice of appeal was given on the 3rd of October, for the October sessions. The court were of opinion that the notice was given in sufficient time.

Order served on 8th June; sessions held on 28th. Appeal may be to October sessions.

To be the next sessions after the removal.

Parties not aggrieved till after the removal.

Rex v. *Norton*, 2 *Stra.* 831. Exception was taken to an order of sessions, because the justices' order was dated June 21st, and the sessions' order was not till Michaelmas sessions. To this it was answered, that the appeal is to be to the next sessions after the parties find themselves aggrieved, which is not till the removal; and for aught that appears, Michaelmas sessions might be the next sessions after the aggrievance. And so held in *Milbrooke* v. *St. John's, in Southampton, M.* 1 Geo. I. To which the court agreed, and the sessions' order was confirmed.

But now the appeal may be made before the removal actually takes place. (See s. 77 of 4 & 5 Will. IV. c. 76, Appendix.)

The time limited for appealing against an order of removal is not suspended by the matter being referred to arbitration, if the award is not final.

Rex v. *Devonshire J., Cald.* 32; 2 *Bott*, 961. A *mandamus* had been moved for to hear an appeal to an order of removal: the sessions had refused to enter into it, as one sessions had intervened since the removal. The order was dated October 21st, 1776; in November the pauper was removed; some time afterwards it was agreed between the two parishes, that the question should be decided by an opinion, provided such opinion was given before the 14th day of January, the sessions beginning on the 15th. It was also agreed, that no other instructions should be given to the counsel than the examination of the pauper, which was, that he was born in Witheridge, and about the age of seven years was bound to Richard Elworthy, of Witheridge, with whom he lived till twenty-one, and then made an agreement with his master to give him one guinea to discharge him from his apprenticeship. Elworthy gave him a discharge under his own hand: after different services he gained a settlement by hiring and service under Robert Salter, in Paddington, if he was so far discharged as to be capable of gaining a settlement by hiring and service. On the 10th of January the opinion was given; and was, "That if the indenture of apprenticeship remained in the master's hands *uncancelled* the apprenticeship still continued, and the agreement was no dissolution thereof, but only a licence to the apprentice to serve where he pleased." *On this day* the officers of Witheridge told the officers of Paddington, that as the opinion was not decisive, they must inquire of the master what had become of the indenture. At the sessions, on the 15th, no appeal was entered. At Easter sessions following, Paddington appealed, but the justices refused to enter into it. A *mandamus* was moved for, on the ground that under the agreement the opinion in favour of Paddington was conclusive, and that Paddington had appealed in consequence of objections raised to this decision *subsequent to the Epiphany Sessions*, and therefore the statutable limitation of appeal to the *next* sessions ought, during the time the parties were under the terms of compromise, to be suspended: the court being satisfied of the appeal having been prevented in consequence of the objection not having been raised *previous to the Epiphany Sessions.* By Lord *Mansfield*, C. J. "As both parties had agreed that this question should be submitted to counsel, and that his opinion should conclude, though the court does not quite agree with the counsel in point of law, they would not, had the opinion been positive, have granted the *mandamus.* Upon the point of law, I am of opinion, that if the indenture had not been destroyed, but remained in the master's hands, the apprentice would yet have gained a subsequent settlement in Paddington. The master received a guinea of his apprentice, then of full age, for the express purpose of vacating the indenture: why should the master after this have used the indenture against the apprentice? So far from it, that the apprentice might have brought an action against the master for it. But the opinion of the counsel was hypothetical only, and upon a state of facts at the time not settled and submitted to him by the parties. The case, therefore, might be considered as open to the interposition of the court. But the merits of the case appearing to be clearly against the party applying, the

An agreement to cancel an indenture by an adult is good.

court, to prevent further litigation and expense, refused the rule; and on account of some misconduct with respect to the affidavits laid before the court by the prosecutors of the rule, directed that it should be discharged with costs out of pocket." Mandamus refused.

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Rex v. *The East Riding of Yorkshire*, *Doug.* 192. The order had been made on the 22d of September, but the pauper was not removed till the 5th of October. Hull, the place to which the pauper had been removed from Whitby, is sixty miles from Northallerton, where the sessions began on the 6th of October; at which sessions no appeal was entered. At the Epiphany sessions Hull offered an appeal, but the justices refused to hear it. An appeal might have been entered at the Michaelmas sessions on the second or third day. The court said, that by *next* sessions the statute Car. II. must have meant the next *possible* sessions, and that here it was impossible for the appellants to lodge their appeal at the Michaelmas sessions. A mandamus granted.

Next sessions means the *next possible* sessions;

Rex v. *Justices of Essex*, 1 *B. & Ald.* 210. Rule to show cause why a mandamus should not issue, commanding the justices to receive and hear an appeal against an order of removal from Tolleshunt Knights to Washbrook. The order was made on Tuesday, the 8th July, 1817, and was served about twelve o'clock on the following Saturday. The distance between the respondent and appellant parishes was twenty-four miles, and the appellant parish was thirty-seven miles from Chelmsford, where the sessions were held on the Tuesday following, and lasted four days: and by the practice of that sessions a motion to enter and respite the appeal might have been made at any time during the sessions. The parish not having appealed at the July sessions, the justices refused to receive the appeal at the Michaelmas sessions. Lord *Ellenborough*, C. J. "The 13 & 14 Car. II. certainly directs the appeal to be at the *next* quarter sessions, but that must mean the next practicable sessions. The parish officers must have a reasonable time allowed them to make the necessary inquiries, that they may judge of the propriety of appealing or not. The notice here is served on the Saturday. I am of opinion that they are not bound to devote Sunday to such a purpose. They have then only one entire day, *i. e.* the Monday, to get the necessary information, and to consider whether they will appeal or not; and that, in my judgment, is not sufficient. It has been said, that although the appeal could not have been heard at those sessions, still that it ought to have been entered and respited; but that would only be incurring an useless expense, without conferring any benefit on either party, and was, therefore, quite unnecessary." Rule absolute.

Or the next *practicable* sessions.

Many of the earlier cases (*a*) had determined, that it was necessary to

It is not necessary

(*a*) *Rex* v. *Herefordshire*, 3 *T. R.* 504. The order was made on Friday, the 18th of April; on the 19th the pauper was removed; on Tuesday, the 22nd, the sessions was held at Hereford, twenty miles distant from the parish to which the pauper was removed; at which sessions it is the practice not to receive any appeal after the Tuesday morning. The parish not having appealed at those Easter sessions, the justices at the Midsummer sessions refused to receive the appeal. Lord *Kenyon*. "The words of the act of parliament are very strong, and they require the appeal to be made at the sessions next after the grievance. Where, indeed, an order of removal has been made some time before, and only executed a very short time before the sessions, so that there was no possibility of appealing to those sessions, this court has interfered, by granting a mandamus to compel the justices at the following sessions to receive the appeal; because the words 'next sessions' mean 'the next *possible* sessions.' But this is a very different case; for there were two intervening days after the execution of the order, and before the Easter sessions; and if there were not sufficient time, before those sessions, to give reasonable notice of appeal, the appeal might have been then entered and adjourned, according to 9 Geo. III. c. 7, s. 8." The other judges concurring—Rule discharged.

Rex v. *J. W. R. York*, 4 *M. & Sel.* 327. An order from a township in the West Riding to Saint Luke, in Middlesex, dated the 3d of January, was executed on the 12th, and the Epiphany sessions for the West Riding were holden on the 18th.

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to enter and respite an appeal, when there is not time to give notice of trial.

enter and respite an appeal at the next sessions, although there was not time to try it then; a more reasonable rule was laid down in *Rex* v. *The Justices of Devon* (p. 341). The order of removal from Upottery to Pitminster was served on the 8th of April. The sessions were held on the 15th of April, at Exeter. Pitminster is eight miles from Upottery, and thirty miles from Exeter. The sessions require eight clear days' notice to try an appeal (*a*). An appeal may be entered and respited without notice. The appeal was not entered at the Easter sessions, but at the July sessions, when they refused to hear it. Lord *Tenterden*, C. J., said, "It is clear that in this case the appellant could not have *tried* his appeal at the April sessions, but it was contended that he ought to have entered it then, and adjourned it. The entry for an adjournment only is an useless act, and only occasions unnecessary expense. I think, therefore, he was not bound to enter it at those sessions. One inconvenience only can follow from our holding that it is not necessary under such circumstances to enter the appeal at the first sessions, viz. where the removal is made within eight days of the sessions, so that the parish to which the pauper is removed cannot try their appeal at those sessions, the removing parish may not know of the intention of the other parish to appeal till within eight days before the second sessions. If that should prove an inconvenience, the sessions may remedy it by requiring, under such circumstances, a longer notice." Rule absolute for a mandamus.

Same point.

Rex v. *The Justices of Kent*, 8 *B. & C.* 639; 3 *M. & R.* 15. The order of removal from Lenham to Pluckley was served on the 8th April. The sessions were on the 15th at Maidstone; they require eight clear days' notice to *try* an appeal. The appeal was first entered at the July sessions; when the order was served, the officer of Pluckley said they should appeal. The officers of Lenham observed that nothing could be done at the April sessions, because there were not eight clear days. The sessions in July refused to hear it. Lord *Tenterden*, C. J. "We think it reasonable that the parish of Pluckley should have an opportunity of trying their appeal; they may probably have been misled by the observation of the officer of Lenham. Independently of that, it appears to me to have been wholly unnecessary to enter and adjourn the appeal at the first sessions, when they could not then try it." Mandamus granted.

Where the service of the order is delayed, the appellants are not to be prejudiced by it.

Rex v. *Southampton*, 6 *M. & Sel.* 394. The order of removal from Ropley to Bentworth was made on the 2nd, and served on the 7th of January. The sessions were on the 14th at Winchester. Eight days' notice is necessary to have an appeal heard. Bentworth is five miles from Ropley, and fifteen from Winchester. The appeal was first entered at the Easter sessions, when they refused to hear it. Lord *Ellenborough*. "The order was made on the 2nd, and not served till the 7th. What prevented the order's being executed promptly? If it had been served immediately, the appellants might, for anything that appears to the contrary, have gone to the first sessions and tried their case. The respondents having by their own act abridged the time, it seems reasonable that the appellants should be allowed to the next sessions, *nunc pro tunc*, for this purpose: for where delay has been caused by one party, the most favourable construction should be adopted as regards the other." *Abbott*, J. "The effect of the delay was to prevent the appellants, if they had been so minded, from

The parish of St. Luke did not appeal to those sessions, but offered to appeal at the Easter sessions in April, when the justices refused to receive it. *Le Blanc*, J., (in the absence of the Chief Justice,) said, "We do not think that the parish were entitled strictly to pass over the first sessions; but if they had done at the second as much as they ought to have done, the court would have relieved them. The parish might possibly have gone, in the first instance, to the Epiphany sessions, but they have not done this, and have also not placed themselves in a situation to be heard at the second sessions; the court, therefore, do not see a sufficient ground for granting the mandamus." Rule discharged.

(*a*) The grounds of appeal must now be delivered *fourteen* days before the sessions. 4 & 5 Will. IV. c. 76, s. 81, *post*.

trying their appeal at the first sessions. Allowing that a satisfactory reason might be given for the delay, still the appellants ought not to be prejudiced by it." Mandamus granted.

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Rex v. *Surrey*, 1 *M. & Sel.* 479. Order of removal from Richmond to Mortlake was dated the 11th of January, and executed in the afternoon of that day. The sessions for Surrey began on the 12th. The affidavit stated that there was not sufficient time to procure any information respecting the pauper, or the evidence to support an appeal; notice must be served of their intention to *try* such appeal, at least six clear days before the sessions. The sessions are always adjourned for a certain time, and appeals are allowed to be lodged at any time during the sitting of the sessions, or at the adjournment held next after the making such order, without requiring notice. The January sessions commenced on the 12th, and lasted fourteen days, when they were adjourned to the 2nd February (which adjournment lasted one day), and again adjourned to the 1st of March, which lasted two days. Newington, where the sessions were holden, was distant eight miles from Mortlake. Lord *Ellenborough*, C. J. "The statute does not contemplate the continuance of the sessions. It enacts that the party may appeal 'to the next quarter sessions,' without adding, 'or some adjournment thereof.' It takes the holding of the sessions as the point of time to which it refers the appeal; and the sessions are always considered in law as one day, to whatever period they may by accidental causes be extended. The appellant parish ought to have a reasonable time allowed for considering whether they will appeal or not. The question is, whether the interval between the 11th and 12th of January was a reasonable time for that purpose? We are of opinion that it was not." *Bayley*, J., referred to *Rex* v. *Flintshire Js.* Rule absolute. And see several cases, *post.*

Time computed from the *commencement* of the sessions.

The sessions are one day in law.

The appeal may be either at the sessions next after the service of the order and notice, or after the actual removal.

Reg. v. *The Justices of Middlesex*, 4 *Jurist*, 1086. On a rule for a mandamus to hear an appeal by Hingham, against an order which had been made for removing to that parish a female pauper and children, from St. Leonard, Shoreditch, it appeared that an order was made on 21st June, 1838. A copy of this order, and of the examination, was sent on the 22nd June to Hingham, with a request, that if there were any objection to the order it might be stated. On the 27th June, the overseers of Hingham gave notice that they should appeal, (but it did not state to what sessions,) "that the grounds of our appeal are," &c., (the grounds were then set forth). According to the practice, the appellants ought to have entered and respited their appeal at the October sessions, 1839, and to have tried their appeal at the January sessions. On the 18th April, 1839, the pauper was actually removed, upon which the overseers of Hingham gave a fresh notice of appeal, and took the proper steps to bring the appeal before the sessions. That court, however, refused to hear the appeal, on the ground that it was too late, and that they had no power to enter on the inquiry. After the argument, *Patteson*, J., said: "I wish this case had been argued before the full court, I must confess; for the material point being, whether or no a parish, after having given a notice of appeal, under the 79th section of the Poor Law Amendment Act, which they have not followed up by prosecuting an appeal, I say the material point is, whether the parish may, after the actual removal of the pauper, appeal under the old stat. 13 & 14 Car. II. c. 12, s. 2. This I shall not determine without further consideration; and I am sorry it falls on me alone to determine. As to the rest of the case, I think that there is nothing in it, and that the point I have mentioned is clearly raised. A notice was sent, and was received; and as to the affidavit, that it was not meant to be a formal notice, I think it a very bold affidavit, and the man who so swears must be a bold man to say he gave no notice. After the service of the copy of the order of removal, an instrument was sent back in the form:—'We, the overseers of the parish, &c., give notice that we shall appeal, &c., and that the grounds of our appeal are,' &c. After such a notice, I repeat, it was very bold

A parish having given notice of appeal against an order of removal, may abandon that notice; and on the actual removal of the pauper may give fresh notice.

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swearing to say, that it was not a notice within the stat. 4 & 5 Will. IV. c. 76, s. 79. But whether, after that notice, and after the time has been suffered to elapse for following up that notice by an appeal, whether the right to appeal under the stat. 13 & 14 Car. II. c. 12, s. 2, is taken away, has not been decided, and none of the cases that have been referred to touch the point. Under the recent act, the parish may appeal before an actual removal takes place, the clause giving a power of appeal on the order of removal being made, though it is not carried into effect; and all that the court has decided in the cases referred to is, that although the parish may appeal under the recent act before an actual removal, yet they are not bound to do so, and that they may still appeal under the stat. 13 & 14 Car. II. where an actual removal takes place. It has only been decided that the parish has a choice, and that because they do not act under the modern statute, the right to act under the old is not taken away. But it has not been decided in any case, because a parish begins to act under the recent statute, and does not follow up their proceedings, that, therefore, they cannot proceed under the old act. It is a point of consequence, and I shall take time to consider it." Afterwards, *Patteson*, J., gave judgment. "This was a rule for a writ of mandamus to the sessions to hear an appeal; and the question is, whether the appellant parish having given notice of appeal within twenty-one days after they received the order of removal, under the 79th section of 4 & 5 Will. IV. c. 76, and not having prosecuted such appeal, can, upon the subsequent removal of the pauper, appeal against the order under the 13 & 14 Car. II. c. 12, s. 2. On the argument, I expressed my decided opinion, that what took place here amounted to a notice of appeal by the appellant parish; on consideration, I entirely adhere to that opinion, and I also think that the reasons adduced to shew that the question I have above stated does not arise, are insufficient. The question itself is of some importance in regulating the practice. This court has several times held, that the parish officers are not bound to avail themselves of the 79th section, but may suffer the twenty-one days to elapse, and appeal to the next sessions after the actual removal. They have considered that the appellant parish may treat itself as a party grieved by the order of removal before actual removal, by the necessary operation of the enactment of 4 & 5 Will. IV. c. 76, or may wait till they are grieved by the actual removal. Further than this, the decisions have not gone; the facts not having, prior to the present case, raised the question now to be determined. I have no doubt, that if the appellant parish had lodged and prosecuted an appeal in pursuance of their notice, and had failed, whether on a point of form or on the merits, and the pauper had afterwards been removed, as the 79th section directs, the appellant parish could not have appealed again. The *R.* v. *Justices W. R. of Yorkshire*, 3 *T. R.* 776, is an express authority for the principle on which I should so hold; and, indeed, the learned counsel did not dispute that point. The dictum of Mr Justice *Buller* in that same case is also an authority to shew, that a notice of appeal not followed up, will preclude a party from giving a fresh notice and appealing thereon, provided it is in proper time. Supposing it to be the first notice, the principle of that dictum applies to the present case; and as the 84th section of the 4 & 5 Will. IV. c. 76, gives the expenses of maintenance to the respondent parish, if successful, from the time of their giving notice of the chargeability, no material injury arises to them from the delay. Looking, therefore, at all the enactments of the 4 & 5 Will. IV. c. 76, relating to this subject, and not finding anything which shews that the legislature intends the notice of appeal, not followed up and prosecuted, to deprive the appellant parish of their remedy upon the actual removal of the pauper, and finding no absurdity or inconsistency involved in holding that they did not so intend, I feel myself bound to hold, that the appellant parish might expressly or tacitly abandon their first notice of appeal, and take their remedy after the actual removal. I am, therefore, of opinion, that the appellant parish was not too late, and that this *rule* must be made *absolute*."

The first notice however must not be prosecuted.

Reg. v. *Justices of Cheshire*, 7 *Jurist*, 370. This was a rule for a mandamus to hear an appeal between the parishes of Ulkindon and Duddon. The order of removal was made on the 22nd February. Notice, by post, was sent to the overseers on the 25th, with a copy of the order, &c., and would be received on the following day. The next quarter sessions were held on the 29th March. This order was made more than thirty days before that time. The overseers of the appellant parish did not appeal within twenty-one days. The pauper was removed on the 12th April. The next sessions were held on the 28th June. At those sessions, without sending notice to the respondents, the appellants entered and respited. Notice of appeal to try at the following October sessions was served on the 2nd October, six months after the actual removal. These sessions took place on the 18th, when it was objected that the appeal was too late. *Wightman*, J. "It appears to me, that the order must be taken as made after the March sessions. If so, then, by the practice, it is not necessary to appeal to the Midsummer sessions; and, in that event, the appellants were in time at the October sessions. The language of Mr. Justice *Patteson*, in *R.* v. *Justices of Middlesex*, is in consonance with this opinion. He there says: 'Looking at all the enactments of the 4 & 5 Will. IV. c. 76, relating to this subject, and not finding anything which shews that the Legislature intended a notice of appeal, not followed up and prosecuted, to deprive the appellant parish of its remedy upon the actual removal of the pauper; and finding no absurdity or inconsistency involved in holding that it did not so intend, I feel myself bound to hold, that the appellant parish might expressly or tacitly abandon their first notice of appeal, and take their remedy after the actual removal.' I think, therefore, that the present rule must be made absolute." Rule absolute.

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The appeal may be to the next sessions after the removal, though a previous sessions had been held more than twenty-one days after service of the order, &c.

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Rex v. *The Justices of Norfolk*, 5 *B. & Ald.* 484; 1 *D. & R.* 69. A rule *nisi* was obtained for a mandamus to enter continuances and hear an appeal against an order of removal. The removal had taken place on the 22nd of August, and on the 5th of September notice of appeal was given. On the 10th of October, a supersedeas, under the hands and seals of the removing magistrates, was served on the officers of the appellant parish, stating, that doubts had been entertained whether the order could be supported by legal evidence, and requiring them to deliver up the duplicate order to be cancelled, and also requiring the other party to take back the pauper. This was done at the instance of the respondents, the order having been founded on the examination of Edward George, taken under 59 Geo. III. c. 12, s. 28, and that, he being a prisoner convicted and under sentence for larceny, his examination was not evidence, he himself not being an admissible witness until the expiration of his sentence. It did not appear whether the costs of maintenance between the 22nd of August and the 10th of October had been tendered by the respondents. On the 17th of October application was made to the sessions for leave to enter the appeal, which was refused, the court being of opinion that the order was at an end. *Pancras* v. *Rumbold* was cited as an authority to show, that though the justices may supersede an order before, they cannot do so after it is executed. *Bayley*, J. "This is a very different case from *Pancras* v. *Rumbold*, which is only an authority to show that the justices having been surprised into making an order, may of their own authority, and without the consent of the removing parish, supersede it before execution, but not after. But in this case there is the consent of the removing parish. The language of Lord *Ellenborough*, in *Rex* v. *Diddlebury* (p. 1088), puts it upon that very ground, for he says, 'There are two ways of getting rid of

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Where an order of removal has been executed, and by consent of the removing parish, and the magistrates making it, it is superseded, and the paupers taken back, it is in the discretion of the sessions to enter an appeal against it or not, according as they may think justice requires it, in order to compel the respondents to pay the costs of maintenance, &c., incurred by the appellants before the order was superseded. (*a*)

(*a*) In *Reg.* v. *Townstal*, p. 1110 during the argument Lord *Denman* observed, "There was a supersedeas in *Pancras* v. *Rumbold*, but that case only decided what magistrates could do, and J. *Bayley*, commenting on it in *Rex* v. *Norfolk*, seems to be of opinion that the consent of the parish is enough without a supersedeas. I do not believe that any judge ever considered a supersedeas necessary."

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an order, one by consent of the parish in whose favour it is made to abandon it, the other by appeal;' and he adds afterwards, 'What objection can there be, as Lord *Mansfield* observed in *Rex* v. *Llanrhydd* (*post*), to a party's abandoning a judgment intended for his own benefit?' These observations show that the consent of the removing parish alone is requisite. I think that in cases like this the sessions may exercise a discretion, and enter the appeal or not, so as best to answer the purposes of justice. If the parties removing do not choose to pay the expenses of maintenance incurred previously to the supersedeas, they may then enter the appeal, for the purpose of compelling them so to do. If they are willing to do it, the sessions may refuse to enter the appeal. Here the only object of entering it would be, either to obtain a decision from the sessions, in the absence of a material witness, or to respite the appeal from time to time. In the latter case, there would be an useless expense entailed upon the parties. As soon as George is discharged from prison a new order may be made; and it is better for the appellants that it should be so, for they will not be compelled to keep the family in the mean time. I think, therefore, that it was entirely in the discretion of the sessions to enter the appeal or not; and I do not see any ground why this court should interfere with their decision. This rule for a mandamus must be discharged." *Best*, J. "The principle upon which this court proceeds, in issuing the writ of mandamus, is to prevent a failure of justice. Here the very reverse would be the effect. For we should either compel the sessions to hear the case in the absence of the person who can give the most material information, or put the parties to the useless expense of obtaining respites from time to time, till his imprisonment be over." Rule discharged.

We have already observed, that the parties may, in certain cases, supersede their own order, still it may be necessary, for the ends of justice, to enter an appeal against it. In the *Reg.* v. *J. W. R. Yorkshire*, *ante*, the court seemed to think that they had no jurisdiction to do so; but in the following case such power was distinctly recognised:—

Where the respondents abandon their order, but do not pay the costs, the appellants have a right to enter their appeal at the sessions to compel the payment of such costs.

By the order of sessions in Cheshire, all appeals are to be entered with the clerk of the peace at the opening of the court at which they are to be heard, when the order or a copy is to be delivered to him. The appellants, on entering their appeal, filed with the clerk of the peace a *copy* of the order The original order was not before the court, and no notice had been given to produce it. The order of sessions is sufficiently complied with.

Reg. v. *Townstal*; *Reg.* v. *Stayley*; 7 *Jurist*, 463; 1 *Q. B.* 376. The sessions for the borough of Clifton Dartmouth Hardness, on appeal, quashed an order of removal, subject to a case:—This was an appeal against an order dated the 23rd September, 1842, for the removal of J. Tucker from Townstal to Stokefleming. On the 6th of October following, the parish of Stokefleming served notice of appeal, and at the same time delivered the grounds of appeal. On the 8th of October, the respondent's attorney informed the attorney for the appellants, that the respondents would abandon their order, and were ready to pay the costs of the appellants, to which no consent was given. On the 11th of October, a notice was served by the respondents on the overseers of Stokefleming stating that they abandoned the order, and were ready to pay all such lawful and reasonable costs as may have been incurred in consequence of such order, and that a fresh order for the removal of the said James Tucker and his said children from and out of our said parish of Townstal to your said parish of Stokefleming. The appellants would not consent to the abandonment of the order; and on the 12th October, an appeal was entered by their attorney with the clerk of the peace for trial at the following sessions, held on the 27th October. At the sessions the respondents insisted, that the order having been abandoned, the appeal should be dismissed. The sessions overruled the objection, on the ground that, without the consent of the appellant parish, or a supersedeas, the abandonment was ineffectual. The court then proceeded to hear the appeal, and quashed the order of removal. If the court shall be of opinion that the order of removal had been effectually abandoned, the appeal shall be dismissed; but if the court shall be of a contrary opinion, the order of removal to stand quashed. *Reg.* v. *Stayley*. The Cheshire sessions, on appeal, quashed an order. Case:—This was an appeal against an order for the removal of B. Johnson from Stayley to Wooldale. Notice of appeal against this order, with the grounds proving several objections to the examination, was served fourteen days before the sessions next following, but the pauper was not removed. On the 23rd of June, and in time to prevent the incurring of any further

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expenses by the appellants going to the sessions, the respondents gave them notice of the abandonment of the order, on the ground that they had discovered that it could not be supported, by reason of the examination on which it was founded being inaccurate as to certain dates and other matters which did not affect the settlement of the pauper; but that the respondents still insisted that such pauper was legally settled in Wooldale, and that, should he continue chargeable, they would immediately apply for another order to remove him to Wooldale. There was no mention made of paying the costs already incurred by the appellant's township in preparing notices of appeal, in subpœnas, journeys to examine pauper, preparation of brief for counsel, and many other expenses; nor in fact were any of these expenses paid before the appellants had entered their appeal, and obtained the adjudication of the court of quarter sessions; nor had any application for such costs been made, or notice of any intended application been given, until the counsel for the appellants moved for them in court. Notwithstanding the service of this abandonment of the order, the appellants, at the sessions on the 27th June, 1842, and without giving respondents any further notice, entered their appeal for trial, having filed with the clerk of the peace a copy only of the order of removal, together with a copy of the examinations, and with the notice of chargeability. When the appeal was called, the appellants moved to quash the order, which the respondents did not appear to support, and for the costs of the appeal, this application was resisted by the respondents, (who were attending the sessions upon other business), on the grounds that the court had no jurisdiction in the matter, inasmuch as no original order was before it, and no notice to produce such original having been given, the paper filed as a copy could not be used; and that after the order had been abandoned for want of sufficiency in the examination, and as the notice of abandonment expressly stated, on no other account whatsoever, it could not entertain the appeal for the purpose of quashing the order which had been already abandoned. The appellants cited the orders of the court, that all appeals intended to be tried at any quarter sessions, whether the same shall have been lodged at a prior sessions or not, are to be entered with the clerk of the peace at the opening of the court at the sessions or adjournment at which the same are to be heard, when the order or proceeding appealed against, or a copy thereof, is to be delivered to him; and no appeal shall be called on for trial which shall not have been so entered. Appellants submitted that they had complied with the rules and practice of the court, in giving a copy of the order to the clerk of the peace. The appellants also contended, that respondents were too late in their notice, the rules of the quarter sessions requiring that notice of countermand of trial, of either traverse or appeal, is to be given six clear days before the commencement of each sessions, and that all other notices are to be given ten clear days before the first day of the sessions. The court quashed the order for want of form, and granted full costs to the appellants. Lord *Denman.* "It is much to be lamented, that there is a want of security for costs in the event of an abandonment of an order of removal by the respondents, upon the discovery of some defect in the examination. There is no other method of proceeding provided, and appellants have a right to go to the court of quarter sessions, and to enter their appeal if they think proper. We think there is nothing in the other objection—viz., that the appellants could not give evidence to a copy served on them." *Patteson,* J. "I am anxious to afford every facility to the abandonment of an order by a removing parish, when a defect is pointed out by the statement of the grounds of appeal; but there is no doubt a difficulty as to costs. It appears that in one of these cases there was an offer to pay, but no specific sum was mentioned; and if the parishes cannot agree between themselves, there is no other course but to go to the court of quarter sessions. *Williams,* J. "A tender is open to this observation by the opposite party. We will take all reasonable costs, but who but the court of quarter sessions is to say what are reasonable costs? The order of sessions must be confirmed in each case."

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A removing parish may abandon its own order of removal.
It is most convenient that an order abandoned should be formally superseded.
In order to compel payment of costs, the appellants have a right to go to sessions, notwithstanding all proper steps have been taken by the respondents towards abandoning their order.
An order of removal had been made on the 27th January, and suspended. Notice of appeal, with a statement of the grounds of appeal, had been served on the 2nd March, to the effect that the examination did not sufficiently state the particulars of the settlement; and hereupon the removing parish procured a supersedeas of the order, and served the appellants with notice of it and of the abandonment.
The appellants proceeded to the sessions, and applied to enter their appeal, which was refused.
Upon motion for a mandamus to the justices to enter continuances and hear the appeal, the court refused to let the writ go, as it had not been shown that any expenses had been incurred by the appellants or any demand made by them on the respondents, which the latter had refused to satisfy.

Reg. v. *J. Anglesea*, 7 *Jurist*, 701. The facts are fully stated in the judgment of *Coleridge*, J. "This was a rule for a mandamus to enter continuances and hear an appeal against an order of removal. The order had been made on the 27th January, and suspended. Notice of appeal, however, had been served, with a statement of the ground of such appeal, on the 2nd March. The ground stated was, that the examination did not sufficiently state the particulars of the settlement; whereupon the removing parish procured a supersedeas of the order, and served the appellants with notice of it and of abandonment. The appellants, however, proceeded to sessions, and applied to the court to be allowed to enter their appeal, which, upon argument, was refused. It seems to me now very fully established, that a removing parish may abandon its own order of removal. In *Reg.* v. *St. Pancras* (p. 1047), the language of the court is, that "an order of removal is merely a warrant to enable the parish officers to remove the paupers, but they are not obliged to carry it into effect." To this abandonment by the parties has, in many cases, been added a formal supersede as by the removing magistrates of their own order; and the degree of importance to be attached to this supersedeas has varied in different reported cases. That the order, whenever it is abandoned by the party, should also be formally superseded by the magistrate, is undoubtedly most convenient as a mode of authenticating satisfactorily the abandonment, and furnishing the most conclusive evidence against any subsequent attempt to set up the order when it may be too late to appeal against it. But it is doubted whether the magistrates are not *functi officio* as soon as they have sealed and delivered their order; in making the order they exercise a statutable power, and no statute in terms gives them authority to supersede the order when once made. I should have thought, however, that such a power was almost necessarily incident to that of making the order, so long as it remained unexecuted, and there are not wanting decisions which give countenance to this opinion. If I were clearly right in this opinion, the consequence would be, that there could be no appeal to the sessions, for there would be no order in existence to appeal against, and the appellate jurisdiction of that court depends on the existence of the original order. This again is full of inconvenience, because if it be understood that no appeal can be entered when an order has been superseded and abandoned, removing parishes will often be found procuring the supersedeas behind the backs of appellants, without notice to them, and after considerable expense incurred, without paying them any indemnity. In support of this view, I was referred to two very recent decisions of the court, *Reg.* v. *Townstal*, and *Reg.* v. *Stayley*, and in the first there had been abandonment, and an offer to pay all reasonable costs; in the second there had been an abandonment, but no such offer; in both the sessions had allowed appeals to be entered after objection, and quashed the order, subject to cases; in both instances they were held to have done right, and their orders were confirmed. It was not necessary in either to decide on the effect of the supersedeas. The orders being in existence, the sessions undoubtedly might have jurisdiction, but Lord *Denman*, C. J., in the course of the argument, is reported to have placed abandonment and supersedeas on the same footing; and his judgment proceeds on the ground, that, in order to compel payment of costs, the appellants have a right to go to sessions, notwithstanding all proper steps have been taken by the respondents towards abandoning their order. This decision, for the reason I have stated, is consonant to justice, and of course binds me; if, therefore, the sessions in this case had received the appeal and adjudicated on it, I could not have interfered with that exercise of their jurisdiction; and if it had been shewn that any expenses had been incurred by the appellants, any demand made by them on the respondents, which the latter refused to satisfy, acting on the spirit of those decisions, I must have made this rule absolute. But as nothing of the sort was made to appear before me, and the case rested solely on the abstract right, and as the sessions would not be bound to give any costs if they heard the appeal, I should do no good if I directed the writ to go, but

only encourage a vexatious spirit of litigation, and occasion useless expense. Without, therefore, in the least questioning those decisions, I think I may discharge this rule, and, under the circumstances, without costs." Rule discharged accordingly.

4. Entering Appeal after Executed Order is Superseded.

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5. Of Entering and respiting the Appeal, and of Adjournment.

5. Of Entering and Respiting the Appeal, and of Adjournment.

In a preceding chapter, we have seen that it is not necessary to enter and respite an appeal at the sessions next after the execution of the order, unless there is time to try it; even then the sessions are not bound to enter an appeal.

The court is not bound to *enter and respite* the appeal, except on such terms for the payment of costs by the appellants as their rules required.

Rex v. *Monmouthshire J.* 1 *B. & A.* 859. An order was made August, 1830, and notice of appeal duly served on the 8th of October, for the sessions to be held at Usk, on the 18th, such notice being sufficient according to the practice of the sessions. The parties attended at Usk on the 18th, and at a late hour of the day, the appeal not having then been entered, the appellants moved to enter and adjourn it on an affidavit stating the absence of a material witness. The respondents, who had come prepared to try, and had received no countermand, opposed the granting of the motion, unless they were paid their costs of the day. The appellants offered forty shillings, the costs usually awarded by the practice of the sessions to the party succeeding on an appeal. The respondents declined this, but proposed to refer the amount to the clerk of the peace, and the court refused to allow the appeal to be entered and respited, unless the appellants should agree to pay the costs of the day, this being conformable to the practice of the sessions in cases where due notice had been given and not countermanded. The appellants would not consent, and the appeal was not entered. A rule was obtained calling on the justices to show cause why they should not enter continuances and hear the appeal. Lord *Tenterden*, C. J. "Entering the appeal is a mere nothing. The motion was to enter and *adjourn*. The justices consented to respite if the appellants would pay the costs of the day. That being declined, I think the justices exercised a very proper discretion in refusing the adjournment. The rule must be discharged." The rest of the court concurred. Rule discharged with costs.

The sessions may adjourn an appeal for further consideration;

Rex v. *King's Langley*, 2 *Salk.* 605; 1 *Lord Raym.* 481. Upon an appeal against an order of removal, the justices adjourned the appeal for further consideration. And it was held by the whole court, they may well adjourn an appeal upon debate for further consideration.

and ought to do so where justices are divided.

Bodmin v. *Warligen*, 2 *Bott*, 982. On an appeal against an order of removal, the justices were divided, and the clerk of the peace made an entry that the appeal was lodged, and nothing done in it. And the court held, that, under these circumstances, the clerk of the peace ought to have entered an adjournment.

Style of the sessions where they are adjourned.

Where the sessions itself is adjourned, the style of the sessions ought not to run, *at such a sessions held by adjournment*, but the time of the first meeting of the sessions ought to be set forth, and that the same was continued to such further time by adjournment, as in *Rex* v. *Hindercleave*, 19 *Vin. Abr.* 356; 2 *Bott*, 956. An order made at the general quarter sessions of the peace, *held by adjournment*, was quashed, because it did not appear that this was the next general quarter sessions; for it might be that the sessions was begun and continued by adjournment before the order was made.

Rex v. *Heptonstall*, *Burr. S. C.* 88; 2 *Bott*, 731. The sessions was said to be holden on such a day *by adjournment*, and it did not appear when the original sessions was holden. Order was quashed for that cause.

A quarter sessions once dropped cannot be resumed.

Rex v. *Polstead*, 2 *Stra.* 1263; 2 *Bott*, 986. Appeal was made to the sessions in Suffolk, held April 7th, 1766, against an order of removal. The sessions was adjourned to April 9th, at Woodbridge, where for want of a sufficient number of justices nothing could be done. April 11th, a sessions

5. *Of Entering and Respiting the Appeal, and of Adjournment.*

was held at Ipswich, and adjourned to the 14th, at Bury, where the appeal was allowed. It was moved to quash the order of sessions, as made without jurisdiction, the sessions ending for want of an adjournment at Woodbridge. And of that opinion was the court; for the words in 2 Hen. V. c. 4, *and more often if need be,* were never considered as giving more than one original sessions in a quarter, but only empowering adjournments. The county must take notice of adjournments, but are not supposed to expect a new sessions till the usual time. And the order of sessions was quashed.

There must be an adjournment from place to place, where the sessions are held at different places.

Rex v. *West Torrington*, *Burr. S. C.* 293. The sessions was held at Kirton; and from thence adjourned to Caistor, at which place no sessions was held pursuant to the said adjournment. Afterwards, a sessions was held at Horncastle; and the appeal was determined there. By the Court: "The sessions at Horncastle could not take up the appeal, for want of jurisdiction. A quarter sessions must be holden four times in a year, as directed by the statute; and it may be adjourned from time to time, and from place to place; but if it is once dropped, it cannot be resumed."

Order confirmed at the sessions without hearing the appellants quashed by court of K. B.

Road v. *North Bradley*, 2 *Stra.* 1168. A pauper was removed from Road to North Bradley. North Bradley gave notice of appeal; on which Road took him back, but however got their order confirmed at sessions. The next sessions set both aside as fraudulent. And now Road insisted that the order was good, as not being appealed from at the next quarter sessions: and as to the other, that it was not in the power of one sessions to set aside the act of the other. All being now before the court they quashed the first order, as being properly quashable on appeal: and would not take notice, that it was not at the next sessions after service of the order, which being in the case of a recent appeal, they would suppose to have been served too late for an appeal to the next sessions. And as to the order of confirmation, they quashed that, as not being made on any appeal, and, consequently, without jurisdiction; and at the same time quashed the latter part of the second sessions' order, that rescinded that confirmation, as not being properly before them.

The sessions are not bound to adjourn the hearing, in order to cure a defect in the grounds of appeal.

Reg. v. *J. of Staffordshire*, 7 *Jurist*, 66; 11 *L. J.* 9, *M. C.* On a rule for a mandamus, to enter an appeal of the overseers of Ramshor against an order of removal, it appeared that a copy of the order of removal was served by the overseers of Kingsley on the overseers of Ramshor, on the 29th July, 1842; on the 18th August, Ramshor gave notice of appeal, and on the 1st October notice of the grounds of appeal were given. The appeal was entered, and on the 19th October the sessions were held, when the appellants having ascertained that the grounds of appeal, the material parts of which were as follows, were too general, applied to adjourn the appeal upon paying the respondent the costs of the day. The chairman expressed his willingness to grant the application if a case could be cited where an appellant parish had been allowed to respite an appeal for the purpose of curing a defect in the grounds of appeal; a case was cited where the appellants had given the notice of the grounds of appeal in time, and subsequently a fresh one not in time, where the court had allowed the appellants to respite, and proceed on the second notice. The application, however, was refused, the respondents contending that the court had no power to adjourn the hearing of the appeal. The grounds of appeal were held to be bad, and the order of removal confirmed. *Wightman*, J. "The difficulty I feel is this: the court of quarter sessions have refused to adjourn the case. They have not reserved any point for this court. Unless they were bound to adjourn the case, I do not see how we can interfere, and the rule must be discharged with costs."

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6. *Of Notice of Appeal.*

9 Geo. I. c. 7, s. 8. Reasonable notice is to be given of appeal.

6. Of Notice of Appeal.

By 9 Geo. I. c. 7, s. 8, "No appeal or appeals from any order or orders of removal of any poor person or persons whatsoever, from any parish or place to another, shall be proceeded upon in any court or quarter sessions,

unless *reasonable notice* be given by the churchwardens or overseers of the poor of such parish or place who shall make such appeal, unto the churchwardens or overseers of the poor of such parish or place from which such poor person or persons shall be removed; the reasonableness of which notice shall be determined by the justices of the peace at the quarter sessions to which the appeal is made: and if it shall appear to them that reasonable time of notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same.

6. *Of Notice of Appeal.*

But now overseers are required, *fourteen days* before the sessions, to give a statement of *the grounds of appeal*, and without it they cannot be heard, nor can they give evidence of any ground of appeal not there set forth in such statement.

The grounds of appeal must be delivered fourteen days before the sessions.

4 & 5 Will. IV. c. 76, s. 81. "That after the 1st day of November, one thousand eight hundred and thirty-four, in every case where notice of appeal against such order shall be given, the overseers or guardians of the parish appealing against such order, or any three or more of such guardians, shall with such notice, or fourteen days at least before the first day of the sessions at which such appeal is intended to be tried, send or deliver to the overseers of the respondent parish a statement in writing under their hands of the grounds of such appeal: and it shall not be lawful for the overseers of such appellant parish to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid: provided always, that it shall not be lawful for the respondent or appellant parish, on the hearing of any appeal, to go into or give evidence of any other grounds of removal, or of appeal against any order of removal, than those set forth in such respective order, examination, or statement as aforesaid."

4 & 5 Will. IV. c. 76, s. 81.

Grounds of appeal to be stated in notice.

Sect. 82. "That upon every such appeal the court before whom the same shall be brought shall and may, if they think fit, order and direct the parish against which the same shall be decided to pay to the other such costs and charges as may to such court appear just and reasonable, and shall certify the amount thereof; and in case the overseers of the poor of the parish liable to pay the same, shall upon demand, and upon the production of such certificate, refuse or neglect to pay the same, the amount thereof may be recovered from such overseer in the same manner as any penalties or forfeitures are by this act recoverable."

Parish losing appeal to pay such costs as court may direct.

Sect. 83. "That if either of the parties shall have included in the order or statement sent as hereinbefore directed any grounds of removal or of appeal, which shall in the opinion of the justices determining the appeal be frivolous and vexatious, such party shall be liable, at the discretion of the said justices, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds, such costs to be recovered in the manner hereinbefore directed as to the other costs incurred by reason of such appeal."

Party making frivolous and vexatious statement to pay costs.

The sessions cannot refuse to hear an appeal because the appellant parish had not two legal overseers, one of them claiming an exemption which had not been allowed. *Rex* v. *J. Cheshire*, 8 *Dowl.* 616.

Appeal by two overseers *de facto*, but one claiming exemption, is good.

The court of sessions have a right to make rules to fix the time when notice of appeal shall be given, (see *Rex* v. *J. Devon*, p. 341). In some counties fourteen days' notice is required, in others eight days; in others it is to be given on or before the Monday in the week next before the sessions. Hence it was necessary in each case to inquire into the practice of each quarter sessions.

Sessions may fix time of notice.

Rex v. *J. Warwickshire*, 2 *N. & P.* 153; 6 *A. & E.* 879. The parish of Solihull appealed against an order of removal from the parish of Norton Lindsey. The grounds of appeal had been served upon T. Canning the churchwarden, and also one of the overseers of Norton Lindsey, but not upon the other overseer. The sessions thought the service insufficient, and dismissed the appeal. The notice of appeal, and the grounds thereof, had been signed by four churchwardens and two overseers, but there was an assistant overseer who had not signed. On a rule for a mandamus to hear

Grounds of appeal signed by the majority of parish officers, is good, and service on one of the officers only is good, if without fraud.

6. *Of Notice of Appeal.*

the appeal, Lord *Denman* said, "We have no hesitation in deciding that the statement of the grounds of appeal, signed by a majority of the parish officers is good, and that service on one of them, if without fraud, is also good." *Littledale*, J., concurred. *Patteson*, J. "This decision will get rid for ever of all questions that can be raised on the point." *Williams*, J., concurred. Rule absolute.

Delivery of grounds of appeal to an attorney acting on behalf of the overseers of the respondent parish, is insufficient.

Where no statement of the grounds of an appeal have been delivered, the sessions may respite the appeal.

Rex v. *Kimbolton*, 1 *N.* & *P.* 666; 6 *A.* & *E.* 603. Mary, wife of R. Phillips, a convicted felon, and her children, were removed from Kimbolton to Leominster; the appeal was adjourned, subject to a case. The notice of appeal was served upon the overseers of Kimbolton on the 10th September, 1835, and on the 3d of October the attorney for the appellants served the grounds of appeal, signed by the overseers of Leominster, upon Mr. Dipple, as the attorney of the overseers of Kimbolton, who accepted the same on their behalf. It was objected, that assuming that Mr. Dipple was the attorney employed by the respondents in this appeal (which the respondents said they were able to disprove), still the service was insufficient, as the statement was not served upon the overseers themselves, and the sessions were of this opinion. The appellants then applied to the court to adjourn the appeal to the next sessions, which the court ordered to be done. The question was, whether under these circumstances the sessions had power to adjourn the appeal. *Littledale*, J. "It seems to me that the sessions had power to adjourn. A general power to that effect is undoubtedly vested in them, and in every court at common law. But it is said in this case that it is useless for them to exercise it, because the statement of grounds is a condition precedent, and therefore if it be a nullity the appeal can never be heard. To that I cannot assent. The statute says that the appellants cannot be heard unless they have given a statement of grounds; it does not say the appeal cannot be adjourned. With respect to the service of notice on the attorney, I think it insufficient. It does, no doubt, in this instance appear that the person so served was the attorney for the respondent parish in this appeal: but when the service took place, the appeal was not, properly speaking, commenced; and at all events I think the service should have been on the overseers themselves. Under s. 79 of the same act, notice, preliminary to a removal, sent *by* an attorney is insufficient, and on comparing that section with s. 81, the latter appears to require a similar interpretation. Under 41 Geo. III. c. 23, s. 4, it is requisite that notice of appeal against a poor's rate should be signed by the persons giving it, *or their attorney*, and served on the churchwardens and overseers: this shows that where it is intended that the signing of notice by an attorney shall be equivalent to signing by the party, the legislature expresses that intention; and the same reasoning holds good as to service on the attorney." *Patteson*, J. "With respect to the service of this notice, I think we must abide by the letter of the act, and hold it insufficient. But the sessions had authority to adjourn, although not bound to do so in this instance, as they were under 9 Geo. I. c. 7, which does not apply here. The act does not say that an appeal shall not be *received* if no statement of grounds is given, only that it shall not be heard; it is therefore within the general jurisdiction of the court to adjourn it, and a new statement of grounds might be given fourteen days before the following sessions. The observations of Lord *Ellenborough* in *Rex* v. *J. Wilts*, (*a*) are particularly in point: the sessions have jurisdiction to adjourn where the appeal is properly lodged, and there is no doubt that it is so in this instance." *Coleridge*, J. "The only question is, whether the appeal was well lodged at the sessions. It appears to me that it was so. Supposing a removal had taken place so short a time before the sessions that the court could not try it, and the appellants could not deliver a statement, the court might adjourn it to the next sessions, and that would be precisely the same case. In *Rex* v. *J. Lincolnshire* (*b*) the question turned on the words of 49 Geo. III. c. 68, s. 7, that no bastardy appeal is to be *brought*, *received*, or *heard*, unless notice be given pursuant to the act; and there the court held, that such notice not having been given, the sessions could not *enter*

Power to adjourn.

Service of notice.

(*a*) 13 *East*, 352.

(*b*) 3 *B.* & *C.* 544.

the appeal: here the word is only 'heard,' which does not exclude a power to receive and enter; and then the power to adjourn is only that which every court must incidentally exercise for the purpose of justice, unless restrained by express enactment. Under these circumstances I do not think it necessary for us to decide whether the notice was well served, but I am of opinion it was not."

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A guardian of a *Union* cannot sign.

Reg. v. *J. Surrey*, 8 *Jurist*, 379; 1 *Car. H. & A.* 124. On a rule for a mandamus, to hear an appeal against an order of removal from Whembedan to All Hallows, London, it appeared that the notice of appeal concluded thus,—"Now we the undersigned churchwardens and overseers of All Hallows do give you notice."

(Signed) W. R., and T. G.; for W. H., W. H. P. } *Churchwardens and Overseers of All Hallows.* J. E., *Guardian.*

A churchwarden cannot sign by a deputy, without express authority.

On the trial it was objected, that this notice was not signed by a majority of the overseers, and on this objection the court dismissed the appeal. By the affidavits it appeared that All Hallows formed part of a union, and that J. E. was the guardian. At the time of signing the notice, W. H., one of the churchwardens, was absent, and unable personally to sign the notice. No proof was given that W. P. H. had authority to sign for W. H., in that his signature was sanctioned subsequently. Lord *Denman*, C. J. "The sessions were quite right in refusing to hear the appeal upon this notice. It may be an unpleasant function to dismiss an appeal upon such an objection, for where the act of parliament requires that a document should be sent under the authority of the signatures of certain officers, it is the duty of the court to see that it has those signatures. Now, the signing by one person for another does not by itself make it the act of the other person; and, as to the deliberation which it is suggested that the act of signing implies, it may be the deliberation of the party signing, not of the party for whom the signature is given. Then, as to the signature by the guardian, he is not a guardian of the parish for this purpose. The 36th section gives a particular power to a sole guardian, but there is nothing in the act which says that guardians are parish officers in any other view, except the interpretation clause." *Patteson*, J. "I am of the same opinion. The 81st section of 4 & 5 Will. IV. c. 76, does not require that the notice should be signed by a majority of the parish officers; if it did, it might be difficult to say who are parish officers for that purpose under the interpretation clause. Where there is a union of parishes under the act, the guardians elected in each parish to form a board for the union are guardians for the union, and have no authority to sign a notice of appeal. The word 'guardian' in s. 81 applies only to the case of a single parish, not associated with others in a union, provided for in s. 39, when the order of removal would be to the guardians of the poor." *Wightman*, J. "In order to make the signature of an agent the signature of the principal, it should appear to have his authority, of which in this case there is no evidence. The signature depends only upon the profession of the party writing the signature. Then it is said that the signature of the guardian will make the signing of the document complete, because a guardian is one of the parish officers; but the 38th section contains an express exclusion of his having any authority except as a member, and at a board of guardians. It is clear that this act is not an act done by him in pursuance of his authority as guardian. Rule discharged.

Notice signed by eight officers does not estop the parish from showing there were only four. (a)

Where an appellant parish gives a notice of appeal against an order of removal, signed by eight parish officers, and afterwards a statement of grounds of appeal signed by four only, they are not estopped from showing that the latter is signed by the proper number. *Reg.* v. *Church Knowle, post.*

The notice of appeal must be

Rex v. *Suffolk*, 5 *Nev. & M.* 503; 4 *A. & E.* 319. On a rule for a mandamus, it appeared that on 17th September, 1835, an order of removal

(a) On an application for an order in bastardy, it was held that one overseer could not sign the notice, as the agent of another overseer. (*Rex* v. *Cambridge*, 7 *A. & E.* 480).

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given according to the ordinary practice of the sessions.
It need not be given within twenty-one days after notice of the order.

was made, and a copy, with a copy of the examinations, and a notice of chargeability on the following day transmitted to the overseers of Manningtree; on the 9th of October, the overseers of Manningtree sent to the overseers of the removing parish a notice of appeal for the next sessions to be holden *for the borough of Ipswich*, accompanied with the grounds of appeal; on the 13th October, the overseers of Manningtree discovering that they had erroneously given notice of appeal to the *borough* sessions, sent to the overseers of the removing parish a notice of appeal for the next quarter sessions for the county of Suffolk, and referred to the grounds of appeal sent with the former notice. By the rules of the Suffolk sessions eight days' notice of appeal is sufficient; on the 17th October, the appellants had given notice of an intention to respite their appeal, as a witness was ill; on the 23d October, the sessions commenced, and the justices considering that notice of appeal ought to have been given within twenty-one days from the notice of chargeability, refused to hear the appeal. Lord *Denman*. "I think that by this act it was not intended to interfere with the practice of the sessions. Such an intention, if it had been entertained, would have been expressed in plain terms. It appears to me, therefore, that the practice as to notices of appeal must stand exactly as it did before the act passed. The act requires that a statement of the grounds of appeal shall be given with the notice, or at least fourteen days before the commencement of the sessions. It appears to me that this was done on the 9th October, for that though the notice of appeal which accompanied the statement was a notice to the wrong sessions, yet the statement of the grounds of appeal was available to all purposes. As, therefore, the notice was in due time according to the practice of the sessions, and the statement of the grounds of appeal was sufficiently early under the act of parliament, the sessions ought to have entertained the appeal." *Patteson*, J. "The notice on the 9th of October stated the grounds of appeal. That is a compliance with the act. If it be an absurdity that the statement of the grounds of appeal is required to be given earlier than the notice need be given, then it is an absurdity introduced by the act of parliament itself." *Williams*, J. "The only novelty introduced by the 79th section of the act is, that the pauper shall not be actually removed within twenty-one days, unless with consent, nor if there be a notice of appeal within that period, until the time for prosecuting the appeal has expired, or the appeal has been heard and determined. That is the only change effected by that section. And the novelty introduced by the 81st section is, that a statement of the grounds of appeal must be sent or delivered to the respondent parish at least fourteen days before the sessions. That has been effectively done here. Whether timely *notice* of appeal was given depends upon the practice of these particular sessions, which stands as it did before the passing of the poor-law amendment act." *Coleridge*, J. "It is admitted that there was no notice within the twenty-one days, therefore if Mr. *Andrews* is right in his argument, that the 79th section imperatively requires every notice of appeal to be given within the twenty-one days, the sessions have acted properly in refusing to entertain the appeal. The *words* of the statute do not in my opinion require the notice of appeal to be given within the twenty-one days. I think it quite clear that it was never intended to go that length. The mischief intended to be provided against, was the immediate removal of paupers. Paupers were *de facto* removed immediately upon the making of the order of removal, without previous communication with the parish charged by the order, and without giving any time for investigating the removal. The intention was only to prevent a removal within twenty-one days. The words of the act are only that the pauper shall not be 'removed, or removeable,' &c. It does not say that there shall be no appeal, unless a notice of the intention to appeal be given within twenty-one days. If this had been intended, the obvious course would have been to have inserted plain words to that effect. Then with regard to the 81st section. We are called upon to make a general alteration in the practice of all the courts of quarter sessions in the kingdom, upon the ground of a mere implication arising out of a supposition

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that some absurdity will be introduced if the practice be not so altered. The section does not say that the *notice* shall be given fourteen days before the sessions or at any particular time. I think that the obvious meaning of the act is, that where any greater time than fourteen days is required by the sessions for the notice of appeal, then you may deliver the statement of grounds with your notice, or if not, that you should deliver the statement of grounds at least fourteen days before the sessions. If any practical absurdity does arise out of this enactment, it is one which we cannot remedy." Rule absolute.

The 4 & 5 Will. IV. c. 76, s. 81, makes no alteration in the time, fixed by the existing practice of sessions, for giving notice of appeal.

Reg. v. *Draughton*, 2 *P. & D.* 224. On appeal to the sessions held, April 2d, 1838, for the West Riding of Yorkshire, against an order for the removal of J. Spencer, who was removed from Draughton. Order discharged. Case:—The notice of appeal was served on the 19th March, 1838. It was objected that such notice was not in time, for that it was not given "fourteen days at the least before the first day of the sessions," which were held on the 2d April, 1838. The court, however, held such notice to be in time, but reserved the question for the opinion of this court. Lord *Denman*. "The implication contended for is not at all necessary to the construction of the act. Notice of appeal may, by the practice in some places, be required more than fourteen days before the sessions, in which case the grounds of appeal may be sent with the notice; in other cases, where so long a notice is not required, the alternative is provided, that the grounds of appeal should be sent to the respondents fourteen days before the sessions. There is no provision as to the time of notice itself." The other judges concurred. Order of sessions confirmed.

Objection to examination, how taken, how cured.

It is now to be considered how the objection to the examination must be taken, and how a defect in the examination is cured. If there is no appeal against the order, the defects of the examination are cured. If there is an appeal, such defects only can be noticed by the court as are pointed out in the notice of appeal. If for instance the notice of appeal refers only to a settlement acquired subsequent to that relied on in the examination, the respondents are not required to give any evidence of the settlement relied on by them (*Rex* v. *Hockworthy*), nor will they be required to prove any fact stated in the examination, and not denied in the grounds of appeal (*Reg.* v. *St. John's, Margate*, p. 1136), where the settlement disclosed in the examination was that by apprenticeship, and the ground of appeal was that the premium had been paid by the overseers, and no notice given under the statute, no proof is required of the execution of the indenture. *Ib.*

Statements in examination when admitted.

The respondents are confined to the examination.

On the other hand, the respondents cannot on an appeal give evidence of any other or different settlement from that mentioned in the examination.

What are fatal variances.

Variances which have been considered fatal are where the settlement relied on was part of a hiring and service to 1813, and the proof was a hiring and service to 1810, *Ex parte Broseley*, p. 1122. So, also, where the hiring was stated in the examination to have been by D. P., and the service partly with him and partly with his mother, and the proof was of a hiring by D. P. as the agent of his father, and part of the service with his mother, as a widow. *Rex* v. *Misterton*, p. 1122. Other instances of defects in the examination will be found in the cases collected under "Notice of Appeal," as it was settled (notwithstanding an early opinion of one judge to the contrary, *Rex* v. *Kelvedon*, p. 1124) that the examination and notice of appeal must be construed by the same rules. *Reg.* v. *East Ville*, p. 1123.

The examination and notice of appeal to be construed by the same rules.

The sessions the proper judges of a variance.

The sessions are the proper tribunal to determine if the variance between the proof and examination be material, *Reg.* v. *J. Yorkshire* (*re Clint*), p. 1125. The court of Queen's Bench is reluctant to control their decision, although when they refuse to hear an appeal, they do exercise such control. *Reg.* v. *Recorder of Pontefract*, p. 1065.

Effect of a variance.

If the sessions should think the variance material, and therefore quash the order and make no special entry, the judgment will it seems be conclusive between the two parties. See, however, the title, "*Effect of order confirmed or quashed*," *post*.

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The sessions having decided that the examination stating a hiring and service in 1813 was not supported by a hiring and service in 1810, the Q. B. will not disturb it.

Ex parte Broseley, 2 *N. & P.* 355; 7 *A. & E.* 423. M. Mason was removed from Broseley to Eaton. The removal was made on the examination of T. Smith, who stated, "In 1831 I occupied a farm at W., in Eaton. About three days before Shelton May Fair Feast, I hired Edward Mason, the late husband of the pauper Mary, to be my servant; and he requested that I would allow him to see the fair, and he promised to come into my service on the fair night, which he did, and remained in my service in Eaton for one whole year, and I paid him his full wages for the same." One ground of appeal was, "that there was in fact no such hiring or service for a year as is stated in the examination of Thomas Smith." Upon the appeal, Smith stated that the hiring took place in 1810, and not, as he had previously stated, in 1813. The sessions thought this was a fatal variance, and quashed the order. On a rule for a mandamus to hear the appeal, Lord *Denman* said, "The sessions have already decided on this case, which is a sufficient answer to this application. I think they have decided rightly; for by the terms of this examination the parish of Eaton would only be induced to inquire as to a hiring and service in the year 1810, and would be completely surprised by a hiring and service being set up three years later. With regard to *Rex* v. *Cornwall*, p. 1138, n. I certainly appear to have said that there was sufficient information given to the parish in the general terms of the grounds of appeal there; and I think in that case there was, on taking the order and examination altogether. It has been thought by my learned brothers since, that such a general mode of complying with the terms of the statute, as was then resorted to, does not give the requisite information to the other parish contemplated by the legislature; and I must say I agree in that latter construction." *Patteson*, J. "I also agree that the sessions have decided this case; and I am by no means prepared to say that they have come to a wrong decision. I am clearly of opinion that we shall do much better by construing all the notices and orders, required to be sent by the act, as strictly as possible. In *Rex* v. *Cornwall*, as my lord has pointed out, there were very peculiar circumstances: the question in that case turned upon a point of law, namely, whether the children of a wife are removable to the parish of her second husband; and the notice of appeal really did give information of the question intended to be tried." *Williams*, J. "I am entirely of the same opinion; and I am by no means satisfied that the sessions were wrong. The object of the legislature, in requiring these notices, was, that each parish should be informed of what was intended to be tried on the appeal; and the best mode to carry that intention into effect, is to hold that a strict compliance with the terms of the notice is necessary." *Coleridge*, J. "I think this case, so far as respects the propriety of the determination arrived at by the sessions, may be decided by *Rex* v. *Holbeach*, p. 1137. In that case the ground of appeal stated that the pauper had stipulated for two days' holiday at Spalding Club Feast; and we held that the sessions were wrong in admitting evidence that the exception was for one day at Holbeach Fair. If that case was rightly decided, and I think it was, it certainly governs the present case." Rule refused.

Rex v. *Cornwall* overruled.

So also where the examination disclosed a hiring by D. P. and service partly with him, and partly with his mother, and the proof was of a hiring by D. P. as *the agent of his father*, and service with the mother as his widow.

Rex v. *Misterton*, 2 *N. & P.* 109; 6 *A. & E.* 878. J. Wood was removed from Stowe to Misterton. Order confirmed. Case:—The 13th October, 1834, and pursuant to and as prescribed by the statute, a copy of the order, examination of the pauper, and notice, was sent to the appellants, and filed. The examination upon which the order was made was as follows:—"The pauper saith that he is twenty-three years of age, and was born at Gainsbro', and that at Gainsbro' statutes, before May-day, 1829, he was hired by Mr. D. Parkinson, of Thonock, farmer, to serve him for a year, from May-day, 1829, to May, 1830, for 3*l.* 10*s.* wages; that he went into his service at Thonock at May-day, and when he had been there about a fortnight, his master informed him that the servant of his mother, Mrs. Parkinson, of Misterton, did not suit her, and asked him if he had any objection to change places with Mrs. Parkinson's servant, and go and live with her instead of him; the pauper said he had no objection, and

without having any fresh agreement, he went to Misterton and served the remainder of his year's service with Mrs. Parkinson, and at the end of the year received of her 3*l.* 10*s.*, the amount of his wages." This was the only ground of removal. The grounds of their appeal were, that the pauper did not gain a settlement in Misterton, by reason of having been hired by Mr. D. Parkinson, of Thonock, to serve him for a year, from May-day, 1829, to May-day, 1830, and by reason of having served first D. Parkinson for a fortnight, in Thonock, and afterwards his mother, in Misterton, for the remainder of the year, under the circumstances stated in the examination of the pauper, and that the contract of service with D. Parkinson was dissolved on the pauper leaving the same. The respondents proposed to prove a settlement in Misterton, as follows:—"That the pauper was hired previous to May-day, 1828, by D. Parkinson, the elder, to serve him from May-day, 1828, for a year; that at that time he lived at Lea; that the pauper entered his service accordingly, and continued in his service until Lady-day, 1829, when he quitted Lea, and took a farm at Thonock, and also a farm at Misterton, to which latter parish he himself went to reside with Mrs. Parkinson, and placed his son David at Thonock, as his servant, to manage that farm. David the elder himself never resided at Thonock, nor did Mrs. Parkinson. The pauper continued in the service of David, the elder, but by his direction accompanied David the son to Thonock, as the servant of David the father. Shortly before May-day, 1829, David the son, as the agent of his father, hired the pauper to serve David the elder, and as the servant of David the elder, for another year, from the May-day following; and the pauper continued in the service of David the elder, at Thonock, until David the elder died, which event took place shortly after May-day, 1829. Shortly after the death of David the elder, David the younger informed the pauper that Mrs. Parkinson, his mother, who continued to reside at Misterton, had a servant at Misterton who did not suit her, and proposed to the pauper to go to Misterton, and that that servant should come to Thonock; which was accordingly done, and the pauper served the remainder of the year at Misterton, under the original hiring to David the deceased, and was paid the 3*l.* 10*s.* wages, originally agreed upon by Mrs. Parkinson. The appellants objected to any evidence thereof, it not being stated in the examination. The court decided upon hearing the evidence, and confirmed the order, subject to the question, whether the respondents were at liberty to give evidence of the settlement of the pauper, as above. The appellants declined calling any evidence, or addressing the court, on the ground that the respondents were not at liberty to give such evidence." *Cur. adv. vult.* Lord *Denman* delivered the judgment. "This is a case in which a pauper has been removed, with a copy of his examination, which stated that he had been hired by a Mr. Parkinson, and had afterwards served with a Mrs. Parkinson. On that statement notice of appeal was given, and the appellants stated as a ground of appeal, that no settlement appeared on the examination, which is obviously true. When the respondents came to the sessions, they sought to give in evidence another state of facts, not indeed inconsistent with those set forth in the examination, but of which the appellants had no previous information. They proposed to show that the David Parkinson, mentioned in the examination, had acted as the agent of his father, and therefore that the service with his mother was a continuance of the original service, which certainly would make a good settlement. But we are all most clearly of opinion, that when the appellants have taken issue on the sufficiency of the settlement, as stated in the examination, it is not competent for the respondents to introduce a new state of facts, which, if they had been communicated, would have induced the appellants, if they had found them to be true, either not to appeal or to be prepared with evidence to meet them. It is quite clear, that under the late act, such an alteration of the examination is quite inadmissible." Order of sessions quashed.

The examination is to be construed

Reg. v. *East Ville*, 1 *G. & D.* 150; 1 *Q. B.* 828. Sarah Thirston was removed from East Ville to Friskney. The pauper stated, that she had

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as strictly as the grounds of appeal.

An examination stating that the pauper's husband had told her that his settlement was in the appellant parish, the respondent parish not to go into evidence of a settlement by hiring and service.

often heard her husband say, that his settlement was in Friskney; that she had received a Christmas-box from Mr. Cust, of Friskney; that the charge-bearers of the same parish had told her that she belonged to that parish, and that they had on a former occasion received her husband without any order of magistrates. A notice of appeal contained the following grounds, that the settlement of W. Thirston was not in Friskney, as stated in the examination, that she had not received relief as a poor person belonging to the parish of Friskney; that the charge-bearers of Friskney had not admitted that W. Thirston was settled in their parish. On the trial, the respondents proposed to prove that the settlement of the pauper's husband was in the appellant parish by hiring and service; to which the appellants objected. The sessions received the evidence, and decided that the settlement of the pauper was in Friskney, subject to the question as to the reception of the evidence. On reference being made to *Rex* v. *Kelvedon*, *Coleridge*, J., said, "A distinction was taken by me in that case, between the language of sects. 79 and 81, as to respondents and as to appellants, but I think wrongly; and it has since been overruled." Lord *Denman*. "The objection having been distinctly taken at the sessions, we think it ought to prevail, notwithstanding the case of *Rex* v. *Kelvedon*." (*a*) Order quashed.

(*a*) *Rex* v. *Kelvedon*, 1 *N. & P.* 189; 5 *Ad. & E.* 687. J. Bird, &c. were removed from Kelvedon to Colsterworth. Order quashed. Case:—The order was made on the examination of J. Bird, who said: "I was born at Kelvedon, where my father then resided, but belonged to the parish of Colsterworth, and continued to belong there till his death, as I have heard and believe; and I have also heard him say, that he was a certificated man from the parish of Colsterworth. That I have never done any act, whereby to gain a settlement in my own right, to the best of my knowledge and belief." The grounds of appeal were that the father of J. Bird never was settled in Colsterworth, nor was there ever a certificate granted by Colsterworth, owning the pauper's father to be settled in Colsterworth, as in the examination stated, and we mean to avail ourselves of both or one of the said grounds of appeal. On the appeal the respondent proposed to prove a settlement gained by the pauper's father in Colsterworth by apprenticeship; and it was objected to, as it was not a ground of removal set forth in the examination. The sessions decided that the respondents were not at liberty to give evidence of the pauper's father having gained a settlement in the appellant parish by apprenticeship, and quashed the order. Lord *Denman*. "I am of opinion that the respondents have done all that is required by the act, and therefore the order of sessions must be quashed. The act gives the magistrates credit for setting out a perfect settlement of the pauper on the order of removal and examination; and that, with the notice of chargeability required by the 79th section, gives sufficient notice of the case to the other side. The legislature might have imposed upon the respondent parish the same duty as they have upon the appellant. They might have required a more specific statement of the kind of settlement, but they have not done so: and for this clear reason, that the appellants know the grounds on which they mean to rely on their appeal, and therefore they are bound to state them. The examination is taken by the magistrates, and is not the act of the respondents; an objection to the examination, therefore, is not an objection to the conduct of the respondents." *Patteson*, J. "I am of the same opinion. The notice of appeal says, that the father was not legally settled in their parish, how then can proof of any description of settlement in that parish be a surprise upon them?" *Williams*, J. "Whether or not the examination was properly conducted, is a question the court have nothing to do with. Perhaps it would have been better if it had stated the settlement of the pauper with more particularity. But the examination of the pauper was taken, and the order and notice required by the act sent. In that examination the pauper is stated to be settled in Colsterworth,—can it be said that they travel out of the notice, when particular evidence was given of what was there generally alleged?" *Coleridge*, J. "I am of the same opinion, and will only add, that there is a great difference in the language of the act with respect to the notice to be given by the respondents, and with regard to that to be given by the appellants. It is to be presumed that the difference is intentional. The respondents obtain the order of removal upon an examination taken by the magistrates; a copy of that order and examination, with the notice of chargeability, is all they are required to send to the other parish. The

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The sessions must decide whether a variance between the evidence and the grounds of removal is fatal or not.

Reg. v. *J. W. R. Yorkshire,* 3 *N.* & *P.* 462; 10 *A.* & *E.* 685. On a rule for a mandamus to hear an appeal on the merits, it appeared that in the examination of the pauper before the removing justices, he stated that in 1827 he took a farm at Clint, of about twelve acres, and entered upon it in the beginning of June; that he was to pay 40*l.* rent; and that he was not enabled to pay the whole of the first year's rent, and law proceedings were commenced against him in the latter end of June, 1828, upon which he gave up possession to Wm. Fawcett, of whom he took it. The grounds of appeal stated, that he did not *bonâ fide* rent or occupy for the term of one whole year a farm in the township of Clint from the beginning of June, 1827, until the latter end of June, 1828, as a tenant to Wm. Fawcett under the yearly hiring at the rent of 40*l.* At the hearing of the appeal, the pauper stated in cross-examination that the taking of the farm was not from June, 1827, to June, 1828, but from June, 1828, to August, 1829. The appellants objected that this was a material variance from the examination; and the sessions, on the authority of *Ex parte Broseley,* p. 1120, quashed the order of removal. Lord *Denman.* "Where the sessions had decided wrong on some preliminary point of practice, we should, no doubt, interfere with their decision, and issue the writ. This case certainly shows that very often it may be a matter of great difficulty to say whether a variance is material or not. A variance may occur which is so trifling as to amount to a mere clerical error, or it may be such a variance as to set up an entirely different question, and, though apparently trifling, such, for instance, as the mistake of a year or even of a name, yet, where the parish is very populous, in effect it may be quite sufficient to mislead the opposite party. This being so, it must be a matter of discretion in all cases for the sessions to say whether the variance is material or not; and, as they have done so here, I do not see how this court can interfere, and as we have not sufficient materials before us, it is very undesirable that we should interfere." The other judges concurred. Rule discharged.

We have seen that the appellants must not only give notice of their appeal, but of the grounds thereof, and they cannot at the trial depart from them or dispute any fact stated in the examination, unless specifically objected to. We have also seen, under the title "Examination," that the examination and grounds of appeal must be equally specific. The cases there collected, therefore, must be consulted, as well as the following, in order to ascertain what is a compliance with this provision of the legislature. No proof will be required from the respondents of any facts not put in issue by the grounds of appeal. The chargeability of the paupers need not be proved unless it is controverted in the notice, and even then the appellants may be estopped from denying it, as by an application for an order of removal by themselves, as in *Reg.* v. *Holdsworth,* p. 1127. The settlement disclosed in the examination need not be proved unless denied by the notice of appeal. *Reg.* v. *Hockworthy, ante,* p. 646.

The notice of appeal may be considered in two points:—

1. When the objections refer to the examination and settlement therein disclosed.

2. When it sets up a new and independent settlement.

1. When the objections refer to the examination and settlement therein disclosed.

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statute takes care that the appellants shall not be prejudiced by any generality of statement in the examination, for the 79th section provides, that the pauper shall not be removed for twenty-one days after notice that the pauper is chargeable, and the copy of the examination has been sent. And then, as the 80th section gives the appellant free access to the pauper, to examine him touching his settlement, if any ambiguity should appear on the face of the examination, the whole of the case can be elicited from the pauper. But, as the grounds of appeal can only be known by the appellants themselves, the act very properly requires them to particularise them all, in their notice. Therefore it appears to me that the statute was made with very different purposes as to the notices to be given by each side. Order of sessions quashed. The case to be re-heard.

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A notice of appeal, stating that "the order and examination are bad on the face thereof," is sufficient to entitle the appellants to object that the examination which disclosed only one settlement, and that by renting a tenement, did not state that it was rented for a year (*Reg.* v. *Middleton in Teesdale*, p. 1127), and that a residence for 40 days was not alleged. *Rex* v. *Horton*, *ante*. But where the appellants made this general objection, and then condescended to particular objections, they will at the appeal be confined to those so particularised, as where, amid many objections, the notice stated that it did not appear by the examination that S. H. was not rated, and did not pay rates, and that the examination does not show in what year he paid rates, "the appellant is precluded from the objection that the rate books were not produced, and that the examination showed no legal evidence of a rating." (*Reg.* v. *Staple Fitzpaine*, p. 1128.) Even an objection apparent on the face of the order is not available unless it is made a ground of appeal. *Rex* v. *Withernwick*, p. 1131.

Objections to the examination.

An examination set forth a settlement by hiring and service, and also frequent instances of relief. The grounds of appeal were, that the pauper acquired no settlement by such hiring and service. This entitled the appellant to show that the relief was given under a mistake that a settlement had been gained by such hiring and service. *Reg.* v. *Bedingham*, p. 1132.

It is not sufficient to state generally that a statute has not been complied with, nor to say that the 56 Geo. III. c. 139, was not complied with, especially the 5th section, when the objection relied on arises in the 2nd (*Rex* v. *Whitley Upper*, p. 1135), nor when want of notice to the overseers of the intention to bind is relied on, can they call for proofs of the execution of the indenture. *Reg.* v. *St. John's, Margate*, p. 1136. If the appellant relies on the obligation of a second husband to maintain the paupers (children), he cannot object that they are irremovable, as being within the age of fourteen, although that fact appeared on the face of the order. *Reg.* v. *Costock*, p. 1136. Where the ground of appeal is, that the hiring stated in the examination was exceptive, as there was a stipulation for two days' holiday at Spalding Club, the proof, that it was for one day's holiday at Holbeach, is insufficient. *Reg.* v. *Holbeach*, p. 1137.

Grounds of appeal, having no reference to the examination.

2. When the notice of appeal discloses a new settlement, every essential ingredient of such settlement must be stated with the same particularity which is required in the examination. The statement of a settlement by hiring and service, without any particulars, or not stating the party to have been unmarried and without children at the time of hiring, though that fact might be inferred from the examination and notice of appeal taken together (*Reg.* v. *Recorder of Leeds*, p. 1137; *Reg.* v. *J. Derbyshire*, p. 1137; *Rex* v. *Bridgwater, Compton Bishop*, p. 1139), or without mentioning any date or residence (*Reg.* v. *Old Stratford*, p. 1141), or not stating it was for a year (*Reg.* v. *North Bovey*, p. 1141), or of a settlement by occupying a tenement, without any statement of residence (*Reg.* v. *Old Stratford*), or omitting the landlord's name (*Rex* v. *J. Sussex*, p. 1142) have been considered defective; so also where appellants relied on the renting of a cow, and did not state it was to be pasture fed, the notice is defective (*Reg.* v. *Cumberworth Half*, p. 1143), and precludes the appellant from being heard on such grounds on the appeal; neither can the appellant avail himself of the examination to supply the defects of his notice, unless he has therein identified the facts relied on by him with those disclosed in the examination (*Reg.* v. *Stowford*, p. 1144). Identity of name is not sufficient

It is sufficient, however, to say, that the paupers are settled in the respondents' parish, as they, during the last six years, and especially in 1839 and 1840, received relief from them when resident in another parish (*Reg.* v. *J. Carnarvon*, p. 1144). A mistake in the initials of the name of one of the removing justices is not sufficient to prevent the appeal being heard (*Reg.* v. *J. Denbighshire*, p. 1142).

It is a good ground of appeal that the pauper was not chargeable (*Rex* v. *Brixham*, *ante*). The notice need not state name of justices (*Reg.* v. *West Houghton*, p. 1146). If the appeal should be adjourned because the

parties are equally divided, the appellants cannot serve fresh grounds of appeal (*Reg.* v. *Arlecdon*, p. 1146). But if it is adjourned because the court had not time to hear it, the sessions are bound to hear the grounds in a second statement (*Reg.* v. *Derbyshire*). The notice of appeal against an order adjudicating the settlement of an insane person, must be given to the clerk of the peace. *Reg.* v. *J. Kent*, p. 1147.

Application for an order of removal to a lunatic asylum estops the parish applying from denying chargeability.

Reg. v. *Holdsworth*, 1 *G. & D.* 442. On the application of the overseers of a parish, two justices made an order on them to remove a pauper lunatic to the county asylum, under the statute 9 Geo. IV. c. 40, s. 38. The order, pursuant to the 41st section of the act, stated that the legal settlement of the pauper was unknown, and directed the expense to be charged to the county. The overseers obeyed the order, and did not appeal against it. Under the 42nd section, two justices afterwards inquired into the place of the last legal settlement of the pauper, and adjudged it to be in the parish the overseers of which had applied for the first order:—Held, that on the trial of an appeal against such adjudication, that their acts of application for and obedience to the first order, precluded them from saying that the pauper was not chargeable to their parish at the time when they made their application for it.

No proof required of facts, not denied by the notice of appeal.

Reg. v. *Hockworthy*, 7 *A. & E.* 493; 2 *N. & P.* 383. The facts of this case are stated *ante*, p. 813. The notice of appeal did not take any objection to the settlement stated in the examination, but alleged that the pauper was settled in another parish. Lord *Denman*. "We think that the appellants cannot insist on any point for quashing the order of removal that is not stated by them in their grounds of appeal." *Coleridge*, J. "If we came to a contrary decision, appellants who had no case at all, but who meant to rely on some defect in the examination, might contend that they were not bound to deliver any statement of the grounds of appeal."

An examination stating a settlement in M. by renting and occupying a house of one J. F. in M., of the yearly rent of 10*l.* is insufficient. The objection may be taken on a notice stating the examination to be *bad upon the face thereof* (*a*).

Reg. v. *Middleton in Teesdale*, 3 *P. & D.* 473; 10 *A. & E.* 688. Elizabeth Collinson and her illegitimate child were removed from Newbiggin to Middleton in Teesdale. Order confirmed. Case:—On an appeal against this order, it appeared that the removal was made upon the examination of the pauper alone, who saith that she is nineteen years of age, and that her father gained a settlement in Middleton in Teesdale, by renting and occupying a house and land of one Jacob Farn, in the said township of Middleton in Teesdale, of the yearly rent of 10*l.* The grounds of appeal were, that the order and notice of chargeability are bad upon the faces thereof. 2dly. That the settlement of E. Collinson and child is in Newbiggin (she not having gained a settlement in her own right), her father having gained a settlement there by renting a tenement of the value of 10*l.* or more in the years 1816, 1817, 1818, and 1819, or some or one of them, and resided there during the time. 3dly. That her said father also gained a settlement in Newbiggin by again renting a tenement therein in the years 1829, 1830, and 1831, or some or one of them, and paying rent for the same to the amount of 10*l.* for the year. On the appeal the respondents insisted that the settlement set out in the examination was admitted by the appellants, as the notice did not specify any defect in the examination, or deny the settlement alleged in the examination, and that the appellants ought not to be allowed to give evidence of the settlement alleged in the second or third ground of appeal, as it did not sufficiently describe the tenement in its nature, or of whom it was held, and the sessions being of this opinion confirmed the order of removal. Lord *Denman*. "The objection taken by the appellants is that the order is bad, and the question is whether it is not clearly defective, not on any formal objection, but substantially for want of shewing that the justices had power to make a removal. Now it appears by the examination that the pauper describes a renting by her father, but makes no statement as to its being for a sufficient period to

(*a*) Many remarks have been made on this case, but the judges have uniformly observed that they adhered to the principle on which it was decided. *Reg.* v. *North Bovey*, p. 1142.

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confer a settlement, the justices consequently had no jurisdiction to order a removal. When the respondents received the grounds of appeal it was their duty to get a better order if they could, but as they have chosen to rest upon it they must take the consequences. *Rex* v. *Withernwick*, p. 1131, is in my opinion consistent with the present decision, for there the defects pointed out were defects of form merely." *Littledale*, J. concurred. *Patteson*, J. "Our judgment may appear strict, but it is better for all parties to hold them strictly to the terms of the act. The examination should contain within itself a sufficient statement of a settlement. Here the pauper was never asked how long, or when her father occupied, and the statement is almost as meagre as if she had merely stated that her father was settled in the appellant parish." *Williams*, J., concurred. Order of sessions quashed.

Where the notice points out specific objections, the appellant will be confined to them although the notice states the examination is bad on the face of it. Where the examination stated that the pauper paid the poor rates as the occupier, and the grounds of appeal were, "that J. H. was not rated, and did not pay rates for the estate; that the examination is informal, insufficient in law, and bad on the face of it. The appellants cannot object that the rate book was not produced before the removing justices, or that the examination contained no legal evidence that J. H. had been rated.

Reg. v. *Staple Fitzpaine*, (*a*) 1 *G. & D.* 605; 2 *Q. B.* 488. Betty Hake, &c. were removed from Staple Fitzpaine to Buckland. Order quashed. Case:—The examinations upon which the order was made were, that of Betty Hake, who said, "I am the widow of Sander Hake, late of Staple Fitzpaine, labourer, deceased. I was married to him in the parish church of Buckland about sixteen years ago. On my marriage I went to live with my husband on an estate at Blindmore, in Buckland, who resided with his father, and was carter to him. After we had lived there about a year, my father-in-law was burnt out of the estate, upon which he went to Staple Fitzpaine, and I and my husband went to Curland, and lived there with my father and mother. My husband never rented 10*l.* a year afterwards. My husband, Sander Hake, died about seven years ago." That of Mary Hake, who said, "I am the widow of John Hake, deceased. About twenty-six years ago (being about the year 1815), Mr. George Score employed my husband to work on and take care of his estate at Blindmore, in the said parish of Buckland St. Mary, and during that year the said Mr. Score, who was at our house, said to my husband; 'John, you shall have this estate,' to which my husband replied, 'I am not strong enough to stock it.' He then said, 'Won't you have it if I give it you? You can borrow some money, and I will be bound for it.' It was then understood that my husband was to have it. It contained about 100 acres, and was worth upwards of 100*l.* a year. My husband afterwards stocked the estate, and occupied it about thirteen years, except small parts of it he let to his sons. I believe he paid the rates and taxes all the time for the whole. I frequently saw him pay the overseers the poor-rates, and many times paid them myself. After occupying the estate about thirteen years, my husband was turned out of it by an ejectment." That of John Hake, who said, "I was present in the year 1815, and heard Mr. Score say he would give the estate to my father, and he might do what he liked with it. Mr. Score called John Pinney, who is now dead, to witness that he gave it to my father. My father afterwards occupied it about thirteen years, except small parts of it, which he about three years afterwards let to me and to my brother under 20*l.* a year, but my father paid the rates and taxes for the whole. From 1815 my brother Sander lived on the estate with my father, as one of his family. My father stocked the farm, and paid the rates and taxes. He also bought a new waggon on which his name was painted, and his name was also on the iron work on the gates. I paid my father rent for the land I took of him. My father during the time he occupied the estate built a new lime-kiln on it, and sold lime, and afterwards let the kiln to Mr. E. Ackland." That of Thomas Willie, who said, "I was overseer of Buckland five or six years, during the time the said John Hake occupied the estate, and about the year 1826 collected the poor-rates of him as the occupier." The following were the grounds of appeal:—"That the said John Hake, the father of Sander Hake, did not gain any settlement in our parish of Buckland by any of the means stated

Grounds of appeal.

(*a*) In several contemporaneous reports with A. & E., this case is by mistake called *Stapleford Fitzpaine.*

in the examination, and that the said Betty Hake and her children were not settled in our parish in the manner stated in the examination. That the said John Hake was not rated, and did not pay rates and taxes for the estate at Blindmore, as stated in the examination. That the said John Hake never was the occupier of the said estate at Blindmore. That the said examination is informal and wholly insufficient in law, and bad on the face of it. That the examination does not contain any sufficient evidence of a settlement gained in our said parish of Buckland by the said John Hake, nor does it contain any valid grounds of removal of the said Betty Hake and her children to our said parish. That the examination does not show that Sander Hake was at any time settled in our parish of Buckland, there being no proof or statement on the face of the examination that the said Sander Hake was unemancipated at the time of his marriage, so as to derive a settlement from his father John Hake. That the examination does not state when or in what year or years the said John Hake occupied the said estate at Blindmore, or in what year or years he paid rates and taxes for the same. That the examination does not state that the said John Hake resided forty days in our parish of Buckland, during the time that he occupied the said estate at Blindmore, or after he had so paid rates and taxes for the same. That the examination does not state any residence by the said John Hake in our said parish of Buckland, sufficient to confer a settlement under the statute of 13 & 14 Car. II. c. 12. Upon the appeal it was proved that John Hake, the father of Sander Hake, had from the year 1813 to 1815 managed the estate mentioned in the examination for Mr. George Score in the appellant parish. That in 1815 Mr. George Score made a verbal gift of the estate to John Hake, in the manner stated in the examination. That from 1815 to 1826 John Hake resided in and occupied the said estate, claiming title thereto by virtue of the said gift, and paying no rent for the same. That in 1824 John Hake made a feoffment of the estate, and levied a fine of the same to the use of himself in fee, and was turned out by ejectment in 1826. That from 1815 to 1826 he was charged to and paid all the parochial rates and taxes in respect of the said estate, including the land-tax. That Sander Hake resided with his father from 1815 to 1825, as one of his family, being unemancipated, and that he was married to the pauper in August, 1825. The court were of opinion, that John Hake acquired a settlement in the appellant parish, both by such residence under a claim of ownership of the estate, and also by being charged unto and paying parochial rates and public taxes, and that Sander Hake followed his father's settlement up to August, 1825. Although the court were of opinion, that under these circumstances the settlement of Sander Hake was in the appellant parish, and that the respondents were entitled to the judgment of the court on the merits, they quashed the order upon the ground that the examination was on the face of it insufficient to enable the respondents to go into either of those grounds of removal. If the Court of Queen's Bench should be of opinion that the examination was sufficient, then the order of sessions to be quashed, and the order of removal to be confirmed. If the court should be of opinion that the examination was insufficient, the order of sessions to be confirmed. *Cur. adv. vult.*" Lord *Denman*. "This was a case of appeal against an order of removal. At the sessions objections were made to the examination, and also the reception of evidence in support of the order, in consequence of the alleged defects in such examination. The sessions have found that John Hake, the pauper's father-in-law, under whom the settlement was claimed, acquired a settlement in the appellant parish by residence, under a claim of ownership on an estate, and also by being charged to and paying parochial rates, and that the respondents were entitled to the judgment of the court on the merits, but they quashed the order, on the ground that the examination on the face of it was insufficient to enable the respondents to go into either of the grounds of removal. The sessions have submitted to us simply the question of the sufficiency of the examination for these purposes. On the part of the respondents the case

Judgment of the sessions.

Judgment of the Court of Queen's Bench.

6. *Of Notice of Appeal.*

has at present been only argued in respect of the settlement by rating, and, if we are of opinion that the examination was sufficient to let them into their case on this head of it, it will be unnecessary to go farther, as one ground of removal is enough, and the sessions have not submitted to us the conclusions which they have drawn from the evidence, supposing they were at liberty to receive and consider it at all. Before we inquire into the sufficiency of the examination, it is necessary to consider the statement of the grounds of appeal, because the appellants can make no other objections to any part of the respondent's case than are stated in such grounds, and we agree with the respondent's counsel, that at least the same degree of strictness is to be used in deciding upon the sufficiency of such statements as in deciding on that of the examination. Both are to be treated candidly, and with a view to advance the objects of the statute in requiring their mutual delivery. The examination, construed fairly, must show that the justices have *primâ facie* been justified in making the order; the grounds of appeal, construed in the same way, must disclose the nature of the objections to the order, or the new matter, as the case may be, which induces the appellants to resist the removal. By these modes the legislature has wisely thought that the expense of groundless removals and fruitless appeals may best be prevented, and it is the duty of the court of quarter sessions, and of this court, to take care that the provisions of the statute be fairly and fully carried out. The statement of the grounds of appeal, so far as regards the present question, after objecting that in fact '*John Hake was not rated*, and did not pay rates *as stated in the examination*,' proceeds thus, 'that the said examination *is informal and wholly insufficient in law, and bad on the face of it;* that it does not contain any sufficient evidence of a settlement gained in our parish, nor any valid grounds of removal to our parish; that it does not show that S. Hake was unemancipated at the time of his marriage, so as to derive a settlement from his father; that it does not state in what year or years John Hake paid rates and taxes, or that he resided forty days after he had so paid rates and taxes.' It may be conceded that the examination does not in any part state in express terms, that John Hake was rated, and assuming that the parish rates were not produced or proved before the removing justices, two questions might have arisen; the first, whether the examination is on these accounts defective; the second, whether looking at it, and the notice of appeal, the respondents could be properly admitted to prove a rating at the trial. But it appears to us that the statement itself is so framed as to preclude the appellants from insisting upon either of these objections. As to the first, it does not object to the examination any want of proof of rating; it denies that in fact John Hake was rated, but does not say that the examination contains no evidence of it. It was urged that this objection was open under the general words '*is informal, and wholly insufficient in law, and bad on the face of it;*' we are quite clear that under these words, if they stood alone, no objection would in this case be open to the appellants, for they would convey no information to the respondents of the ground of appeal intended to be relied on; and to hold them sufficient would defeat the very object of the statute. The addition of other particulars, instead of helping the appellants, makes their case worse. Any one reading these general words, followed by specific objections, would conclude that they were intended to introduce and comprise no more than such particulars as were afterwards so specified. And when, besides this, they are preceded by a denial in terms, that John Hake was in fact rated, the respondents would still more certainly be led to conclude that it was not intended to object to want of evidence before the removing justices, but to rely on the fact itself being otherwise than was asserted. Instead, therefore, of having a defect pointed out to them in the examination, of the existence of which, if true, they must be aware, and therefore might be led by it at once to abandon the support of their order, they would see themselves challenged only to prove the fact on the trial, and be led to prepare themselves to prove it then. Upon

A general objection of insufficiency defeats the object of the statute.

6. *Of Notice of Appeal.*

the principles before laid down, therefore, we think the notice defective for this purpose. But we were referred to our decision in *Reg.* v. *Middleton in Teesdale*, p. 1127, as inconsistent with this. There the grounds of appeal were stated thus:—'The order, the examination, as also the notice of chargeability, are bad on the face thereof,' and we thought this enough to let the appellants into an objection to the following paragraph of the examination, 'my father gained a settlement in, &c., by renting and occupying a house, &c., of one J. T. in, &c., of the yearly rent of 10*l.*' This was the whole that related to the settlement, and nothing was said of the time for which rented or occupied; and in such a case we think it was enough to say that the examination was bad on its face; the notice not only could not mislead, but would scarcely fail to point out to one who read it with ordinary diligence and ordinary knowledge, the defect intended to be insisted on. The facts of the two cases are so different, that the decision of the one case can be no authority for that of the other. The second question is decided by the fate of the first. There was clearly nothing to prevent the respondents from proving a rating at the trial but the assumed defect in the examination as to the want of express statement and strict proof of such rating, for a rating is impliedly stated, and at all events irregularly proved, by the evidence of the parish officer, who states he called on John Hake, *as the occupier*, for the rates, and he paid them, but if the appellants are precluded from insisting upon this defect, by the insufficiency of their notice, it is between these parties as if it never had existed. Other points in support of the order of sessions were argued, but they have not left them open to us to inquire into. With respect, indeed, to the question of emancipation, we may say that the examination appears to us not to be deficient as to this, the non-emancipation of Sander Hake being clearly to be presumed from the depositions set out. We are of opinion, therefore, that, with reference to the notice and grounds of appeal, this examination was sufficient as to the settlement by rating, and that the order of sessions must therefore be quashed."

What is a sufficient statement of non-emancipation.

Rex v. *Withernwick*, 1 *N.* & *P.* 423; 6 *A.* & *E.* 273. W. Tiplady, his wife, and children, were removed from Withernwick to West Newton. Order confirmed as to William and wife, but quashed as to the children. Case:—The order did not state the names or ages of the children, but it stated that West Newton was the place of their settlement. Their only grounds of appeal were that the said pauper, William, never obtained a settlement at West Newton, by hiring and service, as alleged in the examination; and if he did obtain such settlement, then, that subsequently thereto, about thirteen years ago, he gained a settlement by hiring and service with one W. Smith, of Leven. It was proved that he did gain a settlement in Newton, by hiring and service; that he had only four children, and that such children were legitimate, and were named Maria, William, David, and Ralph, and were of the respective ages of ten, seven, six, and two years, or thereabouts. The appellants failed in proving any subsequent settlement in Leven; but they objected that the order was bad as respected the children, inasmuch as it did not state their names or ages; and the respondents contended that was not necessary, as the order adjudged that West Newton was the settlement of the four children; and also, that the objection was not specified in the notice, and that the sessions might amend the order respecting the names and ages of the children in it. The sessions confirmed the order as to William and his wife, but quashed it as to the four children. Lord *Denman*, C. J. "We ought not to encourage any doubt on this point, and I think we ought not to introduce any distinction which may prevent a clear application of the statute. It is unnecesary for us to inquire whether this is matter of form or substance, and amendable or not, because we are clearly of opinion the sessions were not warranted in going into that objection." *Williams*, J. "I am of the same opinion. I do not find that it has been decided that the 81st section, which requires the grounds of appeal to be stated, is to be confined to grounds of appeal on which evidence is to be

Defects on the face of the order cannot be taken advantage of *on appeal*, unless stated on the grounds of appeal

An order as to children which does not state their names or ages, is not necessarily void.

6. *Of Notice of Appeal.*

given. We are left unfettered as to the construction of the act of parliament, which seems to me to require a large and literal construction. The act declares that the parties shall not go into matters of appeal. As this was not made the subject-matter of notice, it seems to me that the parties cannot, under this act of parliament, go into the objection." *Coleridge*, J. "I am quite of the same opinion. It has been a very common ground of complaint, that this court, by the allowing of refinement in the construction of statutes relating to the poor, have occasioned a great deal of litigation. We are now dealing with a new statute, which is most plainly expressed, and I think, therefore, we are bound to give the plain and literal interpretation to the words of this statute. They are as plain as possible, that an appellant, on the hearing of an appeal, shall not be allowed to go into or give evidence as to any other grounds of appeal against an order of removal, than those set forth in his statement. It is said that the statute does not apply to defects on the face of the order. I do not know why it does not. It is argued that a party who is in possession of the order is bound to know the law, and bound to know the defects in the order. So he may be, but he may also be led to suppose the other party does not intend to rely on such defects, and therefore he proceeds to maintain his order, and goes to the sessions, because he is only to contend with the objections which the other parties make in their statement of the grounds of appeal. Then it is said, when this order is brought before the court, that we are bound to take notice of the defects apparent on the face of the order, and to quash it. For the present, I will concede that such is the duty of this court; but it appears to me, that this is not a defect necessarily apparent on the face of the order. It is properly a ground of appeal, because, in order to raise it, some evidence must be adduced. If this order came here in the present state in which it is, we must exclude, on this point, all considerations of the facts stated. We must look only to the face of the order. I am not prepared to say an order is necessarily bad on the face of it, because neither the name nor age of the child is stated, for neither may be known, and therefore, in order to let in that defect, some evidence must be shown, that there were means of ascertaining either the name or the age. There might very well be an illegitimate child, who had never acquired any name by reputation. So these children, for anything we know, may never have been christened. They may have no name, and may have attained no name by reputation. We are at liberty to make all those surmises, because the argument is that the order on the face of it is necessarily bad; and that no state of things can be supposed in which such an order can be good. To that extent I am not prepared to go. It appears to me, therefore, the order of the sessions as to the children must be quashed."

Complaint by one of the overseers on behalf of the rest is sufficient. Relief given by mistake for many years may be explained.

An examination set forth a settlement by hiring and service, and also stated instances of frequent relief: under a notice of appeal respecting the particular settlement, the appellant may show that the relief was made by mistake.

Reg. v. *Bedingham*, 8 *Jurist*, 378. P. Quantul, &c. were removed from Bedingham to Earsham. The examination on which the order was made, was that of J. Smith, who saith, "I am an overseer of Bedingham. P. Quantul, his wife and children (naming them), have come to inhabit in the said parish, not having gained a legal settlement there, and they are now become actually chargeable to the same parish; wherefore I pray that P. Q. may be examined on oath touching his settlement." The pauper said, "At the Bungay sessions, I let myself to Mr. John Spilling, then of Earsham, in the county of Norfolk, at the yearly wages of 9*l.* 10*s.*, and a new hemp shirt, or the worth of one. I remained in his service, lodging in his house at Earsham, till about New Year's-day, when I met with an injury from a horse kicking me, and was unable to work: my master said to me, 'Peter, would you not like to go home to your mother, she would better take care of your leg than the maid can?' or words to that effect. I was willing to go home to her. When in Bedingham, I received from my master 2*l.* wages for the time I had then served, went home to my mother there, and remained there a fortnight. After the fortnight, Mr. John Spilling saw me again in the road, and asked me whether I would not like to come again and take care of my horses;

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I said, 'Why, you have got another man,' and some other words of the same sort. I returned the same day into his service again. Nothing was said after the accident and before my return about wages, or the period of service. I remained with him for the rest of the year till the following Michaelmas; but a little before the Whitsuntide, he talked to me about what harvest wages he was to give; and I said, 'Why, harvest wages, sir, I thought I was come to fill up my year's service!' I then agreed to take 3*s.* 6*d.* a week, including harvest wages, and lived with him, lodging in his house at Earsham, till the Michaelmas, and received my wages at the above rate. I left his place at Michaelmas. My master and I agreed that the shirt should be thought of the value of 7*s.* I received a part of that sum from Mr. Spilling before the horse kicked me, and the rest at the end of the year. I have since done nothing to gain another settlement anywhere. During all this time I was single. About twenty-four years ago, I married Elizabeth, my present wife, in the parish church of Bedingham, by whom I have six children. In several of my wife's confinements in the birth of the above children, and whilst residing in Bedingham, I have been allowed by the overseers of Earsham, at the expense of that parish, a surgeon to attend my wife; and whilst residing in Bedingham, I have been repeatedly relieved by the overseers of Earsham with money. From the second year of my marriage down to about five years ago, I have received from the overseers of Earsham, though living in Bedingham all that time, some money, distributed from a parish charity of Earsham to persons belonging to Earsham," &c. The grounds of appeal were, that the order was not, and does not purport to have been made upon the complaint of the overseers of Bedingham, but of J. Smith only, described as being one of such overseers, and it does not appear, upon the face of the information of the said J. Smith, that he was authorised by the churchwardens and overseers, or by the overseers or guardians of Bedingham, to make such complaint that, if P. Quantul was hired by the said John Spilling for a year, such hiring was dissolved before the expiration of the year; that P. Quantul never acquired a settlement in Earsham, either by hiring and service with the said John Spilling, or by any other means. It was admitted that the application was in part made on behalf of the parish officers, and with their consent, and the court decided in favour of the respondents. Evidence was then given by the respondents of relief given by the appellant parish, out of the poor-rate of that parish, to the pauper occasionally for a period of twenty years, whilst he was residing in the respondent parish; and the respondents then closed their case. The appellants then called on the court to allow them to show that such relief had been given under the mistaken belief that the pauper had gained a settlement in their parish by his hire with Mr. Spilling, as stated in the said examination. To this the respondents objected, on the ground that the statement did not contain that as one of the grounds of appeal. The court then permitted the appellants to call the pauper with reference to this point, who, on examination, also admitted, that, seven or eight years previous to the present order, he was examined before the justices at a petty sessions respecting his settlement, on the application of, and whilst he was residing in, the respondent parish; they refused to make an order; since which he had been relieved several times by the respondent parish, whilst residing in it. The court quashed the order, subject to the following points:—First, whether there had been a sufficient complaint to give the justices jurisdiction to make the order. Secondly, whether the court ought to have admitted the appellants to give the evidence objected to. Lord *Denman*, C. J. "The sessions appear to me to have done right in everything but in the mode of stating the case. The first objection is, that the order was not made upon the complaint of the overseers. I am of opinion that the complaint is sufficient. It is true the complaint is in the name of one overseer, but the order recites that the complaint was by the overseers; and, at the sessions, it was admitted to be on behalf of the parish officers and with their consent. Then, secondly,

Grounds of appeal.

Judgment.

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we are asked, whether the sessions ought to have admitted the evidence objected to. I think the sessions were right upon that point. The examination states that a settlement was gained in a particular manner, and that relief was given upon several occasions by the appellants. No doubt relief alone is evidence sufficient to ground a *primâ facie* case of settlement; but it might be shown that the relief was given by mistake. The case is much stronger where the examination states a hiring and service and relief given. In this case no particular ground of appeal, with respect to relief, is stated by the appellants; but the appellants say what is equivalent; they do not deny that the relief was given, but they say no settlement was gained. Then, if, at the sessions, the settlement by hiring and service falls to the ground, and the respondents rely upon the relief, the appellants were at liberty to show that still no settlement was gained; and they did it, in effect, by showing that the relief was given by mistake; because, at the time, they believed that the pauper had gained a settlement in their parish by the hiring and service." *Patteson*, J. "The complaint of the overseers, under the 13 & 14 Car. II., is not required to be in writing; but it must be made on behalf of the overseers. Such was admitted to be the fact in this case at the sessions, although the complaint was by one overseer, and in writing. Mr. Andrews puts the inconvenience which would arise if one overseer might saddle the parish with heavy costs; but that does not necessarily follow; and here the complaint of one is the complaint of all, and is so treated both by the removing justices and at the sessions. As to the second point, it appears to me that the statement in the examination, that the pauper was settled by the means there stated, and that relief was given; and then a ground of appeal, saying that the pauper never acquired a settlement by hiring and service, or any other means, is tantamount to saying, it is true the pauper received relief, but he never gained a settlement, inasmuch as the relief was given by mistake; though it might have been better if it had been so stated. I am of opinion, however, that the ground of appeal is sufficient to enable the appellants to give this evidence." *Williams*, J. "The sessions only state two points for our consideration: the first is as to the sufficiency of the complaint. The cases quoted all apply to the form of proceeding which is necessary to set the justices in motion, and are not applicable. The question here is, whether the overseer acted by the authority of the other parish officers: that is recited in the order, and admitted at the sessions, which is surely sufficient. Then, as to the other point, the examination whereon the order of removal is made states a supposed settlement by hiring and service in the appellant parish, and relief given on several occasions by that parish when the pauper was residing elsewhere. By their grounds of appeal, the appellants say that the pauper never acquired a settlement in their parish, either by hiring and service, or by any other means; at the sessions, the respondents abandon the settlement by hiring and service, and merely give evidence of relief given by the appellants to the pauper whilst residing in the respondents' parish. Surely it is quite clear that the appellants may oppose that evidence, and explain the grounds upon which the relief was given." *Wightman*, J. "I am of the same opinion upon both points. Under the 13 & 14 Car. II., the complaint need not have been in writing. Now, the complaint was made by one overseer in writing; but that is not to be taken as a contradiction of the fact of its being on behalf of the parish officers, which is all that is necessary, and which this complaint is recited to be in the order. As to the second point, the argument of Mr. Archbold would have weight if relief was in itself a head of settlement; but that is not so; relief must be given for some settlement not stated. It is said that the appellants must either deny or confess and avoid the examination; but suppose, in this case, it had been stated in the examination that the pauper had received relief from the appellant parish whilst he was residing in that of the respondents, but the nature of the settlement has not been stated. The appellants could not deny the settlement specifically, because none

Relief only *primâ facie* evidence.

Complaint not required to be in writing.

was stated; but they could say the pauper never acquired a settlement in their parish, and then give evidence, as they have done here, that the relief was given by mistake." Order of sessions confirmed.

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Reg. v. *Whitley Upper*, 3 *P. & D.* 81; 11 *A. & E.* 90. An order for the removal of W. Child, &c. from Flockton to Whitley Upper. Case:— The examination of the pauper was, that he was illegitimate, and born in Flockton, and when seventeen years of age he was bound apprentice, by the overseers of Flockton, to G. Walker, of Whitley Upper, coal miner, until twenty-one years, and that he duly served his apprenticeship at Whitley Upper. The notice of appeal was, "That the said Child was born in your township of Flockton, and has never done any act whereby to gain a settlement in the township of Whitley Upper, inasmuch as the requisites of the 56 Geo. III. c. 139, and more particularly the 5th section of that act, were not complied with, when the said child was put and bound apprentice, by the overseers of Flockton, to one G. Walker, of Upper Whitley, coal miner." The appellants proposed to prove that the overseers of the appellant township were not present at the binding, and that no notice whatever was given to the overseers of the appellant township previously to or at the binding of the pauper, pursuant to 56 Geo. III. c. 139. The respondents objected to the reception of this evidence, as being a ground of appeal not set forth in the statement. The Court refused to receive the evidence, and confirmed the order. Lord *Denman*. "I am of opinion that the appellants did not give such a notice as would entitle them to go into the case set up by them at the sessions, and that this order must be confirmed; and my opinion is not shaken by the argument that, if we hold such a notice as the present to be insufficient, it may become necessary for parish officers to incur the expense of taking legal advice. It may frequently be their duty to take legal advice upon the form of notice to be given, and when that is the case, they will, by doing so, save expense instead of increasing it. It is highly expedient to state facts in the grounds of appeal, instead of raising an argument upon the provisions of a statute. I do not allow that any injustice was done to the appellants in *Rex* v. *Holbeach* (p. 1137), and cannot see the inconvenience of requiring notice to be given of the particular issues intended to be tried. I am not, perhaps, prepared to go quite so far as I understood my brother *Coleridge* to go during the argument, (*a*) in saying that it never can be sufficient to state generally that none of the requisites of a statute have been complied with, but I think that it is not sufficient, under the circumstances of this case, and that it will always be much better to state facts." *Patteson*, J. "If I thought that, in consequence of our deciding against this notice, voluminous notices and increased expense, on the part of parishes, would become necessary, I should be unwilling to come to such a decision. But I do not think such consequences will follow. This notice not only does not lead the respondents to the point relied upon, but it actually misleads them. It calls their attention to the order and allowance under sect. 5 of the 56 Geo. III. c. 139, whereas the point intended to be raised is as to the notice under the second section." *Williams*, J. "I am of the same opinion. The court has hitherto proceeded steadily on the sound principle of making the parties to the appeal state specifically what they mean to rely on, and I am not apprehensive of any of the inconveniences suggested." *Coleridge*, J. "I am of the same opinion. With regard to my observation, which my lord has referred to, I wish to say that I meant to confine it to the statute now before the court: and when I repeat that it is not enough in the grounds of appeal to state generally that the requisites of the 56 Geo. III. c. 139, have not been complied with, it must

The examination stated a settlement by parish apprenticeship. The grounds of appeal were that the requisites of 56 Geo. III. c. 139, and more particularly the 5th section of that act, were not complied with when the pauper was so bound apprentice. This will not entitle the appellants to prove that their overseers had no such notice of the binding as is required by sect. 2 of that act.

(*a*) When he said, "Surely it is not enough to refer to a statute generally, and say that its requisites have not been complied with, leaving the other side to find out what they are, and what the result is of all the cases decided on the construction of the statute; facts should be stated."

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be remembered what diversity of opinion there has been, both on the bench and at the bar, as to the true meaning of many of its provisions. Such a statement refers the respondents to the statute and all the cases decided upon it. At the same time I do not say that there may not be cases in which general reference to a statute would not do, but it is much better to state facts." Order of sessions confirmed.

A notice of appeal stating that the pauper did not acquire a settlement by apprenticeship, as in the examination stated, because the premium was paid by the parish officers, and the statute for binding parish apprentices was not observed, admits the execution of the indenture.

Semble, the notice was altogether bad for generality.

Reg. v. *St. John's, Margate*, 4 *P. & D.* 653; 1 *Q. B.* 252. J. Gocher and family were removed from St. John, Margate, to Playden. Order quashed. Case:—The pauper stated in this examination, "I am thirty-one years of age, and was born at Old Romney. When I was about fifteen years old, I was bound apprentice to John Clark of Playden. I was bound until I should attain the age of twenty-one years, and I now produce the indenture dated August 30th, 1821, executed by both parties and by my father; the consideration was 15*l.* I served the whole time, and resided in my master's house at Playden during the said service. I have been relieved by Margate parish three times." The grounds of appeal were, that J. Gocher did not acquire a settlement in the parish of Playden, by reason of his being bound apprentice by indenture dated 30th August, 1821, to one John Clark, and serving under the same indenture, because the premium of 15*l.* paid to the said John Clark was a payment made by the parish officers of Old Romney, and not by the father of the said J. Gocher, and the requisitions of the statute made for the regulation and binding of parish apprentices then in force were not complied with. Neither the indenture nor a copy of it was sent to the appellants at any time, nor had they seen it until the day of appeal. The respondents began their case by reading the examination and grounds of appeal, and then produced an indenture of apprenticeship as the document referred to in the examination, and was about to have it read, when the appellants inquired who produced it. The respondents then called J. Gocher, the pauper, who said he produced it, and had given it to the attorney for the respondents. The respondents then proposed to read the indenture, alleging that the execution was admitted by the grounds of appeal. The appellants contended that the due execution of the indenture was put in issue by the grounds of appeal, and that, as there was an attesting witness, that witness ought to prove the execution. The court decided that the execution of the indenture ought to be proved. The respondents then withdrew the indenture, and contended that the affirmative lay upon the appellants, and called upon them to begin and prove their case. The court decided that the appellants were not bound to begin, and they requested the respondent to proceed with his case. This the respondent did not do, whereupon the order was quashed. The *Reg.* v. *Whitley*, p. 1135, was quoted in support of the order. Lord *Denman*. "That case seems to show that the notice was altogether defective. However that may be, it is clear that the notice of the grounds of appeal does not put in issue the execution of the indenture. It merely disputes the legality of the payment of the 15*l.*; but that admits the formal execution of the instrument, and sets up a distinct ground, by which notwithstanding it is said the settlement was vitiated." The other judges concurred. Order of sessions quashed.

Where the ground of appeal was that the second husband was bound to maintain the pauper, an objection of their being irremovable as children within the age of nurture cannot be heard.

Reg. v. *Costock*, p. 432. The grounds of appeal were, because the 4 & 5 Will. IV. c. 76, s. 57, enacts, that every man who shall marry a woman having a child or children, shall be liable to maintain such child or children, as a part of his family. That in the case of the stepfather of these children there is sufficient evidence that he is unable to maintain them without the assistance of the parish, until and only so long as he is receiving relief in the workhouse. The parish of Costock does not deny the settlement of these children, but only their liability for their support, so long as they are under the age of sixteen and their mother shall continue the wife of William Marville. No evidence was offered on either side as to the circumstances of William Marville. Lord *Denman*. "A further point has been made that the child is within the age of nurture, and could not have been removable at all, and that neither child could have been chargeable;

but these points are not raised in the statement of appeal, and cannot be raised now. It is highly important that notice should be given by the appellants of every objection which they mean to rely on. If this objection had been pointed out, the respondents might have been able to meet it at the sessions."

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Rex v. *Holbeach*, 5 *A. & E.* 685; 1 *N. & P.* 137. The pauper was removed from Holbeach to Spalding. Order quashed. Case:—The examination of the pauper stated a settlement by hiring and service with J. B., of Spalding. One ground of appeal was, that at the time of the pauper's contracting to serve in Spalding for a year, "the pauper did stipulate and agree with J. B., his intended master, that he should, out of his year's service, be allowed to have two days' holidays at Spalding Club Feast," and that on those days he was absent. On the appeal, the pauper stated, "that at the time of hiring himself to J. B., he bargained for one day's holiday to go to Holbeach Fair, and that he had such holiday; but he denied that he made any bargain to have holidays at Spalding Club Feast, and in fact he had not such holidays." The respondents objected to any evidence as to the holiday at Holbeach Fair, as it was not a ground of appeal, but the sessions admitted it, and, treating the contract as an exceptive hiring, quashed the order. The question was, whether such evidence was admissible. Lord *Denman*. "It is quite clear that we ought to hold parties strictly to the notice they have given. It is very easy to imagine a case of this sort, where a notice might be given fraudulently, with a view to mislead, and yet a very slight difference in the proof be tendered from that specified in the ground of appeal. The objection having been taken at the hearing, we all think it must prevail." The other judges concurred. Order of sessions quashed.

Where the examination of the pauper stated a settlement by hiring in Spalding, and one ground of appeal was, that the pauper had stipulated for two days' holidays at *Spalding Club Feast*, it is not open to them to prove a stipulation for one day's holiday *at Holbeach Fair*.

Reg. v. *Recorder of Leeds*, 2 *Q. B.* 547. J. Foulstone was removed from Leeds to Hemsworth. The pauper in his examination stated that he was 33 years old. One ground of appeal was, "that the pauper acquired a settlement in the township of Leeds, in or about the year 1820, by hiring and serving with a Thomas Lancaster, of Leeds aforesaid, butcher, for a year; that he served the said T. L., in Leeds, for 4 years or thereabouts, and received 1*s.* per week during the whole of such term, and during the whole of such term he resided and slept in the said township of Leeds." The respondents objected to the hearing of any evidence, as there was no statement that the pauper, when hired, was unmarried and without child. The recorder allowed the objection, and confirmed the order, without any evidence being heard on either side. The recorder offered to grant a case. On a rule for a mandamus, Lord *Denman* said, "This is a less expensive course than a case for obtaining a decision, and the applicant must be content to pay the costs." Rule discharged with costs.

The omission in a hiring, that pauper was unmarried, is fatal, although by the examination it appeared he was then only eleven years old.

Rex v. *Derbyshire J.*, 6 *A. & E.* 885; 1 *N. & P.* 703. An appeal against an order of removal between *Castleton* and *Bradwell*, was entered at the Derbyshire sessions. The respondents objected to its being heard, on the ground that the statement of the grounds of appeal was insufficient. The grounds of appeal were, that the pauper gained a settlement in Chapel-in-le-Frith, in Derby, by hiring and service, for a year and upwards, subsequently to the settlement alleged to have been obtained by her in Castleton; and likewise that she gained a settlement in Bradwell, by hiring and service for a year and upwards; and also by having served several years under a general hiring in Bradwell, after the time when it is alleged she obtained a settlement in Castleton. The majority of the court deemed that the notice was insufficient, and refused to enter on the case. On an application for a mandamus, *Littledale*, J., delivered the judgment. "The question turned upon the sufficiency of a statement of the grounds of appeal given by officers of the township of Castleton, in Derbyshire, against an order of removal from the township of Bradwell, in the same county. The statement alleged as the ground of appeal, that the pauper had acquired a settlement in Chapel-in-le-Frith, by hiring and service, subsequent to the settlement in Castleton, without stating the time

A ground of appeal, that the pauper has "gained a settlement by hiring and service," in a third parish, without any farther specification, is insufficient. Where there are two overseers and one churchwarden, signature of notice of appeal by the two overseers is sufficient.

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when, or the name of the master. At the sessions the appellant proposed to give in evidence that the pauper was hired by and served a person in Chapel-in-le-Frith, since his acquiring a settlement in the appellant parish; but the court refused to hear the evidence, considering the statement insufficient within the 81st section 4 & 5 *W.* 4, c. 76. That section requires that the appellants should deliver a statement in writing of the grounds of their appeal, and provides, that on the hearing they shall not go into or give evidence of any other grounds. In this case, if the statement delivered by the appellants was in itself sufficient, they were entitled to give the evidence they tendered at the sessions, notwithstanding the proviso in the act, for it was not evidence of any other ground of appeal; it was to support, by detailed evidence, that ground which was alleged generally in their statement, viz. settlement by hiring and service in Chapel-in-le-Frith. In *Rex* v. *Holbeach* (p. 1137), and also in *Rex* v. *Misterton* (p. 1120), decided in the present term, we held that the sessions ought not to have received the evidence tendered, because in those cases the statement of the grounds of appeal in the one, and the examination of the pauper in the other, were sufficient in themselves in respect of the particularity of the statement; but the evidence tendered was at variance with those statements, and when received proved another ground of appeal in the one, and removal in the other. Now, it is obvious that this statement gives no real information to the respondent parish. Without being informed of the time of service, or the name of the master, the respondents would in vain make inquiries in any populous parish as to the fact of the pauper having been hired and served in it; and it seems far more convenient to require greater particularity in the statement. But we were pressed with the authority of *Rex* v. *Justices of Cornwall* (*a*) *and Rex* v. *Kelvedon* (p. 1124). In the former, the expressions used by the court undoubtedly seem to sanction generality of statement. The circumstances were, however, peculiar. The order of removal related to a man and his wife, and her children by a former husband,

(*a*) This case is now overruled. It was as follows:—

Rex v. *Justices of Cornwall*, 5 *A.* & *E.* 135. The overseers of St. Gluvias gave notice to the overseers of the parish of Penryn that they intended to appeal against an order for the removal of Charles Halooso and Charlotte his wife, and William, Asinath, and Emily, son and daughters of Charlotte, by a former husband, from Penryn to St. Gluvias, and that the grounds of the appeal are that Charles Halooso was not bound an apprentice (taking different objections to the removal of Halooso,) and that William, Asinath, and Emily, the son and daughters of Charlotte, the wife of the said Charles Halooso, by a former husband, are and each of them *is now settled in the said borough of Penryn*, &c. In her examination Charlotte Halooso stated that her former husband belonged to the borough of Penryn, and that neither of the three children had done any act to gain a settlement in his or her own right; that the children were living with Charlotte Halooso and her present husband. When the appeal came on to be heard, the sessions received the evidence respecting the settlement of Charles Halooso, but refused to hear any evidence against the removal of the children, except so far as depended upon the settlement of Charles Halooso, on the ground that it was not stated in the appeal how the children were settled in Penryn, and removal was confirmed. Lord *Denman*, C. J. "This rule must be made absolute. The sessions have refused to hear a case, raising an important point, because the notice does not state how the children were settled in the respondent parish. Sir *W. W. Follett* contends that the notice must be construed with reference to the order and examination, and that in connection with them it has full information. Without settling the question on that ground, we think it better to state that we think the notice sufficient in itself. The appellants say that they mean to dispute the order on the ground of the children being settled in another parish. That is sufficient to draw the attention of the respondents to the settlement there." *Littledale*, J. "I think this notice sufficient. Under the old law it was sufficient to give notice of appeal without stating the grounds. Such a statement is now made necessary. Formerly there might be doubt as to the nature of the case to be set up, but now a notice like the present confines the party giving it to proof of a settlement in the parish named, and is a compliance with the provisions of the act." *Patteson* and *Williams*, Js., concurred. Rule absolute.

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from Penryn to St. Glauvius. The examination of the pauper and his wife, a copy of which was delivered to the appellants under the 79th section of the act, showed that the man was settled in St. Glauvius, that the father of the children was settled in Penryn—and that they had acquired no settlement of their own. The statement of the grounds of appeal was sufficient as to the man; as to the children, it alleged merely that they were settled in Penryn—a fact which appeared upon the papers of the respondents themselves, and which was not in dispute; but it raised a point of law, namely, whether the children, by the operation of the 57th section of the act, (which makes the children part of the second husband's family, for the purposes of the act,) were removable with the man to his place of settlement. The sessions refused to hear evidence that the father of the children was settled in Penryn. The court held that they were wrong. Perhaps the proper course for the sessions would have been, to have taken the fact of the father's settlement as an admitted fact by both parties, and to have refused evidence either for or against it; but they were certainly wrong in excluding the fact from their consideration. The *Rex* v. *Kelvedon* turned on the sufficiency of the pauper's examination, to show the ground of removal; as to which, it was justly observed by my brother *Coleridge*, that the language of the act is different in the 79th and 81st sections, and that the act was made with different purposes as to the notices to be given by each side. Again, in that case the information was given to the parish in which the pauper was alleged to be settled, and they, by their statement of the grounds of appeal, showed that they fully understood the examination and the grounds of removal contained in it. The clauses in this act, respecting the grounds of removal and appeal, are intended to compel such a disclosure by both parties, as will enable them to go to the sessions fully aware of the questions which are to be discussed: and we think that we best effectuate such intention by holding that the statement must not be in general terms, but must condescend to particulars, not to the extent of setting out the evidence by which facts are to be proved, but so as to give the opposite party reasonable means of inquiry. Another point was made on the argument as to the persons who signed the notice and statement. This point was not made at the sessions; but if it had, we should hold the notice and statement sufficient in that respect, according to the rule which we laid down, a few days since, in the case of *Rex* v. *Justices of Warwickshire*, 4 *A. & E.* 873. Rule discharged.

Signature by two overseers, being a majority, is sufficient. (a)

Reg. v. *Bridgewater*, 1 *G. & D.* 265; 10 *A. & E.* 693. An order for the removal of H. Channon from Bridgewater to Compton Bishop, was quashed. The grounds of appeal were, "that the said H. Channon has never been maintained by our parish of Compton Bishop, but that he has resided in and obtained a settlement in your parish of Bridgewater by servitude therein, the said H. Channon having been the hired servant of C. Knight, of Bridgewater, sheriff's officer, for a period exceeding one year, and has not, since such servitude, obtained a settlement in our parish, and that he, by such service, now is legally settled in Bridgewater." It was objected that the grounds were insufficiently stated, as no time was mentioned. The court thought the notice insufficient, but heard the case, and found that the pauper did gain a settlement by such hiring and service in 1825, and 1826. Lord *Denman*. "It appears to me to be necessary to state the grounds of appeal as far as they are known. It would be dangerous to admit a generality of statement which might require an inquiry by the respondents through a period of fifty years. The greater the obscurity attending the facts, the more incumbent is it on the appellants to give as much information as possible." *Littledale*, J. "There may be, no doubt, inconveniences in giving statements as to time with great particularity. A service might be stated at a particular period inaccurately in some degree, and it might be proved that the alleged master at that particular time was dead, and thus greater difficulty would be thrown

The name of the master under whom the hiring and service took place, but no mention of the date of the service, and no reason for the omission, is insufficient.

(a) The signature of the majority of the parish officers is sufficient, *Reg.* v. *Westbury.* 1 *Car. H. & A.*

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in the way of the appellant; but, on the whole, I think there are more inconveniences on the other side. If the required particulars cannot be given, some reason may why they were omitted." *Patteson*, J. "In cases of settlement by hiring and service the name of the master and the date may easily be given; and, in general, if they are not, I should impute the omission to some sinister motive." *Coleridge*, J. "It is clearly not enough to show the cause of appeal; the statute requires the ground of appeal also to be given. The proviso (sect. 81) shows the intention of the legislature to require information to be given of the kind of case on which the appellants mean to rely, and to the proof of which alone they are confined, so that the respondents may be prepared. I have some doubt whether the information given in this case was sufficient. But, if it is necessary for us to lay down a rule, I think it better to say that the date of the service should be mentioned as well as the name of the master. I think, however, that the sessions would do well to constitute themselves the judges of the particularity requisite." Order of sessions quashed.

Stating that the party "*occupied*" is not a sufficient statement of residence.

Mandamus should be applied for promptly.

Reg. v. *J. W. R. Yorkshire*, (*Drighlington* v. *Pudsey*), 1 *G. & D.* 706; 2 *Q.B.* 505. On a rule for a mandamus to hear an appeal against an order for the removal of Ann the wife of John Moorhouse, &c., from Pudsey to Drighlington, it appeared that the appellants relied solely on a settlement acquired in the respondent township subsequently to the settlement on which the order of removal was made, and one of their grounds of appeal was, "that the husband of the pauper, Ann Moorhouse, in or about the years 1828, 1829, 1830, some or one of them, or some parts of some two of such years, did rent *and occupy* for the space of twelve months and upwards *a house* and land at and in the township of Pudsey aforesaid, as tenant to one Mr. Charnock, of Woodhouse, gentleman, of the yearly rent and value of 10*l.* and upwards, and did pay upwards of 10*l.* rent for the same, and did thereby gain a settlement in your said township of Pudsey." The sessions said—"We are compelled to decide that this notice of grounds of appeal does not disclose residence, which is a necessary ingredient in order to gain this settlement," and they refused to allow the appellants to give evidence of this ground of appeal, and confirmed the order. They declined to make any special entry; the order of removal was therefore confirmed generally. As to the delay in applying for this rule, it was stated by the attorney, that he felt it to be his duty to consult with the parish officers and inhabitants of the appellant township, and therefore, shortly after the sessions, he desired the assistant overseer to convene a meeting of the inhabitants, which was done. That there was such a thin attendance of the inhabitants that they did not deem it proper to authorise this application, but directed him to take the first opportunity of consulting counsel thereupon, and then report to a meeting of the inhabitants previous to Easter Term. That during the Lent assizes at York deponent did consult with counsel upon the subject, and a meeting of the inhabitants was convened, on the 1st of April, and at such meeting he was authorised to proceed. It was objected that the rule should have been applied for in Hilary Term. Lord *Denman* said, "Although there is no absolute rule of practice upon the subject, yet it should be clearly understood that an application of this nature should be made with reasonable promptitude. I doubt whether the present application has been so made, but my brothers think that we should hear the case, as there has been no distinct notice of our practice in this respect. We certainly approve of the conduct of parish officers who do not rush hastily into litigation, but I think these applications should be made very speedily after the sessions, otherwise the situation of the litigant parties may be altered in the interval." *Patteson*, J. "I admit that the word 'occupy' in this ground of appeal would convey to ninety-nine men out of a hundred that the pauper's husband resided in the house. But we have to construe a notice under an act of parliament, and the notice must have legal certainty. It is said that 'occupation' in this case must mean 'residence.' I do not think so, or even that the words 'actual occupation' would have that meaning. A man may actually occupy a large estate which has no house

"Legal certainty" required.

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whatever upon it. The word 'occupation,' therefore, does not in itself necessarily involve residence; and, even in the case of houses, a man may occupy two houses in different parishes; he may reside in one house himself, and occupy the other by his servants residing in it, yet he could not himself be said to reside in the parish where the last mentioned house is situate. Some other words in addition to the word 'occupy' were necessary in this case to remove doubt and to show a residence in the respondent parish for forty days. The notice here does not necessarily import such residence, and, though our construction may appear strict, the court has decided that such notices must state such facts as necessarily import a settlement." *Williams*, J. "The decisions of this court do undoubtedly savour somewhat of strictness; but our principle has been to compel both respondents and appellants to give full information to each other of the case relied upon. In pursuance of this principle, we hold that it is not enough in these instruments, when a settlement is set up in them, to give the legal result of facts by stating generally any particular head of settlement, but that the constituent parts of such settlement must also be specified. The question here is, whether the occupation stated necessarily implies the residence also in the respondent parish. I do not think it does; there should have been an express allegation of residence." *Wightman*, J. "It follows, from the principle that a settlement must be shown in these notices, that the residence should have been shown in this case. Occupation does not necessarily include residence; a man may occupy lands with no house upon them, and even a house he may occupy by his servants. It is better that distinct terms should be used." *Patteson*, J. "I am requested by Lord *Denman* to say that he quite agrees with us in our decision." Rule discharged.

The grounds of appeal must state a *residence* as well as renting and occupation.

Reg. v. *Old Stratford*, 2 *G.* & *D.* 82; 2 *Q. B.* 513. Case:—The appellants admitted a settlement by the birth of the pauper in their parish, and they set up a subsequent settlement of the father of the pauper in Eatington, by renting a tenement. The grounds of appeal were that "Whatcote, the appellant parish, is not the last place of settlement of John Taylor, the pauper's father, as in the examination stated. That the father of the pauper, in November, 1832, rented a house and orchard at Eatington, in the parish of Eatington, the county of Warwick, from William Marshall, servant to Evelyn John Shirley, Esq. of the same place, at the rent of 10*l.* a year and upwards, and occupied the same under such renting or hiring from that time until Michaelmas, 1836, and paid the rent for the same, and also was assessed to and paid the poor rate for the same, during the whole of that time. It was contended that this statement was insufficient, as it was not stated that the father resided in the parish of Eatington for forty days." Lord *Denman*. "It is contended that there is a distinction between this case and that of *Reg.* v. *J. W. Riding*, and there is so in point of fact. The sessions here have found the statement of the grounds of appeal sufficient. But how have they found that question? Subject to the opinion of this court. They were not bound to grant a case, but they have done so. The grounds of appeal are intended to set up a settlement obtained subsequently to that stated in the examination, but they do not state a complete settlement. I think infinite benefit will be conferred upon parishes by requiring the full particulars of a settlement to be given; and I think we ought not to allow the use of words which are contended to be equivalent to those which would accurately describe the settlement." The other judges concurred. Order of sessions quashed.

The grounds of appeal must state all the essentials of a subsequent settlement. In a settlement by hiring and service, it must be stated that the hiring was for a year.

Reg. v. *North Bovey*, 1 *G.* & *D.* 701; 2 *Q. B.* 500. J. Langworthy and family were removed from Northmolton to North Bovey. Order confirmed. Case:—The removal was made on the examination of the pauper, who stated that he had been bound a parish apprentice in North Bovey, without any date. When there were about six months to come of his apprenticeship his master gave him leave to serve whom he liked, and that he afterwards agreed to serve Edmund Stooke, of the parish of Ashton, for a month, at 3*s.* a week. When the month was up he agreed to live on

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at the same wages by the month; the bargain to be at an end at any time by a month's warning from either party. He continued under that agreement nearly two years, and left his place by giving a month's notice; and he has not done any other act whereby to gain a settlement. The ground of appeal was, "that the pauper acquired a settlement in Ashton by hiring and service with one Edmund Stooke, of George Teign, in the said parish, subsequently to that acquired by him in our parish." On the appeal it was objected that the ground of appeal was insufficient, as no *time* at which the pauper was hired and served with Edmund Stooke was specified, and that it was not stated that the hiring was for a year. The appellants contended, that the ground of appeal in connection with the examination was sufficient, and that all was stated as to time which it was *bonâ fide* in the power of the appellants to ascertain, and they tendered evidence to show that inquiries as to that point had been made, but without success. The court found that the appellants had set forth all that was within their knowledge as to time *bonâ fide*, and overruled the first objection to the notice, but on the second objection they think that it is necessary that the appellant should have set forth the hiring and service to have been of the nature and description of a yearly hiring, and, that not having been done, the court admitted the second objection, and confirmed the order. Lord *Denman*. "The question is, whether the notice of appeal discloses any settlement at all. It is very difficult to lay down any rule which parish officers may not elude, but our principle is, that they must give all the information they can. I certainly do not see by what means the justices arrived at the conclusion that the appellants in this case have given all the information in their power. But it is not necessary to go into that question, because it is quite clear that, when appellants meet an examination by setting up a subsequent settlement, the settlement set up must be shown to be a complete settlement. This seems almost a truism. It is argued that, where the appellants set up a settlement by hiring and service, it cannot be inferred that the hiring can be anything else than a hiring for a year. But why is anything to be left to inference? In conformity with *Reg.* v. *Middleton in Teesdale* (p. 1127), we must decide that this notice is insufficient." *Patteson*, J. "If this statement of the grounds of appeal be looked at by itself, as unconnected with the examination, it is wanting in proper particularity of time, and is clearly bad. The statement is, that 'the pauper acquired a settlement in the parish of Ashton, in the said county of Devon, by hiring and service, with one Edmund Stooke, of George Teign, in the said parish, subsequently to that acquired by him in our parish.' If it had said expressly that the subsequent settlement had been gained by the hiring and service mentioned in the examination, a different question would have arisen. It might then have been for the justices to say whether, on the facts, there had been a hiring for a year. But, as the notice now is, the hiring relied on by the appellants may be a different hiring from that in the examination, for the examination is not referred to. The notice of appeal should have shown such a hiring as would give a settlement." *Williams*, J. "The meaning of the court has been, that, as well in the statement of the grounds of appeal as in the examination, a complete settlement should be set out, and that there should be given explicitly all such information as may be requisite to regulate the conduct of the adverse party, to whom the document is sent." *Wightman*, J., concurred. Order of sessions confirmed.

A mandamus will not lie to compel the justices to insert the statement of the residence on the examination, though it is sworn that the pauper so stated, and that it was omitted through inadvertence. (*Reg.* v. *Rogers*, 21 *L. J.* 50.)

Grounds of appeal, setting up a settlement by paying rates in or about the year 1830, in respect of a tenement, not

Reg. v. *J. Sussex*, 10 *A. & E.* 682; 3 *P. & D.* 42. On a rule for a mandamus to hear an appeal of Carshalton against the removal of H. Gilbert, it appeared that the grounds of appeal were, "that the said H. Gilbert did not acquire a settlement in Carshalton by service with T. F. R. for two years, at the wages of 20*l.*, payable half-yearly, as stated in the examination; and

stating the name of the landlord, is insufficient.

secondly, that after leaving the service of the said Reynolds, the said H. Gilbert acquired a settlement in the parish of Ticehurst, in the county of Sussex, by having in or about the year 1830 paid parochial taxes for and in respect of a certain tenement in the said parish of Ticehurst, rented by the said H. Gilbert at 15*l.* a-year for one whole year, and occupied by him under such hiring for more than the said term of one year, the rent for the same to the amount of 10*l.* having been paid by the said H. Gilbert." At the sessions the appellants admitted the settlement in their parish, but proposed to prove a subsequent settlement in Ticehurst parish, by renting a tenement. The respondents objected that the grounds of appeal were too general, and the sessions stopped the hearing and discharged the order. Lord *Denman.* "I do not mean to say that the local situation of the premises must necessarily be specified, because that may be difficult; though in a large parish it ought to be ascertained as nearly as possible. But at any rate the landlord's name should be given. This notice was insufficient." *Littledale*, J. "The landlord ought to have been described; I do not say by his Christian name, but at any rate by his surname." *Coleridge*, J. "Ascertaining the situation of the premises might be more or less difficult, according to the nature of the parish. In an agricultural parish, for instance, there might be a good deal of difficulty, but there the name of the landlord would be the best way of fixing the property." Rule discharged.

That pauper rented a tenement consisting of the feeding of a cow on the land, &c., is not sufficient.

Reg. v. *Cumberworth Half*, 8 *Jurist*, 57. The settlement stated the following ground of appeal, "That, subsequent to the said alleged apprenticeship (*a*) in our said township of Cumberworth Half, that is to say, in or about the year 1812, the said William Burdett, the pauper, rented a cottage or tenement of the value and for the sum (which he paid) of 1*l.* 10*s.* per annum, situate at Exley Gate, in your said township of Denby, in which he resided for the term of one whole year at the least, and the said pauper has ever since continued to reside, and does in fact now reside in the same cottage at Exley Gate aforesaid; and that in or about the year aforesaid, and at the same time that he so occupied and resided in the said cottage or tenement at Exley Gate aforesaid, he also rented and occupied another tenement at Denby Hall, in your said township of Denby, consisting of the keeping or feeding of a cow, of which he was the owner, by and on the land and premises of James Haigh, of Denby Hall aforesaid, for the space of one whole year, and which was of the value of 10*l.* a year at the least, and for which the said pauper paid to the said James Haigh the sum of 4*s.* a week during the whole year, whereby the said pauper did acquire a settlement, and is now legally settled in your said township of Denby." The respondents admitted that the facts stated in this ground of appeal were true, and it was agreed that evidence sufficient to establish such facts should be taken as having been adduced by the appellants; but it was objected that the ground of appeal did not show upon the face of it a settlement in Denby. The sessions so decided, and confirmed the order. Lord *Denman.* "It is contended that the statement in the grounds of appeal, of a subsequent settlement by renting a tenement, is not sufficient. In my opinion, that which is stated does not constitute a tenement. *Rex* v. *Tisbury* (p. 757), and the other cases all show that a settlement can only be gained by a contract to keep and feed upon the growing produce of some particular land. The words 'by and on the land and premises' are not entitled to much weight; I think, that, putting a reasonable construction upon the language used, the statement with respect to the tenement is insufficient." *Patteson*, J. "As to the other point, the case is very clear, unless the argument as to the word 'by' is entitled to any weight. 'By,' it is said, must apply to the growing produce of the land for the whole year; but it seems to me that it can only apply to the growing produce when there is any on which the cow may be fed. *Rex* v. *Sutton St. Edmond's* (p. 759), is strongly in favour of the respondents. *Bayley*, J., citing *Rex*

(*a*) As to the *examination* in this case, p. 1061.

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v. *Oswald Twissell* (p. 759), says, 'In that case, the pauper rented, *inter alia*, the milk of a cow to be kept by the owner; her keep made up the necessary value, 10*l.*, and she was, in fact, pasture fed; but it was held, that, as it did not appear to have been made matter of bargain that she should be pasture fed, hiring her milk was not necessarily taking a tenement, and the order of sessions allowing the settlement was quashed.' Lord *Tenterden*, in his judgment in the same case, says, 'According to *Rex* v. *Oswald Twissell*, the contract must be to feed the cattle with the growing produce of the land.' Now, this statement does not show any such contract: this contract was generally to feed the cow for the whole year. As to the second point, reading the language of the grounds of appeal as a man of common sense would do, the contract was to keep and feed the cow by and on the land and premises of John Haigh, for the space of one whole year; using the word 'tenement' would not make that a tenement which was not one in law. It does not at all appear that the cow must necessarily be pasture fed." *Wightman*, J. "I am of the same opinion. It is true, the word 'tenement' is used in the statement, but it does not necessarily appear that the cow must have been pasture fed; the cow might have been fed upon hay grown on the land in a former year, or upon hay grown on other land. There is no sufficient tenement set out in the statement." Order confirmed.

A defect in the grounds of appeal cannot be supplied by incorporating the examination, unless the notice expressly refers to the examination.

Reg. v. *Stowford*, 2 *G. & D.* 390; 2 *Q. B.* 526. Williams was removed from Stowford to Broadwoodwidger. Order quashed. Case:—The examination of the pauper, after alleging a settlement in Broadwoodwidger, proceeded thus:—"About ten years ago I went to Mr. Rundell, at Stowford, and lived there from Michaelmas until Lady-day, and then went to Maristowe, and lived there eight months, and afterwards went to work until the following Lady-day, and then went to Stowford, and *lived with* Mr. Jackman there under a yearly hiring for eleven months and a fortnight." The grounds of appeal were, "because the pauper acquired a settlement in the said parish of Stowford subsequently to that acquired by him in our parish. Because the pauper acquired a settlement in the said parish of Stowford by hiring with *one* Mr. Jackman from Lady-day to the following Lady-day, and service under the same in that parish accordingly, subsequently to that acquired by him in our parish." The respondents objected that the appellants were not at liberty to go into evidence of the settlement in Stowford upon the above grounds of appeal. The sessions overruled the objection, and quashed the order. Lord *Denman*. "The first impression of any one reading these documents might very well be, that the Mr. Jackman mentioned in them is one and the same person. But when the grounds of appeal are attentively looked at, it will be seen that there really is no reference in them to the Mr. Jackman mentioned in the examination, so that there are two persons mentioned and no averment is made of their identity. There was the same state of things in *Reg.* v. *North Bovey* (p. 1141), and my brother *Patteson* considered whether the reference to the examination sufficiently appeared. He thought it did not, and I think he was right. Where the places mentioned are very small, and the names of persons very uncommon, there may be no uncertainty as to the persons meant; yet, on the other hand, the mention of a common name with reference to a populous neighbourhood, might give no information whatever, and it would be most inconvenient to lay down a different rule for the two cases. I think *Reg.* v. *North Bovey* an authority binding upon us, and, as the sessions have asked our opinion, we cannot but say, that we think there was nothing for them to inquire into, and that their decision was wrong." The other judges concurred. Order of sessions quashed.

A ground of appeal stating that

Reg. v. *Carnarvonshire* (*a*), 1 *G. & D.* 423; 2 *Q. B.* 325. On a rule for

(*a*) Another point determined in this case was, that the court of Queen's Bench will issue a mandamus to hear an appeal, if the sessions have refused to hear upon an erroneous decision as to the sufficiency of the grounds of appeal. This was reversed in *Reg.* v. *Kesteven*, *post*.

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a mandamus to hear an appeal by Gyffym against an order for the removal of M. Roberts and children, it appeared that it was objected that the grounds of appeal were too general, and the sessions allowed the objection, and refused to hear the case. The grounds of appeal were, secondly, that D. Roberts was settled in Liverpool; thirdly, "that the respondent parish have acknowledged D. Roberts to be an inhabitant of, and legally settled in, their parish, by relieving him and the other paupers, as part of his family, from time to time during the last six years, whilst they were resident (in other places) out of the respondent parish, and particularly by giving relief to D. Roberts and the paupers, as part of his family, several times in the years 1839 and 1840, during which time he and his family were residing in the town of Liverpool." *Williams*, J. "The third ground of appeal states that the appellants proposed to prove relief given by the respondents out of their parish. The argument against the sufficiency of it goes to exclude evidence of the most cogent description, that the pauper was settled in the respondent parish. This statement satisfies the object of the act of parliament, which was, that parties at the trial of the appeal should not be taken by surprise. The second ground is no doubt too general; but the third, I think, gives adequate information; and the sessions having declined to hear the case altogether, I am of opinion that this rule should be made absolute." *Coleridge*, J. "I agree with my brother *Williams*. The statement appears in perfect good faith to state a matter more within the knowledge of the respondents than of the appellants. It in fact says, 'I object to the removal of the pauper because your parish has always acted as if he were settled within it.' It gives adequate information of the strong *primâ facie* case which the appellants propose to prove—that the respondent parish has relieved the pauper repeatedly out of their parish. The times, sums, and places, are all more within the knowledge of the respondents than of the appellants. I think there is nothing in the objection that the statement does not in terms assert a particular settlement. Proof of those facts stated would constitute a *primâ facie* case without evidence of any particular settlement." *Wightman*, J. "The second ground of appeal, stating that the pauper is settled in the respondent parish, is too general; but the third, the legal effect of which is the same as the second, is not open to that objection. It gives the particulars of facts, much better known to the respondents than to the appellants, which, if proved, would establish a *primâ facie* case against the respondent parish." Rule absolute.

the pauper had been relieved during the last six years out of the parish, and particularly during 1839 and 1840, while residing at Liverpool, is sufficiently explicit.

Reg. v. *J. Denbighshire*, 5 *Jurist*, 99. An order was signed by B. Cundy and E. L. Kenyon, two justices of Denbigh. The order removed a woman and three children to the parish of Llangollen. A notice, without a date, of the order of removal, together with a copy of the order and of the examination of the pauper, was sent to Llangollen, and the paupers were removed. A notice of appeal was sent, stating that the parish of Llangollen intended to appeal against the order of removal made by R. H. Cundy and E. L. Kenyon. This notice properly described the paupers, the parishes, and the order of removal in every other particular. The settlement stated in the examination of the pauper, was a settlement of her husband by apprenticeship in the parish of Llangollen. The grounds of appeal were, that the husband, during his apprenticeship, resided forty days and slept forty nights in a third parish, but it was not distinctly stated that he had gained a settlement thereby, nor was there any statement that the last night of the service under the articles of apprenticeship was passed in the third parish. The want of date to the notice of the chargeability of the pauper was another ground of appeal. At the sessions it was objected that there was a variance between the notice of appeal and the order of removal, as to the name of one of the justices who signed the order, and that consequently no notice of appeal had been given against the order in question, and the justices refused to hear the appeal. On an application for a mandamus, *Williams*, J., said: "If the case had come to the point of how

A variance between the notice and the order in the initials of the name of one of the magistrates who signed the order, is not fatal. The sessions ought to hear such appeal.

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far those grounds of appeal were good, so as to let in the questions as to the residence of the pauper's husband in the third parish, there might have now been something for me to decide as to those questions; but as the case was stopped at an earlier stage, it is unnecessary for me to decide them; so in the same way it is unnecessary for me to decide as to the want of a date to the notice of the order of removal; that point not being raised on this rule. The only question now is, whether the variance in the name of the justice between the order of removal and the notice of appeal, is so material as to create a doubt whether the order of removal was the one appealed against or not. I think that the point is very different from a point of variance arising from the setting out of documents in pleading, and that it cannot be considered at all as a parallel case. The notice of appeal is for the purpose of intimating that the respondents have been aggrieved by the order of removal. The order is, in every other respect, properly described; and I think that the court of quarter sessions have unnecessarily taken into their consideration a nice point of variance, with which they had nothing to do." Rule absolute.

The notice need not state the names of the justices who signed the order.

Reg. v. *West Houghton*, 13 *L. J.* 41. The notice of appeal did not state the names of the justices who made the order. The sessions allowed the objection, but reserved a case. Lord *Denman*. "We do not wish to encourage the practice of asking questions of this court, with a view to a rehearing of the case by the sessions; but in this instance we may say, that there is nothing whatever in the objection." Case sent back.

Where an appeal, in consequence of the justices being equally divided, is adjourned to a subsequent sessions, the appellants cannot serve new grounds of appeal.

Reg. v. *Arlecdon*, 3 *P. & D.* 93; 11 *A. & E.* 87. The appeal was *heard* at the Michaelmas sessions, when the justices, being equally divided in opinion, adjourned the appeal to the following sessions. Before the Epiphany sessions the appellants furnished fresh grounds of appeal, containing the ground set out in the first statement, and also three additional ones. It was objected that the appellants had no right to serve a fresh statement under the circumstances. The sessions held that the appellants had such right, and received the statement. The appellants then objected, under the new statement, to the notice of chargeability, as not having been signed by the requisite number of parish officers. The sessions allowed the objection, and quashed the order. Lord *Denman*. "This case has been properly distinguished from *Rex* v. *Derbyshire* (*infra*), where there had been no trial at all. Here the court was in possession of the grounds of appeal at the first hearing, and we cannot allow them to be afterwards unravelled. We think the case may be reheard upon the merits."

But when an appeal, in consequence of pressure of business, is made a remanet, the appellants may serve a fresh statement, differing from the former.

Reg. v. *J. Derbyshire*, 3 *N. & P.* 591; 6 *A. & E.* 612. On a rule for a mandamus to hear an appeal, it appeared that notice of appeal, and a statement of the grounds, had been duly served on the respondent parish before the Epiphany sessions, when, in consequence of the pressure of business, the case was made a remanet to the Easter sessions. Before these sessions a fresh statement of the grounds of appeal was served, which differed in some respects from the former. On the appeal, the appellants produced both statements; and the court held that they must elect and rely upon one only, and on their electing to rely on the statement last served, it was objected that they had thereby waived the other, and that the statement relied on was invalid, because it had not been served, according to 4 & 5 Will. IV. c. 76, s. 81, fourteen days before the first day of the sessions at which the appeal was intended to be tried, which were the Epiphany, and not the Easter sessions. The sessions allowed the objection, and dismissed the appeal. During the argument, Lord *Denman* observed, "Suppose they had given in their statement so early before the sessions, that they had time enough afterwards to serve a totally different or an amended statement, could they not have done so?" And as to the inconvenience, Lord *Denman* said, "The sessions might award costs to the respondents, if they should be misled, and thereby put to expense;" and in giving judgment he said, "I do not think the word 'intended,' in the act, should be construed so as to confine the appellants strictly to their

original statement. It is reasonable that they should be heard." The other judges concurred. Rule absolute.

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The notice of appeal against an order adjudicating on the settlement of an insane pauper, should be given to the clerk of the peace and not to the justices.

Reg. v. *J. Kent*, 2 *G. & D.* 152. On a rule for a mandamus to hear an appeal by St. Nicholas, Deptford, against an order of two justices, adjudging the settlement of Eliza Rawlings, a poor insane person, confined in the county lunatic asylum, to be in the said parish, it appeared that the notice of appeal had been given to the clerk of the peace for the county. It was objected that the sessions could not entertain the appeal, as the justices who made the order ought to have been served with notice of the appeal, and have been made respondents therein. The sessions allowed the objection, and dismissed the appeal. Lord *Denman*. "The question is, whether the notice of appeal given in this case to the clerk of the peace, under the 54th section, was a good notice of appeal against an order made under the 42d section. I think it was a good notice, and that the justices should have heard the appeal. The words of the appeal clause, in section 54, are large enough to include this case, and, notwithstanding the position of the section, may relate back to the 42d section. It is said that we cannot leap over the intermediate appeal clause in the 46th section, which will include this case. But I think the 46th section, which gives the right of appeal, 'if any person shall feel aggrieved by any order, or by any refusal of an order,' applies only to the cases in the 44th and 45th sections—the cases of lunatics wandering about the country, and to other cases, where an individual is affected by an order or by the refusal of an order. The present is not such a case, but involves a question between the parish, upon which the order to maintain the pauper has been made, on the one hand, and the county on the other, upon which the burden of maintaining the pauper will be cast back, if the order is quashed. The appellants in the case are the churchwarden and overseers of the parish, and the county is represented by the clerk of the peace, as its officer. The clerk of the peace would seem to be the proper party to receive the notice on behalf of the county. As there are particular cases under sections 44 and 45, to which the appeal clause in section 46 may refer, and as the county fund is equally concerned, whether the case is under section 42 or section 54, it seems reasonable to hold that this notice to the clerk of the peace, under the 54th section, is good." *Patteson*, J. "I am of the same opinion, though the case is not free from difficulty. I think, however, that the appeal clause in the 54th section applies to orders made under the 42d section, and that there is no difference, in this respect, between criminal and pauper lunatics; in either case the contest is between the county and the parish. Section 46 appears to apply to the cases in the 44th and 45th sections only. There is certainly some difficulty in this construction, for, if under section 44 the vagrant has been adjudged to be a settled pauper, and the order should be appealed against, there seems just as good reason why the clerk of the peace should be respondent in that case, as if it were a case under the 54th section, for there is the same interest on the part of the county, and the same absence of interest on the part of the justices, in both cases." *Coleridge*, J. "I am of the same opinion. Sections 44, 45, and 46, seem isolated from the rest of the act. Under sections 44 and 45, individual interests are concerned either by the making or refusing an order, which adjudges a party to be disordered in his senses, and that his property may be seized. There is therefore abundant room in such cases for individual grievance, and it is right that the justices should have notice of appeal against their order. The appeal clause, therefore, in section 46, has something to act upon, without reference to the 42d section. In a case like the present, the interested parties are the parish on the one hand and the county on the other. It is therefore reasonable that the clerk of the peace, who represents the county, should have the notice." *Wightman*, J., concurred. Rule absolute.

The grounds of appeal must be served fourteen

Reg. v. *J. Salop*, 3 *N. & P.* 286. On a rule for a mandamus to hear an appeal against an order of removal, that the Epiphany sessions were held

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clear days before the first day of sessions, and such days exclusive of the day of the delivery and of the first day of sessions.

(a) In re *Prangley*, 4 *Ad. & E.* 781.

on the 2d January, 1836, and that the grounds of appeal had been delivered on 19th December, the sessions were of opinion that they had not been delivered "fourteen days at least" before the first day of the sessions, and refused to hear the appeal. *Coleridge*, J. "We lately held (*a*) that the three days' notice, under the rule of H. T. 6 Will. IV., by persons applying for admission as attorneys, were to be clear days." Lord *Denman*. "The rule has been already laid down, that so many days 'at least' means clear days: it would be more mischievous to shake this rule than to cause inconvenience in a particular case." *Littledale*, J. "If this were *res integra*, I should say that 'a day at least' cannot mean more than 'a day;' but as there has been a decision, we will abide by it." *Patteson*, J., concurred. *Coleridge*, J. "I concur on the ground already mentioned; but if there had been no authority, my opinion would have been otherwise." Rule discharged.

Sessions are bound to receive an appeal, although no notice has been given.

Rex v. *J. of Huntingdonshire*, *Cald.* 283; 2 *Bott*, 948. Upon a removal of a pauper, the notice of appeal was served upon a Sunday: had the appellants deferred the service of their notice till another day, they would not have been in time, under the practice established in that court, to have given reasonable notice for the purpose of *trying the merits*. The sessions (being of opinion that the party aggrieved was not at any rate, or for any purpose, entitled to appeal, unless the prescribed notice had previously been given; and also that a service of a notice on a Sunday was not a legal service, and that in point of law there had not been any notice,) refused to hear, adjourn, or enter the appeal. A rule was obtained for mandamus to receive and hear the appeal, and no cause being shown was made absolute.

The justices are bound to receive an appeal against an order of removal, if offered at the next sessions, although no notice has been given.

Rex v. *J. of Gloucestershire*, *Doug.* 191; 2 *Bott*, 727. On application for a mandamus to receive an appeal, it appeared from the affidavits, that the examination of the pauper was taken in August, the order of removal the 12th of November following, and the sessions were held on the 12th of January following: that no notice of appeal had been served (for which the reason assigned was, that the appellants had not been able to get their witnesses ready till it was too late to give such notice), that the court had been moved to receive the appeal, and adjourn the consideration of it till the following sessions, and had refused. The court were clearly of opinion, that the justices ought to have received the appeal, and the rule was made absolute.

It is imperative upon the sessions to enter and adjourn the appeal where no notice has been given to the respondents.

Rex v. *J. of Bucks*, 3 *East*, 343. It was determined, that where notice had been given, and if upon an appeal lodged against the order of removal, the sessions were of opinion that reasonable notice had not been given by the appellant to the respondent parish, they could not dismiss the appeal on the ground that notice might have been given in time, but were bound by the direction of the stat. 9 Geo. I. c. 7, s. 8, to adjourn the appeal to the next sessions. (N.B. This case overruled that of *Rex* v. *Yorkshire*, 3 *T. R.* 150, but see the reason given in that case for the refusal, and the observations of Lord *Tenterden*, *Rex* v. *Wiltshire*, p. 345).

Same point.

Rex v. *J. of Shropshire*, (erroneously reported *Rex* v. *J. of Staffordshire*, 7 *East*, 549). An appeal was lodged at the next sessions after an order of removal made, and was moved to be adjourned on the part of the appellants, no notice having been given to the respondents; but the sessions being of opinion there had been sufficient time for the appellants to have given notice of such, after the order had been executed, and before the holding of the sessions, dismissed the appeal. Whereupon a rule was obtained for a mandamus to enter a continuance to the next sessions, and hear the appeal. No opposition was made; it was considered (*a*) that *Rex* v. *J. of the North*

(*a*) In that case, reported 3 *T. R.* 150, an order was made on the 26th of November, and executed on the 28th. It appeared that the appellants attended at the next sessions, held on the 13th of January, and moved the court for leave *to lodge the appeal, and to respite the hearing thereof* to the next sessions. The following entry was made by the sessions: "Forasmuch as it appears to this

Riding of Yorkshire had been overruled by *Rex* v. *J. of Bucks.* Lord *Ellenborough*, C. J., said, that "the latter case had been well considered, and that the court were satisfied that the statute was compulsory on the sessions in these cases to receive and adjourn the appeal." Rule absolute.

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Justices ought not to enter and adjourn an appeal, if there has been time to try it.

In *Rex* v. *Wiltshire* (p. 345), Lord *Tenterden*, C. J., said, "It appears to me, upon the sound construction of 17 Geo. II. c. 38, s. 4, that where there is time, between the allowance of the rate and the next sessions, for a reasonable notice of appeal to be given, and no notice is given, the justices not only may, but ought to reject the appeal, and not suffer it to be entered at all. But where they do suffer it to be entered, I think they have most clearly the power of adjourning or respiting it; for such a power is incident to their character as a court of justice."

The sessions have power to judge of the reasonableness of the notice; but the court of K. B. has a visitatorial jurisdiction (*a*)

Rex v. *J. of Wiltshire*, 10 *East*, 404. On a rule for a mandamus to hear an appeal by Stourton against an order of removal from Mere, in Wiltshire, it appeared that the appellant's attorney lived at Wincaunton, in Somerset; that he was applied to by the officers of S. on the 19th of April last, to enter the appeal and get it respited until the next sessions, in consequence of which, notice of appeal, and of the intended motion to respite, was given to the respondents; the next sessions was held on the 26th of April, when the appeal was entered and respited to the Midsummer sessions, which was held at Warminster on the 12th of July; on the 2nd of July the appellant's attorney learnt, for the first time, that the sessions had made certain rules for their practice, which were not published till after the April sessions, nor acted upon, nor officially circulated, till the Midsummer sessions, by which it was required that, on all trials of appeals, the notice of trial was to be given on or before the Monday in the week next before the sessions, otherwise the notice to be deemed insufficient, *and that the like notice was to be given in the case of respited appeals, unless, &c.* On Tuesday, the 5th of July, notice of trial of the appeal was served on the respondents, at six o'clock in the morning, dated the day before, being as soon as the signatures of the parish officers could be obtained. The usual notice theretofore required in such cases, in this and the neighbouring counties, was given in this case. The appeal was called on, when the respondents objected that the notice had not been given in time. The appellants then applied for an adjournment under the circumstances, offering to pay the costs of the day; but the court refused it, thinking they had no power to do so. Affidavits were read in answer, alleging that the new order of practice was made at the preceding January sessions, held at Devizes: and that notice of it was immediately after promulgated in the county; that the appellant's attorney lived only five miles from S., though in the county of Somerset; and that the litigating parishes were very near to each other. Lord *Ellenborough*, C. J. "The magistrates certainly had a discretion to exercise with respect to what was reasonable time for giving the notice of appeal; but we have also a kind of visitatorial jurisdiction over them, in the exercise of such discretionary power; and we think that

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court *that there has been sufficient time since the removal of the paupers for the appellants to give notice* and come prepared to try this appeal at this sessions, and no cause shown why they did not proceed accordingly, it is ordered *that the motion for lodging the same, and respiting the hearing to the next quarter sessions, be rejected.*" The court were of opinion that the justices had not acted wrong; for the motion was in effect to adjourn the appeal. And it was evidently the intention of the parties not to enter the appeal, unless the court would adjourn it. *The justices are to judge of the reasonableness of the time;* and in some counties they establish a rule regulating the time of notice. Here it appears that the order of removal was executed on the 28th of November; so that there was sufficient time for the appellants to give notice and to come prepared to try it; and the justices, who are the judges of this, thought so. Rule for mandamus discharged.

(*a*) "It is not correct to say this court sets its discretion against that of the sessions." *Parke*, J., 5 *B. & Ad.* 671, *Rex* v. *Yorkshire J.*

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in this case they have not exercised that discretion in a way that we ought to give effect to; but that we ought to interfere and correct it. Here it appeared that a new rule of practice, with respect to giving notice, had been recently made by the sessions, of which the appellant's attorney had no knowledge, but he conformed himself to the former practice; and, under these circumstances, it would be too much to conclude the appellants from having their case heard." Rule absolute. [Though by 13 & 14 Car. II. c. 13, the appeal was to be lodged at the *next* quarter sessions, yet when it was so lodged, the justices might have adjourned it *toties quoties* the purpose of justice required. *Vide Rex* v. *Lumley*, 2 *Salk.* 605. And there is nothing in 9 Geo. I. to restrain their general power in this respect, but rather to compel the adjournment, if the first notice has not been given.] —(Mr. *East's* note.)

The 9 Geo. I. c. 7, s. 8, only applies to the first sessions after executing the order of removal; and therefore the court will not interfere with the discretion of the magistrates at the second as to adjournment, if it is in furtherance of a reasonable practice.

Rex v. *Monmouthshire*, 3 *Dowl. P. C.* 306. By an order of removal, dated May 28th, 1834, a pauper was removed from Bedwellty, Monmouthshire, to Rhyndwyclydach Lower, Glamorganshire. At the following sessions, held at Usk on the 30th of June, an appeal against the order was entered and respited. No notice was given to the respondents previous to such entry and respite; but on the 30th of September following, the agents received a letter, inclosing a notice of appeal, which notice was forwarded by them, by the same day's post, to the attorney for the respondents. By the practice of the Monmouthshire sessions, eight days' notice is required in common appeals, and fourteen days' notice in respited appeals. The Michaelmas sessions were held at Usk on the 14th of October; it was therefore admitted that the notice of appeal was served too late, in consequence of which notice was given by the appellants to the respondents, that they should move to adjourn the appeal at the ensuing sessions. Accordingly at those sessions the appellants did so move; when the court, exclusive of the chairman, being equally divided in opinion, he gave the casting vote against the appeal being adjourned. The attorney for the appellants stated in his affidavit that he was wholly ignorant of the practice of the Monmouthshire sessions, never having tried an appeal at them; and that he never heard that fourteen days' notice of appeal, in case of adjourned appeals, was necessary, until he was so informed by a letter, dated the 30th of September, from his agents. The affidavit against the rule stated that the agents had been in practice for many years at Usk, where the sessions were always held, and were well acquainted with the practice of those sessions. *Patteson*, J. "The question here is, to what extent the court will interfere with the jurisdiction, and with the exercise of the discretion of the sessions. Though a doubt was raised last term, whether the 9 Geo. I. c. 7, s. 8, applied to a subsequent sessions, I take it to be a settled rule, at least I always thought so, that it only applied to the first sessions. The extent to which the court will interfere with the sessions is a matter that I do not like to determine at once. In *Rex* v. *Wilts* (p. 1149), the judges seem to have gone a long way; but in *Rex* v. *W. R. Yorkshire* (p. 1149 *n.*), *Parke*, J., stated that "he did not approve of the observations in that case, that the sessions were judges of what was reasonable notice. Now if the court, in the case of *Rex* v. *Wilts*, means only that we might interfere where there is no rule, it is quite right: if it means that we are to interfere in all cases where there is an existing rule, I should have considerable doubt." *Cur. adv. vult.* *Patteson*, J. "I have considered this case; I think it seems to have been agreed on both sides that the 9 Geo. I. c. 7, s. 8, does not apply to the present case; that section unquestionably applies only to the first sessions; and that section gives no jurisdiction further than this, whether the notice is a reasonable notice or not: but it goes on to say, that, if it is not a reasonable notice, then the justices are to adjourn the appeal. They *must* adjourn it. In this case there was no notice at the first sessions, therefore the statute was entirely out of the question. The whole matter, therefore, depends on whether this court can interfere where the magistrates have laid down a rule, and

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have chosen to act upon the rule. *Rex* v. *Wilts* has been a good deal relied upon. That case is certainly one in which some of the expressions have been, I will not say found fault with, but cautiously abstained from in later cases, because the judges thought they went too far; that case proceeded entirely on this, that there was a new practice, only existing for two sessions, doing away with the former practice, and the attorney had acted in ignorance of that practice, and the court thought that the sessions had acted wrongly. How far there would be a similar decision now may be doubtful. But this case is not like that. Here there is no suggestion that the practice is a new practice; and I cannot say that that practice is an illegal practice. The practice requires eight days' notice of an original appeal, and fourteen days' notice of an adjourned appeal: why more should be required in the latter case than in the former I do not see." [Counsel. "It is founded on this ground, that the respondents may naturally expect to have an appeal at the first sessions after the order, and therefore eight days' notice will be sufficient; but if the appellants pass by the first sessions, the respondents will be lulled into security, and therefore are fairly entitled to a longer notice at the second sessions."] *Patteson*, J. "I suppose that may be so. There is nothing illegal in it. There is nothing so absurd in it as to require us to lay it down that it is not good. If the sessions have thought fit to lay it down, they may abide by it. It was for the sessions to determine whether they would adjourn. The sessions seem to have differed in opinion, but that is immaterial. It was in the exercise of their discretion whether they would adjourn. It was purely a matter of discretion. Undoubtedly, there was no great hardship on the attorney; he was a stranger, but he ought to have informed himself of the practice of the sessions where the case was to come on. Reliance was placed on *Rex* v. *W. R. Yorkshire.* There there was a special act, allowing an appeal upon giving ten days' notice of appeal, and nothing was said about that appeal, supposing it to be adjourned. The sessions refused to adjourn; and this court said that the sessions were wrong, because there was no practice, which there could not be, as to that appeal. There was no general practice brought to the notice of the court, and therefore they held that the sessions had acted wrongly in refusing to hear the appeal, there being nothing at all to show that the party desirous of appealing was to give a notice at the second sessions. Here there is a distinct practice of requiring such a notice." Rule for a mandamus discharged with costs.

Mandamus to hear appeal granted, when by practice of sessions fourteen days' notice was required.

Rex v. *Lancashire*, *J.*, 7 *B. & C.* 691. An order was served, and instructions given for appeal too late to try the appeal at the July sessions in 1827. It was lodged and respited then. On the 8th of October notice of appeal was given for the sessions held October 22nd. By a rule of sessions made in 1816, fourteen days' notice, *exclusive of the day of notice and the day of holding*, was required. The attorney thought that the fourteen days were to be calculated, one exclusive, and the other inclusive. Lord *Tenterden.* "We think that justice will be most satisfactorily administered by ordering the justices to enter continuances, and hear this appeal. They certainly have a discretionary power to make rules for the governance of the practice of the sessions, but the case cited (*Rex* v. *Wiltshire*, J., *ante*, p. 1149,) shows that this court, for the purposes of justice, will interfere to control that discretion." Mandamus granted.

No notice of appeal is required where the respite takes place at the instance of the respondents.

Rex v. *Lindsey*, 6 *M. & Sel.* 379. An order of removal from Messingham to Tickhill was made on the 7th of January, 1817. On the 11th, Tickhill gave notice of appeal. At the sessions the respondents moved to adjourn the appeal on account of the absence of a witness, and it was adjourned. At the following sessions the respondents objected that no notice of appeal for that sessions had been given; and the order was confirmed without a hearing. By the rules of the sessions in all cases of appeal, not otherwise directed by law, ten days' notice in writing is required, and in case of respited appeals the like notice is given, unless the parties agree to the contrary. Lord *Ellenborough.* "The appeal was adjourned at the instance of the respondents, who now require notice; but

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have they not, in effect, had notice? The object of giving notice is to inform a person of that of which he may, otherwise, remain ignorant; but a person cannot be supposed to be ignorant of that which is done at his own request, and for his own convenience." *Bayley*, J. "The practice of the sessions does not apply to this case, but only to the common case of entry and respiting an appeal. In many cases parties enter and respite an appeal as a matter of course, not having satisfied themselves of all the facts of the case. But here the appellants were ready and in condition to try, and but for the application of the respondents, would have tried their appeal. Then the respondents desire to respite it, which is, in effect, an agreement that they will be ready at the next sessions to try it without notice."

If a regular notice has been given for one sessions, and the appeal be adjourned at the instance of the appellants, after hearing counsel on both sides, it is not necessary to give a strictly regular notice of trial for the following sessions.

Rex v. *Gloucestershire*, 3 *Dowl.* 298. The order of removal was made in March, 1834, and notice of appeal was given for the Easter sessions. At those sessions, upon the application of the appellants, the appeal was adjourned, upon an affidavit of the illness of a material witness for the appellants, after the court had heard counsel on both sides, the appellants paying the costs of the day. A second notice of appeal was given for the July sessions, which was too late by two days, if the rules of the sessions applied to this case. Those rules required notice on all trials of appeal to be given on or before the Thursday in the week next before the sessions; and the like notice in the case of respited appeals. Another rule required the appellants to produce the pauper, on the trial of the appeal, or the order would be confirmed. Within a few days of the July sessions the pauper was confined, and thereby rendered incapable of being produced at those sessions; in consequence of which the appellants, on an affidavit of these facts, moved to adjourn the appeal again, when it was objected that the appellants could not be heard; first, on the ground that the notice was too short; and secondly, on the ground that the pauper was not produced. The sessions refused to adjourn the appeal, and confirmed the order. *Cur. adv. vult.* *Littledale*, J., afterwards sent an intimation to the crown office, that he was of opinion that the rule for the mandamus ought to be made absolute: but giving no other reason than "I thought the notice sufficient." Rule absolute.

Mandamus to be applied for speedily.

No answer that a case was offered.

The application for a mandamus must be made speedily, and, it seems, in the term next after the refusal (*Reg.* v. *J. Yorkshire*, 13 *L. J.* 80, *M. C.*) It is no answer to the application for a mandamus, that the justices had offered the party a special case (13 *L. J.* 84, *M. C*).

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7. Of Evidence.

54 Geo. III. c. 170, s. 9, rated inhabitants and parish officers declared to be competent.

By 54 Geo. III. c. 170, s. 9, "No inhabitant or person rated or liable to be rated to any rates or cesses of any district, parish, township, or hamlet, or wholly or in part maintained or supported thereby, or executing or holding any office thereof or therein, shall on such account be deemed an incompetent witness for or against such district, parish, &c., in any matter relating to such rates or cesses, or relating to any order of removal, or the settlement of any pauper, or touching any bastards chargeable or likely to become chargeable to such district, parish, township, or hamlet, or the recovery of any sum or sums for the charges or maintenance of such bastards, or the election or appointment of any officer or officers, or the allowance of the accounts of any officer or officers of any such district, parish, township, or hamlet, any law, &c., notwithstanding."

Decisions thereon.

See the decisions on this act in *Meredith* v. *Gilpin*, 6 *Price*, 146; and see also 1 *B. & Ald.* 87; 2 *Stark. R.* 215; *Rex* v. *Hayman*, *M. & M.* 401; *Marsden* v. *Stansfield*, 7 *B. & C.* 815; and *Rex* v. *Bishop's Auckland*, 1 *A. & E.* 744.

In *Slocomb* v. *St. John*, 29th August, 1829, on an issue to try whether the parish of Putney were to appoint both churchwardens, or whether the minister, by custom, is to appoint one, Sir *J. A. Park* held, that a rated inhabitant of the parish is a competent witness to prove that the parish elects both churchwardens, saying, that the principal object of the act, on

the face of it, appears to relate to the poor, yet the words "election or appointment of officers" are very general.

In *Oxenden* v. *Palmer* it was held, that an inhabitant of a parish is not, either at common law or under this act, a competent witness to prove the right of surveyors of highways in a parish to take beach from the sea shore in order to repair highways.

A witness in a settlement case having admitted that he had rateable property in the township, which was at that time *primâ facie* a disqualification, was allowed to prove on the *voire dire* that he was not actually rated. (*a*)

The overseers, on a parochial appeal, were not competent witnesses.

Reg. v. *The Recorder of Bath*, 1 *P. & D.* 469; 8 *A. & E.* On a rule for a mandamus to hear an appeal it appeared, that on an appeal being called on, between two parishes of the city of Bath, an overseer of the appellant parish was called to prove the notice of appeal, when objection was taken that the recorder of a borough had no jurisdiction to try a settlement appeal; and secondly, that an overseer was not a competent witness: the recorder being of opinion that he had no jurisdiction, acceded to the objection and dismissed the appeal. Lord *Denman* observed, "The impression on my mind is, that these preliminary matters may be proved by the parties nominally interested. We will, however, look into the late act." *Cur. adv. vult.* Lord *Denman* afterwards said, "The question is, whether the recorder of Bath did right in rejecting the evidence of an overseer, who was called to prove the notice of appeal; and we are of opinion that the recorder did perfectly right in rejecting him, for none of the statutes make him competent. I had some doubts whether he might not be competent to prove a notice, as in this court we frequently admit affidavits from parties on preliminary matters; but on reflection we are of opinion that no distinction of that sort can prevail." Rule discharged.

Rate payers made competent witnesses.

In consequence of this decision, it was enacted by the 3 & 4 Vict. c. 26, "That no person called as a witness on any trial, in any court whatever, may and shall be disabled or prevented from giving evidence by reason only of such person being, as the inhabitant of any parish or township, rated or assessed or liable to be rated or assessed to the relief of the poor, or for or towards the maintenance of church, chapel, or highways, or for any other purpose whatever."

So also parish officers when only nominal parties.

And by s. 2, "No churchwarden, overseer, or other officer in and for any parish, township, or union, or any person rated or assessed or liable to be rated or assessed as aforesaid, shall be disabled or prevented from giving evidence on any trial, appeal, or other proceeding, by reason only of his being a party to such trial, appeal, or other proceeding, or of his being liable to costs in respect thereof, when he shall be only a nominal party to such trial, appeal, or other proceeding, and shall be only liable to contribute to such costs in common with the other the rate payers of such parish, township, or union."

Owner of lands is incompetent.

As to the construction of this statute, see *Reg.* v. *Alderbury East*, p. 1155. In *Reg.* v. *Doddington*, 1 *Q. B.* 411, it was held, that this statute had rendered the *owner* of lands a competent witness, although he was not liable to be rated, as it would be absurd and ridiculous for an act to render those immediately liable to the rates competent, and exclude those remotely liable.

A pauper competent to prove his own settlement.

A *pauper* is a competent witness, and may be examined as to the fact, whether he had ever gained a settlement, or whether there was a reasonable ground to conclude that he had gained a settlement in the appellant parish by apprenticeship or otherwise. *Per Bayley*, J., in *Rex* v. *Yarwell*, 9 *B. & C.* 895; 4 *M. & R.* 685; and *per Ashhurst*, J., in *Rex* v. *Eriswell*, 3 *T. R.* 720.

A rated inhabitant is to be considered as a party to an appeal be-

Rex v. *Woburn*, 10 *East*, 395, 402. Upon an appeal by the overseers of St. Alban, against an order of removal from Woburn to St. Alban, J. Hilliard, an inhabitant of St. Alban, and rated and paying poor rates,

(*a*) *Rex* v. *Gisburn*, 15 *East*, 57; *Rex* v. *Killerby*, 10 *East*, 292.

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tween his parish and another touching the settlement of a pauper, and cannot be *compelled* to give evidence against his parish.

A mortgagee, a rated inhabitant of the appellant parish, subpœnaed by the respondent parish, is not compellable under a *subpœna duces tecum* to produce the title deeds of his mortgagor. His attorney cannot be allowed to produce an *abstract* of the deeds, or to give parol evidence of their contents.

A party to the appeal not compellable to give evidence.

was called as a witness for the respondents, and refused to give evidence. The sessions were of opinion that John Hilliard was not *compellable* to give evidence, and quashed the order, subject to the opinion of the court on this point. The court said, that the question being of general consequence, as involving the construction of the late act, they would advise upon it before they delivered their opinion. And *Le Blanc*, J., observed, "That if the sessions had been aware at the time of the extent of the question, there would have been no difficulty: for if the witness were rejected on the ground of his being a party to the suit, his declaration of any facts touching the matter in issue would necessarily have been evidence against him."

Rex v. *Upper Boddington*, 8 *D. & R.* 726. Ann Leigh was removed, from Upper Boddington to Staverton. Order quashed. Case:—Joseph Leigh, the pauper's late husband, was the son of George and Isabella Leigh, who for many years after the year 1776 resided in a house in the appellant parish. Notice had been given by the respondents to a Mr. Thomas Hands, to the parish officers, and to their attorney, *subpœna duces tecum* served on Mr. Thomas Hands, to produce at the trial all the deeds, papers, and writings relating to a certain cottage, situate in Staverton, heretofore the property of George Leigh and Isabella his wife, or one of them, late of Joseph Leigh, deceased, and now of Richard and George Leigh, and lately on mortgage to the representatives of Mr. John Liddall, deceased, and particularly a lease and release bearing date respectively the 8th and 9th of April, 1776, and made between Elizabeth Isham, daughter and devisee of William Isham, the said George Leigh and Isabella his wife, and the said Joseph Leigh, the only son of the said George Leigh by the said Isabella his wife, of the second part, and John Leigh, of Upper Boddington, weaver, and Henry Burditt, of Staverton, shoemaker, of the third part; which deeds it was contended would, when produced, prove a conveyance of the said house to the said George Leigh. The lease and release were, before the removal of the pauper, in the hands of Mrs. Ann Marriott, as a mortgagee, at which time an abstract of them was made by a clerk of her solicitor, by the solicitor's direction. Afterwards these deeds came into the possession of Mr. Thomas Hands, as assignee of the said mortgage. Mr. Hands appeared in court in compliance with the subpœna, with a parcel of deeds, but objected to produce the one in question, as it formed one of the title-deeds of his property; and the court held that he was not bound to produce it. The respondents then called the clerk who made the abstract. He proved that the deed from which the abstract was made consisted of a lease and release, though he did not particularly notice with what stamp; and it appeared to have been duly executed. The respondents then tendered the abstract as secondary evidence of the contents of the deed, or offered to give parol evidence of its contents by the clerk. To this evidence the appellants objected, and the court refused to receive it, and quashed the order of removal. *Bayley*, J. "I am clearly of opinion that the decision of sessions was right upon both points, and that their order therefore must be confirmed. Hands was a party to the appeal, and as such was not compellable by the adverse parish, by whom he was called, to give evidence at all. He was also interested as a mortgagee in the deeds, and as their production might by possibility have put his interest in jeopardy, he was justified in refusing to produce them. The deeds themselves not being produced, secondary evidence of their contents was certainly admissible; but then that secondary evidence must have been of an unexceptionable nature in point of law. Was the secondary evidence offered in this case of such a nature? Clearly not. The abstract was made by the attorney of a former mortgagee of the premises, of which the deeds constituted the title; and those deeds had come into Mr. Hands' possession as the assignee of that mortgagee. It was therefore an abstract made by an attorney for the purposes eventually of Mr. Hands, and as it remained in that attorney's possession after Mr. Hands became the mortgagee, must be taken to have been deposited there by him, and for his use and benefit, and the attorney was not at liberty to produce it. If so, it follows that the

attorney could not be at liberty to give evidence of the contents either of the deeds or the abstract, because the whole of those contents were a confidential communication between a client and his attorney, and therefore privileged from disclosure; and as to the attorney's clerk, he stood precisely in the same situation as his master. I think it would be opening a door to great abuse of the confidence necessarily reposed by the client in his legal adviser, if we were to hold such evidence as this admissible." The other judges concurred. Order of sessions confirmed.

Declaration of a rated inhabitant admissible against his own parish.

In *Rex* v. *Hardwicke*, 11 *East*, 557, where it was held that the declaration of a rated inhabitant was admissible, although it is exceedingly weak evidence in the case of a settlement. And the admissibility was determined on the principle that the inhabitants are substantially the parties to the appeal.

Even since 3 & 4 Vict. c. 26.

Reg. v. *Alderbury East*, 13 *L. J.* 9, *M. C.* Upon an indictment against a township for not repairing a bridge, the declaration of an inhabitant of the township is admissible in evidence against the township, on the ground that he is a party to the record, although he be not a rated inhabitant. It was contended that the 3 & 4 Vict. c. 26, had not only made parties competent witnesses, but their ability to refuse to give evidence was removed. But the court were of opinion that the statute had not deprived the crown of the right of using such declaration. The act removes any disability that existed to a party being a witness, on the grounds either that he was rated, or a nominal party to the trial. He is not on that ground to be incompetent, but as a party he cannot be compelled to give evidence against himself, and therefore his admissions or declarations are receivable. It had been previously held that the declaration is admissible, though the party who made it is alive. (*Woolway* v. *Rowe*, 3 *Nev. & M.* 849; 1 *Ad. & Ell.* 114.)

7. Effect of an Order unappealed against.

7. *Effect of an Order unappealed against.*

1. *How far it is Final.*
2. *Of what Facts it is conclusive, when Unappealed against.*

1. How far it is Final.

1. *How far it is final.*

Order not appealed against is final; and there can be no second order reversing the first, excepting by appeal.

Malendine v. *Hunsdon*, *Fol.* 273. Two justices, by an order, send some persons to Hunsdon; two justices there, by an order, send them back again. By the court: "They ought to have appealed, and not sent them back; and held the order of the first two justices to be good, because there was no appeal against it."

Parish, upon whom an original order is made, cannot remove till that be reversed.

Chalbury v. *Chipping Farringdon*, 2 *Salk.* 488. A person was removed, by an order, from a parish in Warwickshire to Chalbury; from thence, by an order, to Chipping Farringdon. It was objected, that Chalbury ought to have appealed, and got the order upon them discharged; to which *Holt*, C. J., agreed; for sending the man to another place is falsifying the first order, which cannot be done but by appeal: for the order is a determination of the right against all persons, till it be reversed. Chalbury should have appealed from the Warwickshire order, and got that set aside, and sent the man back thither; and the justices there should have sent him to Chipping Farringdon. Therefore the latter order was naught.

A second order must be obtained where a settlement has been completed since the first order.

Rex v. *Widworthy*, *Andr.* 4 (*ante*). If a person has an inchoate right of settlement in the parish removing him (*ex gra.* as being entitled, when so removed, to administration of an estate in the parish,) which he *afterwards* perfects (by obtaining a grant of administration) before the appeal against the order of removal is heard, this does not authorise the sessions to quash such order. The proper course, in such case, is to remove him back by a new order. (And see *Rex* v. *Willoughby*, p. 818.)

The original order is, when unappealed from, conclusive. (a)

Rex v. *Leverington*, *Burr. S. C.* 276; 2 *Bott*, 935. Removal from Sut-

(a) See *Rex* v. *Mytton*, 4 *Dougl.* 333; *Cald.* 536. See also *Rex* v. *Ealing*, p. 997.

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ton St. Mary's to Leverington; and no appeal. Four months after the first order, a second order was made to remove the pauper from Leverington to Sutton St. Nicholas; which second order was confirmed upon appeal. By the court: "The second order, and the order of sessions confirming it, were quashed, and the first order was confirmed; for L. was bound by the first order unappealed from, unless some subsequent settlement appears, and four months is not a sufficient distance of time, whereupon to ground a presumption of having acquired a new settlement. And the order of sessions confirming the first order was quashed, as being a voluntary and extra-judicial act of the sessions, to confirm an order which was not complained of. A resolution to the same effect in *Godalmin* v. *St. Michael's, Winchester*, 13 Geo. II., was mentioned by the court.

Except where the removal is to a place that does not maintain its own poor separate.

But in *Rex* v. *Swalcliffe, Cald.* 248; 2 *Bott*, 896, where T. Hawkins and his wife were removed from Swalcliffe to Stourton, the sessions quashed the order, and stated specially, that the pauper was born at Swalcliffe; that in January, 1782, he was moved from Swalcliffe to Ascott, a large populous village, part of the parish of Whichford, and maintaining its poor in common with Whichford: Ascott did not appeal, and Swalcliffe filed the order at the Epiphany sessions, 1782, for safe custody. The pauper and his wife coming again into Swalcliffe, and not having acquired any subsequent settlement, Swalcliffe obtained the first-mentioned order, and sent the paupers to Stourton, where he had gained a settlement by hiring and service. It was contended, an order is exclusive only when directed to a place to which a removal can legally be made, and where there is to be found some person legally authorised to appeal; yet that here were no officers to act: that to omit to do a thing which was impossible to be done could not be conclusive upon any one: that Whichford could not in this case appeal; for not being parties, they were not entitled to be heard. By Lord *Mansfield*, C. J. "The removal to Ascott was, in truth, no removal at all; there was no reason for an appeal; it was a mere nullity." Order of sessions quashed. (See *Rex* v. *Denbighshire J.*, p. 1100.)

Where the justices making the order want jurisdiction, it is a matter of *substance*, and not of *form*, and such an order, although not appealed against, is totally void, and cannot be amended.

Rex v. *Chilverscoton*, 8 *T. R.* 178. W. Fennel removed from Sow to Chilverscoton. Order confirmed. Case:—The pauper, in 1779, married his present wife in Bedworth, where he then resided; they were afterwards removed to Sow by order: "To the churchwardens, &c., of Bedworth, in the county of Warwick, and to the churchwardens, &c., of Sow, in the county of the city of Coventry; whereas complaint has been made by you, the churchwardens, &c., of Bedworth, unto us whose hands and seals are hereunto set, two of his majesty's justices of the peace (whereof one is of the *quorum*), *for the county aforesaid*, that W. Fennel, E. his wife, &c." [The other parts were regular; it was dated 16th March, 1779. No county was mentioned in the margin.] Against this order there was no appeal. In May, 1779, a certificate was granted by Sow to Bedworth, acknowledging the pauper to be settled in Sow, but, at the time of granting this certificate, no settlement had been gained in Sow, unless the above order from Bedworth to Sow had conferred one; but the pauper's settlement had always continued at Chilverscoton. Lord *Kenyon*, C. J. "It should appear upon the face of the order, that the justices who made it had jurisdiction; which, if they had, every fair presumption will be made that they decided rightly; but if they had not, the proceeding is a nullity. It is said, however, that the parish of Sow ought not to be permitted, at this distance of time, to object to the order; but there is a maxim that *quod ab initio non valet tractu temporis non convalescet*. And as this order was void at the time when it was made, because it does not appear that the justices who removed had any jurisdiction, it cannot have become a valid order by the time that has since elapsed. A general proposition, indeed, that an order of removal unappealed against is conclusive on the parish to which the removal is made, cannot be shaken; but it must be understood as part of that proposition, that the order is not a nullity, but was made by two justices having jurisdiction to make it. The *Rex* v. *Stepney* (p. 29), is, I think, decisive of the present." *Lawrence*, J.,

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expressing some doubt on the subject, the case was not then finally decided; but afterwards Lord *Kenyon*, C. J., said, "that after considering the cases cited, and upon the authority of *Rex* v. *Stepney*, and *Rex* v. *Bedwin*, we are of opinion that the former order was a nullity; and though it was not appealed against, it was not conclusive on the parish of Sow." Order of sessions confirmed.

Rex v. *Hulcott*, 6 *T. R.* 583, though on a different statute, confirms *Rex* v. *Chilverscoton*. And see *Rex* v. *Stotford* (p. 1047), in which case the order was held to be *voidable* only on appeal; but the objection did not appear on the face of the order. (See also *Rex* v. *Cottingham*, p. 127.)

The order may be abandoned.

We have already seen that an order of removal may be abandoned by consent: and in such cases a fresh order may be obtained. (*Rex* v. *Diddleby*, *ante*.)

By an order, unappealed against, a pauper was removed from A. to the parish of B., in the county of S. B. at that time consisted of two townships, C. and D. (jointly maintaining their own poor,) in the county of S., and one township, (separately maintaining its own poor,) in the county of W. This order is conclusive upon that part of B. which lies in the county of S., *semble*. After the removal, C. and D., being required by mandamus, elect separate overseers and maintain their poor separately; the same pauper is afterwards removed from A. to the township of C. C. is not estopped by the former removal.

Rex v. *Oldbury*, 5 *Nev. & Man.* 547; 4 *A. & E.* 167. An order of removal of R. Thompson from West Broomwich to Oldbury was confirmed. Case:—The parish of Hales-Owen consists of the borough of Hales-Owen, the township of Oldbury, and ten other divisions situate in Shropshire, and three townships (Lutley, Cradley, and Worley), situate in Worcestershire. The three Worcestershire townships have always supported their poor apart from each other and from the rest of the parish. The township of Oldbury, the borough of Hales-Owen, and the ten divisions above mentioned, which lie in Shropshire, and which form the remaining part of the parish, until the separation of the township of Oldbury from them, as hereafter mentioned, always supported their poor *jointly*, and the affairs of the Shropshire part of the parish had, until that event took place, been administered by the churchwardens and four overseers, appointed respectively for four quarters, (Oldbury being one,) into which that part of the parish was divided. In 1832, this court made absolute a rule for a mandamus to compel the appointment of overseers for the township of Oldbury, pursuant to the 13 & 14 Car. II. c. 12, s. 21; since when that township has maintained its own poor distinct and apart from the other parts of the parish. In 1816, the pauper, together with her father and the rest of his family, were removed by an order of justices from Harborne, Staffordshire, to the parish of Hales-Owen, in the county of Salop. Against this order no appeal was made, and no subsequent settlement has been gained by the pauper. The pauper having become chargeable in West Broomwich, (where she resided,) was removed to the *township* of Oldbury, by an order of 6th January, 1834. Against this order an appeal was entered, and came on for trial at the last Easter sessions for Staffordshire; when the respondents put in the order of removal made in 1816, and unappealed against. The appellants then proposed to prove that the pauper had never gained any settlement in Oldbury, but the respondents contended that the last-mentioned order being unappealed against, was conclusive upon the parish of Hales-Owen, and every part thereof, and that as Oldbury at that time formed part of the parish of Hales-Owen, it was now *estopped* from contesting the question of the pauper's settlement not being in that township. And the sessions being of this opinion, declined to hear the evidence of the appellants, and confirmed the order. The question was, whether Oldbury was precluded from contesting the question of the pauper's settlement, in an appeal against the present order. Lord *Denman*. "I remember that when I first read the case, I thought that the respondents were right in contending that the order of removal was conclusive. But upon more consideration, I think that the township of Oldbury is now estopped. In 1816, a removal was made to the whole parish of Hales-Owen, which then consisted of fifteen divisions; three in Worcestershire, and twelve in Shropshire. There is a good deal of difficulty introduced into the case, in consequence of the mode in which the parish of Hales-Owen is described in the first order of removal. The words 'in the county of Salop,' may be considered as introduced in order to identify the parish. Upon this I entertain much doubt. Supposing, however, the order to have been pro-

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perly made to the whole parish, it appears to me that the township of Oldbury, which began to maintain its own poor some time after the order had been made, was at liberty to deny that it was estopped from giving evidence to show that the settlement was not gained in that part of the parish of Hales-Owen which constitutes the township of Oldbury. Were it otherwise, a removing parish would be at liberty to select any township in the parish. There is no estoppel, unless the parties are the same. The party in the order of 1816 was the parish. The party now is the township. As the parties removing the pauper thought fit to say that the pauper was settled in the township of Oldbury, they ought to have proved the fact. *Rex* v. *Oakmere* is inapplicable, since it relates to a district newly made parochial—not to an immemorial vill. Lord *Tenterden* (*a*) says, 'This case arises on the act 52 Geo. III. for inclosing the forest of Delamere, and the question is, whether the district newly created into a township under this statute, which before was neither in any parish nor township, is to be considered as if it had formerly been a parish or township with regard to settlement, or only as becoming so from the time of its creation under the act, and as if it had been formerly uninhabited. And we are of opinion that the latter is the true construction and effect of the statute.' It would rather seem, therefore, that if that, instead of being a new district, had been an ancient division which could have maintained its own poor, when it began to have separate overseers, it would have become a separate township as from the earliest time, and would have constituted such a division as a removal might have been made to. Under these circumstances, it appears to me that we must take it that the township is not concluded by any order made on the parish of Hales-Owen." *Patteson*, J. "I entertain very considerable doubts upon this question. I thought, when the case was mentioned last term, that the township was estopped altogether, and precluded from denying that the pauper was settled in their township. My doubts are not cleared up now; but my lord and my brothers think that the township was not estopped, and I do not feel the doubts so strong as to lead me to say that I entirely differ from the rest of the court. The parish seems to have been divided long before the first order of removal was made, and it ought to be taken that the order was made on that part of the parish which lies in Shropshire; and the order being so made, the pauper was continuously settled in that division of the parish, and in the Oldbury part of the division as well as in the other parts. If it had been proved that the settlement had been gained by renting a tenement, not in Oldbury, that would not show that the pauper was not settled in Oldbury as to a third parish. Since the making of that order Oldbury has been separated from the rest of the division of the parish, but I cannot fully understand how, by a district's dividing itself into partitions, any particular portion can get rid of a liability that previously attached to the whole. At the same time there are great inconveniences in deciding the other way, because it would follow that every part would be estopped, as well as Oldbury. I confess I am not fully satisfied, but my doubts are not so strong as to make me differ entirely." *Williams*, J. "There is certainly the difficulty pointed out by my brother *Patteson*, that the parish, by their own act, are to get rid of a liability previously fixed upon them by the order of removal. Then, on

(*a*) Lord *Denman*. "In *Rex* v. *Oldbury*, I referred to a passage in Lord *Tenterden's* judgment in *Rex* v. *Oakmere*, as to the effect of modern appointments of overseers to townships which previously had none. It seems to me, however, that those remarks are not altogether sound. Though a vill or township may have existed from time immemorial, it cannot be said that the obligation on it to maintain its own poor separately has existed from time immemorial, as there may have been no means of appointing officers for that purpose. What fell from Lord *Tenterden* was wholly immaterial with reference to the decision of that case." *Reg.* v. *Hunnington*, p. 407. As to the parish of Hales-Owen, see *Reg.* v. *Salop*, p. 18.

the other hand, there is this difficulty, that if the pauper is conclusively settled in the whole and every part of the parish, and the parish were subsequently divided into twenty parts, a third parish might choose any one of the parts in which to fix the settlement of the pauper. It therefore comes to this, whether the precise ground on which the sessions have acted can be sustained. They have acted on the ground that this was an estoppel, and on that ground the evidence was refused. I think the township of Oldbury was not estopped. Admitting that the township is as distinct from the parish as Cumberland from Cornwall, I cannot conceive how a decision that the party was settled in the whole parish is any decision that he is settled in the particular district." *Coleridge*, J. "I am of the same opinion. I do not think this is a question of estoppel. The ground on which an order of removal unappealed from or confirmed, is conclusive, is not that it is an estoppel, but that it is an adjudication by a court of competent jurisdiction. The ground of my decision is this: the respondents have removed to Oldbury, and are therefore bound to prove a settlement *in that township*. They put in the order of removal to Hales-Owen. That alone will not do for them. They must therefore make out their case by showing, by parol evidence, that at the time when the order was made Hales-Owen and Oldbury were identical. The sessions prematurely stopped the inquiry. At the same time, I am aware the court may have great difficulty in dealing with the case when it comes before them again. On the present statement I think the sessions have done wrong." Order quashed; the case to be reheard.

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2. Of what Facts it is conclusive when Unappealed against.

2. *Of what Facts, &c.*

Rex v. *Northfeatherton*, 1 *Sess. Ca.* 154. Order of removal of a man, his wife, and four children, naming them, to Featherton, and no appeal. Afterwards Featherton found out that this woman was not the wife, for that the man was married before to another. And they removed the woman by her maiden name to Horsington, and the four children thither as bastards. Horsington appealed; and the sessions stated that this woman and the four children were the same with those removed by the first order, and quashed the second order. And by the court: "They have slipped their opportunity, and the first order not appealed against is conclusive."

An order removing a wife and children is conclusive of the marriage.

Nympsfield v. *Woodchester*, 2 *Stra.* 1172. In 1731, a man and his wife were removed from Nympsfield to Woodchester, and no appeal. They afterwards returned to Nympsfield and had there three children, who were now sent from Nympsfield to Woodchester, together with the father. And upon appeal as to the children, evidence was offered that the man had a former wife, and, consequently, the children born at Nympsfield were bastards settled there. The sessions refused to go into this evidence, being of opinion that Woodchester was concluded by the first order, and that it made no difference that the children were born afterwards. The court, on debate, confirmed both orders; for the marriage being established by the first order, the settlement of the children (which is derivative) follows of course, and can no way be impeached, but by entering into the merits of the first order, which hath been acquiesced in. And nothing is more established, than that an order, unappealed from, is conclusive.

It is conclusive of the fact of marriage in respect of after-born children, claiming settlement from the father and mother.

In *Rex* v. *Silchester*, *Burr. S. C.* 551, the court were so clear in this as a settled point, that they did not hear counsel on the side of the objection.

Rex v. *St. Mary, Lambeth*, 6 *T. R.* 615. The pauper (with her three children) was removed as Elizabeth the wife of W. T. from St Mary, Lambeth, to Huntspill. Order confirmed as to Elizabeth, but quashed as to the children. Case:—The pauper, Elizabeth, in 1784, was removed from Stoke-under-Hampden to Huntspill, with and as the wife of a man, to whom, before that time, she had been married, which order was unappealed

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from. The appellants offered to give in evidence, that the pauper Elizabeth had been married to W. T. illegally, he then having a former wife, and which wife was still living; the children were born of the pauper Elizabeth during her cohabitation with W. T.; and the court said, "that *Rex* v. *Southowram* (*infra*), and *Rex* v. *Lubbenham* (p. 986), did not affect the authority of *Rex* v. *Woodchester* (p. 1159), and in that case it was established, that an order of removal unappealed against is conclusive, not only on the persons removed, but also on all derivative settlements from them."

If a feme coverte be removed by an order describing her as a "widow," it is conclusive not only as to *her* settlement, but as to that of her husband's also.

Rex v. *Rudgeley*, 8 *T. R.* 620. Removal of Emanuel Smith and Elizabeth his wife from Acton Trussell to Rudgeley confirmed. Case:—About 40 years ago the paupers were married. They parted in 1787, and since that time never saw or heard of each other, until after the removal next mentioned. In 1799, Elizabeth was removed by the name and description of Elizabeth Smith, "widow," from St. George, Hanover-Square, to Acton Trussell; and against that order there was no appeal. It was said, that this was not a removal of Emanuel nor of his wife, *as the wife* of Emanuel, but simply of Elizabeth Smith, widow, and that, therefore, Acton Trussell had no notice of the ground on which the order of removal would be disputed. But *Grose*, J., said, "That this order was conclusive, as well as in the case of removal of one *as wife;* for that this description imported, that she was removed to a parish where her husband had gained a settlement, at least it put that question in issue, and therefore it behoved the parish to which the removal was made to inquire how that settlement was gained. This would have been an object of inquiry on an appeal against that order; but as that parish did not then litigate the question, the court were bound, according to all the authorities, to determine that the former order of removal is conclusive, and that not as to her only, but as to the husband likewise." And *Lawrence*, J., agreed, and also said, "that the description '*widow*' raised a presumption that she was removed to the place where her husband was settled." *Le Blanc*, J., was of the same opinion, and said, "that the cases of *Rex* v. *Silchester* (p. 1160), and *Rex* v. *St. Mary, Lambeth* (*supra*), show that an order of removal unappealed from is conclusive, though the party be removed by a wrong addition; for in both those cases the woman was removed as the wife, though, in fact, she was not the wife; yet it was holden that the parties were precluded by the orders from disputing the settlements again upon subsequent removals. That the result of all the cases seemed to be this; an order of removal, unappealed against, is conclusive; an order of removal of a woman, though not as wife, is conclusive of the settlement of the husband as well as the wife; and the circumstance of the party being removed under a wrong description does not take the case out of the general rule." Both orders quashed.

Conclusive, though not named as *wife*.

Rex v. *Towcester*, 4 *Doug.* 240. If a wife is removed, and the order unappealed against, it is conclusive as to the husband's settlement, although it was not stated in the order that she was his wife.

An order removing a father and mother is not conclusive as to a son, not then a member of the family.

Rex v. *Southowram*, 1 *T. R.* 353. Elizabeth Booth, widow, and her three children, were removed from Southowram to Northowram. The sessions stated, that it appeared by the evidence of William Booth (father of Jeremiah, late husband of the pauper), that the said William and Jeremiah were born and settled at Halifax, but it did not appear that J. had done any act to gain a settlement; that on the 6th of April, 1774, William Booth *and his wife, but not any of their children*, were removed from Halifax to Northowram, who received them and did not appeal. Jeremiah and Elizabeth the pauper were married some years before the removal of William and his wife, and had those three children; and J., from the time of his marriage until his death, *lived at H., in a house he rented, independent of his father*, and was not removed by, or mentioned in, the order, nor was then any part of his family. By the court: "The order of removal, unappealed from, is conclusive as to the *father* and *mother*, but not as to the *son*, because he is not mentioned in it, and the sessions have

expressly found that the son was settled at Halifax." Order of sessions confirmed.

Rex v. *Binegar*, 7 *East*, 377. Order of removal of Elizabeth Savage, otherwise Walters, by the name of E. S., single woman, from Midsomer Norton to Binegar, affirmed. Case :—In April, 1793, an order stated, "that John Savage, labourer, and Betty his wife, lately came into Kilmersdon, and are become chargeable ; *and upon the examination of the said Betty*, the wife of the said John Savage, it was adjudged that J. S., and B. his wife, *were* legally settled in Midsomer Norton." Betty was removed from K. to M. N., and no appeal. On the 20th of July, 1799, there was another order, made on the complaint of the parish of Wellow, by which it was adjudged that the place of the lawful settlement of the said E. S. is in M. N. No appeal against this order. At Lady-day, 1803, E. S. hired herself and served a year with J. B. of Binegar. John Savage is still living. After she left this service she returned to M. N., and became chargeable to that parish. In May, 1805, J. S. was committed to the house of correction for having run away and left E. therein, called *his wife*, so chargeable ; after this, he was at the sessions convicted of having so done, and was sentenced. The marriage between J. S. and E., before either of the said orders of removal were made, was a nullity. The question was, whether the respondents were estopped either by the orders of removal, or by the adjudication of J. S. to be a vagrant for running away and leaving *his wife*, from giving evidence to prove the marriage a nullity. The second order, treating E. S. as a single woman, was laid out of the case. And also the order of vagrancy was considered as an *ex parte* proceeding, and therefore not conclusive of the fact of marriage. And it was stated, that it did not appear that the parties ordered to be removed were within the jurisdiction of the removing magistrates ; it only stated, that the paupers *lately* came into the parish of K., not that they were *then* in the parish at the time of the order made. Lord *Ellenborough*, C. J. "The order states, and the magistrates adjudge it to be true, that the paupers *are likely to become chargeable* to the parish, which could not be, if they were not in the parish at the time." Then it was urged, that here was no adjudication of a *present* settlement, only that the paupers *were* last legally settled in M. N. Lord *Ellenborough*, C. J., said, "That it referred to the time of the complaint made, and the court could not intend an intermediate settlement between the hearing of the complaint and the making of the order of removal." And the court considered the first order of removal as good upon the face of it, and conclusive of the question of marriage, which was involved in the judgment of the justices. Orders quashed.

An order removing B., *as wife of* J. S., is conclusive of the marriage.

An order of vagrancy is not conclusive.

Lately come into the parish is sufficient.

Rex v. *Catterall*, 6 *M. & Sel.* 83. Order of removal of W. Waring, his wife and children, from Preston to Catterall, confirmed. Case :—In 1810, George W., father of the pauper, not then emancipated, gained a settlement by renting a tenement in Catterall. In 1814, he was removed by an order from Claughton to Inskip, which order was confirmed, the sessions not being satisfied of the value of the tenement at Catterall. When the order was made, the pauper was emancipated, but had acquired no settlement in his own right. It was insisted, that the order of removal of the father was conclusive as to the son, and that the value of the tenement at Catterall could not then be proved. Lord *Ellenborough*, C. J. "I own that it appears to me that in conformity to the rules which are applicable to judgments in other cases, we ought to quash the order of sessions. There is no doubt that the son is privy to the father's settlement; it is not pretended that he had any other at the time of the adjudication of the father's settlement, or that he acquired any subsequently to it. The question now is, whether the son's settlement is to be governed by this adjudication, which, as it is a matter which regards the general municipal regulations of the realm, is of universal obligation and effect, unless fraud be shown. This, then, being a fair *bonâ fide* adjudication on the subject-matter, is conclusive as to all the world. The pauper either derived a settlement from his father, or he did not. If

The order is conclusive as it regards the settlement adjudicated, and consequently of a derivative settlement.

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not, this adjudication could not affect his settlement, but if he did, then is his settlement determined by that which has been pronounced with respect to his father, to which he is privy." *Bayley*, J. "The difficulty I have felt in coming to this result, arose from the consideration lest we should thereby hold the son to be bound by an act to which he was not a party, and had no opportunity of giving an answer. But this difficulty is removed when it is recollected that this is not the son's appeal, and he might have appealed if he had been prejudiced by his removal. I forbear to give any opinion as to the question, whether it would have been conclusive against the individual if he had appealed." *Abbott*, J. "It is important that this question should be settled on general principles, rather than upon nice and petty distinctions. Now the general rule is, that an order of removal, confirmed upon appeal, is conclusive as to all other parishes, as it regards the settlement thereby adjudicated: and it is immaterial, as it respects this general rule, whether the child who derives the settlement from his father be named in the order or not. So, I think, it has been adjudged in other cases. As then the adjudication in 1814 decided that the parent's settlement was elsewhere than in Catterall, this was conclusive as to the son's settlement there, unless it could have been shown that the father acquired such settlement after the emancipation of the son." *Holroyd*, J., referred to *Rex* v. *St. Mary, Lambeth* (p. 1160), and the opinions of *Grose*, J., and *Le Blanc*, J., in *Rex* v. *Rudgeley* (p. 1160), and said, "These authorities appear to me to be decisive that the order in question, having been confirmed on appeal, is like a judgment of ouster, conclusive as to all the world, upon the point of the father's settlement, and of those deriving a settlement from him." Orders quashed.

The pauper may appeal. Is such order then conclusive?

Reg. v. *Wye*, 3 *N. & P.* 6; 7 *A. & E.* 761. W. Shrubsole and wife were removed from Doddington to Wye. Order confirmed. David Shrubsole, whose settlement was in Wye, was married to Elizabeth Fenn, whose settlement was in Kennington, at the parish church of St. Margaret's, Rochester, on the 24th day of May, 1813. By her he had issue William, the pauper, and several other children, all born during the marriage, in the parish of Eastling. David continued to reside in Eastling from his marriage until March, 1833, and during this period frequently received relief from the parish of Wye. By an order of June 6th, 1833, he was removed from Eastling to Wye, together with his wife and six children therein named, by the description of David Shrubsole and Elizabeth his wife, and their six children (naming them). The pauper William was not named in the said order, but he was then unemancipated, and had gained no settlement in his own right. At the sessions held on the 2nd July, the overseers of Wye entered and respited an appeal against this order, which was confirmed at the Epiphany sessions, on the 31st December, 1833. Previously to the confirmation of this order, the churchwardens of Wye commenced a suit in the Arches Court of Canterbury, for the purpose of annulling the marriage between David Shrubsole and his wife; and on the 1st May, 1834, a sentence of that court pronounced the marriage and license incestuous and unlawful, and that the same should be dissolved, "as having been absolutely null and void from the beginning, to all intents and purposes in law whatsoever." The sessions were of opinion that the order of removal, by which David Shrubsole and his wife and children were removed from Eastling to Wye, having been confirmed on appeal, was conclusive of the pauper's derivative settlement in Wye from David, his father. The question was, whether, in consequence of the dissolution of the marriage between the pauper's father and mother by the sentence of the Arches Court, pronounced subsequently to the date of the confirmed order, the settlement of the pauper, and consequently that of his wife, is in Eastling, the place of his birth, or in Wye, as a derivative settlement from his father. Lord *Denman*, C. J., delivered the judgment:—"In this case the pauper's father and mother, as man and wife, with their six children, were removed by an order, naming them, and dated in June, 1833, from

By an order confirmed, D. S. and E. his wife, with their six children, (named therein,) were removed to W. A subsequent order was obtained for the removal of W. S. to W., who was born during the marriage of D. S. and E. and unemancipated at the date of the first order, but not named in it. It is competent to W., on appeal against the second order, to prove that, since the first order, the marriage between D. S. &c. had been dissolved by the Ecclesiastical Court, as void *ab initio*, so as to defeat the derivative settlement.

Eastling to Wye. An appeal was entered and respited at the following July sessions, and after another respite, the order was confirmed at the Epiphany sessions, December 31st, 1833. Pending this appeal, and before the confirmation of the order, the churchwardens of Wye had instituted proceedings in the Ecclesiastical Court to annul the marriage between the father and mother as incestuous; and on the 1st May, 1834, by a decree of that court, the marriage was for this reason dissolved, 'as having been absolutely null and void from the beginning, to all intents and purposes in the law.' At the date of the order the pauper was alive, but was not named in it nor removed by it. He was born during the existence of the marriage; and at that date was unemancipated and without any acquired settlement. He was now, by the order at present in question, removed to Wye; and the only point which we have to consider is, whether the first-named order, with proof that the pauper was born during the existence of the marriage, conclusively proves a derivative settlement for him in the parish of Wye. Our opinion is, that it does not. The judgment of the sessions, upon the former appeal, decided *directly* the settlement of the persons included in the order; and this being a judgment *in rem*, was conclusive not only between the parties, but against all the world. In order to arrive at this judgment as to so much of it as affected the wife and children, it was necessary for the court, and within its competence, to examine into and determine both the fact and legality of the marriage. And although the last-mentioned matter was only incidentally within the cognizance of a temporal court, and therefore it might have seemed, according to the judgment delivered by *De Grey*, C. J., in the House of Lords, on the trial of the Duchess of Kingston, (*a*) that the order was no evidence with regard to it in any future proceeding; yet numerous cases have decided that orders of removal, unappealed against or confirmed on appeal, are not only evidence, but conclusive as to all the facts mentioned in them, and which are necessary steps to the decision. Marriage, and the legitimacy of children, are among the facts as to which this rule has been upheld; and it has been extended to the case of a child emancipated at the date of the order; *Rex* v. *Catterall* (p. 1161); and even to that of children unborn at the time; *Nympsfield* v. *Woodchester* (p. 1159), and *Rex* v. *St. Mary, Lambeth* (p. 1160). These, and many other cases, have formed a class which has settled the practice at quarter sessions; and it is so especially desirable, with regard to this branch of the law, to avoid all uncertainty and all subtle distinctions, that we should upon no account think ourselves justified in throwing any doubt upon these decisions. The principle, however, on which these cases mainly proceed, is a perfectly sound one,—that a matter once examined into and decided by a competent tribunal, shall not be re-agitated and in effect shown to have been decided erroneously upon new evidence, which either could or could not have been, but in fact was not, produced upon the former hearing. And accordingly it is observable, that in all the cases where the conclusive effect of the former order has been disputed, it has been the object of the party tendering the rejected evidence to procure a contrary decision *upon the same state of facts* by throwing new light upon them. Thus, for example, in *Nympsfield* v. *Woodchester*, and *Rex* v. *St. Mary, Lambeth*, the marriages were in fact equally as void at the respective dates of the prior orders as of the later; but the evidence failed to prove them so. If the new and better evidence had been admitted on the second appeal, the effect must have been—not indeed to destroy the *legal effect* of the former adjudications on the points decided, *i. e.*, the settlement of the parties actually removed—but, by showing them to have been erroneously decided, to take away their effect upon settlements derivative from the former; and the courts have rightly said, 'the opportunity for this is past.' But in the case now before the court, a new state of facts has arisen since the former decision. An incestuous marriage, until avoided by the sentence of the Court Christian, is voidable only, and remains valid to all civil purposes. The judgment of the sessions having passed before the sentence pronounced, was therefore

(*a*) 11 *St. Tri.* 261.

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correct in fact and in law. No alteration of the evidence, consistent with the state of facts then actually subsisting, ought to have made any difference in it. Had the incest *de facto* been ever so clearly made out, still the marriage must have been held valid, the children legitimate, and all the civil consequences as to the settlement of the wife and children named in the order must have followed. Whatever, therefore, has been decided upon the then existing state of facts, remains unimpeached. But the settlement of the pauper now comes in question for the first time; and it is admitted that he has no settlement in Wye, except upon proof that he is the legitimate son of his father. The former order, with proof of the date of his birth, is, no doubt, *primâ facie* evidence of his legitimacy. But suppose the appellants had tendered evidence that his father had been absent in America for a year before his birth, while the mother was in England, in order to show him a bastard, can it be doubted that such evidence would have been receivable? It would have contravened no fact found, or matter decided, by the former order; it would merely have cut the link which connected, *primâ facie*, his settlement with that found by the former order. It does not appear to us that the evidence tendered in the present case differs at all in principle from that just supposed. The appellants admit the former case rightly decided, that the settlement was, as there found, and the marriage then valid; but they say the decree of the Ecclesiastical Court shows that the pauper is, and always was, a bastard. Whatever be the conclusiveness of a former order on the facts found by it, it cannot, in point of time, extend beyond its date; it conclusively shows the state of facts then existing, and declares the law that results from it. But what is so shown conclusively then, may not continue; a change of circumstances may occur, to which the former finding is inapplicable. We are of opinion, therefore, that, consistently with all the former decisions, and desiring in no way to break in upon them, the sessions were wrong in refusing the evidence tendered; that the respondents did not, by their proof, make out conclusively a derivative settlement in Wye; and, consequently, that the order must be quashed."

An order of removal, unappealed against, is conclusive of the place of settlement up to that time.

Rex v. *Kenilworth*, 2 *T. R.* 598. Thomas Byfield, his wife and children, were removed from Birmingham to Kenilworth. Order confirmed. Case:—The pauper, on the 10th May, 1765, was hired for a year to J. Chatterton, of Birmingham, and that day entered into his service, and continued in the same until the 1st of April, 1766, when he was taken up on a charge of bastardy, and married the next day. His master did not make any complaint against him, nor discharge him from his service. On the 3rd of April he was removed from Birmingham to Kenilworth, where he remained until the 7th of April, and then returned back to Birmingham into his master's service, who willingly received him again, and he continued in his service till the end of the year, and received his full year's wages. The order of removal was not appealed against. *Buller*, J. "There is no proposition in the law of settlements more clear than this, that *an order of removal unappealed against is conclusive against all the world;* and this is so clearly and universally established that it ought never to be impeached. At the same time the rule is, that the order of removal, though unappealed from, does not at all affect a subsequent settlement. After the order of removal unappealed from, the pauper could not legally return to the parish from whence he had been removed: it would have been a crime in him to do so: and if he could not return without committing a crime, he could not be liable to an action by the master for not completing his contract. If the law intervenes and disables a person from completing his contract, it puts an end to the contract. In this case the pauper returned after the order of removal to the parish of B., where he served a month; but that could not gain him a settlement there, for the act subsequent to the order of removal, by which he was to gain a settlement, should be complete in itself." *Grose*, J. "I doubt whether the party was liable to be removed, but there having been an order of removal unappealed from, it is decisive." Order confirmed.

This is the general rule.

But *Rex* v. *Willoughby*, *ante*.

Rex v. *Corsham*, 11 *East*, 388. The pauper was removed from East Moulsey to Corsham; and it was confirmed by the sessions, who stated that on the 9th of April, 1807, he had been removed from Charlton to Garsdon, and no appeal had been entered against that order; which removal was subsequent to a settlement he had gained in Corsham. Lord *Ellenborough*. "If the pauper were settled at Garsdon at the time the former order was made, could not Corsham, as well as all other parishes, have taken advantage of that upon a question of settlement? Now the order of removal submitted to is the most authentic proof of his settlement being there at the time the order was made, and we must intend every thing in support of that settlement so adjudged. It is in effect a statutable certificate, if I may so express myself, that the pauper was then settled at Garsdon. The statute gives him a settlement *there;* and the fact stated by the sessions of a prior settlement in Corsham is immaterial." *Le Blanc*, J. "If the former order were not conclusive as to the settlement being in Garsdon at the time, Garsdon would escape the effect of it altogether, for this order would be conclusive upon Corsham, so as to prevent Corsham removing to Garsdon." Order quashed.

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Even when a question of settlement is raised between two other parishes.

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8. *Effect of Confirming or Quashing Orders of Removal Appealed against.*

Effect of order superseded by consent.

The practice of superseding the order by the removing justices has become so frequent, that it may be proper to consider what the effect of this step is between the contending parishes. The power of the justices to annul their order by consent is clearly established, unless an appeal has been entered at the sessions, and then the order may indeed be quashed by consent, by the sessions, but it will be conclusive between the parishes unless it is quashed on special grounds. But if the order is annulled before such appeal, the legal consequence seems to be the same as if the order had never been made.

A judgment not acted on, but reversed by consent of the party entitled to it, is no bar to any future proceeding; and when a legal instrument is annulled, all legal rights, not vested, cease with them. The proper mode of annulling the order may be by cancellation, and then there seems no legal mode of asserting its validity, and it is not like the act of the court in quashing an order, for that does not destroy the original order, but only reverses the judgment of the justices. This proceeding is more analogous to the constantly exercised authority of the court in reversing their own orders during the sessions, *i.e.* as long as their jurisdiction remains; and their first order is entirely done away with. So also the reversing justices may act, so long as the matter remains under their control, and that will be until the appeal is entered.

If the order is discharged on appeal, it is conclusive only as between the contending parishes, and then only when quashed on the merits. The sessions may make a special entry that the order was quashed for form, and then it does not conclude the defendant parish. There are many cases on the point as to what is a decision on the merits and what on form. See *post*.

Where an order is confirmed it is conclusive as to all the world, as it is a judgment that the paupers were at that time legally settled in the appellant parish.

Order confirmed upon the appeal is final; but an order discharged binds only the parties.

Mynton v. *Stoney Stratford*, 2 *Salk*. 527. By *Holt*, C. J., and the court:—"If on appeal to the sessions an order be discharged, that judgment binds only between the parties; but when upon an appeal an order is confirmed, that is conclusive to all persons as well as to the parties, for it is an adjudication that this is the place of the party's last legal settlement, which cannot be avoided by the parish against whom it is made."

Little Bitham v. *Somerby*, 1 *Stra*. 232. A person is sent by an order to Somerby as the place of his last legal settlement Somerby appeals, and

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the order is confirmed. Soon after, without stating that he had gained any new settlement, Somerby sends him to a third place. By the court: "An order of reversal is final only between the two parishes; but if it be confirmed, it is final as to all the world; and therefore, no new settlement appearing, the order of removal from Somerby must be quashed.

An order confirmed is not even evidence, if the settlement was a matter which arose *collaterally*. Is parol evidence admissible to show the ground of the decision?

Rex v. *Knaptoft*, 4 *D. & R.* 469; 2 *B. & C.* 883. Order for the removal of Elizabeth Burdett from Gumley to Knaptoft confirmed. The case is fully stated in the judgment delivered by *Bayley*, J. "Two questions were raised for our consideration in this case. First, whether the prior order of removal, and the judgment of the court of quarter sessions quashing the same, were admissible in evidence in the present appeal? and second, whether the question put to the pauper's father, and interdicted by the court, ought to have been allowed and answered? The order of removal and the judgment thereon were tendered for the purpose of disproving the pauper's settlement in the respondent parish: the question put to the pauper's father, he having stated that he was examined at the former appeal, was, what facts he had there stated? We who heard this case argued are decidedly of opinion that the prior order of removal and judgment were not, with any explanation, receivable in evidence on the second appeal. The prior order of removal was quashed. That may have been done upon any one of three grounds. Either because the sessions were of opinion that the pauper was emancipated, and had acquired a settlement of his own; or because the respondents were not then in a situation to prove the father's settlement in the appellant parish: or because the appellants were able to prove a settlement of his elsewhere. The case does not inform us on which of these grounds the order was quashed, but it is conceded that it was quashed upon the merits, and not upon any point of form. If we believed that the ground of the judgment was the want of proof of the father's settlement in the appellant parish, and had then thought that the evidence was under those circumstances admissible, we should have sent the case back to the sessions for further explanation on that head; but we are of opinion that under none of the circumstances supposed the evidence was admissible, and therefore we think it better to dispose of the case in its present shape. As a broad and general proposition we may say that the order of removal, confirmed or reversed upon appeal, or acquiesced in without appeal, is receivable in evidence, because it is a judgment of law. But where, and under what circumstances, is it receivable? This inquiry is answered by the rule laid down by *De Grey*, C. J., in the *Duchess of Kingston's case*, by which we find that to make the order receivable the parties in the case must be the same, and the point in issue must be the same: these are both indispensable qualifications. If the matter in issue be collateral or incidental, the evidence cannot be received. The language of that learned judge as applicable to the present case is, 'that a judgment directly upon the point is, as evidence, conclusive between the same parties upon the matter directly in question.' Does this case fall within that rule? Is the matter in question in the second appeal the same as that in the former? Is the judgment offered in evidence in the second directly upon the point which was in issue in the former? We think not. From the very nature and substance of the order of removal, it is merely collateral to the issue raised in the second appeal. By the original order, an individual, not the pauper in this case, was removed; the question to be tried on appeal was, where his settlement was. The judgment decided that his settlement was in a particular parish. That was the point there, and that was the matter in question; but it is not so here. The early case of *Harrow* v. *Ryslip* (2 *Salk.* 524; 3 *Salk.* 261), will illustrate this position. The case was this: A. comes into Harrow, and being likely to become chargeable, was removed to Ryslip; Ryslip appealed, and upon the appeal, A. was adjudged to be settled at Ryslip; afterwards Ryslip discovered that Hendon was the place of his last legal settlement, and sent him thither; and the question was, whether, after the adjudication upon the appeal,

A judgment to be conclusive must be *direct* on the point.

Ryslip was not estopped against all the world to say that Ryslip was not the place of his last legal settlement: *et per Holt*, C. J., 'Ryslip is estopped to say otherwise: for if Ryslip had not been the very place of his last legal settlement, the justices must have sent him back to Harrow, who were first possessed of him, for that reason, because they were possessed of him, and he did not belong to Ryslip. And now this is in effect the same question again, viz. whether he belongs to Ryslip? which question has been already determined by the justices on the appeal, who have adjudged that he was last settled at Ryslip.' The report goes on to say,—'Afterwards this was moved again, and then *Holt* and *Gould* held the adjudication was final as to Ryslip against all persons and places, because the point of his settlement as to Ryslip was tried in the appeal: but as to Harrow (for he had been formerly removed by them to Hendon, and that order reversed), they were at liberty to send him to any other place, and were not estopped; because the justices on the appeal did not adjudge him to be settled at Harrow, though they adjudged him now to be settled at Ryslip; so that the other point was not tried.' The language of the court in one part of this case applies to the instance where the order of removal is confirmed, and that on the other where it is reversed; and points out the distinction already alluded to between a judgment of confirmation and one of reversal. In the latter instance the sessions do not find where the pauper was settled, and thus the order of removal confirmed or unappealed from is conclusive evidence that the settlement is in the place to which he is removed; reversed, it is conclusive evidence that the settlement is not there; and beyond this point no case with which we are acquainted has ever yet gone. There are undoubtedly cases which show that where the point in issue is decided, all results flowing out of that point are decided also; as for instance, that a wife's removal to the place of her husband's settlement is conclusive to show that that is his place of settlement. But no case has ever gone further than to hold that the point decided is conclusive upon the same point, and therefore receivable in evidence; other points collateral or incidental to the point decided and undetermined by it are excluded from its operation, and cannot be proved by giving the point decided in evidence. It is the same with respect to judgments; they are merely evidence of the point decided. It is admitted that the pauper has no settlement in the parish to which he has been removed unless his father has acquired a settlement there. Then the father's settlement was a question which came in incidentally, but incidentally only, and was not the point decided by the judgment on the first appeal, which consequently was not admissible as evidence in the second. For these reasons we are of opinion that the order of sessions in this case was right, that the sessions properly rejected the evidence tendered, and that the rule for quashing their order must be discharged."

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The order is not evidence upon points collateral.

Reg. v. *Yeaveley*, 1 *P. & D.* 60; 9 *A. & E.* 806. Ed. Smith and family were removed from Yeaveley to Shirley. Order quashed. Case:— The pauper was the son of Edward and Millicent Smith, and was born at Yeaveley, in 1798. The respondents, to show a settlement in the appellant parish, proved that the pauper's father, who died at Yeaveley in 1811, was born at Shirley, and that after his death his widow and family received relief weekly, for several years previously to 1817, from the appellant township, whilst residing in the respondent township, and that the pauper, in 1817, being then under age and unemancipated, was bound apprentice to William Walker, under such circumstances that no settlement was gained thereby. In answer to this case, the appellants offered in evidence an order of removal of the pauper's mother from Yeaveley to Shirley, dated the 6th day of October, 1824, in which order the said M. Smith was described as widow of the late Edward Smith, (who was the father of the pauper,) and for the purpose of proving that such order was quashed on appeal, they offered in evidence the original sessions book, being a paper book, containing the orders and other proceedings of the court, made up and recorded after each sessions by the clerk of the peace,

An order of sessions in 1824, quashing an order for the removal of the pauper's mother, a widow, is material evidence, on a subsequent contest between the same parishes as to the settlement of the pauper, to show that he was not settled in the appellant parish at the time of the quashing of such order, although he was not named therein, and was then 26 years old, it appearing that in 1817 he had gained no settle-

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ment of his own, and that he was then unemancipated.

To prove that an order of removal had been quashed, the original sessions book, being a paper book, containing the orders of the court, made up and recorded, after each sessions, by the clerk of the peace, from minutes taken by him in court.

from minutes taken by him in court, which book he considered and stated to be the record itself of the proceedings of the court. It was headed at each sessions with the usual caption of the justices at sessions. The book contained under the above heading for the October sessions, 1824, amongst other orders made the same sessions, the following:—"Upon an appeal brought this sessions by the churchwardens and overseers of the poor of the parish of Shirley, in this county, against an order of removal under the hands and seals of Richard Arkwright, the younger, and William Webster, Esquires, two of his Majesty's justices of the peace for the said county, (one whereof is of the quorum,) whereby Millicent Smith, widow of the late Edward Smith, and her grandson Thomas Smith, actually became chargeable, and were removed from the township of Yeaveley, in the said county, to the township of Shirley aforesaid, as the place of the lawful settlement of them, the said Millicent Smith and Thomas Smith; and upon hearing counsel and witnesses examined upon oath on both sides, this court doth order, that the said order of the said two justices be, and the same is hereby discharged; and doth further order, that the churchwardens and overseers of the poor of the township of Yeaveley aforesaid, do pay to the churchwardens and overseers of the poor of the parish of Shirley aforesaid, the sum of 40*s.* for their costs of this appeal, and also the sum of ———, for the maintenance of the paupers." The book at the termination of the proceedings of the sessions is signed, "By the court, John Charge, clerk of the peace." Every order, when copied out to deliver, is always signed in the same manner; no other record was kept of the proceedings of the sessions, than the said sessions book, and it had always been received in evidence in the court for the purpose of proving them. This evidence was objected to by the respondents, on the ground that it was not material to the issue between the parties; and also, that the order of sessions, if material, could not be proved by such evidence. The sessions received. Lord *Denman.* "I am of opinion that the sessions book was properly received as evidence that an order for the removal of the pauper's mother to the appellant parish was quashed in 1824. The book contained a regular caption, showing the authority of the sessions who made the order, and a statement of the order itself; and it appears also, though it may be doubtful whether it be material, that no other record of such orders was ever made. Unless we are to hold that parchment was necessary to prove the order, the book in question was legitimate evidence. A decision by the justices is all that takes place, and it is not followed up or modified by any ulterior proceedings. In *Rex* v. *Ward* (*a*) it does not appear what the state of the minute book was, but I should rather infer that it was a book kept by the deputy clerk of the peace for his own convenience, and that it did not contain any caption, so that our judgment upon this point does not interfere with the authority of that case. What then was the effect of this quashed order in 1824? The language of *Bayley*, J., in *Rex* v. *Knaptoft*, (p. 1166), was unnecessarily large. The adjudication in 1824, although it might have gone on other grounds, was at least *primâ facie* evidence, which was unanswered, that the settlement of the pauper's mother at that time was elsewhere than in the appellant parish. The pauper himself was not shown to have been then emancipated, though twenty-six years old; it appeared that an attempt had been made in 1817 to bind him an apprentice, but that it had failed. There was evidence then that he was unemancipated in 1817, and it was not shown that the state of facts was altered in 1824. Taking it therefore that he was unemancipated, it would appear that the settlement of his mother, which had been previously adjudicated upon, would extend itself to him; so that a good *primâ facie* case was made out by the appellants to meet the other *primâ facie* case of relief given by them to the widow and family while resident in the respondent parish." *Patteson*, J. "I think, in the absence of any direct authority, we must hold that the sessions book was receivable in evidence. In *Rex* v. *Ward* it appeared that something more than the book would have been producible, if it had been asked for; here it is found that the practice is to do no more than

(*a*) 6 *C. & P.* 366.

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make the entries in the book, and that it is treated as a record of the court, so that it comes to the question whether or not parchment be necessary. I am of opinion that it is not. Now with regard to the materiality of the evidence. It is found that in 1817, when the pauper was nineteen years of age, he was put out as an apprentice under such circumstances that he gained no settlement thereby. We hear nothing more of him; it does not appear whether he ever returned to his mother at all; there are no new facts to show whether he was emancipated or not. The cases show that it is not necessary that he should have returned before he was twenty-one. But, as it appeared that he was not emancipated in 1817, the onus of showing that he was emancipated in 1824 lay on the respondents, who offered no evidence of it. We must presume then that he was unemancipated. It matters not whether the order of sessions proceeded on the ground that the widow had gained a settlement in her own right, which was elsewhere than in the appellant parish, or that she had gained no settlement at all, and that the settlement of her deceased husband was elsewhere. The respondents are in a dilemma, a derivative settlement elsewhere than in the appellant parish would on either supposition be communicated to the pauper." *Williams*, J. "I am entirely of the same opinion on both points. There is no instance where an objection to the admissibility of such an instrument as the sessions book, to prove their own order before the justices themselves, has been considered a valid objection. It is said a minute might be evidence of a conviction in the same manner. But how could such a minute prove any such thing? The judgment might have been arrested. So to prove that a person had committed perjury, it is essential that the jurisdiction of the court in which perjury was committed should appear; and that could only be manifested to another court at least by a formal record, as was held in *Rex* v. *Ward*. The book in this case was, in my opinion, a record for the purpose of proving to the sessions the existence of one of their own orders. In considering the effect of such order we are brought back to very early principles indeed. None of the books omit to tell us that an order quashed is conclusive between the same parishes, as to the point decided. What was the point decided? The settlement of the mother. This would communicate itself to her son, if unemancipated. According to the ordinary principles of evidence, it lay on the respondents to show that he was emancipated, for the last account of him is, that he was not so, and we must presume that this state of facts continued, until the contrary be shown." *Coleridge*, J. "This case is very simple. The evidence was cogent, if admissible. As to the mode of proof, we learn that the practice of the court was to have no other record. The book contained a regular caption, showing the authority under which the court sat. Mr. Clarke has admitted that he has never seen a formal record of a sessions order, nor have I. With respect to the effect of the evidence, no one can doubt at this time of day that an order quashed is conclusive between the same parishes as to a settlement at the time of the adjudication upon it, and that unemancipated children follow the settlement of their father, and on his death that of their mother. On whom then was the onus to prove this pauper's emancipation? Obviously it was upon the respondents, who contended that the state of things was different from what it was found to be when the cause was tried before." Order of sessions confirmed.

Order quashed does not conclude a third parish from the proof that the pauper was then settled in the appellant parish.

Rex v. *Cirencester*, *Burr. S. C.* 17; 2 *Bott*, 521. The pauper was removed from Minety to Coln St. Aldwin's; and on appeal the order was reversed. Afterwards he was removed from Cirencester to Coln St. Aldwin's. The former removal was on complaint of Minety; the latter on complaint of Cirencester: the pauper was sent on both complaints to Coln St. Aldwin's. On appeal against this latter order, the sessions quashed the same, because they thought the first order conclusive. By the court: "An order confirmed binds all the world; but when discharged, it is binding only between the parties concerned. For the discharge of the order doth

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not determine where the pauper is settled; but only that he is not sufficiently proved to be settled in the particular parish to which the justices had removed him." And Lord *Hardwicke*, C. J., said, "He took it to be clearly settled, where an order of removal is confirmed, that it is conclusive to all the world; where it is discharged, that it is conclusive only between the two contending parishes. And this distinction is reasonable; because a third parish may be able to give better evidence than the other could." And this latter order of sessions was quashed.

An order of removal *discharged* does not prevent a *third parish* from showing a settlement in the same parish, at the time of the order discharged.

Rex v. *Bentley*, *Burr. S. C.* 425; 2 *Bott*, 919. The pauper was first removed from Baxterley to Stourbridge; which order, on appeal, was discharged. Then Baxterley removed to Bentley, and Bentley upon appeal offered to give evidence that the pauper had gained a settlement at Stourbridge subsequent to the settlement which they acknowledged he had gained in Bentley. The sessions refused to hear it, because the settlement set up in Stourbridge was anterior to the first appeal. By Lord *Mansfield*, C. J., and the court: "An order confirmed concludes all the world. It is a suit instituted and determined by a court having proper jurisdiction between all proper parties, for the parishes and the pauper were the only proper parties. It is establishing one certain fact, which, when ascertained, regards all the world, and is not to be considered in the light of a *res inter alios acta*. So the finding that such-a-one was the father of such a child, or the fact of a marriage, or that a person is executor, by suit properly instituted in the spiritual court; in all these cases, when the fact is once established by proper judges, and between proper parties, it is a truth which regards the whole world. But an order discharged is only a kind of negative finding that such a settlement is not the last legal settlement. But does this establish the affirmative, namely, what is so? There is all the reason in the world to let in a third parish, not party to the suit, to give what evidence they can; because it would otherwise open a door to much collusion between parishes. The sessions in substance have said no more than this, 'Upon the case made out to us the pauper is not settled at Stourbridge;' but this ought not to conclude the third parish from giving what evidence they can to discharge themselves. And nothing is more common in settlement cases, than for one parish to be able to get at evidence which another parish could not produce." And the orders were quashed.

Order quashed, conclusive only between the parties.

St. Michael's, *Beddington*, v. *Kingston Bowsey*, 2 *Salk.* 486. Order reversed on the appeal is conclusive only as to the parish acquitted, but the first parish may remove again to any parish not party to the former removal.

But it is conclusive as between them.

Foston v. *Carleton*, 1 *Str.* 567. A person was removed from Foston to Carleton. On appeal, the order is quashed; and at three months' end a new order is made to remove him from Foston to Carleton. But by the court: "The last order must be quashed. *Barrow* v. *Ingoldsby*, E., 11 Anne, was at the distance of nine months, but the court quashed it, because there could be no inconvenience in putting them to show a new settlement."

Appellant parish not liable for a child born before the appeal.

Pending an appeal against an order of removal, the pauper was delivered of a bastard child in the appellant parish. The order was afterwards quashed. The child acquired no settlement in the appellant parish. *Rex* v. *Great Salkeld*, p. 413.

Conclusive between the parties.

Rex v. *Bradenham*, *Burr. S. C.* 394; 2 *Bott*, 918. Order of removal, dated December 30, 1754, of John Saunders and Sarah his wife, and four children, from Thame to Bradenham. Bradenham appealed to the next (Epiphany) sessions, and the order was discharged. March 28, 1755, a new order was made for removing Sarah, the wife of J. S., and her children, from Thame to Bradenham. Upon appeal, the sessions adjudged the last settlement of Sarah Saunders and her children to be in Bradenham, and confirmed the order. On removal of these four orders into the King's Bench it was argued, that the order of reversal was conclusive between the two parishes, that so there might be an end of things; and that one sessions shall not counteract and control the acts of a former, unless they state specially, which they have not done here. By the court: "The last

orders must be quashed. We must take the appeal, on which the original order is discharged, to be on the merits. The matter has been determined already between these two parishes, and it must be conclusive. But it is said there are cases where there may be a new removal, as supposing there had been one or two years' distance between the two orders of removal, or a sufficient time to gain a new settlement; yet the court will not intend one gained, unless it is *stated in the order.* (*a*) And in this case there is no such time."

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If quashed on form, not conclusive between the parties.

Rex v. *St. Andrew, Holborn*, 6 *T. R.* 613. M. Carter and her illegitimate son were removed from St. Andrew, Holborn, to Northaw. Case:—By an order, dated 24th July, 1794, M. Carter was removed to Northaw. On appeal, the order, for want of a proper adjudication of the last legal settlement of the pauper, which was apparent on the face of it, was quashed. On the 25th of January, 1795, the present order was made, whereby M. Carter and her son were again removed from St. Andrew, Holborn, to Northaw. Upon appeal, the sessions were of opinion, that the first warrant and judgment, having been quashed, was binding between the two parishes, and they quashed the last order. Lord *Kenyon*, C. J., said, "That as the first order in this case was quashed for defect of *form*, which appeared by the minute of the sessions, it was essentially different from the cases cited, where the order was quashed generally, which must be taken to be on the merits. And it is undoubtedly law, that if an order of removal be quashed for form, it does not conclude the parties." Order of sessions quashed.

Or on special matter as not being chargeable.

Rex v. *Osgathorpe*, 2 *Stra.* 1256. A person was removed by an order from Diseworth to Osgathorpe, which was quashed. He was by a second order sent from Diseworth to Osgathorpe as a certificated man; and upon an appeal it was stated, that the first removal was *before* he became chargeable, and the second *after* he became so; and the sessions were of opinion, that the first determination was not final, and therefore confirmed the second order. It was moved to quash these two last orders, because a reversal is final between the parties. But by the court: "So it would be, if the special matter did not appear; a certificated person cannot be sent back until he is actually a charge; a removal before is premature. The consequence of which only is, that he must be suffered to remain till he doth become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed."

Appellant may show by evidence the ground upon which the former order was quashed.

Rex v. *Wheelock*, 5 *B. & C.* 511. This was an application for a mandamus to direct the sessions to make a special entry that an order had been quashed for want of proof of chargeability, which, though the fact, the sessions had refused to do. A rule *nisi* was refused, *Bayley*, J., saying, "The respondents are not, at all events, concluded by the judgment of the sessions, but may, in the trial of another appeal against another order of removal of the same party, explain by evidence to the sessions the particular ground on which the former order of removal was quashed." *Holroyd*, J., concurred.

An order of removal from A. to B. was quashed at sessions by consent, on the ground that the pauper was at that time irremovable, and this reason was communicated to the ap-

Rex v. *Wick St. Lawrence*, 2 *Nev. & M.* 289; 5 *B. & Ad.* 526. Elizabeth, wife of Isaac Harle (who had lately left the parish of Banwell) and children were removed from Banwell to Wick St. Lawrence. Order confirmed. Case:—The paupers were in 1822 removed by an order from the respondent to the appellant parish; against which order there was an appeal to the Easter sessions in that year. The respondents having discovered before those sessions that the paupers were irremovable, by reason of their residing on a tenement purchased by Isaac for less than 30*l.*,

(*a*) The accuracy of this decision may well be doubted. Unless there is some defect on the face of the order, how can the Court of Queen's Bench quash it, unless the sessions state their reasons specially? Besides, *every intendment will be made to support an order.* In this case, the pauper might have acquired a settlement in Bradenham by forty days' residence on his estate, between the 30th December, 1754, and 28th March, 1775, or he might have perfected a settlement inchoate only where the first order was made, as in *Rex* v. *Willoughby*, p. 818.

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determined to abandon their order, and the reason was communicated by the then attorney of the respondents to the then attorney of the appellants, but no mention of the same was made to the court, and at the said sessions an order was made by the consent of all parties for quashing the order of removal, in which order of sessions no mention was made of the ground on which the same was quashed. The court (on hearing of the present appeal), thinking themselves bound to admit the evidence above stated, overruled an objection to it made by the counsel for the appellants; and upon proof that the pauper Isaac did, before the order of removal now appealed against, sell the tenement which rendered him irremovable, and that he had before 1822 obtained a legal settlement in the appellant parish, the court confirmed the last order of removal. If the court should think that the sessions improperly admitted such evidence, and that the order of sessions in 1822 was, as between the present parties, conclusive of the pauper's settlement at that time, the order now appealed against was to be quashed. Lord *Denman*. "The only question submitted to us by the sessions is, whether the parol evidence was properly admitted. The justices have drawn their conclusion from the facts proved; and I think it sufficiently appeared that the consent was given in consequence of its having been discovered that the pauper was irremovable. The question as to the admissibility of the parol evidence depends on the nature of the point actually decided by the sessions when they quashed the first order of removal; for judgments of courts of competent jurisdiction directly on the point are, as evidence, conclusive between the same parties upon the same matter directly in question in another suit. Upon this principle a judgment at the quarter sessions confirming an order of removal is conclusive not only against the parish to which the removal is directed to be made, but (being a judgment in rem) against all the world, that the pauper, at the time when that order was made, was settled in the parish to which he was sent; for that is the point which the sessions must have decided when they confirmed the order of removal. An order of sessions, quashing an order of removal, is also conclusive between the contending parishes as to the point decided by it. Then the question is, what that point really is. It is that the parish to which the removal was directed to be made was not bound to receive the pauper. The court may have come to that decision, either on the ground that the pauper was not settled in the parish to which he was sent; or that he was not chargeable, or was irremovable when the order was made. That being the effect of an order of sessions quashing an order of removal, it seems to follow that if it be offered as evidence to prove that the pauper was not settled in the appellant parish, it may be shown by parol evidence that the judgment proceeded upon some other ground. It is said that the sessions ought to have made a special entry of the ground on which they quashed the order of removal, and there being no such entry, it must be presumed that they decided on the merits; but in *Osgathorpe* v. *Diseworth*, (p. 1171,) there was no such entry on the face of the order, and therefore parol evidence must have been given on the trial of the second appeal to show that the pauper was a certificated man when the first order of removal was made, and consequently not chargeable. That is an authority expressly in point; and in *Rex* v. *Wheelock*, (p. 1171,) *Bayley* and *Holroyd*, Js., refused to compel the sessions by mandamus to make a special entry of the cause for which they had quashed an order of removal; and that on the ground that the party had his remedy by giving, on the trial of a second appeal, parol evidence of the distinct ground on which the order of removal was quashed. It is said that admitting parol evidence to explain such an order of sessions will be inconvenient; but supposing the inconvenience were greater than any I can see in the case, injustice is the greatest of inconveniences, and when an order of removal has been discharged, not on the merits but on other grounds, it would be great injustice if it could be set up as a decision on the merits by a party who knew that they had not been inquired into." *Parke*, J. "The only question referred to us by the sessions, is, whether

pellants, but not to the sessions. This order is not conclusive, and parol evidence is admissible to show that this was the ground of the order being quashed.

Order confirmed conclusive.

Mandamus to make a special entry refused.

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they were right in receiving the parol evidence. It is not for us to inquire whether they came to a right conclusion on that evidence, though I have no doubt they did; but the only question now is as to the admissibility of the parol evidence, and I think it would lead to much injustice if it were inadmissible. There are two rules applicable to this subject; one is, that an order of sessions confirming an order of removal is conclusive against all the world; the other is, that an order of sessions quashing an order of removal is conclusive between the contending parishes: but it is conclusive only as to the point which it decides, *i. e.* that at the time when the order of removal was made, the appellant parish was not bound to receive the pauper. It is like an acquittal upon an indictment, for not repairing a road, on a plea of not guilty, where the question of liability has not been raised on the record; such acquittal is no evidence that the parish was not liable, because it may have proceeded on a different ground, viz., either that the road was not out of repair, or was not a public highway. So an order of sessions, quashing an order of removal, may have proceeded either on the ground that the pauper was not settled in the appellant parish, or that he was not chargeable, or that he was irremovable. By analogy, therefore, such an order of sessions cannot be conclusive evidence that the pauper was not settled in the appellant parish. I think it would have been better if the court had held, that it was no evidence at all to prove any of the facts on which the decision may have proceeded, because it does not distinctly show upon the face of it on what ground it did proceed. The cases, however, show that it is *primâ facie* evidence that the pauper was not settled in the appellant parish; but it must be competent for the respondents to show by parol evidence that the order of sessions was not made on that particular ground, for otherwise they would be subjected to great injustice. In some of the cases the special ground for quashing the order of removal has appeared on the face of the order of sessions; in others it has not. In *Osgathorpe* v. *Diseworth*, the special ground was not stated on the face of the order of sessions. *Rex* v. *Wheelock* is a direct authority in favour of our present decision. There the order of removal was quashed in fact for want of proof of the chargeability of the person removed; but that ground was not stated on the face of the order of sessions, and this court refused a mandamus to compel the sessions to state that ground specially in their order, because the respondents might, on the trial of a second appeal, explain by evidence the particular ground on which the former order was quashed. Undoubtedly parties must have a right, either to have the ground stated on the order, or to prove it afterwards by parol evidence. As to *Mungerhunger* v. *Warden*, (p. 1070,) I doubt whether that is any authority at all; it does not appear to have been decided on the question of settlement. It is a general rule, that the judgment of a court of competent jurisdiction is never final between the parties, except as to the point on which the court has adjudicated. Now here, the point adjudicated was merely that, at the time when the order of removal was made, the appellant parish was not bound to receive the pauper; and parol evidence was admissible to show that that was the matter really adjudged." *Taunton*, J. "I certainly had a strong impression in the first instance, that the decision of the sessions in this case was wrong. In the course of the argument, the difficulties I entertained have been removed. I think this falls directly within the authority of one case cited, and that it is also within the scope of another. I would be the last person to disturb the general rule laid down, that an order of sessions quashing an order of removal is conclusive between the contending parishes, and that an order of sessions confirming such an order is conclusive against all the world. But then, an order of sessions must operate with reference to the state of things existing at the time when it was made. Parol evidence, therefore, was admissible here to show the state of things when the first order was made, and explain to what extent it was intended to operate. The argument is, that if the parol evidence be

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admissible, it appears thereby that the ground for quashing the first order of removal was altogether temporary, inasmuch as the pauper then resided on a tenement which, being his own property, rendered him irremovable, but which was not of a sufficient value to give him a settlement: and, therefore, that the order of removal could not then be supported, it being premature: but that after 1822, a new state of things arose: the pauper sold his tenement, and was no longer irremovable: the right to remove him, which was only suspended, revived, and the sessions, in 1832, might take the new state of things into consideration. I think that view of the case correct. I rely chiefly on the case of *Osgathorpe* v. *Diseworth;* I do not place so much dependence on *Rex* v. *Wheelock*, because there the point now before the court arose incidentally and not directly. But I cannot distinguish this case from *Osgathorpe* v. *Diseworth.* There the pauper, who was a certificated person, was removed before he became chargeable, and a second order of removal having been made, upon appeal, the above facts appeared by evidence, (which must have been given to explain the first order of sessions,) and the sessions thought the first determination was not final between the parties, and made their order accordingly. On motion to quash the last two orders, on the ground that a reversal is final between the parties, the court said: 'So it would be if the special matter did not appear: a certificated person cannot be sent back until he is actually a charge: a removal before is premature: the consequence of which only is, that he must be suffered to remain till he does become chargeable, but not to make a premature removal final for ever. The last orders must be confirmed.' So in this case, as long as the pauper resided in the parish on his own property, he was irremovable; but as soon as the property ceased to be his, he became removable. If a different rule were to prevail here, the consequence would be to make a premature removal decisive. I think the evidence was properly received, and that this case is not distinguishable from *Osgathorpe* v. *Diseworth.*" *Patteson*, J. "I think we must assume that the sessions were satisfied that the first order of sessions was made on the ground of the pauper having been irremovable. If they were not so satisfied, they would not have sent the case here. It is admitted, that if the special ground for quashing the first order of removal had appeared on the face of the order of sessions, it would not have been conclusive. The question then is, whether the parol evidence was properly received. Now on that point I cannot distinguish this case from *Osgathorpe* v. *Diseworth.* I think it would be much better if the special ground for quashing an order of removal were always stated on the face of the order of sessions, because it would then be unnecessary to give parol evidence on the trial of the second appeal, which is always attended with great expense: but on the authority of *Osgathorpe* v. *Diseworth*, I think parol evidence may be given on appeal against a second order, to explain the ground on which the first was quashed. It appears that in that case the ground for quashing the first order of removal was not stated in the first order of sessions, but that it was stated to the court on the trial of the appeal against the second order of removal. *Rex* v. *Wheelock* is not in point, but I am at a loss to see how the court could have refused a mandamus, unless they had been of opinion that upon appeal against another order, parol evidence of the circumstances might be received, for otherwise it is clear that the party must have a right to have the special ground appear on the face of the proceedings, and the court in that case would have interfered to enforce it." Order of sessions confirmed.

An order of removal, regular on the face of it, was on appeal quashed by order of sessions for "informality." No case having been

Rex v. *Cottingham*, 4 *Nev. & M.* 215; 2 *Ad. & E.* 251. S. Moor was removed from Cottingham to Patrington. On appeal it was quashed. No case was stated. The order of sessions was, that the order "be quashed for informality, and that the respondents do pay to the appellants, 30*l.* 16*s.* 8*d.* for their costs in prosecuting this appeal." The two orders having been brought up by certiorari, a rule was obtained to show cause why the

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stated, the court of Q. B. will affirm the order of sessions.

The sessions may award costs to the appellant, though the order be quashed for informality only.

order of sessions should not be quashed. Lord *Denman*. "The court of quarter sessions ought to have absolute dominion as to law and facts which come before them. We can know only what they send to us; they have quashed this order on the ground of informality. What the informality is, we do not know. It is argued that it must be an informality on the face of the order; I cannot agree to that. Interpreting the meaning of the magistrates according to popular language and in the usual sense of the words, we must understand that they meant to state that the order was not quashed on the merits; and it is reasonable that they should do so, to prevent their order from having an effect in binding parties which it ought not to have. The *Rex* v. *Wick St. Lawrence*, (p. 1171,) supplies an instance in which an order was held not to be binding, because the decision was not on the merits. As to the question of costs, the order would certainly be bad if the act had said that costs should be granted only when the decision turned on the merits, but that is not so. The act says, that the justices may award costs to the party for whom the appeal shall be determined. They may justly think a removal vexatious which has been made under circumstances producing what they call an informality. It is not necessary that the determination of the appeal should be on the merits. In *Rex* v. *The J. of Essex*, (p. 350,) a question arose as to the power of the sessions to award costs, and it was held that they had no such power, but there the appeal was not entered, and the statute gives the power only where the appeal is 'determined'." *Taunton*, J. "I am of the same opinion. There are two ways in which the proceedings of a court of quarter sessions may be erroneous. They may be defective on the face of them, or they may be erroneous from facts apparent on a special case. Here there is no special case, but on the face of the order of the court of quarter sessions it appears that the original order was quashed 'for informality.' The only question then is, whether such informality could be an informality only on the face of the original order; certainly none such appears. But notwithstanding this, I think there might be an informality in some part of the proceedings, and such an informality as could come before this court no otherwise than by a special case. But if this court see that there *might* have existed some circumstance making the original order informal, we must confirm the order of sessions, there being no special case. I do not agree that all the cases suggested would be cases of informality, but looking at the order of sessions, and nothing being brought positively before us to show that it is wrong, I think it must be affirmed. It is a wholesome rule, that this court is not to entertain a jurisdiction over extraneous matters coming before the sessions unless they be specially stated. If it were otherwise, if we could go into the merits without a special case, there would be in almost every instance a discussion upon affidavits. As to the question of costs, I fully agree with my lord. The words of the statute are quite strong enough to give the power of awarding costs in the case of an order quashed for informality." *Patteson*, J. "If the word 'informality' in this order of sessions is to be used in its strict legal sense, the sessions have done wrong in quashing the original order. But if it may be understood as merely used in contradistinction to the merits of the case, we cannot say what the ground has been upon which the order has been quashed, and we can only act on what we see. As to the costs, I agree that the words of the act do not restrict the power of the justices to cases of decisions upon the settlement." *Williams*, J. "The question is, whether 'informality' means a strict legal informality, or whether the word is used in a more popular sense. I do not see why the more popular sense may not be that which the justices intended, and this is the more probable, as the entries of the courts of quarter sessions are frequently made with great laxity." Order of sessions affirmed.

Such an order is not conclusive, if it is in itself void, as being directed to a place not maintaining its own poor. (*Rex* v. *Oldbury*, p. 1157.)

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An order then quashed for form is not conclusive between the parishes, and the sessions should make a special entry "quashed for informality only, and not on the merits (*a*)." The Court of Queen's Bench will not, unless a case is reserved for their opinion, inquire into the nature of the informality. (*Exparte Overseers of Pontefract*, p. 1184; *Rex.* v. *Cottingham*, p. 1174.) But if the sessions make a wrong entry, which they had no jurisdiction to make, they may be compelled by mandamus to erase it from the records, but not where they make a special entry which was in law incorrect. (*Exparte Crick, and Exparte Ackworth; Rex* v. *J. Yorkshire; Rex.* v. *Cornwall.*) The court, however, will not compel them to make any special entry, although it appears that the order was on the trial quashed for informality. (*Reg.* v. *Lancashire, J.*, p. 1177.)

What is an adjudication *on the merits.*

It becomes very material to ascertain what is an adjudication on the merits, (*b*) and what on form; and perhaps it may be stated generally that a decision on the *question of settlement* is a decision on the merits, although the question might have been imperfectly raised on the examination, or grounds of appeal. Where the examination did not state that the pauper had resided forty days in the parish, and the respondents consented for that reason to quash the order (*Rex* v. *Church Knowle*, p. 1177, *Reg.* v. *Evenwood*, p. 1178), or where the sessions were of opinion that there was a material variance between the evidence and the examination (*Reg.* v. *Yorkshire* re *Clint*, p. 1125), or that the examination was in itself imperfect, which did not disclose the time of the pauper's birth (a settlement by birth being relied on), (*Reg.* v. *Charlbury*, p. 1180): or where an order was confirmed without hearing, because the appellants had given no notice of appeal, (*Reg.* v. *Oundle*, p. 1183), or when a former order is relied on, and it appears that it was suspended, and the order was quashed, because the examination did not show that such order had been executed, or the suspension removed; in all these cases, the decision is on the merits, and conclusive between the parishes: and a special entry by the sessions that the order was quashed not on the merits, was ordered to be erased (*Exparte Ackworth*, 3 *Q. B.* 397, *post*).

Not on the merits.

But where the order was quashed on the ground that the pauper was at the time irremovable (*Rex* v. *Wick St. Lawrence*, p. 1171), or on the ground that the examination did not disclose the chargeability (*Reg.* v. *Perranzabuloe*, p. 1184), the judgment of the sessions is not conclusive. Where the respondents had given notice of abandonment of the order, offered to pay all costs incurred, stating their intention to ask the court to quash it, but "not on the merits," which was done, a fresh order may be obtained. (*Exparte Overseers of Pontefract*, p. 1184.)

Where the examination did not state at what time the relief relied on was given, and quashed the order, "not on the merits," reserving a case as to the propriety of a fresh entry, the Queen's Bench declined to give any opinion, and discharged the rule for quashing the order of sessions. (*Reg.* v. *Kingsclere*, p. 1185.)

Where the order is quashed without any special entry, it will be presumed that it was quashed on the merits, but where the entry was "the merits not being inquired into," this is not a decision on the merits, and the order is not conclusive. (*Reg.* v. *Ynisawdra*, p. 1185.)

(*a*) *Reg.* v. *Pixley*, p. 131, an order relating to a lunatic was quashed "for form and not on the merits." This does not preclude a subsequent inquiry into the settlement.

(*b*) J. *Patteson* has observed, "I object, and did so in *Reg.* v. *Charlbury*, to the statement in such cases that an order was or was not discharged on the merits. The true question is, not whether the former order of sessions proceeded on the merits, but whether it decided the same point as is sought to be raised by the second appeal. Chargeability and settlement are both merits. Here the point decided on the first appeal was wholly collateral to the question of settlement, which was left untouched on that occasion, but is the question sought to be raised in this second appeal, *Reg.* v. *Perranzabuloe*, p. 1184.

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The Queen's Bench has no power to order the sessions to make a special entry.

Rex v. *Lancashire*, 3 *Q. B.* 367. On an application by a mandamus to the sessions to enter on their order the reasons for making it, it appeared that Mitchell was removed from Heaton Norris to Preston. Preston gave notice of appeal, stating that the order and examinations were bad on the face of them, and that the justices making the order had no legal evidence of the place of settlement. The appeal had been previously entered and respited. Finding the objections insurmountable, the overseers of Heaton obtained and served a supersedeas; but not agreeing with the overseers of Preston as to the terms of abandonment, they attended the sessions and moved to quash their own order for informality, incorrect evidence, and badness of the examinations, according to the grounds of appeal, and to have a special entry made of the reason for quashing the order. The appellants resisted it, in order to obtain their costs, and urged that the justices in sessions having in a previous case on that day expressed their determination to put an end to frivolous removals, they should not enable the respondents to remove again by quashing this order for mere informality. The justices refused to make a special entry, and quashed the order generally, saying they believed by so doing they pursued a course which would put an end to unnecessary litigation. They offered to grant a case, which the respondents declined. Lord *Denman*. "Enough has been said to justify our having granted the rule *nisi*, but there appears now to be no doubt on the point. The mandamus, if granted, would go to a court of quarter sessions perhaps differently composed from that which made the order, and therefore not able to judge of the reasons; and, at all events, the sessions may exercise their own discretion as to stating them." *Patteson*, J. "I regret that we cannot order this entry to be made; but we have no power to do so, according to *Rex* v. *Wheelock*, (p. 1171)." The other judges concurred. Rule discharged.

Where an order has been quashed by consent, but *without communicating to the appellants the grounds on which it was quashed*, the order of sessions is conclusive between the two parishes.

The copy of the *examination*, on which the pauper was removed, did not state any residence by him in the appellant parish, the respondents, on discovering this omission, procured their appeal to be quashed, by consent of the appellants, but did not communicate on what grounds, either to the sessions or the appellants. The order of sessions being general, is a decision on the merits.

Reg. v. *Church Knowle*, 2 *N. & P.* 359; 7 *A. & E.* 471. R. Galley was removed from Church Knowle to St. Martin, Salisbury. Order quashed. Case:—A former order of removal had been made upon the examination of the pauper on the 20th day of December, 1834, touching his hiring and service with James Furber, in or about the year 1824; but it did not state as a fact, that during such service the pauper resided in the appellant parish. A copy of this order, with the examination of the pauper, was sent by the overseers of Church Knowle to the overseers of St. Martin. Against this order an appeal was entered at the Epiphany sessions and respited to the Easter. At the Easter sessions, the parish of Church Knowle having discovered that in the pauper's examination no mention was made of his having resided in the parish of St. Martin, moved on this ground only, but without stating this or any other grounds either to the court or the appellant parish, to quash their own order, which was done generally, and with the consent of the appellant parish. The pauper having again become chargeable to Church Knowle, a second order of removal to St. Martin was made upon another examination of the pauper, dated 27th June, 1835, touching the same hiring and service with Furber, and also upon an examination of the said Furber, touching the same hiring and service, and copies thereof were sent to the overseers of St. Martin. On the 17th of August, the appellant parish sent to the overseers of Church Knowle a notice of appeal, signed by four churchwardens and four overseers, therein described as the churchwardens and overseers of the poor of the parish of St. Martin, in the city of New Sarum, and on the 5th of October, a statement of the grounds of appeal, signed by two churchwardens and two overseers only, therein described as the churchwardens and overseers of the poor of the parish of St. Martin, in the city of Salisbury, and the appeal was entered at the Michaelmas sessions. At the hearing of the appeal, the court overruled an objection made by the respondents, that the appellants were bound by the description contained in the notice of appeal of the four churchwardens and four overseers who signed the same, and were thereby precluded from putting in the statement of the grounds of appeal signed by two churchwardens and

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The appellants are not estopped by the signatures to the notice of appeal from proving that those who signed it were not the real number of parish officers.

two overseers only. The court overruled, also, an objection made by the appellants, to the reception of parol evidence to explain the grounds on which the respondents had moved to have the first order quashed, and after hearing the same, thought the quashing of the said order conclusive as between the same parties, and accordingly quashed the last order. Lord *Denman*, C. J. "I am of opinion that the sessions were quite right, in both the conclusions they have come to. The first point made is, that the statement of the grounds of appeal was inadmissible, because the appellants had precluded themselves from tendering it, by having previously given a notice of appeal, signed by a greater number of parish officers. But it seems clear to me that the appellants were not so bound by the way in which the notice of appeal was signed, and as the very objection was raised at sessions, we must take it that an explanation was given, which was perfectly satisfactory, as the justices allowed the appeal to go on. Nothing in fact is stated in the case to show that those who signed the statement of grounds of appeal, were not both in fact and law the proper persons so to do. On this point it seems impossible to come to any other conclusion. Then it is said that the rule of law which makes an order of sessions conclusive between the two litigant parishes, is not applicable here, inasmuch as the order was quashed on an application of the respondents themselves, who had discovered some defect in the statement of their case, and we are referred to certain decisions as guides on the subject. I do not think, however, I shall interfere with anything that has been laid down either by myself or other judges, in arriving at a different conclusion here. For in those cases there was either an express decision of the sessions, pointing out the special grounds on which their judgment proceeded, or as in the last case cited, *Rex* v. *Wick St. Lawrence*, (p. 1171,) there was what was equivalent to it, a quashing of the order by consent of the parties, the point on which it was quashed being expressly made known to the other side. Can it be even said here that the sessions did not quash this order on the merits; all that can be gathered from the facts stated is, that the respondents found some deficiency in the facts to support their case, and upon that they procured their order to be quashed. If on an appeal being decided in this manner, we should hold that evidence was admissible to show that it was not decided on the merits, what a door we should open to injustice, for the respondents might get their order quashed again and again, and at last contend that the case had never been decided on the merits. The appellants, by such a course, would naturally be misled, for if this could be done once, it could be done twenty times, and then when the appeal came on to be heard, the question would be, whether the case had been previously decided on each occasion on the merits or not, the great inconvenience of which is obvious. In this case, in my opinion, the sessions were quite right in the decision they came to, that their former order was conclusive, because, on looking at the statement of the grounds of appeal, it is quite clear that the parties went to try the same question on both occasions; there could be no doubt, therefore, what the point to be tried was. I think, therefore, in every point of view, the sessions were quite right, and that when an order of removal is quashed, it is binding and conclusive, unless the opposing party is protected, and put on his guard, by being told that the appeal is to be quashed on some special ground, apart from the merits of the case." *Patteson* and *Williams*, Js., concurred. *Coleridge*, J. "I should not have added a word to what has fallen from my lord, had it not been that for some time I entertained a different opinion, which, however, was entirely altered by the argument for the appellants. Quashing an order for want of form is different from quashing it merely because the merits are not gone into. If the order is discharged because the respondents do not choose to enter into their case, that is a quashing on the merits. We decide this case, therefore, on the general ground, which has been long established." Order of sessions confirmed.

If an order is confirmed because the

Reg. v. *Evenwood*, 3 *Q. B.* 370. Margaret Robinson, and children, were

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appellants who relied on a settlement by renting a tenement did not allege any *residence* in E, the decision is upon the merits, and conclusive.

removed from Middlestone to Evenwood. Order confirmed. Case :—The paupers were removed on an examination taken on the 18th August, 1842, which set forth a settlement of the paupers in Evenwood, derived to them from William Robinson, the late husband of Margaret, he having been settled in the said township by reason of his having rented and occupied a farm of land therein from May-day, 1824, to May-day, 1827, at the rent of 50*l.* a year, and having paid the rent for the farm, and having resided in the township on the said farm whilst such tenant thereof for more than a year. Against this order Evenwood appealed, and the ground of appeal was, that by an order of removal, of the 16th September, 1841, the paupers had been removed from St. Helen's Auckland, to Middlestone, and that such order had been confirmed on appeal, subject to a case, which had been since abandoned. On the trial of this appeal, the respondents proved all the facts necessary to support the settlement stated in the examination. The appellants contended that the judgment of the sessions on the former order was conclusive, the circumstances of which judgment were as follows: the former order removed the paupers from St. Helen's Auckland, to Middlestone, on an examination setting forth a derivative settlement of the paupers in Middlestone, by reason of a settlement having been obtained by the said W. R. in that township, by hiring and service, whilst unmarried, in the year 1822. Against this order Middlestone appealed, and admitted the settlement by hiring and service, but alleged a subsequent settlement in Evenwood, in the following terms, that is to say, that, in 1842, he rented a farm, situate at or near Tofthill, in Evenwood, from Mr. Thomas Dickenson and others, at the rent of 50*l.*, or thereabout, and occupied the same under such renting, from the 13th May, 1824, to the 13th May, 1825, and paid the rent for the same. And he also rented and occupied the same farm, from the 13th May, 1825, to the 13th May, 1827, and paid the rent, and was also assessed to and paid the poor-rate due for the same farm during the whole of the time he rented such farm. That appeal came on for trial at the Easter sessions, 1842, when the respondents objected that the grounds were defective in not stating any residence by W. R. in Evenwood ; and the sessions, being of this opinion, confirmed the order with leave to the then appellants to take the opinion of the court upon the sufficiency of the statement. Instead of proceeding with the case, they notified the abandonment thereof to St. Helen's Auckland, and obtained the present order of removal. The sessions were of opinion that their judgment, of the preceding Easter sessions, was not a judgment on the merits, and that the respondents were not concluded thereby. The appellants thereupon called witnesses to rebut the alleged settlement of W. R. in their township. Upon the evidence, the sessions confirmed the order, but granted this case upon the point, whether the court were right in holding that the former judgment of the paupers from the township of St. Helen's Auckland, was not conclusive. Lord *Denman.* " There is a regular mode of proceeding for a court of quarter sessions. If the court comes to a decision for defect of form, a special entry should be made to that effect ; if that is done, it will appear when necessary how the case was disposed of ; but if that is not done, a party must prove how the case was disposed of. I think we decided correctly in *R.* v. *Lancashire,* (p. 1177,) that the justices must exercise their discretion as to making a special entry of the grounds on which they quash an order, according to *R.* v. *Wheelock,* (p. 1171.) There will be infinite difficulty if we are to unravel the facts on which the judgment of a court of quarter sessions is given in a former case." *Williams,* J. " The appellants gave notice of this objection in their statement of grounds of appeal. In the former case, there was no allegation in the grounds of appeal, that the pauper resided in Evenwood, and the court of quarter sessions held that the statement was insufficient. I confess I cannot understand what is a hearing on the merits if this is not so. It seems to me, that if the parties go to the sessions, the appeal comes on to be heard, the respondents' case is concluded, and then it turns out that the statement

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by the appellants in their grounds of appeal is insufficient, so that they cannot be heard at all, the decision is not upon a preliminary objection." *Coleridge*, J. "I am entirely of the same opinion: this question is put upon the right issue; this is not a decision upon matter of form, but upon the merits. There has been a hearing of all the legitimate evidence upon the one side and upon the other. If evidence is improperly rejected, then the case is not decided upon the merits; but if the justices decide upon the evidence before the court, the appellants cannot be allowed to say they had not a full opportunity of being heard; the decision is conclusive. If there is once a departure from that rule, it will be impossible to know where to stop." Orders quashed.

Where the sessions discharged an order of removal, on the ground of a material variance between the settlement stated in the examination, and that proved, the decision is *upon the merits* and final. An examination stated a renting from 1827 to 1828, but the renting being in fact from 1828 to 1829, the variance is material.

Reg. v. *Clint*, 1 *G. & D.* 245, 11 *A. & E.* 886. J. Lax was removed from Birstwith to Clint. Order confirmed. Case:—By a former order, the pauper had been removed from Birstwith to Clint, on the 8th May, 1839, upon an examination of the pauper, setting up a settlement in Clint by renting, &c., in that township, in 1827, and an occupation from June in that year to June, 1828. That order was appealed against, and the ground of appeal was, that the pauper did not *bona fide* rent or occupy for a year, from June, 1827, until June, 1828. On the appeal, it appeared that the pauper entered upon the tenement in June, 1828, and not in 1827, and that he quitted in August, 1829. The sessions held the variance material, discharged the order, and refused to grant a case. This court afterwards, in Trinity term, 1840, discharged a rule for a mandamus to the justices to enter continuances and hear the appeal. A second order of removal, now in question, was made upon an examination of the pauper, stating his occupation, agreeably to the dates proved at the trial of the former appeal, to have been from June, 1828, to August, 1829. The question was if the first order was conclusive. During the argument, *Coleridge*, J., said, "The question was not as to the settlement of the pauper generally, but as to the settlement *alleged*. Did not the sessions decide upon the merits when they decided the whole question, which was, whether the pauper had the settlement *alleged?*" It was then contended that the settlement now alleged had never been adjudicated on, and that by a mere informality they were prevented from going into his case. *Coleridge*, J. "You did go into your case and the sessions decided that you had failed to prove it. We must now assume the variance to have been material." *Patteson*, J. "You might as well say the decision would not have been upon the merits if you had set up in the examination a settlement by hiring and service, and had sought to prove nothing but a settlement by estate." Lord *Denman*. "The 4 & 5 Will. IV. c. 76, has made a great difference as to such points. A party must send notice of the actual settlement on which he relies, and if he does not, whether by mistake or not, his adversary has a right to bind him, and shut him out from proving any other settlement. This may be said to be a hard rule; but I think it promotes justice to keep parties to the issue, and not allow them to set themselves right at any future time." The other judges concurred. Order of sessions quashed.

An order was quashed on appeal, because the examination did not state the date of the birth, another order was obtained, which the sessions quashed, and found that the omission in the first examination was material. Q. B. will not interfere; and the judgment of the sessions on the first order is conclusive.

Reg. v. *Charlbury & Walcott*, 3 *G. & D.* 177; 3 *Q. B.* 378; 7 *Jurist*, 1083. By an order of February, 1843, E. Wright was removed from Charlbury and Walcott, to Bloxham. Order quashed. Case:—It appeared that a former order of removal between the same parishes as to the same pauper had been quashed on appeal upon the objection that the examination (on which the order was founded) was insufficient, in not stating the date of the birth of the pauper's husband; and which omission the sessions held to be material, and therefore quashed the order without hearing any evidence, or further going into the case. Upon this appeal, a witness was tendered to prove, that on the former appeal, the order of removal was quashed upon this preliminary objection to the sufficiency of the examination, and that the merits of the case were not gone into; but the sessions held, that such evidence would not alter their decision, and thereupon quashed the present order, subject to the

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question as to the judgment quashing the former order being conclusive between the parties so as to preclude the respondents from removing the paupers again upon a fresh order founded upon an amended examination, which supplied the omission in the former one. Lord *Denman*. "The object of the legislature and the wish of this court in these cases is, to make a free and true communication of the facts between the one party and the other; and where that is not done, great expense is incurred by reason of the doubts which are raised. In this case, the examination is sent by the respondents: the appellants say, by their statement of grounds of appeal, that the examination is insufficient, in not stating the date of the birth of the pauper's husband. That is the history of the parties. The omission may be material, and the respondents have notice of it. Then the respondents have a discretion; they may either go to the sessions, or they may abandon their order, and proceed to obtain a new one. It is said that the appellants have a right to costs, and have a right to enter their appeal at the sessions, in order to compel the payment of their costs, and then the order will be quashed; but it seems to me, that this has nothing to do with the question; the respondents should tender costs, or offer to refer the question of costs to some one who can decide that question between the parties: it is the fault of the respondents, if they prevent the appellants from getting them in that way. In this case, however, the respondents did go to the sessions; and, upon the question raised by the statement of grounds of appeal, whether the examination was sufficient, the sessions found that the objection was good, and the order of removal was quashed. The same pauper is removed again, and, upon the trial of an appeal against this latter order, an application is made by the respondents for an entry upon the records of the court, that the former appeal was not decided upon the merits; but this the sessions refuse to do, and quash the latter order, subject to the opinion of this court upon the question, whether the judgment quashing the former order of removal, under the circumstances, was conclusive. The sessions do not ask our opinion, whether the omission in the examination was material, and we cannot enter into a discussion upon it; they may be right or they may be wrong in that respect; but we must give them credit for acting judicially, and we ought to adhere to their decision. I think it might be upon the merits, because the pauper being about to be removed to her husband's birth settlement, the examination might be insufficient to make out the case without evidence of the date of the birth of her husband. In the *Rex* v. *J. Carnarvonshire*, where this court was called upon to interfere by mandamus, we thought the justices were mistaken in their decision, that the statement of grounds of appeal was not sufficiently explicit. With regard to matters of practice, this court will always interfere; and that was not a decision, strictly speaking, either on the merits of the appeal or upon a matter of form, but a decision with regard to the rights of the parties. In the present case, I think we ought to abide by our decision in *Reg* v. *Evenwood*, (p. 1178,) which appears to me to be on right and sound principles, and to confirm the order." *Patteson*, J. "There may, no doubt, be a great number of nice points raised for our consideration, but are there not fewer appeals tried at the sessions? are there not a multitude of cases in which settlements are fixed by means of the examination and statement of grounds of appeal, without the parties going to the sessions? The cases here are determined on the best view we can take of the questions brought before us. If an order of removal is quashed in general terms, the respondents may, on a subsequent occasion, go into parol evidence to show that it was not quashed on the merits, as in the case cited of *R.* v. *Osgathorpe*, (p. 1171,) where the first order of removal upon appeal was quashed generally; and, upon an appeal against a second order, it was proved by the respondents, that the first removal was before the pauper became chargeable, and the second, after he became chargeable: but that is not the case here; the first order was quashed on an objection that there was a material omission in the examination, but we cannot enter into

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The sessions are the proper judges of the materiality of an omission in the examination.

the question of materiality; the sessions decided it; then a second order is made, and, upon an appeal against it, the respondents say, now we will go into the ground upon which the first order was quashed; they do go into it, and ask the sessions if the former judgment is conclusive. The sessions hold that it is. Then the sessions ask us if their former judgment is conclusive; it seems to me that it is. The ground of litigation is the same in both cases. If the sessions have found that there is a material omission in the examination, it is the same thing as if they had found that there was a want of evidence; and if an order quashed for want of evidence is conclusive, an order quashed for a material omission in the examination is conclusive. *R.* v. *Evenwood* seems to me to be similar to the present case; when that case was first brought under my notice in the Bail Court, I did not quite agree to it; but upon consideration I do. The principle is this: if there is a material omission in an examination, or in a statement of grounds of appeal, and the order is quashed or confirmed on that, there is a decision on the settlement itself, and that decision is conclusive; I therefore think, that the sessions decided rightly in the present case, and that the former order was conclusive." *Williams*, J. "I am of the same opinion. It has for a long time been settled, that, where an order is quashed, it is conclusive between the same parties on the same state of facts. A decision, that a pauper is not chargeable, is not a decision upon matter of preliminary form; as soon as fresh relief is given to the pauper, there is a new state of facts, and a fresh order is made. Now, in the present instance, the first order of removal is said to have been quashed on preliminary form, and not on the merits: that brings us to the point as to what may be considered a decision on the merits. If an appeal comes on for hearing, and the sessions decide that the examination is insufficient, or that the evidence is defective, that is a decision on the merits. It cannot, I presume, be said, that witnesses must be called on each side. Here, the cause was called on, it was alleged in the statement of grounds of appeal that there was a defect in the examination, the sessions decided that the examination was defective, and surely that was a hearing. On the second appeal, the sessions held that their decision on the former case was a hearing on the merits. When the sessions have come to a decision on a ground submitted to them, and eminently within their jurisdiction, we ought not to interfere. An order, quashed after a hearing upon the merits, is conclusive, except there be a change of facts." *Coleridge*, J. "I quite agree in the preliminary observations of my brother Patteson. I have no doubt, that, in consequence of the greater minuteness in the examination and in the statement of grounds of appeal, many appeals have not come before the sessions where there is an objection to an examination, on the ground that it is insufficient; it may be that the examination does not give sufficient information, or that the information is sufficient, but that at the trial of the appeal the evidence varies from it; but the sessions are to judge in the one case and in the other; and when they decide, it is as much a decision on the merits as if the whole facts were proved, and the evidence was not sufficient to support the order. If the sessions improperly refuse to let a party go into evidence, then a mandamus is the proper remedy; but there has been no such application in this case. The sessions held, on appeal against the first order, that the examination was insufficient, and the order was quashed generally. A second order is obtained, and an appeal is entered against it. On the hearing of the second appeal, the respondents pray to be allowed to show the ground on which the first order was quashed, as in *R.* v. *Wheelock*. (p. 1171). The sessions hold, that such evidence would not alter their decision, and quash this latter order, subject to our opinion whether the former decision was conclusive. We cannot say the sessions were wrong, if, on the facts stated, they may have been right. There are many cases where an objection to an examination may have rather an appearance like form; but it still may be substance. The date of the birth of the pauper's husband may have been most cardinal; there may have been a question as to

What is a decision "on the merits."

his legitimacy, which may have turned wholly upon the opportunity given to the appellants by the date, if given in the examination, of hunting out the history of his birth. How can we say that the sessions were wrong? We must, therefore, decide that they were right." Order of sessions confirmed.

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An order confirmed because no grounds of appeal had been given, is conclusive, although at the same sessions, on the usual motion, the appellants entered and respited an appeal.

Reg. v. *Oundle*, 2 *G. & D.* 77; 3 *Q. B.* 353, *n.* On appeal against an order of removal from Titchmarsh to Oundle, the sessions dismissed the appeal. The inhabitants of Oundle appealed against the said order at the sessions of the 7th January, 1841, when the court made this order:—"Now, upon the opening of the appeal by A. B. of counsel for the respondents, and hearing C. D. of counsel for the appellants in reply, and it appearing that notice of the grounds of the said appeal had not been given by the appellants to the respondents, as required by the act of parliament in that case made and provided, this court doth refuse to hear or respite the said appeal, and doth hereby order that the said order of the said justices be ratified and confirmed, subject, nevertheless, to the opinion of the Court of Queen's Bench on a special case." Subsequently, at the same January sessions, the court made another order, which, after reciting the same order of removal, proceeded thus:—"And whereas the inhabitants of the said parish of Oundle did, at this sessions, by C. D. their counsel, pray this court that they might be permitted and allowed to enter their appeal against the above recited order to the judgment of this court, to be tried at the next general quarter sessions of the peace, to be holden, &c. Now this court doth order that the inhabitants of the said parish be permitted and allowed to enter their appeal against the above recited order to the judgment of this court, to be tried at the next general quarter sessions, &c., upon due notice thereof to be in the meantime given to the churchwardens, &c., of the parish of Titchmarsh." This appeal came on to be tried at the April sessions. It did not appear at this time that any case had been tendered by the appellants to the respondents in pursuance of the said first mentioned order of the 7th day of January, at any time since the previous sessions. On the trial of this appeal, the only evidence given by the respondents was the entry in the clerk of the peace's book of the order of sessions, made on the 7th day of January, 1841. The order of the previous sessions, secondly before mentioned, was also read, and it appeared to the court therefrom (as the fact was) that the order of justices now appealed against was the same as that referred to in the first order of the previous sessions. The court considered that the said order of justices had been absolutely confirmed by the judgment of the previous sessions, and that such judgment was still in full force, and in nowise revoked by the said second order of the said previous sessions, and therefore refused to hear any evidence on the part of the appellants, and dismissed the appeal with costs. The question was whether the sessions were right in considering the order of justices as absolutely confirmed, and in dismissing the appeal. Lord *Denman.* "It appears that, when this appeal came on at the January sessions, notice of the grounds of appeal had not been given as required by the statute, and that the sessions therefore refused to hear or respite the appeal, and confirmed the order of removal, subject to a privilege, which the appellants did not choose to exercise, of stating a case for the opinion of this court. Subsequently, at the same sessions, an order was made, permitting the same appeal to be entered a second time. In point of form, it was by the order of the sessions that the second entry of the appeal was made, but we cannot but see that it was substantially an *ex parte* proceeding by the appellants, of which their opponents would have no notice or knowledge whatever; the usual practice being, that the motion to enter and respite an appeal is a mere motion of course, on which the appeal is put into a particular paper, without any communication to the respondents. In this case, the appeal having been once dismissed, the appellants should not have moved, in a mere formal way, to enter it as of course, and as though it had been an

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entirely distinct appeal from the previous one. However, in this formal way the appeal is re-entered, and at the ensuing sessions, when the justices find out that it is the same appeal they had previously dismissed, subject to a case, which had not been brought up, they think the appellants had no right so to enter the appeal a second time, and they dismiss it. I think they were authorised in dismissing the appeal under these circumstances. That is the only question we need decide, and the question as to the confirmation of the order by the dismissal of the previous appeal is immaterial." *Patteson*, J. "I think the sessions were quite right in dismissing the appeal, if they thought the order for entering it a second time was not authorised by them. The first appeal was dismissed, because the statement of the grounds of appeal had not been given as required by the Poor Law Amendment Act. The sessions refused to adjourn the hearing of that appeal, and they had a right to refuse, for the 9 Geo. I., which compels them to adjourn an appeal, when proper notice of it has not been given, does not apply when there has been no statement of the grounds of appeal delivered under the late act. The sessions heard the appeal as far as it could be heard under the circumstances, and dismissed it subject to a case. It is said that, as their decision was subject to a case, the appeal was not in truth decided. That may be so, but still it does not show that they were obliged to hear the appeal over again, because the appellants did not think proper to bring up the case granted them for the opinion of this court. Whether, as the appeal was dismissed, not absolutely but subject to a case, the order of removal was thereby confirmed, is immaterial to us, as we think, when the same appeal came before the sessions a second time, they had a right to say, that it was not by their act that the appeal had been so re-entered, and to dismiss it." *Wightman*, J. "The question raised as to the confirmation of the order of removal at the January sessions is unimportant; we think, when it was discovered that the same appeal which had been once disposed of was entered a second time, that it was rightly dismissed." Order of sessions confirmed.

Effect of a decision subject to a case which is never acted on.

Reg. v. *Fordham*, p. 1189.

An order quashed because the examination did not disclose chargeability, is not on the merits, and therefore not conclusive.

Reg. v. *Perranzabuloe*, 8 *Jurist*, 57; 3 *Q. B.* 400; 1 *Car. H. & A.* 16. C. Cocking was removed from Perranzabuloe to Bodmin. Order quashed. Case:—The appellants proved that the pauper had been removed by a former order from Perranzabuloe to Bodmin, and that such order had been reversed on appeal; in answer to which, the respondents tendered evidence to show that the merits were not heard at the trial of the former appeal. It was then admitted that the former order of the 29th November was quashed, because the examinations upon which that order was founded did not contain evidence of chargeability; and the court, being of opinion that the omission went to the merits, quashed the second order. Lord *Denman*. "The former order of justices was discharged on an objection which was held to be the merits; but it was on the merits as they then existed. A new state of things has occurred since, and the former order cannot affect both. The second order has been quashed upon a misconception, and the order of sessions must be discharged." The other judges concurred

Where the sessions make a special entry, *not on the merits*, the Court of Queen's Bench will not direct it to be erased, the real ground being a defect in the examination.

Exparte Overseers of Pontefract, 3 *Q. B.* 391. On a rule for a mandamus to erase an entry from the records of the quarter sessions of Yorkshire, it appeared that on the 22nd April, 1843, a pauper was removed by an order from Thorne to Pontefract. The latter at the Midsummer sessions entered and respited an appeal against it on the 3rd of August. The overseers of Thorne gave notice to the overseers of Pontefract that they had discovered that the examinations were defective, and that they abandoned the order, stating also that they should apply to the quarter sessions to quash the order upon a special entry, "quashed not upon the merits." They further stated, that they were willing to pay all reasonable costs already incurred on the appeal, together with the maintenance, on the 29th September. The overseers of Pontefract gave notice of trial, and delivered their grounds of appeal. At the trial the notice of abandonment was

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admitted, and the respondents moved to quash the order, with a special entry "not upon the merits." The appellants claimed the right to have the appeal heard, or if the court declined to hear the appeal, that the entry should be according to the fact, that it was quashed because the examination was defective. The order of the sessions was, that the order of removal should be discharged "not on the merits," and that the costs of the appellants to the time of the service of the notice of abandonment, and the costs of coming to the sessions, should be paid to them by the respondents. Lord *Denman*. "It appears to me that the court of quarter sessions did perfectly right; and it would be sufficient to rest our judgment in this case upon their conclusion being a right one. When the respondents at sessions said, 'We feel that we cannot support the order, and we are willing to pay all the costs incurred up to the time of the abandonment,' it was the duty of the appellants not to make a job of the trial, but to ascertain what was the amount of their costs, and, receiving them from the opposite party, to withdraw the appeal. It was against good faith in the appellants to try to establish a settlement in the respondent parish after they had been served with notice of abandonment, and to seek to get an entry of judgment as if the case had been decided upon the merits. The appellant parish has indeed a right to say, 'We cannot accept your abandonment,' and to go on and take the opinion of the court of quarter sessions as to whether it will think the case, under such circumstances, decided upon the merits or not. In this case the court thought it was not decided on the merits, and I think so too." *Williams*, J. "Upon the hearing of the case, the opposite party strikes, and abandons his order. Then the party who requires the case to be heard has a decision in his favour on the very point which he sought to have determined. It could not be stronger for the appellants if all their witnesses had been heard. The result would have been the same." *Coleridge* and *Wightman*, Js., concurred. Rule refused.

When the sessions quash the order *not on the merits*, it is not conclusive, although they decided on the sufficiency of the examination.

Rex v. *Kingsclere*, 3 *G. & D.* 186; 3 *Q. B.* 388. On an appeal against an order of removal, the sessions quashed the order, subject to a case which stated, that, with a view to enable the respondents to obtain a fresh order of removal, the court directed the order of quarter sessions to be drawn up in the following form:—"It appeared unto this court, that the examination of the pauper and other persons annexed to the order made by the said two justices for the removal of the said paupers, is insufficient. It is therefore ordered and adjudged by the court, that the order of the said two justices be quashed, *but not on the merits;* and it is hereby quashed accordingly. And it is further ordered, that a special case be stated for the opinion of the Court of Queen's Bench, whether the insufficiency of the examination of the pauper is a defect of form or a question of merits." Lord *Denman*. "I should rather think, from the entry of the judgment, that the court of quarter sessions were of opinion that the date of the relief was not material. They say, indeed, that the examinations are insufficient; but they also say, 'We have not decided upon the merits.'" The other judges concurred. Order of sessions confirmed.

An order quashed, "the merits of the case not being inquired into," is not conclusive.

Reg. v. *Ynisawdra*, 7 *Jurist*, 1057. On appeal an order made on the 11th day of September, 1841, for the removal of a pauper and her family from Ynisawdra to Laleston, was quashed. Case:—At the Midsummer sessions, 1841, an appeal came on to be heard, in which the overseers of Laleston were appellants, and the overseers of Ynisawdra were respondents, which appeal was brought against an order made on the 3rd day of April, 1841, by which the same paupers were ordered to be removed from Ynisawdra to Laleston. On the 28th day of June, 1841, the respondents served the appellants with notice of abandonment of the order of the 3rd April, and at the sessions on the following day it was quashed, on the application of the appellants, with the consent of the respondents, but not for want of form or chargeability, or after a hearing on the merits. The respondents thereupon, and after reading the 6th rule of practice of the

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said court under the head of "Appeals," which is in these words:—"Whenever any order of removal shall be quashed otherwise than on the merits, a minute of the grounds of the judgment shall, subject to the approval and revision of the court, be settled by the advocates on either side, and if they disagree, by the chairman, and such minute shall be entered on the record," prayed the court, in pursuance of such rule, that the grounds on which the order of removal was quashed, should be entered on the record. The appellants objected. Ultimately, by direction of the court, the following order and judgment were entered by the clerk of the peace, in the proper book or record of the same court:—"Midsummer sessions, 1841. Laleston and Ynisawdra. Appeal brought over. On the motion of W. Morgan, ordered that the order of justices be quashed, with costs, *the merits of the case not being inquired into.*" At the trial of this appeal, the appellants stated, that the only ground upon which they relied and intended to resist the first-mentioned order was, that, at the last preceding quarter sessions, the order of the 3rd day of April, 1841, had been appealed against by the parish of Laleston, and was quashed on the motion of the appellants, and with the consent of the respondents. The respondents contended that they were not concluded by the judgment of the court upon the former appeal, as the order was then quashed without entering on the merits. The sessions were of opinion, that, in the present appeal, such order and judgment were conclusive against the respondents, and quashed the order of the 11th day of September, 1841. Lord *Denman*, C. J. "What was done on the trial of the first appeal is entirely within the principle, if not within the express terms, of former cases. The former order was clearly not quashed upon the merits; and the entry then made seems intended expressly to give an opportunity of trying the case upon the merits." *Patteson*, J., concurred. *Coleridge*, J. "Independently of the cases, this entry was made in express accordance with the rule of the sessions. A quashing not on the merits, and a quashing for defect of form, are really convertible terms." *Wightman*, J., concurred. Order of sessions quashed.

IX. Of Amendments by Sessions.

9. *Of Amendments by Sessions.*

Enabling statute, 13 & 14 Car. II. c. 12, s. 2.

The 13 & 14 Car. II. c. 12, s. 2, declares, that the justices upon the appeal shall do justice between the parties, *according to the merits of their cause.*

Defects of form to be amended.

And the 5 Geo. II. c. 19, s. 1, provides, that on all appeals to the sessions against the judgments or orders of any justices of the peace, the justices there shall cause *defects of form* therein to be rectified, *without costs*, and after such amendments shall proceed to examine and consider the truths and merits of the cause.

Power is given to the justices to amend defects of form; and this power should be liberally exercised, as they may order the amendment to be made on payment of costs. The legislature evidently intended that whatever did not relate to the "truths and merits of the cause" should be considered matter of "*form.*" This is not the sense, however, in which that word was interpreted in *Rex* v. *Cottingham* (p. 1174), and *Rex* v. *Wick St. Lawrence* (p. 1171).

The omission of a complaint, and of adjudication of chargeability, is not a matter of form that can be amended.

Rex v. *Great Bedwin*, 2 *Sess. Ca.* 142; 2 *Stra.* 1158. Order of removal of a certificated person, in which there was no complaint nor adjudication of chargeability. On appeal the sessions amend the order in these particulars, as matter of form only, and insert such complaint and adjudication. And now the question was, whether these amendments went only to form or substance. By *Lee*, C. J. "There has been but one case in this court on this act since the making of it, and that was not determined. The present seems to be a very strong case against the power of amending. For there must be a *complaint* from the overseers, otherwise the justices have no power to remove; and a certificated person must be *adjudged* to be actually chargeable, otherwise he cannot be removed; and these amend-

ments might be the real merits on which this case depended. And it would be a detrimental construction of the act to take it so largely; and would be giving the sessions an original jurisdiction." And quashed by the whole court.

Nor of the jurisdiction of the justices.

Rex v. *Chilverscoton*, 8 *T. R.* 178. The two parishes were in different counties, and no county mentioned in the margin. The justices were described as justices of the *county aforesaid*. Lord *Kenyon*. "It is now too late to discuss one of the points made at the bar, namely, whether or not the sessions could amend in this case, it having been decided in *Rex* v. *Great Bedwin* (p. 1186), that the sessions can only amend mere defects or wants of form. *I verily believe that if the legislature had been asked what was their intention when they passed statute 5 Geo. II. c. 19, they would have said they meant, that if upon inquiry it appeared that the pauper had been removed to his proper parish, the sessions would have power to correct all defects in the order:* but the decision to which I before alluded was made ten years after the passing of the act, and at a time when Lord Chief Justice *Lee*, who was peculiarly conversant in sessions law, presided here. And though I lament that that decision was made, because it renders the statute of little avail, yet it has been acted upon ever since, and it is important to adhere to determinations respecting settlements."

The true construction, but not observed.

Statute a dead letter.

Rex v. *Moor Critchell*, 2 *East*, 66. Lord *Kenyon*, C. J., said, "That it was to be lamented that the 5 Geo. II. c. 19, which was intended to give the justices in sessions a power of amending orders of removal, which were defective in point of form, had, by the construction which had been put upon it, been rendered a dead letter, as all defects of this sort had been considered to be matters of substance, and not of form."

The sessions may alter the word "parish" to "vill;"

Rex v. *Amlwch*, 4 *B. & C.* 757. It was part of this case, that in April, 1824, overseers were appointed for the parish of Llanerchymedd. The order of removal was directed to the churchwardens and overseers of the parish of Llanerchymedd. To this it was objected, that Llanerchymedd was not a parish. The court of great sessions directed the order to be amended in this respect, and the appellants denied their right to do so, which forms the first point in this case. If they had that power, the case stands as if the removal had been to the parish or vill of Llanerchymedd. *Bayley*, J. "I am of opinion, that giving a fair construction to 5 Geo. II. c. 19, the sessions had the power to make this amendment. This order was directed to the churchwardens and overseers of *the parish*, and the fact was, there were no churchwardens of L., and it was not a parish but a vill. The persons for whom the order was intended, received it, for they appealed against it, by the description given to them in the order. Upon the appeal they said that L. was not a parish, but an extra-parochial vill, or, in other words, they pleaded misnomer; that was a mere matter of form. *Rex* v. *Great Bedwin* (p. 1186), is very distinguishable, because in that case there was no complaint, nor any adjudication of chargeability; there were material facts and essential parts of the order, for the justices had no power to remove, unless there was a complaint from the overseers; and a certificated person could not be removed unless he was adjudged to be actually chargeable." *Holroyd*, J. "It was material in point of substance that the order should be directed to a district, the inhabitants of which were bound by law to maintain their own poor." In this case the sessions also erased the word "*churchwardens*."

and erase the word "churchwardens."

Township for parish.

In *Rex* v. *Bingley* (*ante*), the sessions amended the order by substituting the "township" for the "parish."

10. *Power of Sessions in Orders of Removal.*

X. Power of Sessions in Orders of Removal.

1. *Of their Judgment upon Orders of Removal.*
2. *Of Special Cases thereon.*
3. *Of Costs and Maintenance.*

It is important that the sessions should bear in mind, in adjudicating upon orders of removal, that the justices by whom the order is made, and also those who are rated or rateable in either of the contending parishes, or whose interests may be affected by the judgment, have no right to vote upon the determination of an appeal. (*Rex* v. *Yarpole*, 4 *T. R.* 71.)

Magistrates cannot vote on appeals where they are interested.

Rex v. *Gudridge*, 5 *B. & C.* 459; 8 *D. & R.* 217. A writ of certiorari issued under these circumstances: Upon an appeal against the accounts of the overseers, the order for allowance was quashed. The respondents applied for a case, but a majority of justices then present refused it. After some of them had left the court, a case was again applied for, and three voted for and two against it. One of the three was a rated inhabitant of the respondent parish, and had not voted on the decision of the appeal. The case was afterwards drawn without the concurrence of the appellant. *Abbott*, C. J. "We think it the safer course to hold that magistrates should not interfere in cases where they are interested; and that the rule for quashing the certiorari (*quia improvide emanavit*) must be made absolute." (See *Rex* v. *J. Monmouthshire, post*, and *Rex* v. *J. Leicestershire*.)

1. Of their Judgment upon Orders of Removal.

1. Of their Judgment upon Orders of Removal.

The sessions cannot make an original order of removal.

Rex v. *Bond*, 2 *Show.* 503; 2 *Bott*, 922. The court of quarter sessions cannot make an original order of removal.

Must either quash or affirm.

Rex v. *Oswell and Woking*, 2 *Salk.* 472; 2 *Bott*, 926. The sessions ordered the order of removal from Oswell to Woking to be *superseded*, and that the person should be removed to "Woking aforesaid." And it seems that the court were of opinion that the sessions could not *supersede*, though they might *repeal* an order of removal.

They cannot order the pauper to be returned to the respondent parish.

An order may be good in *part*.

The sessions may alter an order made at same sessions, but not of a previous sessions. (*a*)

Rex v. *Milverton*, 2 *Bott*, 928. The sessions ordered that the order should be quashed, and the party sent to the parish from whence he was removed. And it was held that they had only power to affirm or quash, but not to make a new order; and also that because an order might be good in part, and bad in part; the first part was confirmed and the latter quashed.

St. Andrew's Holborn v. *St. Clement's Danes*, 2 *Salk.* 494; 2 *Bott*, 929. The sessions made an order, and afterwards, at the same sessions, vacated it. Both orders were returned upon a certiorari; and by *Holt*, C. J., "You should not have returned the vacated order, but only the latter. There ought not to be two different judgments. The sessions is all one day, and the justices may alter their judgment at any time while it continues; but they cannot rescind the order of a previous sessions." (*Rex* v. *Cuckfield*, 2 *Bott*, 925.)

Where the justices are divided, the appeal should be adjourned.

Rex v. *Justices of Westmoreland*, 2 *Sess. Ca.* 193; 2 *Bott*, 931. Appeal to the sessions, at which only four justices were present, who were equally divided; so no determination was made, nor the appeal adjourned. A mandamus was directed to all the justices of the county in general, to proceed on the appeal. It was returned, that at such a sessions an appeal was lodged, and that four justices only attended, two whereof were interested in the question, and the other two were divided in opinion. It was agreed on all hands that this return was not to be supported. It was objected that the mandamus ought to be quashed, because it doth not appear that the appeal was before them; and that for aught appears, the mandamus requires the justices to do an impossible thing, viz. to proceed on an appeal not before them, since the appeal, being lodged at a former sessions, was not continued over to the subsequent sessions, and therefore was by law gone. On the other side it was said, that it was not usual in such

(*a*) See also *Rex* v. *Cheshire, post.*

cases to return the continuances; but that if in fact there was no such continuance, the fault was in the justices, who ought to have adjourned the appeal, till, by the coming of more justices, the matter might have been determined. Lord *Hardwicke*, C. J. "The question is, whether there is a possibility of the justices' proceeding in this appeal?" He thought if there was not, as there would be a failure of justice in this respect, an information ought to go against the justices who were at the sessions.

1. *Of their Judgment upon Orders of Removal.*

[*Note.*—The chief justice advised the proceeding on the appeal, or returning the continuances, and seemed inclined to grant a peremptory mandamus if they did not do so.]

2. Of Special Cases. (*a*)

2. *Of Special Cases.*

How drawn up.

When the sessions entertain a reasonable doubt upon the law, they authorise the unsuccessful party to draw up a *case* for the opinion of the Court of Queen's Bench. It is settled by the contending parties, and if there is any dispute, the difference is disposed of by the sessions. It is usually signed by the chairman and the clerk of the peace.

and brought before the Queen's Bench.

When a special case is thus granted, the unsuccessful party sues out a writ of certiorari. The order of sessions, embracing the special case, is then returned, and a rule obtained to quash it, against which the successful party shows cause, and the point of law is then determined.

The examinations form no part of the record.

The examinations, however, on which an order of removal has been made, form no part of the record of the sessions, and therefore cannot give the grounds of appeal by the certiorari. (*Reg.* v. *Abergele, infra; Ex parte Tollerton*, p. 1190.)

Costs.

Before suing out the certiorari, security must be given to pay the costs, if the party does not succeed. At the same time, he will not be entitled to his costs from the other side, even if successful.

If the order returned does not correspond with the certiorari, a motion should be made to quash the return.

Reg. v. *Fordham*, 11 *A. & E.* 73. It was contended that the orders of sessions had not been properly received, as the certiorari mentioned one order only, and two had been received. *Per Curiam:* "It is too late to take this objection: a motion should have been made before this argument to quash the return."

Effect of a case.

If the party declines to bring up a case, it would seem that an order of sessions which was confirmed, subject to a case, is not confirmed at all, unless the case be stated. (*Rex* v. *J. Pembroke*, p. 1191.) The better form, therefore, would be, that the said order be confirmed, unless the Court of Queen's Bench shall otherwise direct.

when it ought not to be granted.

The sessions, however, are not bound to grant a case whenever they are pressed to adopt it by the counsel for the defeated party, but may exercise their discretion; and where they have no doubt in their own minds, they ought to refuse, in order to save the parties from further expensive litigation. (*Rex* v. *Darley Abbey*, 14 *East*, 285, 597.) On the other hand Lord *Hardwicke* said, "that if the justices will not state the facts specially, though requested to do so, when the matter is doubtful, this is very blameable conduct in them." (See *Rex* v. *Preston-upon-the-Hill*, p. 1191.)

The sessions having refused to state a case, on a certiorari to bring up the order, a statement of the facts relating to the appeal, and the grounds of appeal ought not to be returned.

Reg. v. *Abergele*, 3 *N. & P.* 406; 8 *A. & E.* 394. A certiorari having been obtained for removing into this court all orders made on an appeal touching the removal of Evan Evans, between Eglwys Rhos, otherwise Llanehos, and Abergele; the clerk of the peace made a return, setting out the order of removal, the grounds of appeal, (which was bad on the face of it,) and the order of the sessions, (which was good on the face of it,) quashing the original order, and also setting out the facts of the case. The grounds of appeal being bad, the respondents applied to the Queen's Bench to quash the order of sessions, and confirm the original order. The objection to the notice had been taken at the sessions, and overruled,

(*a*) In copying the cases throughout this volume, the introductory part of the case has been abridged. The proper form is given in the Appendix.

2. *Of Special Cases.*

and a case to this court had been refused. Lord *Denman*. "In the absence of any authority, I think the course which has been adopted here is wrong. It would be a departure from the usual practice, and an introduction of a precedent full of inconveniences for the future. The rule must be discharged." Counsel objected to the discharge of the rule, as the notice was clearly bad. *Patteson*, J. "If a motion were made now to quash the return for its introduction of impertinent matter, on the next return being made, the order of sessions only would be brought up; but that being good on the face of it, would be confirmed. The same result arises from discharging the rule."

Where the sessions refused a case, the court of Q. B. will not grant a certiorari to bring up the examination, and grounds of appeal, for they are no part of the record of the sessions.

Ex parte Tollerton, 2 *G. & D.* 53. On a rule for a certiorari to bring up an order of removal, *the examination on which it was founded*, and the proceedings in the quarter sessions, upon an appeal against the said order, including the order and examination aforesaid, and the notice and grounds of appeal, it appeared that the sessions had refused to grant a case on the objection taken to the insufficiency of the evidence on the examination. Lord *Denman* delivered the judgment. "One of the questions, which in the case just disposed of we observed to be involved in the discussion, has now come before us; and it is this, whether the writ of certiorari ought to require anything more to be returned than the record of the court of quarter sessions, thereby meaning the original order of removal and the proceedings of the sessions thereon upon the hearing of the appeal. In the present instance the application is to require the return of that record, *and also* of the examination, whereupon the original order of removal was made. In the first place we find, upon reference to the officers of the crown office, that there is no memory nor any note to be found of any certiorari (except where a case has been granted by the sessions) having issued, requiring the return of any such additional matter. The case just disposed of is of course an exception, and the writ is considered as having issued improvidently, so far as respects the direction to return such additional matter as is therein specified. The cases cited in support of the present application are entirely foreign to the purpose. In all of them, without exception, a case appears to have been granted by the sessions, and so to have been brought before this court. In the case of *Rex* v. *Tedford*, it appears that a case was stated by the court of quarter sessions. In *Rex* v. *Margam*, a case also appears to have been stated, and this court (though not precisely in the usual form) in substance ordered that case to be restated. In *Rex* v. *Whittlebury*, a case had been granted by the sessions, and the remarks of Lord *Kenyon*, which were much pressed upon us, regarded the facts stated in that case, and are utterly without application to the present. *Rex* v. *Wishford* (the latest authority cited) was also the common case of an order of sessions upon a case reserved. Nothing therefore has been adduced to show that we ought to do what is now required. But, on the contrary, we find that an understanding seems to have prevailed in direct opposition to it. In the case of *Rex* v. *Oulton* (p. 1191), we find the following remarks in the judgment of Mr. Justice *Probyn*: 'This court can take no notice of anything but the order. I remember a case where *the examinations* were returned with the order, but the court said they could take notice of nothing out of the body of the order.' Upon the whole we consider this to be a speculative novelty, without the warrant of any principle, precedent or authority, and that therefore there must be no rule."

Special cases substituted in place of statement for judge of assize to determine. (*a*) Sessions ought not to grant cases

This practice of stating a case for the opinion of the court is a very wholesome substitute of the old mode, by which the facts were specially stated in the order of sessions, and then referred to the judges on the circuit. The appeal for this purpose was adjourned, and then the order of removal either quashed or affirmed, according to the opinion of the judge.

(*a*) Special cases from sessions should be always drawn by counsel. (*Rex* v. *Woolpit*, 5 *Nev. & Man.* 526, 538; and see *Rex* v. *Great Wishford*, p. 663.)

Still the order might be removed into the King's Bench; and in *Cuerden* v. *Leyland*, 2 *Str.* 903, was quashed, though the judge on the circuit had given an opinion in favour of it. But in *Rex* v. *Natland* (p. 873 *n*), the sessions directed a case to be drawn up for the opinion of the judge of assize, and agreed to be determined by his opinion. The judge heard counsel on both sides, and gave his opinion; and upon a notice of certiorari, Lord *Mansfield* observed, "that it was a manifest consent of the parties to this reference to the judge, and therefore it was like all other references, by consent; and after this consent, he thought it very improper to take the matter up again."

which in one alternative is to be *reheard.* Ap. 44; *L. J.* p. 41; *Reg.* v. *Houghton; Reg.* v. *Stoke-on Trent.*

Where it was agreed that several cases should abide the issue of one case, King's Bench will not interfere. (*Rex* v. *Justices of Worcester*, 9 *D. & R.* 210.)

If the justices will not state the case specially, though it may be blameable conduct in them in some instances, yet there are no means to compel them. In *Rex* v. *Oulton* (*Burr. S. C.* 64), an order of removal, upon appeal, was confirmed generally, without stating any case. The appellants excepted at the sessions to their refusing to state the case specially, and delivered into court a bill of exceptions under their hands, which was read and received by the court. The substance of the exception was, that the children, removed after their father's death, went with their mother to an estate of her own at Burnham Overy, and there inhabited with her upwards of three months. These exceptions were returned up together with the orders. And it was moved to quash the order of sessions together with the order of removal. The court were inclinable to come at this case if they could, as it seemed to be a determination against law. But by Lord *Hardwicke*, C. J. "To what purpose should we make a rule to show cause why this order of sessions should not be quashed? For I do not see that we can ever make such a rule absolute; because this, that it is alleged to have been the real state of the case, doth not appear to us to be the fact. And how can we take it for granted that it was the real fact? To be sure, it is a thing very much to be censured and discommended, when an inferior jurisdiction endeavours to preclude the parties from an opportunity of applying to a superior. But still we must go according to the due course of law." And *Page*, J., said, "he never knew an instance that this court could force the justices, against their will, to state a special case."

Sessions are not compellable to state cases.

Rex v. *Preston-upon-the-Hill*, *Burr. S. C.* 77. Order for removal from Daresbury to Preston upon appeal confirmed generally; not caring to state any special case in their order. A motion was made to quash these orders, which came before the court upon a bill of exceptions containing a special state of the case. On showing cause, the single question was, whether a bill of exceptions would lie in this case to a court of quarter sessions? By Lord *Hardwicke*, C. J. "This is a case of great consequence, and there may be very great inconveniences on either side. It hath been much wished, that a bill of exceptions would lie to the justices at their sessions; because otherwise it may sometimes happen, that they may determine in an arbitrary manner contrary to the resolutions of the courts of law. For if the justices will not state the facts specially (though requested to do so) when the matter is doubtful, this is a very blameable conduct in them, and it is to be wished that it might be avoided. On the other hand, there may be very great inconveniences arising from the abuse of bills of exceptions. And this matter of the settlement of the poor, which ought to be rendered cheap and speedy, may, by such means, be rendered dilatory, expensive, and burthensome." And after a full hearing of the arguments on both sides, the court were unanimously of opinion, that a bill of exceptions doth not lie to the quarter sessions.

A bill of exceptions does not lie to the quarter sessions.

Rex v. *J. Pembrokeshire*, 2 *B.& Ad.* 391. On a rule for a mandamus to the justices of Pembrokeshire to state a special case for the opinion of the Court of King's Bench, pursuant to an order of sessions made on an appeal against an order of removal from Narberth to Llanboidy, and to return the case so

The court refused a mandamus to the sessions to state a special case, though it

2. *Of Special Cases.*

Appeared that a case had been granted, as the decision of the sessions upon the facts precluded any question of law.

stated into the court, it appeared that the appeal came on to be tried at the Midsummer quarter sessions in 1830, when, after hearing contradictory evidence on a question of settlement by renting a tenement, the court confirmed the order; but, being requested to grant a case, did so in general terms, and without reference to any specific point. The attorneys could not agree in drawing up a case; and, upon their waiting on the chairman to settle the statements they had prepared, he said he could not sign any case by which it should not appear that the court had decided in favour of the respondents on the facts, independent of the law. The appellants' attorney declined taking a case so stated. The question of law which the appellants wished to bring before the court regarded the effect of a supposed agreement between the pauper and the landlord of the tenement, that certain repairs to be done by the pauper (and which it was alleged he had afterwards done) should be allowed in lieu of rent: but it seemed that the justices at sessions, although they granted the case, had been of opinion, upon the evidence, that the agreement had not been made, nor the repairs done; and the chairman would not sign any statement to a different effect. Lord *Tenterden.* "The justices have confirmed the order, subject to a case. *That is no confirmation, unless a case be stated.* All we can do, under the circumstances, is to require them to enter continuances, and hear the appeal. I do not see how we can order them to state a case." The rest of the court concurred. Rule discharged. On a subsequent day in the term, *Rex* v. *Earl of Effingham* (determined in Hilary Term, 1782,) was mentioned, from a note taken by the late Mr. *Dealtry*, and in which the court granted a mandamus to the justices present at the last Bradford (West Riding of Yorkshire) sessions to state a case. Lord *Tenterden.* "I admit that there may be instances in which such a mandamus may issue; but not that it ought to go upon the present application. Here the case, if stated, could come to nothing. The facts are for the judgment of the sessions; and, under the circumstances disclosed, it would evidently be useless to call upon them for a case."

Aliter where the decision of the sessions as to a case had been defeated by some misunderstanding.

Rex v. *Earl of Effingham*, 2 *B. & Ad.* 393, *n.* On a rule for a mandamus to the Earl of Effingham, and the justices, commanding them to state a special case on an appeal between Northowram and Hipperholme, it appeared that, the order being affirmed, the appellants desired a special case to be stated, which the sessions unanimously consented to; and the counsel for the appellants drew the case; and in the afternoon both counsel tendered the case to the sessions for their approbation. Two parties who joined in making the original order, and one who had an estate in each parish (and therefore declined giving any opinion in the morning) were the only justices remaining, when two of them refused to permit the case to be stated. Lord *Mansfield* doubted whether a mandamus could go to compel justices to state a case; but Mr. Justice *Buller* saying that in this instance the court of quarter sessions had actually agreed to state one, but Sir W. H. prevented it, a rule *nisi* was granted. Mr. *Fearnley* and Mr. *Dunning* (in Hilary Term, 1782) showed cause on affidavits, in which it was represented that the case had not been regularly granted, but that some of the justices had said a case might be stated if counsel could agree upon one; that counsel had not agreed, and that no directions for a case had been given to the clerk of the peace. The *Attorney-General* and Mr. *Heywood*, in reply, said that the case had been properly granted, and that the justices were willing that it should be stated; and the *Attorney-General* mentioned that an instance had occurred in which a mandamus had been granted, when the respondents would not consent to the stating of a case. Lord *Mansfield* ordered the case annexed to the affidavits in support of the rule to be read; and, it being read, asked Mr. *Fearnley* what facts in the case he could controvert? Mr. *Fearnley* said he had not seen the case at the sessions, and was not prepared now to go into the truth of the facts. Mr. *Heywood* observed, that though the case was annexed to Mr. Parker's affidavit, none of the justices showing cause had denied any fact in it. Lord *Mansfield* said there had been a misunder-

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standing; there did not seem to be any contrariety of facts, and the mandamus must go. Mr. *Fearnley* asked whether the justices must re-examine the witnesses? Lord *Mansfield.* "They must do it in order to know what case to return, if there is a difference about the facts." In Easter Term, 1782, a return was made, stating a special case, and stating also that the sessions had discharged the order of two justices; and a rule *nisi* was obtained for affirming this last-mentioned order of sessions; which rule was afterwards made absolute, no cause being shown.

It was moved to set aside an order of sessions confirming an order upon appeal. But the court would hear nothing of the merits of the cause, the order of sessions being in that case final, unless there had been error in form. (1 *Vent.* 310.)

The justices at sessions are not bound to express the reason of their judgment.

South Cadbury v. *Braddon*, 2 *Salk.* 607; 2 *Bott*, 751. On appeal to the sessions, the court discharged the first order. It was moved to set aside the order of discharge, because the justices do not say whether they discharge it for form, or on the merits. But by the court: "The justices are not bound to express the reason of their judgment, any more than other courts; but the reason of their judgment must be collected from the record, as where judgment is arrested upon an insufficient indictment."

Effect of their judgment.

If the sessions reverse the first order, and that, being removed, appears to be good, this court must intend it was reversed on the merits, and affirm the order of sessions. So also if the order is reversed specially for want of form, and no defect of form appears on the face of it, the court will infer that it was quashed for some extrinsic informality. (*Rex* v. *Wheelock*, p. 1171.)

If the sessions reverse the first order, and that, being removed, appears not to be good, the court must intend it was reversed for form, and affirm the order of reversal.

So, if the sessions affirm the first order, and that appears to be good, the court must affirm the order of sessions.

But if the first order appears bad, and the sessions affirm it, this court must reverse it, because it appears naught.

The justices should find the *facts*, and not merely state the evidence from which the facts are to be drawn.

In stating a case it is the duty of the justices to find the facts, and not to state the *mere evidence* of the facts. "The court are left to draw the inference which the justices below ought to do." (*Rex* v. *Lyth*, p. 496.) "However strong the presumption be, as only the evidence of hearing is stated and not the fact itself," the court cannot decide the case. (*Ib.*) The *fact* of a parish being unable to enjoy the benefit of the statute of Ely must be stated, and not the circumstances (*Rex* v. *Watson*, p. 15). "The sessions have not found all the facts from which we might draw the legal inference, but in addition to some facts stated, have supplied us with a considerable portion of documentary evidence. This is not the proper mode of submitting a case for our consideration, and it must not be assumed because we enter into the examination of these documents, that we will on all occasions inquire into matters of fact cognizable by the sessions only." (*Reg.* v. *Marquis of Salisbury*, p. 224.) The sessions must decide whether a particular excavation is a mine or a quarry. If they "avoid such finding, the answer of the court is,—we will not decide the question of fact." Case sent back. (*Rex* v. *Dunsford*, p. 246.) Whether a former wife was alive at the time of second marriage is a fact which the sessions should find. (*Rex* v. *Harborne*, p. 467.) "They should state the fact one way or another, whether it was a dispensation of the service, or a dissolution of the contract. (*Rex* v. *St. Peter's, Mancroft*, 575; *Rex* v. *Bottesford*, 579.) "It is a question for them (*Rex* v. *Roxby*, p. 587). The sessions should decide if the contract was one of hiring, or an imperfect apprenticeship. (*Rex* v. *Ightham*, p. 656). "The sessions should decide whether the party occupied the house as tenant, or servant" (*Reg.* v. *Bishopton*, p. 779). "It is a conclusion partly of law and partly of fact, and it is incumbent on the other side to satisfy the court that the sessions have necessarily drawn a wrong conclusion." (*Rex* v. *Snape*, p. 783.) The sessions should state

They should draw their own conclusion.

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whether the party occupied as tenant under a new contract, or as the executor of the former tenant (*Rex* v. *Barnard Castle*, 885).

The sessions ought not to grant a case on the sufficiency of the grounds of appeal (*Reg.* v. *Kesteven*). In one case the facts were stated, without noticing the points for consideration. (*Rex* v. *Harbury.*) The judgment of the sessions was reversed. "Such practice is very inconvenient, the points for argument should be distinctly stated." But where the sessions stated that *it appeared* to them that the pauper was bound, the King's Bench thought this sufficient, as "it is not necessary that the evidence should appear to us." (*Rex* v. *E. Knoyle*, p. 735.) If a particular term has acquired a local meaning, the sessions must state the sense in which the word is used, for without such explanation, the King's Bench will understand it in its ordinary meaning, and if the word "going" imports pasture fed, the sessions must so state it. (*Rex* v. *Thornham*, 761.) Where it was insisted that the term, "Landsell Colliery," imported an interest in land, *Willes*, J., said, "We cannot take notice of the meaning attributed to the term, and said to be so understood in the North by the trade, unless it were so stated to us." (*Rex* v. *N. Bedburn*, p. 808.)

They are the proper judges of fraud.

The justices are the proper judges of fraud and must find it as a fact. If there is a fraud in dissolving the original contract of hiring, the sessions must decide it. (*Rex* v. *Bottesford*, 579.) So also if the departure from service is fraudulent. (*Rex* v. *Preston*, p. 593.) So also that the removal of a pregnant woman was by the fraudulent collusion of the parish officers. (*Rex* v. *Llanfihangel*, p. 412.) So also they must find whether the overseers gave money to a tenant by way of relief, or fraudulently to throw a burthen on another parish. (*Rex* v. *Tillingham*, p. 851.)

But their judgment, as a conclusion of law, has been reversed.

But where the justices do find fraud, the Court of Queen's Bench will inquire whether the fraud is such as will prevent a settlement. Where from the confirmation of an order the necessary implication was, that the sessions thought that the pauper had been born in an extra-parochial place by the fraudulent contrivance of a large rate-payer, the court quashed their order, as the fraud must be that of the parish officer. (*Rex* v. *Mattersey*, p. 411). The sessions stated it as their opinion that all transactions by masters to prevent settlements are fraudulent; but the court quashed their order, as it is lawful to hire so as to prevent a settlement. (*Rex* v. *Mursley*, p. 521.) The sessions found that the pauper and his grandfather had fraudulently colluded to impose the grandfather upon the parish as a proper master for the child; the court said the justices have mistaken the effect of the fraud, and as there had been no fraud by the parish officers, a settlement was gained, and they quashed the order of sessions. (*Rex* v. *Great Sheepy*, p. 626.) The justices refusing to bind an apprentice to a particular master, the overseer, the pauper, his mother, and the master, executed an indenture privately. The sessions found fraud. The court said, "There are no circumstances to warrant such a conclusion," and quashed the order of sessions (*Rex* v. *Killy*, p. 668.) The parish officers procured letters of administration for a widow, and thereby perfected her settlement. The sessions found that there was fraud in so doing. The court said, "The sessions have stated the facts on which that finding was grounded, and there is not any fraud sufficient to prevent the estate vesting in the widow. (*Rex* v. *Great Glenn*, p. 867.) A schoolmaster was appointed in a manner which the sessions thought was "fraudulent, and in no respect consistent with the will" of the person who created the trust. The court thought that by *fraudulent* the sessions meant a *colourable* appointment, by which the master was deprived of part of his emoluments; there was no fraud in the master, and quashed the order of sessions. (*Rex* v. *Owersby-le-Moor*, p. 877). A purchase was made for 39*l.*, 30*l.* of which was borrowed, and the sessions found that the purchase was fraudulent. Lord *Hardwicke*. "The justices are the proper judges of fraud, and if they had found fraud generally, we might have been bound by it; but when they state the facts particularly, the matter is as much open for our determination as for theirs;" and the order was quashed. So

also where the sessions found the payment of rent by the parish officers was fraudulent, but that the landlord and tenant were not parties to it, the court held a settlement to be gained, and quashed the order of sessions. (*Rex* v. *Kibworth Harcourt*, p. 800.)

The court of Queen's Bench is not disposed to interfere with the decision of the sessions

Where the sessions draw a conclusion and state the facts specially, the *inclination* of the court is, although they do not concur in the inference drawn, not to disturb the decision, if there be any premises to warrant it. Dispensation, for instance, in a question of fact which the sessions must decide. "I should not, perhaps, have interfered if they had drawn a different conclusion, though I should not have been so well satisfied." *Abbott*, C. J. (*Rex* v. *Bottesford*, p. 579.) "The sessions have confirmed the *rate*, we must see that they are wrong before we quash their adjudication." (*Rex* v. *Ellis*, p. 223.) The sessions have found them to be *saleable* underwoods. I do not say their decision is right; and if I had to decide I might have come to a different conclusion. But it is a question of fact, and unless we can see that the sessions were wrong in law, we ought not to disturb their decision." *Coleridge*, J. (*Reg.* v. *Narberth*, p. 250.) "I should have drawn a different conclusion, but the decision of the justices ought not to be disturbed." *Littledale*, J. (*Rex* v. *St. Martin's, Leicester*, p. 499.) "As the sessions have expressly found the fact of hiring and service for a year, I think we are bound by it." *Abbott*, C. J. (*Rex* v. *Tyrley*, p. 505.) "I certainly should not have come to the conclusion myself. I should have thought there was no dispensation." (*Ib.*) "Rule is inveterate; if the justices find a hiring and service for a year, that is decisive to give a settlement." *Grose*, J. (*Rex* v. *Overnorton*, p. 583.) "The sessions had better not have found a special case." (*Ib.*) "Unless the court sees clearly that the sessions had concluded wrongly they would not reverse their conclusion." *Le Blanc*, J. (*Rex* v. *Mildenhall*, p. 584.) The sessions found that the contract was dissolved. "I should not be disposed to interfere with their judgment, even if I thought it wrong, which I do not." *Abbott*, C. J. (*Rex* v. *Roxby*, p. 587.) "I cannot say the sessions have done wrong, though I think they might have drawn a different conclusion." *Le Blanc*, J. (*Rex* v. *Maidstone*, p. 589.) "In this case the sessions have drawn, as they had a right to do by law, the proper conclusion from the presumption of facts, and we should not be justified in reversing their order." *Rex* v. *Catesby*, p. 966.) The sessions have implied a hiring. "I should have drawn a different conclusion, but the decision of the justices ought not to be disturbed." (*Rex* v. *St. Martin's, Leicester*, p. 499.) In *Rex* v. *St. Andrews, Cambridge*, 8 *B. & C.* 664; *Rex* v. *Rosliston*, *Ib.* 668; the sessions in one case found that there was a hiring and in the other there was none, and although some of the judges said they should have drawn different conclusions, the decision ought not to be disturbed. So also in *Rex* v. *Edwinstowe* (p. 1008), a settlement was inferred from a single act of relief, yet although the court would have come to a different conclusion, they would not reverse their decision unless they were clearly wrong. So also when they declined to make the inference from repeated acts of relief. "There was a strong *primâ facie* case, but they were not bound to draw the conclusion." (*Rex* v *Yarwell*, p. 1008.) But where "there was evidence on one side and none on the other, the sessions determined that the no-evidence preponderated;" their order was quashed. (*Rex* v. *Colcorton*, p. 1005.) "If it is a question of fact" (viz. whether the contract was for a hiring or for apprenticeship) "the sessions have decided it, and before we reverse it we ought to see clearly that there were not sufficient premises to warrant the conclusion." *Bayley*, J. (*Rex* v. *Edingale*, p. 658). In *Rex* v. *Billinghay* (p. 549), the sessions found it to be a contract of apprenticeship. But the court thought that it was a hiring, and quashed the order of sessions. Where the sessions find it expressly to be a contract of apprenticeship, Q. B. will not interfere. (*Rex* v. *Great Wishford*, p. 663.) "The jurisdiction on matters of fact is with the sessions. This court has it only when a matter of fact is referred to it by the sessions, or where they have decided on the fact without any evidence, or against evidence."

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Coleridge, J. (*Rex* v. *Great Wishford*, p. 663.) "The sessions *have in effect* negatived the consent by finding that the pauper gained no settlement." *Grose*, J. (*Rex* v. *Crediton*, p. 701.) "If we do not take all jurisdiction from the sessions their finding must be conclusive on the point, viz. an assent to a particular service." Lord *Ellenborough*. (*Rex* v. *Ashby*, p. 707.) "If the sessions think that the omission in the examination is material, the court will not interfere." (*Reg.* v. *Charlbury*, p. 1180.)

In other cases the court has considered the finding of the sessions to be conclusive, as, on finding a place to be a "vill" or "chase," (*Rex* v. *Ronton Abbey*, 14) or that "Stock was not productive," (*Rex* v. *Macdonald*, p. 147), though, in a similar case (*Rex* v. *Dursley*, p. 147), the order was quashed, because the facts were not sufficiently disclosed to enable the court to draw the conclusion that the party was rateable. As to which it was said, in *Rex* v. *Darlington* (p. 148), that the sessions had forborne to draw any conclusion, whereas "here they have," and the order was confirmed.

The decision of the sessions reversed.

But, although the court has thus shown an inclination to support the inference drawn by the sessions, they have in so many instances reversed it, that it is difficult to collect what the rule is. In *Rex* v. *Harbury* (p. 553), the order of sessions was quashed. *Parke*, J., observed, "The sessions in substance have found a *continued* service. I think their conclusion is wrong." In *Rex* v. *Dursley* (p. 147), the sessions thought that the property in question ought to have been rated; but the court quashed their order. The facts are not sufficiently disclosed to enable us to draw the conclusion that these persons ought to be rated." In *Reg.* v. *Mansfield* (p. 424), the sessions inferred illegitimacy from non-access. The court thought the inference wrong, and quashed the order. The sessions, it is said in *Rex* v. *St. Peter's, Mancroft* (p. 575), should find the fact of dispensation, or not. In *Rex* v. *Little Coggeshall* (p. 510), the sessions so found it; but the court thought otherwise, and quashed the order. In *Rex* v. *Ardington* (p. 503), the sessions found a yearly hiring. The court decided that this could not be supported, and quashed their order. "Though the sessions have drawn the conclusion that this was a *general hiring*, yet it is clear they meant only to state it as a conclusion of law, from the antecedent facts, the propriety of which they refer to us." Order of sessions quashed.—Lord *Ellenborough*. (*Rex* v. *Hanbury*, p. 516.) In *Rex* v. *Threkingham* (p. 530), it was urged that the sessions had found a yearly hiring. Lord *Denman*. "The sessions have given us the very words employed by the parties," and quashed the order of sessions. In *Rex* v. *Norton Bavant* (p. 540), the sessions quashed the order, thereby deciding that there was no hiring and service. The court decided otherwise. "It is quite trifling to say that there has been any finding by the sessions which can prevent our going into the inquiry."—*Coleridge*, J. Where no point was stated for the opinion of the court, *Parke*, J., said, "I think the conclusion upon the facts found by them is wrong." Order of sessions quashed. (*Rex* v. *Harbury*, p. 553.) "It (*i. e.* the service) is a mixed question of law and fact, and the circumstances are stated, that we may draw the conclusion."—Lord *Ellenborough*. (*Rex* v. *Corsham*, p. 588.) In *Rex* v. *Whitchurch* (p. 969), the court presumed on the facts in favour of a certificate, which the sessions had not done; but, in *Rex* v. *Catesby* (p. 966), the court said the sessions ought to make the presumption. In *Rex* v. *Ightham* (p. 656), the sessions quashed the order, thereby *implying* that the pauper acquired a settlement by hiring and service in the appellant parish, but the court reversed their decision. So, also, *Rex* v. *Newton* (p. 657); *Rex* v. *St. Margaret's, King's Lynn* (p. 662). In *Rex* v. *Hatfield Broad Oak* (p. 905), the sessions found that the consideration for the purchase was pecuniary only, and no settlement acquired by it. The court thought it was partly from love and affection, and quashed the order of sessions. "It is very clear the finding (as to a *distinct* house) is not warranted by the premises," (*Rex* v. *Rickinghall*, p. 769), where the decision was confirmed on other grounds. In *Rex* v. *Clixby* (p. 927), the sessions found that it was "a public annual office." Lord *Denman*. "The finding is not warranted by the facts stated," and

the order was quashed. But, in *Rex* v. *Ilminster*, the sessions found the same fact, and Lord *Kenyon* said, "By thus finding that it was a public annual office, they have precluded any further discussion." In *Rex* v. *Nether Knutsford* (p. 660), the sessions by implication found the contract to be one of hiring. The court thought it an imperfect apprenticeship, and quashed the order of sessions. *Rex* v. *Edingale* (p. 658), seems at variance with this. This the court has done, because it must be "presumed that where the facts are specially stated, the justices wish to know if their inference is correct. But it cannot be said that the sessions doubted their own decision, by referring it to the court, for this argument would arise in every special case." (*Rex* v. *Great Wishford*, p. 663.) "If upon a case stating evidence only the court of King's Bench should think the conclusion drawn by the sessions wrong, they would probably deem it better to send it back for revision; but where the conclusion appears to be right, it would be useless to send it down again."—*Abbott*, J. (See *Rex* v. *Rickinghall*, p. 769.) So, also, the order of sessions will be confirmed, when the ultimate decision, although founded on wrong grounds, was correct. (*Rex* v. *Skeffington*, *ante*.)

Decision right, but reasons wrong.

When the case stated facts, from which the sessions ought to have drawn their inference, the case has been sent back to them for that purpose. (*Rex* v. *Road*, 1 *B. & Ad.* 362.) But, in *Rex* v. *Harbury*, they quashed the order. But it was agreed in *Rex* v. *Wykes*, (*ante*), that it could not be done without consent; and the counsel against the order of sessions refusing to consent, the order of sessions was quashed. Where the sessions were of opinion that an indenture was void, and the King's Bench thought otherwise, "as the merits of the case had not been gone into at the sessions," the case was sent down to be re-stated. (*Rex* v. *Winwick*.) (*a*) If the Court of Queen's Bench should be equally divided, order of sessions will be confirmed. (*Rex* v. *Barnard Castle*, p. 885.) When the sessions improperly rejected evidence of the contract of hiring, and a case was granted upon the admissibility of the evidence, the case was sent back to the sessions to be reheard. (*Rex* v. *Wrangle*, 2 *Adol. & El.* 13; 4 *Nev. & M.* 375.) If the case is signed by the chairman, strong evidence is required to show a mistake in any part. (5 *B. & Ad.* 883.)

Case sent back.

The sessions should state what the Court of Queen's Bench is to do in the event of their opinion being in favour, or against their judgment, and should not direct that in a given event the case should be sent back to be reheard. (*Reg.* v. *Stoke-upon-Trent*, p. 532.) "I hope that in future, where a question arises as to whether the facts form a sufficient ground of appeal, it will be clearly understood that they ought not to grant a case, if they are satisfied that there is not a sufficient notice of the grounds of appeal; and if they entertain so much doubt as to be induced to grant a case, they should go on with the hearing of the case, and determine the subject of the appeal."—*Patteson*, J. (*Reg.* v. *Kesteven*, *post*.)

The conclusion of the case.

Reg. v. *Wistow*, 1 *G. & D.* 681. An order of removal from Holy Trinity, Kingston-upon-Hull, to Wistow, was confirmed subject to a case, which, after stating the point submitted to the opinion of this court upon a question whether the grounds of appeal against the order had been served in time, concluded, "If the court shall be of opinion that the said service of the statement of the grounds of appeal was bad and insufficient, then the aforesaid order shall stand confirmed; but if the court shall be of a contrary opinion, then the appeal *to stand respited* until the general quarter sessions to be held for the said borough of Kingston-upon-Hull next after the judgment of the court." Lord *Denman* said that "this court could not hear a case so stated; that the sessions asked this court to decide the case, and appeared also to reserve to themselves the right of coming to a decision

Q. B. refused to hear a case which concluded thus—"if the court of Queen's Bench shall be of opinion, &c., then the order to be confirmed, but, if the court shall be of a contrary opinion, then the appeal to *stand respited* until the next sessions after the judgment of the court."

(*a*) In *Rex* v. *Laindon*, *n.*, the court said, that a formal objection to the order ought not to be permitted, when both parties had agreed, by drawing up the special case, to take the opinion of the court on the merits. See also *Abbott*, J. 5 *M. & Sel.* 93.

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of their own upon it afterwards." The other judges concurred. Rule for quashing the order discharged.

But where the order of sessions is quashed upon an objection, which the sessions ought not to have heard, the case will be sent back. (*Reg.* v. *Arlecdon*, 11 *A. & E.* 87.)

Case sent back to cure an informality. It is not necessary to hear fresh evidence. See subsequent cases.

Rex v. *Bray*, *Burr. S. C.* 682; 2 *Bott*, 993. The sessions stated the evidence only, and not the fact of hiring. (*a*) It was sent back to be re-stated, and the majority of the justices there refused to re-examine the pauper, or to hear any further evidence; although three of the justices then on the bench had not been present at the appeal. It was moved to send it again to the sessions, to be a second time restated. *Rex* v. *Page*, *M.*, 1764, was cited, where the question was, whether a man was occupier of tithes, or only bailiff? The sessions was ordered to hear further evidence; and did so, and cited *Rex* v. *Hitcham*, *H.*, 33 Geo. II., where the sessions did re-examine the fact, whether the pauper was a single or a married man, when hired? Unto this it was answered, that in both of these cases it was necessary to hear the evidence again: in the present case it was not necessary; the matter was fully examined into before; the sessions had stated the evidence, without drawing the conclusion; the court thought the sessions ought to have drawn the conclusion, and sent it back to them for that purpose only. They have now done so. They have stated a hiring for a year. And this court have now received all the information they wanted. By Lord *Mansfield*, C. J. "Whether the justices, at the second sessions, were or were not obliged to hear new evidence, is a question that must depend upon the nature of the case. In *Page's case* new evidence was necessary. But in the present case it was sent back only to cure an informality. Here the pauper had before given a full account of the agreement. Therefore the justices at the second sessions did very right in not examining him over again."

The whole case must be reheard when it is sent back to the sessions.

In *Rex* v. *Bromley*, 6 *T. R.* 330, which was an order for the removal of Sarah, widow of J. Ward, the respondents proved the settlement of J. Ward in the appellant parish, and then cohabitation with the pauper as his wife. The appellants then called Sarah, to prove that they were never married, and the court refused to hear her. Lord *Kenyon* said, "The evidence was admissible, but the sessions must judge of the effect of it." It was then proposed that on the rehearing, the sessions should be confined to the examination of Sarah and of witnesses to that particular point, without putting the respondents to the expense of proving their case again. Lord *Kenyon*. "*The whole case must be gone into again at the sessions.* I remember a case, some years ago, when the same objection was made, and Lord *Mansfield* said, that 'it was like granting a new trial, in which case the whole case must be proved.'"

Where an order of justices has been quashed on appeal, subject to a case, and this court directs the case to be restated, the sessions have no jurisdiction to hear the case without a notice of trial.

The notice may be given by the respondents.

Serving the rule of Q. B. is not sufficient.

Reg v. *Barnes*, 2 *G. & D.* 233; 3 *Q. B.* 437. An appeal was brought by Barnes and another, surveyors of the hamlet of Beard, against an order of justices, adjudging a sum of 88*l.* to be paid by Barnes and another to the treasurer of a turnpike road. Case:—An order was quashed subject to a case. This court, upon argument in Michaelmas term, 1841, ordered the case to be sent back to be re-stated. The respondents served a copy of the order for the re-stating of the case on the appellants, but they gave no notice of any intention to appear at the next sessions for the purpose of having the case re-stated, or otherwise; nor was any notice of any intention to do so given by the appellants. The respondents appeared at the next sessions, the appellants did not, and the sessions made an order, which concluded: "And the court of Queen's Bench having, upon hearing counsel on both sides, directed the order returned with the writ of certiorari to be sent back to the sessions to be re-stated, and the said appellants now appearing to prosecute the said appeal against the said order of the said justices, this court doth order that the said order of the said three justices be and the same is hereby confirmed." A motion was made to quash this

(*a*) Such formal defects are now generally amended at the time of argument, by consent of the parties.

order, as the re-hearing had been without any notice of trial, or of intention to proceed at the next sessions, and the sessions had no jurisdiction. Lord *Denman.* "The party who wishes to relieve himself from the burden ought to give the notice necessary to put the court in motion. The case is distinguishable from the case of an ordinary appeal." The other judges concurred. Rule absolute.

A case sent back to be re-stated must be re-heard, and the sessions may receive further evidence and make a new order on such re-hearing.

The certiorari by which the original order was removed does not operate to remove the subsequent one.

A certiorari cannot be applied for after six calendar months from the making of the order, whatever may have been the cause of delay.

Rex v. *Bloxam*, 3 *Nev. & M.* 385 ; 1 *Ad. & E.* 386. At the Warwickshire January sessions, 1832, James Smith, having been convicted by Dr. Bloxam, of being an idle and disorderly person, in refusing to support his wife and child, whereby they became chargeable to the parish of Rugby, appealed against the conviction, which was quashed by the sessions subject to a case. Dr. Bloxam thereupon obtained a certiorari to remove such case, and the orders and proceedings of the sessions in the court of K. B., and the usual recognizances were entered into for prosecuting the certiorari. On the hearing in K. B., the case was sent back to the sessions to be re-stated. At the July sessions, 1833, the appeal was re-heard, and the court then confirmed the conviction, subject to a case reserved to the appellant. In Michaelmas term, 1833, a rule of K. B. was obtained, calling on the prosecutor of the appeal to show cause why the recognizances of the defendant (Dr. Bloxam) and his bail should not be discharged, and why all further proceedings on the certiorari, and the re-stated order of sessions returned therewith, should not be stayed until the prosecutor's attorney should undertake to pay the defendant or his attorney his costs, if the last decision of the sessions should be affirmed. It was stated on affidavit, in answer to this application, that the ground on which the case was before sent back to the sessions, was their omission to state certain facts ; that they had now specially found those and other facts, but that such their special finding was inconsistent with the determination they had come to in favour of the conviction ; that at a subsequent session (October, 1833,) the appellant had moved that the case should be re-stated, and the proceedings returned to K. B. under the original certiorari, and an order had been made by the justices accordingly. A rule was thereupon granted by K. B. enlarging the rule for discharging the recognizances, until the judgment of that court should be given upon the re-stated case and order of sessions, in the matter of the above-mentioned conviction. In Hilary term, 1834, a rule was obtained calling on the prosecutor of the appeal to show cause why the rule last above-mentioned should not be discharged, and why the certiorari should not be quashed, and a procedendo awarded to carry back the record of conviction to the sessions. The affidavit in support of this rule professed to explain the finding and judgment of the sessions complained of by the appellant ; and it stated that, although the sessions had made an order for re-stating the case and returning the proceedings to K. B., no case had ever been prepared or brought up on behalf of the appellant under the existing writ of certiorari, nor had he applied for any new certiorari for that purpose, and that six months had elapsed since the reservation of a case at the July sessions ; it was therefore suggested that the prosecutor was now disabled from further carrying up such re-stated case or proceedings to K. B., under the present or any other certiorari, that the conviction must remain in force, and that the object of the respondent in suing out the certiorari and giving the recognizances having thus been effected, the recognizances ought to be discharged. In an affidavit on the other side, it was represented that the delay in preparing the case had been occasioned by the defendant's refusal to settle one." Lord *Denman*, C. J. "By 13 Geo. II. c. 18, s. 5, a certiorari must be applied for within six months next after the conviction, order, or other proceeding to be removed : and according to the authorities cited in 1 *Chitty's Statutes*, tit. *Certiorari*, p. 133, note *c*, the time is to be reckoned without regard to delays in drawing up the case, or from any such cause ; and if this were not so held, the statute would in effect be repealed. It follows from the express words of the act, that the court has no power of extending indulgence to a party who from whatever cause

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is behind the proper time. Then however it is said that the original certiorari is still in force. The question therefore is, whether when a party has obtained a certiorari to remove a judgment given against him, and the case has been sent back to the sessions, which implies a power given to them of re-hearing the whole, he is afterwards bound, upon the sessions reversing their former judgment, to bring up proceedings which are then in his favour: or whether the certiorari, which originally issued, had the effect of removing those proceedings which had not then taken place? and I think this cannot be maintained. As to the question, who should remove the ultimate proceeding of the sessions, it is often unnecessary to raise it, because if the second hearing convinces the justices that their former decision was right, the judgment is the same, and no such difficulty can arise. But where an opposite decision is come to, he who complains of it is the party to bring up the case. The appellant ought to have done so in the present instance, but he is out of time. The proper course will be to discharge all the rules, the case will then stand as if there had been no appeal." *Littledale*, J. "I am of the same opinion. The party who originally removed the proceedings has nothing to do with removing them now. They have changed sides." *Patteson*, J. "I do not acknowledge the distinction between re-stating and re-hearing. How is it possible for the sessions to re-state the case without hearing it again? The bench may not consist of the same persons. If the certiorari were considered as operating upon the last order of sessions, there would be this absurdity, that the party who sued it out would be liable under his recognizance to pay costs, unless he got a judgment set aside which was in his own favour." *Williams*, J., concurred. The court made the rule absolute for discharging the recognizances, but with this exception discharged all the rules.

What is to be done with the pauper when the order of removal is quashed.

After the determination of an appeal at the sessions, if the order is reversed, and the paupers will not, or are not able to return of themselves, to the place from whence they were improperly removed, it seemeth that the place where they are cannot lawfully be rid of them but by another order of the justices, setting forth the matter specially. In *Honiton* v. *South Beverton* (*Comb.* 401; 2 *Bott*, 909), two justices remove a man from Honiton, Devon, to South Beverton, Somerset. They appeal to the sessions in Devon, where the order is reversed. Now two justices of Somerset may by order remove him to Honiton again; for it is but an execution of the order of sessions, which could not otherwise be done, because it is out of the jurisdiction of the court of sessions.

If no certiorari then no case.

If the writ of certiorari be taken away by statute, local, or otherwise, no case can be brought up to the superior court. (See *Certiorari.*)

A certiorari must be moved for within six months after the order of sessions; and six days' notice of such motion must be given to the justices, notwithstanding the order of sessions was made subject to a case.

Rex v. *Justices of Sussex*, 1 *M. & Sel.* 631. A rule was obtained for a certiorari to remove an order, in an appeal between Billinghurst and Slinfold. The affidavits stated that the appeal had been heard at the Michaelmas sessions, when the order was confirmed, subject to the opinion of K. B. on a case to be stated. A case had been drawn by counsel for Billinghurst in November, which was not approved of by the solicitor for Slinfold; but, although frequent applications were made to him, he would not state his objections. The case was afterwards settled by the court at the Epiphany sessions, and a copy sent to the solicitor for the respondents; and he was again applied to, to have the case set down for argument: this request he refused to comply with; but at the same time gave the solicitors for the appellants to understand, that they need be under no apprehension, as he would consent to a certiorari issuing without regarding whether the six months had expired or not. Under the impression that the certiorari would be consented to, the usual notice to the justices, as required by 13 Geo. II. c. 18, s. 5, had not been given. It was contended, that the statute was only intended to enable justices to show cause against the granting such certiorari, and did not apply to this case, where the justices themselves had settled the case, and thereby expressed their desire to have it brought up; and cited Lord *Kenyon* in *Rex* v. *Battams* (1 *East*, 298).

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Lord *Ellenborough*, C. J. "The order of removal was in the first instance a summary proceeding, and the order of sessions thereupon was a revision of that which was originally a summary proceeding. I find nothing in the language of Lord *Kenyon*, on which an argument has been raised, to the contrary: it is not applicable to the present case. Admitting that the magistrates may have wished, at the time when they settled the case, to have brought it up, still there may be reasons why they might think fit to show cause, and, unless it can be shown that it could serve no possible end to give them six days' notice, we cannot so presume. The statute appears to me imperative." *Bayley*, J., "was not aware of any instance where a *certiorari* had been granted, after the expiration of the six months, upon a case reserved, and that it was the settled practice to give the six days' notice." Rule discharged. The application was renewed in the same term (1 *M. & S.* 734), the six days' notice having been given to the justices. It was urged, that the above circumstances took it out of the general rule. *Rex* v. *Winpenny* (34 Geo. I.) was cited, where a similar application for removing an order for the maintenance of a bastard child was made after the six months, and allowed. Lord *Ellenborough*, C. J. "The statute expressly requires that the *certiorari* shall be applied for within six calendar months after order made; and I think it will be attended with beneficial consequences, if we put a strict interpretation upon this clause, as it will have a tendency to accelerate the settling of the cases which are intended to be brought up for our revision." *Bayley*, J. "In strictness, the case ought to have been settled at the Michaelmas sessions *sedente Curiâ*." Rule refused.

The costs of the hearing at the sessions, at which a case was sent back to be amended, are not costs which the party suing out the *certiorari* are bound to pay. *Rex* v. *Higgins*, 5 *A. & E.* 554.

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3 *Of Costs and Maintenance.*

3. Of Costs and Maintenance.

8 & 9 W. III. c. 30, s. 3. Justices, on appeal to them concerning the settlement of any poor person, to award costs.

By 8 & 9 Will. III. c. 30, s. 3 (*a*), "For the more effectual preventing of vexatious removals and frivolous appeals, it is enacted, That the justices of the peace of any county or riding, in their general or quarter sessions of the peace, upon any appeal before them there to be had, for and concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the churchwardens or overseers of the poor of any parish or place (though they did not afterwards prosecute such appeal) shall, at the same quarter sessions, award and order to the party from whom and in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given as aforesaid, such costs (*b*) and charges in the law, as by the said justices in their discretion shall be thought most reasonable and just, to be paid by the churchwardens, overseers of the poor, or any other person, against whom such appeal shall be determined, or by the person that did give such notice as aforesaid; and if the person ordered to pay such costs shall happen to live in any county, riding, city, or town corporate, or elsewhere, out of the jurisdiction of the said court, it shall and may be lawful for any justice of the peace of the county, riding, city, liberty, or town corporate, wherein such person shall inhabit, and every such justice is hereby required, upon request to him for that purpose to be made, and a true copy of the order for the payment of such costs produced, and proved by some credible witness upon oath, by warrant under his hand and seal, to cause the money mentioned in that order to be levied by distress and sale of the goods of the person that is ordered and ought to pay the same; and if no such distress can or may be had, to commit such person to the common gaol of that county or liberty, there to remain by the space of twenty days."

(*a*) As to costs of suspended orders of removal, see p. 1084.

(*b*) The statute does not extend to costs of the day when appeal respited, *Rex* v. *Monmouthshire*, 1 *Bar. & Adol.* 597.

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Also of frivolous grounds of appeal.

By the 4 & 5 Will. IV. c. 76, s. 82, the court of sessions may order the parish against whom the appeal shall be decided *to pay just and reasonable costs*, and the *court is* to certify the *amount;* and by the 83rd section, if any of the grounds of appeal are frivolous and vexatious, the court may award the costs of disputing such grounds. These costs, as well as the maintenance, are recoverable in the same manner as the penalties under the statute. (See the sections in the Appendix.)

Of maintenance.

The parish to which the pauper shall belong shall pay the relief and maintenance of the pauper from the time of receiving notice of the chargeability. Section 84.

If appeal against removal be determined in favour of appellant, the justices shall award to appellant payment of expenses as relieving the pauper.

By 9 Geo. I. c. 7, s. 9, "For the preventing of vexatious removals, if the justices of the peace shall, at their quarter sessions, upon an appeal before them there had, concerning the settlement of any poor person, determine in favour of the appellant, that such poor person or persons was or were unduly removed, that then the said justice shall, at the same quarter sessions, order and award to such appellant so much money as shall appear to the said justices to have been reasonably paid by the parish, or other place, on whose behalf such appeal was made, for or towards the relief of such poor person or persons, between the time of such undue removal, and the determination of such appeal; the said money so awarded to be recovered in the same manner as costs and charges upon an appeal are prescribed to be recovered by the said statute made in the ninth year of his late Majesty king William the Third, intituled (c. 30) '*An Act for supplying some Defects in the Laws for the relief of the Poor of this Kingdom.*'"

Allowance of costs discretionary.

Rex v. *J. Nottingham*, 1 *Sess. Ca.* 422; 2 *Bott*, 776. A mandamus was granted for the justices to give costs to the party in whose favour the appeal had been determined; yet upon their return of it, the court held it reasonable for them to have the power of judging whether costs shall be allowed or not, and quashed the mandamus.

No costs on an adjournment.

Rex v. *Stansfield, Burr. S. C.* 205; 2 *Bott*, 776. The sessions adjourned the appeal to the next sessions, and ordered four guineas costs to the appellants; which order was quashed as to the costs; for the sessions cannot give costs on a mere adjournment of the appeal, without hearing it (*a*).

Mandamus lies to enforce.

St. Mary's, Nottingham, v. *Kirklington*, 2 *Sess. Ca.* 67; 2 *Bott*, 776. Motion for a mandamus to the justices, commanding them to allow Kirklington the expense their officers had been put to, in keeping a poor person from the time of his removal till the order was discharged by the sessions upon appeal. Mandamus granted.

Maintenance may be levied by distress. If the parish is not within the justices' jurisdiction, justices who have granted it must indorse the warrant of distress, and they cannot refuse.

Rex v. *Kynaston*, 1 *East*, 117. A rule for a mandamus was obtained against a magistrate of Essex, commanding him to indorse a warrant of distress. On the 6th of May, 1799, an order was made for removing D. Glover from Lexden to Coggeshall in Essex, and it was suspended. On the 31st of July suspension was removed, and an order made on the parish officers of Great Coggeshall to repay the parish of Lexden 20*l.* 16*s.* 3*d.*, for expenses incurred during the suspension. The overseers of Great Coggeshall, not paying this within three days after demand, nor giving notice of appeal, the same magistrates granted a warrant of distress; but Great Coggeshall not being within their jurisdiction, the parties applied to the defendant, who had jurisdiction in Great Coggeshall, to indorse the warrant of distress for execution, and he refused. Lord *Kenyon*, after looking into 35 Geo. III. c. 101, said, "It was impossible to make any question upon this part of it: it is peremptory upon the magistrate under these circumstances to indorse the warrant; he has nothing to do with the propriety of making the original order or granting the original warrants; he acts merely ministerially; in like manner as justices do in allowing a

(*a*) Where an application for an order of bastardy was entered with the clerk of the peace, pursuant to the rule of the sessions, *before* the sessions, and no one appeared in support of it at the sessions, but the defendant appeared and applied for costs—this is a sufficient *hearing* to entitle the court to award costs. *Reg.* v. *Stamper*, 1 *Q. B.* 117. See, also, *Reg.* v. *Recorder of Exeter*, 13 *L. J.* 7, *M. C.*

poor rate, whose signatures are mere matter of form. The justices, indeed, by whom the original order and warrant were issued, had a discretion to exercise upon the matter submitted to them; but the magistrate who merely indorses the warrant of another, under this act, is not answerable for the legality of it, which remains at the hazard of him who first granted it; here also, the order, being for payment of above 20*l.*, might have been appealed against by the parties who were dissatisfied with it, and then the merits of the question might have been discussed; but the court cannot do otherwise at present than make the rule absolute."

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And as to the enforcing or punishing disobedience of order of sessions, see *Rex* v. *Mytton*, 4 *Doug.* 333.

Sessions must either give or not give costs at the time they make their order.

Rex v. *Great Chart*, *Burr. S. C.* 194; 2 *Bott*, 1015. An order was quashed by the sessions for insufficiency; and the sessions thereupon order that the costs of maintaining the pauper since the time of his removal shall abide the event of the cause, in case Great Chart shall think proper, by another order, to remove the pauper to Kennington; which order, as to the costs, was quashed by the Court of King's Bench, because the sessions must either give or not give costs *at the time* when they make their order. *Semble*, therefore, the court at time of confirming an order subject to a case, should make a conditional order for costs and intervening maintenance.

May give costs where order quashed for informality.

Rex v. *Cottingham*, 4 *Nev. & M.* 215; 2 *Ad. & E.* 250, *ante*, 915. The sessions have power to award costs where the order is quashed for informality.

So also when the order has been abandoned.

An appeal may be entered after the order has been abandoned by the removing parish, on neglect to pay the costs and maintenance. *Rex* v. *Norfolk*, p. 1111.

Where an appeal is entered without notice of trial, and the respondents endeavour to obtain a *supersedeas*, the sessions should not award costs to the appellant. *Reg.* v. *Bythen*, 20 *L. J.* 106.

The costs must be ascertained at the sessions.

Where the recorder (and the same rule will apply to the county sessions) confirms an order with costs, but without specifying the amount, a taxation of such costs, after the end of the sessions, is irregular, although the amount be submitted to the recorder (after the sessions), and approved of by him. An order for payment of such costs cannot be enforced. *Reg.* v. *Long*, 1 *Q. B.* 740 (*a*).

An order of sessions confirming at the instance of the respondents (after a countermand) the order of removal, and giving the respondents the costs and charges of "attending the sessions to support" their order, after a countermand, is altogether bad.

Reg. v. *Stoke Bliss*, 1 *Car. H. & A.* 267. On January 2nd, 1844, the sessions confirmed an order, for the removal of Ann Wall, &c. from Kingswinford to Stoke Bliss. The order was, "Upon motion of counsel for the poor of the parish of Kingswinford, in the county of Stafford, and upon proof of notice of appeal, with a statement in writing, &c., and no one appearing on behalf of the appellants to prosecute their appeal, it is ordered that the said order made by the said justices be, and the same is hereby confirmed; and it is further ordered that the churchwardens and overseers of the parish of Stoke Bliss do and shall forthwith pay to the churchwardens and overseers of the poor of the parish of Kingswinford the sum of 15*l.* 10*s.* for costs and charges which they have incurred and have been put unto in attending the court this day to support their said order." On a rule to quash the order for insufficiency, it appeared that the order of removal was dated September 29, 1843. Notice and grounds of appeal were served in time for the Epiphany sessions, 1844. On the first day of the sessions, (Tuesday, January 2nd,) the respondents received a letter from the attorney for the appellants, inclosing a copy of a notice of countermand of the appeal, and stating "that the delay had arisen in consequence of the absence of a material witness, and that, if any removal took place, they should give fresh grounds of appeal, as the paupers belonged to a third parish, which fully appeared from the grounds of appeal as already sent." The practice of the Staffordshire sessions is, that notice of coun-

(*a*) So also an order for costs under the Highway Act must specify the amount; an award of costs generally is bad. *Selwood* v. *Mount*, 1 *Q. B.* 726.

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termand of any appeal must be given not later than the Monday before the sessions, and, if given later, the appellants are in such case liable, by the practice of the court, to pay costs to the respondents for their failure to try the appeal. On the third day of the sessions, (January 4,) the respondents, having entered the appeal, applied for the costs incurred in preparing to try the appeal, and incident thereto; and, upon due proof of notice, and grounds of appeal, and notice of countermand, the sessions made the above order. Lord *Denman*. "This was an order of removal appealed against by the parish on which it was made. The parish officers gave notice of appeal, and then countermanded, but not in time. Their attorney, however, told the officers of the respondent parish that they countermanded because they were in want of a witness; but that, if any removal took place, they should appeal again. The respondents afterwards attended the sessions, and entered the appeal; when the justices confirmed the order, and gave the costs of appeal. The order of confirmation is bad; but it is contended, that, though the confirmation is bad, the direction about the costs can be sustained. That might be so in one view of the case, if the orders were distinct from each other; but, when we come to look at the documents issued by the sessions, we find that the confirmation of the order, which was beyond the jurisdiction of the sessions, and the order for costs, which was within their jurisdiction, are both included in the same order. It is clear, therefore, that the direction as to costs was ancillary to, and formed part of the order of confirmation; and as the sessions had no authority to make the one, the validity of the other cannot be sustained; I am, therefore, of opinion that the certiorari may issue to bring up an order which cannot be sustained in point of law." *Patteson*, J. "The sessions have here made a confirmation in a matter over which they have no jurisdiction, and to this they have added an order for costs. The defect of the former, as both are parts of the same document, affects the latter, by rendering the order, of which it forms part, incapable of being sustained." *Williams*, J., concurred. *Coleridge*, J. "I am of the same opinion. This was certainly the proper time at which to make the application for costs, but it has not been properly introduced here. I do not mean to say that an order of this sort might not, under some circumstances, be divisible, and that one part might be held good, though the other was declared to be bad. If the order for costs could in this case stand alone, I should be glad; but this is a question of construction, and the whole document must be taken together. What was argued by counsel, or what was said at the sessions, cannot be taken into consideration in construing this document. We must see what was done on the face of the written order. We cannot, then, avoid seeing, that the sessions thought they had a jurisdiction which in law they had not, and they confirmed an order, and granted costs on the confirmation; that being so, the costs were dependent on the confirmation; and as the confirmation cannot be sustained, neither can the costs which are dependent on it." Rule absolute.

After a supersedeas, the appellants may enter an appeal to obtain costs.

The practice of allowing no more than 30*s*. costs to either party if the appeal was tried, is unreasonable.

The sessions ought to exercise their judgment as to the fair remuneration to the appellants for the costs incurred.

Reg. v. *Merionethshire*, 1 *Car. H. & A.* 277. On a rule for a mandamus to hear an appeal against an order of removal from Denio to Llangar, it appeared that the notice and grounds of appeal were served on the 19th of March. On receipt of the grounds of appeal, which pointed out defects upon the face of the examinations, the parish officers of Llangar obtained a supersedeas of their order. This supersedeas was served on the appellants on the 29th of March, but no offer was made as to the payment of costs. On the 9th of April, the parish officers of Llangar obtained and sent a fresh order, with copies of examinations, to the parish officers of Denio, at the same time tendering them two guineas, in payment of the costs occasioned by the first order. The parish officers of Denio refused the money, and at the following sessions, held April the 12th, they attended, and applied to enter the appeal. On these facts appearing, and the parish officers of Llangar repeating their offer of two guineas for costs, the sessions refused to allow the appeal to be

entered. It also appeared that there has been for a great many years past, a standing rule on the books of sessions for Merioneth, whereby it is ordered, "that the sum of 30*s.* only, as and for costs and expenses, shall be allowed, in appeals against orders of removal tried in the said court, to either party." Lord *Denman.* "I think the standing order and practice of the quarter sessions are sufficiently stated. It is said that the affidavits do not clearly show what the practice of the sessions is; but we must see what they consider to be the practice. The question is, whether they have acted legally or not. I think that they have not acted legally. They were bound to allow the appeal to be entered; and, when the writ goes, they ought to exercise their judgment as to the costs which have actually been incurred. It is very proper that a party should abandon an appeal against an order, when he feels that he cannot succeed in maintaining it; but it is equally proper, that the other party should recover the reasonable costs incurred by him up to the time when the notice of abandonment is given." *Patteson*, J. "I do not see how, consistently with the last decisions, it is possible for the sessions to justify their refusal to hear this case." *Williams*, J., concurred. *Coleridge*, J. "The justices were clearly wrong in refusing to hear the case; but we should not be warranted in allowing this writ to go, if we thought they would strictly adhere to what has been stated to be the practice at the sessions. As that practice is an unreasonable one, I have no doubt, that, after the intimation of the opinion of this court, they will alter it, and consider what the party ought fairly to receive, as a remuneration for the costs he incurred before the notice of countermand was given." Rule absolute.

XI. Of the Superintendance of the Queen's Bench.

When the court of Queen's Bench will interfere by mandamus.

It is part of the privileges and duties of this High Court of Justice to interpose its authority to prevent a refusal or denial of justice by any inferior jurisdiction. It has been therefore the practice of this court for a long period, by the writ of mandamus, to compel the court of quarter sessions to hear cases, when they have improperly refused. Such has been the practice where the sessions have declined to hear a case when they ought to have entertained the appeal. When the sessions refuse to hear an appeal on the preliminary objection, that the grounds of appeal are insufficient, the court will not interfere by mandamus. *Reg.* v. *Kesteven*, p. 1213. In one case it was said it was unusual to issue it when the sessions had granted a case, (*Reg.* v. *Suffolk, J.* p. 1214), but in *Reg.* v. *Recorder of Leeds*, p. 1137, this course was approved of, as being less expensive. The court will not command justices to take or alter an examination, but if they refuse to make an order, the court will compel them. *Reg.* v. *Rogers*, p. 1142. If the sessions require notice of appeal to be given, which is not reasonable, the court will interfere. *Rex* v. *J. Lancashire*, p. 1151. So also to erase a false entry in their records, when they had no jurisdiction; but not to grant a case. Nor where the sessions first confirmed the order, and then quashed it, at the suggestion of a magistrate, that the order was directed to a place not maintaining its own poor. *Reg.* v. *J. Cheshire*, p. 1214.

If an order of removal, or the order of sessions are defective, and the defect is apparent on the proceedings, they may be removed into this court by a *certiorari*, and quashed.

The sessions, being equally divided upon the merits of an appeal, quashed the order: a mandamus will not lie to rehear it. (*a*)

Rex v. *J. Monmouthshire*, 4 *B.* & *C.* 844; 7 *D.* & *R.* 334. Upon an appeal against an order of removal, the justices were divided in opinion as to the settlement; but thinking that the respondents ought to have proved the forty days' residence, and had not, they determined, without any division, to quash the order. It was urged that whether the decision was

(*a*) Subject fully considered in *Reg.* v. *Cart-Hewes*, 3 *A.* & *E.* 725; and sometimes a procedendo is awarded, *Reg.* v. *Carworth*, *post.*

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right or wrong, the King's Bench ought not to interfere by mandamus; and also that the decision was right, although in *Nolan's Poor Laws* (vol. ii. p. 446), it is said, "That if the magistrates, who have a right to join in the court's determination, should be equally divided in opinion, no judgment can be given, but the appeal must be adjourned from sessions to sessions, until a majority concur." And in a note, "This seems to be their bounden duty; for otherwise the court will grant a mandamus to compel them to enter continuances and hear the appeal at a subsequent sessions." *Bodmin* v. *Warlingen* (2 *Bott*, 733, 889), and *Rex* v. *J. Westmoreland* (p. 1039), are cited in support of, but do not support these positions. In the former case, the justices neither made any order nor adjourned the appeal: and at the following sessions the order of removal was quashed, and this court quashed that order of session, because it was made without an adjournment. In the other case the justices neither gave judgment nor adjourned, and on an application for a mandamus, though the court entertained an opinion in its favour, nothing was done; but if a mandamus had been granted, that would only show that the court will compel the sessions to proceed to judgment on an appeal which they have begun to hear, and improperly refused to go on with. It was also urged, that this was not like an appeal to the House of Lords, where, if the house be equally divided, the respondent prevails, for the presumption is in favour of the respondents, who have the judgment of the court below. But that an appeal against an order of removal is in reality an original proceeding. *Contra*, it was argued that in *Bodmin* v. *Warlingen*, the court said that where the justices were equally divided, that was a sufficient warrant for the clerk of the peace to have entered an adjournment, and it was his duty so to have done. *Abbott*, C. J. "I think the rule for a mandamus ought to be discharged. It appears that in this case the sessions have given their judgment. This court is not a court of error from that court; it may compel the sessions to proceed to hear and decide the appeal; but when they have so determined it, this court cannot compel them to correct their judgment, if it appear to be erroneous. It is unnecessary to say whether the judgment pronounced by the sessions is erroneous, because we are of opinion that if it were so we have no authority to compel them to correct it."

Q. B. is not a court of error from the sessions.

By the vote of an interested justice the court were equally divided, and an adjournment was entered. Assuming this to be wrong, K. B. cannot review it. (*a*)

Rex v. *J. Monmouthshire*, 8 *B. & C.* 137; reported as *Rex* v. *Uske*, 2 *M. & R.* 173. On an application for a certiorari to bring up an order of removal, and an order of sessions for adjourning the appeal against the said order, that the same might be quashed, it appeared that four justices were present at the appeal. One of them was the removing justice, and rated in Uske (the respondent parish). He and one other justice voted for the respondents, and the other two for the appellants. The chairman announced that the court was divided. The appellants then moved to quash the order, because the respondents had not made out their case. But the court adjourned the appeal. Lord *Tenterden*. "This rule must be discharged; but I wish to have it clearly understood that, in doing so, we do not, in any degree, intend to sanction a magistrate's voting in any case in which he is interested. It is contended that, though the justices were divided in point of fact, that in point of law the vote given by the party interested was a nullity, and that the sessions ought to have quashed the order. The late decisions establish, that we cannot assume to ourselves the jurisdiction of a court of error, and revise the judgment of the sessions. It is said that the sessions had not jurisdiction to make the adjournment. It is clear that they had jurisdiction to make any order concerning the appeal; and, among others, the order that the hearing should be adjourned.

(*a*) See remarks on this case in *Rex* v. *Cheltenham Commissioners*, 1 *Q. B.* 476, from which it may be inferred that the court did not interfere, because they could not order the thing asked for. But it is not to be considered as an authority for saying that the court "refuses to interfere to prevent a decision taking effect in which an interested magistrate has participated."

In *Rex* v. *Gudridge*, 5 *B. & C.* 459, the rule which had been obtained was, not to review the order of the sessions, but to quash the certiorari, *quia improvide emanavit.* The question before the court was, whether that writ ought to have been allowed to issue to remove an order of sessions, made under circumstances similar to those in this case? And the court thought that the certiorari ought not to have issued. Here a judgment has been pronounced by the sessions, relating to a matter over which the court had jurisdiction; and assuming their judgment to be erroneous, I think we have not jurisdiction, as a court of error, to review it."

Where judgment was entered by mistake, on a miscalculation of votes, the court of K. B. refused to interfere. (*a*)

Rex v. *J. Leicestershire*, 1 *M. & Sel.* 442. On an appeal against an order for the removal of W. Clifton from Market Harborough to Biddenham, the chairman pronounced the judgment of the court for confirming the order; but one of the justices who made the order, being present, inquired of the clerk of the peace, whether he was not one of the justices making the order; and being answered in the affirmative, observed that, it being contrary to a rule of that court, for justices who had made orders of removal to vote on the hearing of any appeal thereon, his vote, in this case, must consequently be withdrawn; and therefore judgment must be for quashing, instead of confirming the order, as by taking away his vote, the majority would be against confirming and for quashing the same. The clerk of the peace thereupon entered the judgment of the court for quashing, without perceiving at the time, that, by withdrawing the vote of the said justice, the votes of the remaining justices would be equal; whereon, by the rules of the court, an adjournment of the appeal should have been entered, instead of a judgment to quash the order. On an application for a mandamus to adjourn the appeal to the next sessions, and then to hear it, Lord *Ellenborough* said, "If any error was made in the entry of the clerk of the peace, that error should have been pointed out at the sessions while the court was sitting, and competent to reform its own errors, and to draw out a more correct judgment. If no judgment had been pronounced, the court might have interposed; but here there is a judgment. The party who would have corrected the error should have applied to the proper forum, and in due time; and if it had been found that the numbers were equal, nothing would have been done upon it; for it would have been a nullity: but here no step of that sort was taken, but judgment was entered; and this court cannot, in order to supply a remedy, exercise a jurisdiction which does not belong to them." *Grose*, J. "This court ought not to countenance such an application, inasmuch as the error should have been noticed at the time." *Bayley*, J. "Except in matters of a criminal nature we cannot look *dehors* the record. This court cannot sit as upon a scrutiny before an election committee. In *Bodmin* v. *Warlingen*, p. 1206, the objection appeared upon the entry of record, made by the clerk of the peace." Rule discharged.

Where the chairman gave a casting vote, and on the following morning the court, though not the same justices, confirmed it, it is good.

Reg. v. *Fladbury*, (see facts, p. 806,) 10 *A. & E.* 706. Lord *Denman.* "We must take the facts of this case as we find them set out. It is said that the decision of the justices was not binding, because, as the chairman has no casting vote, the numbers on each side were equal, and therefore the judgment was a nullity. But it appears that on the following morning their decision was affirmed. It is suggested that their judgment then did not pass on the merits, but that is not so clearly stated as to enable us to say the justices have not pronounced their judgment on the whole case."

Q. B. may order an entry improperly made in the record of the sessions to be erased when an appeal has been entered by the *respondents.*

Reg. v. *J. W. R. Yorkshire*, 7 *Jurist*, 698; *Crich* v. *Sheffield*, 1 *Car. H. & A.* 98. On the 14th September 1841, an order was made to remove M. Young from Sheffield to Crich. Before the next sessions, the overseers of Crich gave notice of appeal and the grounds, and before the sessions countermanded them, the grounds being insufficiently stated reserving the right of appeal when the pauper was

(*a*) Not even in a criminal case will a mandamus issue to alter the minutes of a verdict, or to cancel an alteration in the minutes. *Rex* v. *Hewes*, 3 *A. & E.* 725.

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After countermand of the notice of appeal, the court will so interfere.

removed. At the next sessions after the order, notwithstanding the countermand, and without the knowledge of the overseers of Crich, an appeal was entered by the overseers of Sheffield, and confirmed at the sessions; at the time of holding the sessions, the paupers were not removed, nor were they removed, nor was notice given of the order of sessions, until the 10th May, 1842; at the next sessions after the removal (28th June), application was made by the overseers of Crich to erase from the records of the sessions the entry of the appeal and the order by which it was confirmed, and to enter and respite an appeal against the order of removal; but the justices refused so to do. A mandamus was issued commanding the justices to erase the entry of the appeal against the order, and the order of sessions by which the same was confirmed, and to enter the appeal of the overseers of Crich as of the last sessions, and to cause continuances, &c. The return set forth (*inter alia*) that, on the 18th September, 1841, the overseers of Crich did give notice to the overseers of Sheffield, that, in the event of the removal of the pauper from Sheffield to Crich, the overseers of Crich did intend to enter an appeal against such removal at the sessions to be holden next after such removal; that no appeal was entered by the overseers of Crich at such sessions, but at the sessions holden on the 25th October, 1841, upon the application of the overseers of Sheffield, the court ordered that an appeal should be entered against the order of removal, and that the order should be confirmed; and awarded 40*s*. to be paid by the overseers of Crich to the overseers of Sheffield for their costs; that the actual removal of the paupers did take place on the 10th May; that at the next sessions on the 4th July, the overseers of Crich did apply to the court to order an appeal to be entered against the order, and that the entry of the proceedings had at the sessions on the 25th October, 1841, should be erased; but that the court refused to order the appeal to be entered and the entry to be erased; by reason whereof, the order of confirmation of the order remains unrepealed and in full force. It then proceeded as follows: We the said justices have not erased the said entry nor the confirmation of the said order, because we conceive that we have no power or authority by the laws of this your Majesty's realm in England, to erase or cause to be erased the entry of appeal and order of confirmation from the records of the court of sessions, nor in any manner to alter, change, or vary the same records; and that, inasmuch as the order of removal of the paupers was and yet remains confirmed by the court of quarter sessions so holden as aforesaid, we have not entered or caused to be entered as of the last quarter sessions holden for the said riding, the appeal of the overseers of Crich against the said order of removal, neither have we caused continuances &c., as by the said writ we are commanded to do. Lord *Denman*. "This is a very peculiar case. I do not know but that this is the first time that this court has been asked to grant a mandamus to erase an entry made upon the records of a court of quarter sessions; but there must always be an example set, and I have no difficulty in saying, that whatever is necessary to prevent the ends of justice from being defeated, this court will do; the case of a mandamus to justices to enter continuances and hear an appeal, for instance, is a very strong proceeding on our part. At first we thought that the justices might do this act themselves, but I think we were wrong in saying that they did not require the authority of this court; when the mandamus was moved for, we wished to have the question discussed upon the return,—we thought that the entry was innocuous. It is quite clear that this erasure must be made, the practice of sessions to allow the respondents to enter appeals is wrong; it gives an opportunity for fraud, and might lead to great injustice. Under 8 & 9 Will. III. c. 30, s. 3, it was quite immaterial whether the order of removal was confirmed (being unappealed against), when the respondents applied for costs, and the application might be made behind the back of the appellants; but since the passing of 4 & 5 Will. IV. c. 76, the appellants may consider themselves aggrieved either by the order, or by the removal of the pauper. In this case, the overseers of Crich had withdrawn their

notice of appeal against the order, reserving to themselves the right of appealing after the paupers should be removed, yet the respondents enter the appeal without the knowledge of the appellants, and the court confirms the order. This court would be neglecting its duty if it did not interfere under such circumstances, and the rule for a peremptory mandamus must therefore be made absolute." *Patteson*, J. "I had considerable doubt for some time whether we had the power to order this entry to be erased; but I am now satisfied that the proceeding is strictly analogous to the practice of ordering the sessions to enter continuances from sessions to sessions, and hear an appeal. The justices themselves have not power to carry this into effect, but they can do it by the authority of this court. I do not see that they have more power to make an entry than to make an erasure; but this court can order them to do either the one or the other. This is not an application to alter the record; there is a false entry, no such appeal ever was presented; and surely we must have power to order the justices to remove that entry. Before the 8 & 9 Will. III. c. 30, the respondents had no means of obtaining their costs, if notice of appeal was given and afterwards withdrawn; I know not whether the practice for the respondents to enter an appeal is usual, but there would be no necessity for 8 & 9 Will. III. c. 30, if it was legal. Sect. 3 enacts, that the justices, upon any appeal before them, had concerning the settlement of any poor person, or upon proof before them made of *notice* of any such appeal given by the proper officer to the overseer of any parish (though they did not afterwards prosecute such appeal), shall award and order to the party for whom such appeal shall be determined, or to whom such notice did appear to be given, such costs and charges as by the said justices in their discretion shall be thought reasonable and just to be paid by the overseers of the poor against whom such appeal shall be determined, or by the person that did give such notice. From this section it appears, that the application, where *notice* of appeal was given, and such appeal was not afterwards prosecuted, was for costs only; and that being so, this practice of entering an appeal may have arisen, because, before the New Poor Law Act, it made no difference, inasmuch as, whether an order was unappealed against or confirmed, the appellants were equally concluded; but now, when it is decided that a parish may appeal, either after the service of the order, or against the actual removal, it becomes of importance to have the entry correct. The sessions have done wrong in one respect; when they were applied to to erase the entry of the appeal and the confirmation of the order, and to enter an appeal, it is true they had no power without the authority of this court as to the former entry, but they had power to enter an appeal, and ought to have done so. If we had only directed the sessions to enter continuances and hear an appeal, the former order would be on the records, and the parties might be said to be concluded; and therefore, although this may be the first time that we have been called upon to order a court of quarter sessions to make an erasure from the records, I have now no doubt as to our power to do it to prevent the ends of justice from being defeated." *Williams*, J. "I am now satisfied, partly by the argument of the learned counsel, and more especially by what has fallen from my Lord *Denman* and my brother *Patteson*, that the respondents were only entitled under 8 & 9 Will. III. c. 30, to go to the sessions and to ask for some costs, in consequence of the appellants having abandoned their notice of appeal; the respondents had no power to give the sessions jurisdiction over the question of settlement; on the contrary, the appellants stated in their notice, that they reserved to themselves the right of appealing after the paupers should be actually removed. But the respondents take an irregular course, which was furthered by the practice of the sessions: they go to the sessions, enter an appeal, and obtain a confirmation of the order,—a proceeding most irregular and improper. The respondents wait six months until the certiorari is gone, and then actually remove the pauper; against which, the other side had reserved to themselves the right of appealing. The appellants come to the next sessions, and find the records blocked up

The justices at a subsequent sessions cannot erase an order of the court.

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against them. This is a case of extreme necessity for the furtherance of justice, though I have not come to the conclusion without a great deal of hesitation and difficulty." *Coleridge*, J. "I am of the same opinion. I put my decision on the grounds, that the sessions have acted without jurisdiction, and that the appeal was entered for a fraudulent purpose. The facts as they appear are as follows:—An order of removal is made and served; a notice of appeal is given and afterwards countermanded; that being so, the respondents enter an appeal against that order. It is not necessary for the respondents to have the power to appeal; if the order is against their interest, they may abandon it, or have it superseded, or they may remove it by certiorari; if they do not complain of the order, they may still go to the sessions for costs under 8 & 9 Will. III. c. 30; and if they wish to make the order evidence, they may inrol it there; it will not be so made stronger evidence, but it simplifies the mode of proof. The respondents cannot enter an appeal; the proceeding is irregular; and there are no words in the statute to enable them to do so. In the particular instance, it was made use of with a fraudulent design; for when the overseers of Crich withdrew their notice of appeal, they reserved to themselves the power of appealing when the pauper was removed; and the respondents having gone to the sessions, entered their appeal and got it confirmed; they do not forthwith remove the pauper, but wait for six months until the certiorari is gone. Surely that was for a fraudulent purpose. This was an act of the sessions, without jurisdiction; and, in the particular instance, the entry was made for a fraudulent purpose. Then, has not this court the power to act under such circumstances, and to correct the proceedings of the court of quarter sessions? I think that if there is no other instance in which there is an inherent power to enable us to make precedents, we have that power to-day, in analogy to that which our predecessors made many years ago, in ordering a court of quarter sessions to enter continuances and hear an appeal."—Rule absolute for a peremptory mandamus.

The inrolment of an order simplifies the proof, but does not strengthen the order.

Where, two days antecedent to the regular service of an order of removal, examination, and notice of chargeability, a rough copy of the order and examination, in which the year 1840 was, by error, substituted for 1843, was delivered by the overseer of the respondent to the overseer of the appellant parish, solely with a view of giving information as to the nature of the settlement, but not as a service of the order, and the appellants treated the rough copy first delivered as a separate order, and entered two appeals at the quarter sessions without the knowledge of the respondents; and the sessions quashed the first alleged order with costs, because no notice of chargeability had been

Reg. v. *Cornwall*, 8 *Jurist*, 289. On a rule for a mandamus to erase from their records of the sessions an entry made touching an order of removal of J. Schollor, it appeared that an application was made by the overseer of Breage, on the 13th May, 1843, at the petty sessions at Holsten, for an order to remove the paupers from Breage to Gennoe, and an order, bearing date the 13th May, 1843, was made and delivered to such overseer; one of the overseers of the appellant parish was present when the order was made, and requested that it might not be acted on till after the then next petty sessions, to give the appellants an opportunity to produce evidence, showing that the paupers were not settled in their parish. As the two parishes had been in the habit of conducting their business in an amicable spirit, and submitting parochial matters to arbitration, this request was acceded to by the overseer of the respondent parish, with the sanction of the magistrates present; on the 15th May an interview took place between the two overseers, when it was arranged that Gennoe should take the paupers, and Breage should receive in their place a pauper named Richards, then chargeable to Gennoe, and alleged to be settled in Breage; upon that occasion the overseer of Breage handed to the overseer of Gennoe a rough copy of the order of removal and examinations, in order that the latter might be apprised of the nature of the evidence in support of Schollor's settlement. This copy had never been examined; no notice of chargeability was given, nor was the original order exhibited at the time of delivery; and such rough copy was given only for the purpose of furthering a friendly settlement. In it there occurred a blank after the word "forty," so that the instrument purported to be the copy of an order of "the 13th May, in the 6th year of her Majesty Queen Victoria, and in the year of our Lord, 1840." On the same day the overseers of Breage fruitlessly applied to the overseer of Gennoe for a return of the rough copy of the order. On the 5th June examined copies of the order and examinations, together with

the notice of chargeability, were duly served upon the parish of Gennoe. On the 26th June the paupers were removed to Gennoe under the order of the 23rd May, 1843, and the parish of Breage received the pauper Richards. On the 2nd October, fourteen days before the quarter sessions, the respondent was served with two notices of appeal, and two statements of grounds of appeal, the one against an order of the 13th May, 1840, and the other against an order of the 13th May, 1843. Until such service, they had received no intimation of any intention on the part of the parish of Gennoe to appeal against the order. The first statement contained seventeen grounds of appeal, of which one was, that no notice of chargeability had been given. The other contained eleven grounds of appeal, consisting of objections to the evidence in the examinations and traverses of the facts contained in it. The respondents attended the quarter sessions, and then learned that two appeals by the parish of Gennoe against the parish of Breage had been entered and respited at the last July sessions. On the first appeal being called on, the appellants produced the above-mentioned rough copy of the order, &c., and insisted on their right to try an appeal against an order of the 13th May, 1840, and proceeded to object that no notice of chargeability had been given; the respondents denied the right of the appellants to be heard, and proved, by uncontradicted evidence, that there was, in fact, but one order; that the delivery of the rough copy was not intended or understood as formal service, and that the removal of the paupers took place under the real order, dated in 1843. But the sessions thought themselves bound to adjudicate upon the appeal, and quashed the order with costs, on the ground of want of notice of chargeability. The second appeal was thereupon called on, and the appellants contended that the order which had just been quashed as an order of 1840 was, in fact, an order of 1843; that the respondents had themselves shown that there was, in fact, but one order, that that had been quashed, and they, consequently, could not be heard in support of it. The respondents declared themselves ready to support the order on the merits; contending, that the want of notice of chargeability could not apply to this order, and that the conduct of the appellants, in entering an appeal against a non-existing order, and then asserting its identity with a valid order, was a fraud upon the court: but the court refused to hear the respondents, and quashed the order with costs. On an application for a mandamus to erase these entries, *Patteson*, J., said, "An application to erase an entry from the records of the quarter sessions will not be granted except upon the strongest possible grounds, otherwise we should be gradually creeping into a most inconvenient practice. The *Reg.* v. *J. W. R. Yorkshire*, p. 1207, i no authority, as the facts there were of a very peculiar nature: there the respondents had entered an appeal against their own order, and procured the appeal to be dismissed and the order confirmed in the absence and without the knowledge of the appellant, and so the court had no jurisdiction. Here, undoubtedly, a gross fraud had been practised upon the sessions, and it is matter of surprise that they could have been deceived by it; and the conduct of the parties in the matter has been in the highest degree discreditable, but the matter was properly before the court, and they exercised a judgment upon it." Application was then made for a mandamus to hear the second appeal. *Patteson*, J. "I cannot grant the application for an erasure of the entry from the records, otherwise we shall have innumerable applications of the same nature. All I can do is to grant you a rule to show cause why a mandamus should not issue to hear the second appeal."

given, and then quashed the real order with costs, without hearing the respondents in support of it, inasmuch as it was identical with the one previously quashed; a rule for a mandamus to erase the entry of the order on the first appeal was refused, but granted to enter continuances to hear the second appeal.

Reg. v. *W. R. Yorkshire*, (*Ex parte Ackworth*,) 3 *Q. B.* 397. J. Johnson was removed from Shitlington to Ackworth. This order was obtained on an examination, which, it was contended, did not disclose any settlement in, or ground for removal to, the appellant township, and, without calling on the appellant, the sessions held the objection to be fatal. The chairman then stated the order must be discharged; when a magistrate on the bench observed, that it would be proper to discharge the

Where the sessions quash the order, and make a special entry, "Quashed, not on the merits," although it was quashed on an objection which

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went to the merits, the court will not order them to erase such entry. The examination set out a prior order, but it did not state that it had been served, or pauper removed. Such examination is bad, and a decision by the sessions, that this objection was valid, is a decision on the merits of the settlement.

order not on the merits, so as to enable the respondents to remove again. The appellants contended that the decision was on the merits, and that, if the question were doubtful, it ought to be left for decision elsewhere, whenever a necessity for its decision might arise. But the court said they were disposed to make the entry "discharged, not on the merits." The appellants then stated, that, on condition of the court ordering the appellants their costs to be paid by the respondents, they would consent to the special entry, though the facts contained nothing to justify it; that the decision was in favour of the appellants according to the merits of the case; that the appellants had a right to try their appeal so as finally to dispose of the grounds of removal on which the order had been made. The court, however, ultimately determined that they would abide by their former decision, and caused a special entry to be made of the order having been "discharged, not on the merits," in order to prevent the respondents from being concluded. On a rule for a mandamus to erase this entry, *Patteson*, J., said, "It appears that the examination on which the order of the magistrates was founded, disclosed no ground for the removal of the pauper. It set forth, as the ground, a prior order of removal to the appellant parish unappealed against, which, it alleged, had been suspended; and there was no statement contained in it showing that it had ever been served. The examination was, therefore, bad; and the sessions, being of that opinion, quashed the order, with a special entry that it was "quashed, not on the merits." There appears to have been considerable discussion hereupon, and the counsel for the appellants offered to go into the case; that, however, was resisted, and it was contended, that the appellants must abide by the decision of the court already given. The sessions refused to hear it, and thereupon an entry was made, that the appeal was quashed, not on the merits. At the time the case was first mentioned, I thought the sessions were right, and that a decision upon this objection was not a quashing on the merits; but, on consideration, it now appears to me that the sessions were clearly wrong, not only from the older cases, but from a case or two decided a term or two ago. The *Reg.* v. *Evenwood*, p. 1178, and *Reg.* v. *Charlbury*, p. 1180, have rightly decided that, where the examination is defective, where it omits some material facts, it is the same thing as if, on the hearing of the appeal, the parties had not produced evidence of such facts before the court, and is conclusive, I will not say on the merits, for that word appears to me unfortunately used, and likely to mislead. The sessions were here undoubtedly wrong in their decision, and then the question arises, whether this court can apply a remedy by directing the record to be amended. The only case cited in favour of the rule was *Reg.* v. *J. W. R. Yorkshire*, p. 1207; but that case was of a peculiar nature, and should not be brought as a precedent. There this court certainly directed an entry of an appeal on the record of the court of quarter sessions to be erased, and it is urged, it is an authority for this application; but the court had there originally possessed no power to make any entry at all. The sessions had entered an appeal in that case, on the motion of the respondents, and in the absence of the appellants, which they had no authority to do. They consequently had no jurisdiction, for the case was not properly before them. In the present instance, the appeal was properly entered, and the court had jurisdiction over it, and they have decided it. How, then, can we compel them to re-hear a case on which they have decided? It is impossible for this court to interfere to compel them to hear and determine when they have actually heard. It may be true, that their decision is erroneous; but, nevertheless, we cannot interfere. They had the case properly before them, they came to a judgment, and made an entry, and it is impossible to interfere by erasure. The law in such a case has provided no means of redress; for this court, even though they have decided wrongly, is not a court of error, to which appeals may be made from the sessions. Whether, upon any subsequent occasion, the magistrates will permit the appellants to contradict their record, and

explain the grounds of that decision by evidence that the former decision was erroneous, and in fact a decision on the merits, is a question which remains to be settled by them, and on which it is unnecessary now to enter. Under the circumstances, the rule now applied for must be refused."

Where the sessions have rejected evidence for the appellants, and confirmed an order of removal, on the ground that the statement of grounds of appeal was insufficient, this court will not interfere by mandamus. *Rex* v. *J. Caernarvon*, overruled.

If, on the hearing of an appeal, a point of law arises upon which the court entertains a doubt, and wishes to take the opinion of this court, they should hear the appeal through, and state a case, so that the decision of this court upon the point may determine the appeal.

Reg. v. *J. Kesteven*, 1 *Car. H. & A.* 151; 8 *Jurist*, 445. On a rule for a mandamus to the justices of Kesteven, to enter continuances and hear an appeal against an order of removal, it appeared that the order was grounded on a settlement by apprenticeship. The appellants relied on a subsequent settlement in the respondent parish, by residence of the pauper therein under the apprenticeship, with consent of his master. The respondents objected, that the grounds of appeal did not convey sufficient information as to the house in which the pauper slept, but merely stated that he served a person in the parish. The sessions were of that opinion. The appellants applied for a case, which was granted, and confirmed the order, subject thereto, and stated that if the court should be of opinion that the grounds of appeal were insufficient, the order was to stand confirmed, but if the court should be of a different opinion, then continuances were to be entered, and appeal sent back to be re-heard. Lord *Denman*. "After the present argument, it will, I should hope, be universally known that this court will not decide a point merely for the purpose of setting the sessions in motion, though we will give our opinion upon a question properly submitted to us; and the way of doing that is, for the sessions to decide the case provisionally, so that upon the delivery of our opinion, the case may be finally settled. If they ask us merely whether they shall go forward, fresh expense is unnecessarily incurred. In the next place, we have to consider whether the cases of *Reg.* v. *J. Caernarvon*, p. 1144, and *Reg.* v. *J. W. R. Yorkshire* (*Keighley* v. *Wilsden*), p. 1066, were rightly decided, and I think we are bound to say that the former case (at the decision of which I was not present), is clearly wrong; and that the latter case, in the decision of which I concurred, is, if possible, more wrong. In the former case, the court may have been led to the decision by the way in which the parties at the bar agreed in presenting the case to it; but the court in both cases took upon itself to say, not merely that the sessions had done wrong, but that they had come to a wrong conclusion. This was, in fact, in each case a new trial upon the evidence, which the court has no power to order. The language of the judges in *Reg.* v. *Caernarvon* shows how this mistake arose. They say that where the sessions have taken an erroneous view of a preliminary objection, and refused to hear the appeal, this court will grant a mandamus; and so, if the preliminary point was a matter of practice on which the sessions were clearly wrong in point of law, this court will tell them as a rule of law that which is not so. But if the sessions have decided on a matter of fact, then we will not interfere. Now the question of the sufficiency of the grounds of appeal is entirely for the consideration of the sessions; they are the proper judges of it, as was suggested in former cases by my brother *Coleridge* and myself, and we cannot well judge of it." *Patteson*, J. "I hope that in future, when a question arises as to whether the facts stated form a sufficient ground of appeal, it will be clearly understood by the sessions, that they ought not to grant a case if they are satisfied that there is not a sufficient notice of grounds of appeal; and if they entertain so much doubt as to be induced to grant a case, they should go on with the hearing of the case, and determine the subject of appeal. The appellants argue that they are enabled to say that no case has been taken by them. There might be some doubt if a case had been asked and refused; but where a case is given, though in a particular form, which it is said amounts to none, the party should remonstrate and decline to take it, and then he would be entitled to a mandamus. I agree that *Reg.* v. *J. Caernarvon*, and *Rex* v. *J. W. R. Yorkshire*, were wrongly determined. Where the question is whether there was sufficient information on the grounds of appeal to entitle the appellant to go into his case, that is a

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question for the sessions." *Williams*, J. "The decision in the two cases referred to cannot be supported; and the erroneous part of the decision, *Rex* v. *J. Caernarvon*, rests upon the misapplication of the term 'preliminary point.' It is impossible to say that a case was not heard, unless the parties have gone through the whole of the case. There has been a hearing and decision of the appeal, if the case was stopped upon an objection to the sufficiency of the statement of the grounds of appeal." *Wightman*, J. "The decision in *Rex* v. *J. Caernarvon* proceeded upon an erroneous view of what is a preliminary objection. In this case, the sessions, in deciding the matter which they have, have done more than decide a point of practice; it is a point touching the merits of the case." Rule discharged. An application was then made to bring up the case. Lord *Denman*. "That we cannot allow now." (*a*)

If the sessions think that it was necessary to give the date of apprenticeship, Q. B. will not interfere.

Reg. v. *Cornwall*, 1 *Car. H. & A.* 161, *n.* On a rule for a mandamus to hear an appeal against an order of removal from Redruth to Kenwyn, it appeared that the ground of appeal relied on was a settlement by apprenticeship in a third parish, subsequent to that set out in the examinations. The date of the indenture was not given. The sessions were of opinion that the grounds of appeal were insufficient, for not giving the date, and confirmed the order. It was urged that the respondents assume that every indenture of apprenticeship has a date. Lord *Denman*. "No; it only assumes that the date was necessary in this case, of which the sessions were the proper judges." *Per Curiam:* Rule discharged, with costs to the justices only.

When an appeal is dismissed, subject to a case, the court will not grant a mandamus to hear the appeal.

Rex v. *J. Suffolk*, 3 *N. & P.* 306. This was an appeal against an order of removal. One ground of appeal was, that it did not appear by the examination, that the pauper was chargeable. The sessions quashed the order, subject to the opinion of the court. Lord *Denman*. "I do not think we meant to proceed in *Rex* v. *J. W. R. Yorkshire*, on the distinction now pointed out, that it was a mere question of sessions practice. If the court of quarter sessions grant a case, they afford a ready mode by which a complete remedy may be afforded for any misdecision, and it is quite impossible to grant two modes of compelling a proper decision to be arrived at.

On an appeal against an order of removal to the parish or township of C., the respondents took an objection to the grounds of appeal, which the court held was valid; but on looking at the order, one

Reg. v. *J. Cheshire*, 1 *P. & D.* 88; 8 *A. & E.* 398. William Jepson, &c. were removed from Yeardsley-cum-Whaley to the parish or township of Chapel-en-le-Frith, otherwise called Coomb's Edge. The order was served on the 15th of December 1836, on A. Pott, as one of the overseers of Chapel-en-le-Frith. On the 30th of December, the overseers of Yeardsley were served with a notice of appeal, signed by J. Lomas, churchwarden, and A. Pott and J. Marckington, as overseers of the poor "of the parish of Chapel-en-le-Frith." On the 8th of March a second notice of appeal, with the grounds of appeal, by the "churchwarden and overseer of the township,

(*a*) *Reg.* v. *J. Caernarvon.* The facts of this case, which is now overruled, are given p. 1144. In that case, *Coleridge*, J., said, "There may be judicial observations somewhat conflicting upon the question whether the sessions may take upon themselves to determine finally the sufficiency of the statement of the grounds of appeal; but the authorities, on a review of them, appear conclusive that when the sessions have declined to hear a case on a preliminary objection, shutting out the merits of the case, their decision may be reviewed by this Court. If the sessions go into the case, then their decision upon the facts is without appeal. *Ex parte Broseley*, p. 1122, was a case of the latter description: to the sufficiency of the examination there was in that case no objection. A witness was called by the respondents, who proved the fact, varying in part from that set out in the examination. The sessions said, 'You have failed in proving the case you proposed to prove.' They clearly therefore went into the case, and decided it upon its merits. I still think that the question, whether the notice given is sufficient, must depend on many circumstances, of which the sessions must be better judges than we are. But I feel myself bound by the authorities, that this Court will inquire into the propriety of the decision of the sessions." *Wightman*, J. "It is settled beyond all doubt, that this court will always interfere when the sessions have taken an erroneous view upon a preliminary point, and refused to hear a case."

district, or place known by the name of Coomb's Edge, and sometimes called Chapel-en-le-Frith," was served on the removing parish. The second notice was signed by "J. Lomas, churchwarden," and "A. Pott, overseer." On the appeal the respondents called for proof of the notice of appeal, and objected that the notice was invalid, and applied to have the order confirmed. The court decided that the notice was invalid. The order of removal was then looked at by the court. and one of the magistrates on the bench stated that there was no township of Chapel-en-le-Frith, but that the parish of Chapel-en-le-Frith contained three townships, Coomb's Edge, Bradshaw Edge, and Bowden Edge, each maintaining its own poor; and thereupon the court decided that the order was misdirected and a nullity, and they quashed it; although the respondents contended that the order ought to have been confirmed, as the appellants were out of court, in consequence of the invalidity of the notice containing the grounds of appeal, and proposed to prove that the order was in point of fact correct. It was stated in an affidavit made by a late overseer of the parish of Chapel-en-le-Frith, that the poor of the whole parish were maintained out of one common fund. On a certiorari to quash the order of sessions, Lord *Denman* said, "This is a case which presents very peculiar circumstances, and although I cannot approve of the result arrived at by the sessions, yet this court is always very scrupulous in interfering with their decisions. The first question is, whether they had jurisdiction over the subject-matter? They certainly had, for it was an appeal against an order of removal. It turned out that the notice of appeal was signed by one overseer only, which the sessions held to be bad. It is a fallacy to say that their decision on this point ousted them of their jurisdiction, and it may be tried by this test—could not the court, at any time during that sessions, have granted costs? It appears also by the affidavits that jurisdiction was given to the court below by the respondents' counsel, for they applied to have the order confirmed. It is not unnatural that the justices should ask to look at the order; and although the justices were apparently mistaken in the decision they then came to, it was their decision, and cannot be disturbed. I am not, however, prepared to say that this order would be a final decision of the question." *Patteson*, J. "If the question simply were, whether the sessions had done wrong, I should have no hesitation in deciding that their conduct was very wrong, very absurd, and very inconsistent. At the same time I cannot help seeing that they had jurisdiction. It is the decision alone of the sessions which is to be regarded; what they may have said before that decision may be treated as a mere opinion, with which we have nothing to do." *Williams*, J. "The affidavits state the counsel for the respondents insisted that the order ought to be confirmed; it is clear, therefore, from the affidavits, that at that moment the jurisdiction was not at an end." *Coleridge*, J. "Although the rule of law may bear hard in the present case, still if it is the rule, and if that rule is found as a whole to operate beneficially to the public at large, there can be no doubt that it ought to be strictly observed. It cannot be disputed that there are many cases in which affidavits may be looked at in order to ascertain whether there was jurisdiction or not; for suppose an order made, which was good on the face of it, but which was not made by a magistrate, it is clear that this fact may be shown to the court. The simple question then here being whether the justices had jurisdiction, I can entertain no doubt that they had. The appeal being lodged, an objection was taken to the notice, which was held bad, and it is contended that at that moment the appeal went out of court; but that is said without attending to the words of the act. If there had been any doubt as to the jurisdiction of the sessions, the counsel for the respondents appear to have helped them out of the difficulty, by applying to have the order confirmed." Rule discharged. See *Reg.* v. *Westmoreland*, p. 1039.

justice stated that C. was wrongly described, as there was no township of C. maintaining its own poor; the sessions held thereupon that the order was a nullity. Held, that although the sessions had decided the notice of appeal to be bad, their jurisdiction was not at an end, and that their order being good upon the face of it, could not be quashed on certiorari.

Affidavits may be used to show that an order of sessions, valid on the face of it, was made without jurisdiction.

Reg. v. *J. W. R. Yorkshire*, (*Sprotbrough* v. *Attercliffe*,) 1 *Car. H. & A.* 64. Hur Turner, was removed from the township of Attercliffe cum Darnall to the parish, township, or place of Sprotbrough. The parish of

The court of Q.B. will not interfere, unless it appears that the ses-

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sions have not decided the question raised before them.

An application to respite an appeal is no admission that an objection taken to the notice, because it was signed by the overseers of the *parish* instead of the *township*, is valid.

Sprotbrough, in fact, consists of two townships, Sprotbrough and Cadeby, each maintaining its own poor, and having separate and distinct overseers. The *parish* of Sprotbrough has no overseers. The removing township sent the notice of chargeability, &c., to the overseers of the *township* of Sprotbrough, and on the 17th of March received a notice of appeal, purporting to be under the hands of the churchwardens and overseers of the *parish* of Sprotbrough, and on behalf of that *parish*. The notice was signed by T. Wood, one of the churchwardens of the *parish* of Sprotbrough, and by M. Clark and W. Nabon, the overseers of the *township*. On or about the 30th of March, the following notice was served by the respondents on the overseers of the township of Sprotbrough:—"To the churchwardens and overseers of the poor of the *township* of Sprotbrough. We do hereby give you notice to produce, at the trial of the appeal against an order, &c. for and concerning the removal of Hur Turner, &c., from &c., out of our said township of &c., to your said township of Sprotbrough, and *of which appeal you have given notice to us* of your intention to try and prosecute at the next general quarter sessions, &c., the aforesaid pauper to be examined, &c." The appeal was entered at the sessions, on behalf of the overseers of the township of Sprotbrough, and was by agreement respited to the next sessions, on the understanding that no fresh statements or notices should be given. The appellants, however, did serve fresh notices, exactly similar to the former. The appeal came on for trial at the Midsummer sessions, when the respondents called upon the appellants to prove their notice and grounds of appeal; and on the production of the above notice objected that it was invalid, as coming from the churchwardens and overseers of the parish, instead of the township. A contention took place as to whether the respondents could or could not have been misled by the notice. During this argument the counsel for the appellants applied to respite the appeal. The respondents admitted the right of the court to do so, but contended it should only be done on payment of costs. This being refused by the appellants, the court said, "Then we confirm the order." On an application for a mandamus, *Ex parte The Overseers of Armley*, Mich. 1840, being cited, in which it was held that the guardians of a town forming part of a union under Gilbert's Act were the proper persons to appeal; and that a notice given by overseers of the township, one of whom was also the guardian, was not good, *Patteson*, J., said, "The 22 Geo. III. c. 83, s. 7, expressly provides, that, where guardians are appointed, the overseers shall not act. That notice was by the overseers, and was consequently a nullity; it did not state that one of them was also the guardian. Here the notice was given by persons who, by law, had a right to give it, but who took a wrong title." It was then urged that the notice was an estoppel. Lord *Denman*. "If this had been an application by the respondents, I can imagine that such a notice as this would have estopped the appellants from disputing the character of persons whom they had so treated in the notice. But, in this case, we are called upon by the appellants to say the sessions have done wrong. Upon the materials brought before us, I think they have not done wrong. At all events, it is impossible to say that they have not decided what they were called upon to do, namely, whether the respondents were or were not misled by the notice of appeal." *Patteson*, J. "I am of the same opinion. It does not appear from the affidavits that the point was brought to the notice of the sessions." *Coleridge*, J. "If I were called upon to conjecture, I think it possible that the sessions were wrong in the conclusion at which they arrived; but if misconduct is imputed to them, it must be made out satisfactorily. It is not done so in this case." Rule discharged.

Where the sessions refused to hear evidence on the ground that the examinations were deficient in particularity, Q. B. refused a man-

Reg. v. *J. W. R. Yorkshire* (*Beckington* v. *Elland*,) 1 *Car. H. & A.* 247. The facts of this case are fully stated in the judgment delivered by Lord *Denman*: "This was a case against the justices for the West Riding, which arose in this way:—In a former term, cause was shown against a rule for a mandamus (*Reg.* v. *Kesteven*), requiring the court of quarter sessions to enter continuances and to hear an appeal, on the ground that it had impro-

perly refused to do so when the case was called on for trial. The cause shown was, that that court had heard the appeal and decided upon it, and that we could not subsequently enter upon any inquiry as to whether their judgment was right. In giving effect to this argument we were under the necessity of re-considering some former decisions of this court, by which it was determined that a mandamus would be the proper mode for compelling the sessions to correct their error; and we felt it our duty to overrule expressly the *Reg.* v. *J. Carnarvonshire* and *Reg. J. W. R. Yorkshire,* and perhaps some other cases. The more the question is considered, the more clearly will be shown the propriety of our last decision. The practice which had crept in, from the desire entertained by the court, that in all cases a fair trial of the issue between the parties should be had, would have led to perpetual interference with every proceeding of the quarter sessions, both embarrassing and derogatory to a tribunal exercising very important functions. All now understand, that, when any such tribunal declines to exercise a jurisdiction imposed on it by the law, this court will enforce its proceeding; but that, when it has acted, its judgment can only be reversed here on a case stated by itself for our opinion. There is certainly no want of facility in granting such cases, and they are conveniently disposed of on grounds well understood between the parties, while the conflict of affidavits on such matters is of itself a real evil. As soon as the said rule was discharged, another, involving the same point, was brought before us; we inquired of the learned counsel who appeared in support of it, whether the two cases could be distinguished; the learned counsel did not attempt to show that our preceding decision was wrong, and that the former authorities ought still to prevail; but he expressed an opinion that the two cases might probably be distinguished, and, that he might have the opportunity of distinguishing them, the rule was enlarged to this term. When, however, it was called on, no attempt at such distinction was made. It was then thought right to inform us, at much length, that the parties had been misled by our mistake in former decisions, and that hardship and injustice would result to the losing parish if we should now refuse them those means of questioning the judgment below which we had led them to suppose that they possessed. But we cannot allow any weight to these observations; parties must indeed act on the authority of our decisions, but those decisions, when pronounced erroneous, cannot give them any shadow of right against their adversaries who have acted on that which is now declared to be the law, in spite of that erroneous decision, even at the moment when it was pronounced. But these observations were rather made as introductory to an application for a rule to show cause why the appellants should not be at liberty to file affidavits in support of their application for a mandamus. So confident, it was urged, had both parties been that this court would continue to act as it had done before, that the appellants actually refused to take up a case granted by the court of quarter sessions, both parties agreeing to be bound by the opinion of this court on the disputed question, when discussed in the proceedings by mandamus. We have paused to consider, whether, in the exercise of our discretionary power, we ought not to grant this application: two cases were cited where the court was supposed to have done so, *Rex* v. *J. Wilts,* 10 *East,* 404, and *Rex* v. *J. Lancashire,* (p. 1151,) but in the latter the court either corrected a mistake in the judgment of the court below, in believing that they had no jurisdiction, or they acted in the manner which we have renounced and condemned by our late decision. In the former case the court interposed merely to defeat a fraud attempted to be practised by one parish on the other. On this we shall never hesitate; when the judgment of the inferior court is sought to be made available by fraud, the mandamus is not a coercion of that court, but a privilege to do what is right, which we confer upon them. No *mala fides* is imputed here; the agreement to be bound by our decision could not be confined to our decision of the single point argued, but would apply to any principle of decision that the law should require. We should be slow to unravel the matter by affidavits, nor can we fail to see the simple

damus to compel them.

In cases of fraud, a mandamus will be granted.

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answer is the most consistent with probabilities, and must be decisive against the rule if it were granted. We feel it right, therefore, to abstain from re-opening the flood-gates of litigation, and refuse this application; and, instead of enlarging the rule, therefore, it must be discharged."

A mistake as to date had been made in the copy of an order of removal served on the appellants, who entered an appeal against it. A correct copy was afterwards served, and a return of the former requested by the respondents; the appellants, however, refused to return it, and entered a second appeal. The sessions heard and quashed the first appeal, but refused to hear the second, on the ground that it was in fact the same as the one already decided: Held, that the sessions were not justified in such refusal, and a mandamus was granted to compel them to enter continuances, and hear the second appeal.

Reg. v. *J. Cornwall*, 1 *Car. H. & A.* 314. On a rule for a mandamus to hear an appeal by the parish of Germor against an order for the removal of J. Schollar, &c. from Breage, it appeared that on the 18th of May, 1843, the respondents served a copy of the order of removal dated May 13th, 1840, together with copies of the examinations and a notice of chargeability, which was not signed. Against this order there was an appeal entered at the Michaelmas sessions. In June, 1843, the respondents served a second order of removal on the appellants, similar to the former, except that it bore date 1843, and the notice of chargeability which accompanied it was duly signed. When this last set of documents was served, the respondents requested that the former should be returned, but the appellants refused. Against this second order, also, they entered an appeal at the same sessions. When the appeal against the first order came on, the respondents contended that the first was not a formal order, but an incorrect copy of the second order, and that it had been served, in compliance with the usual practice, of giving the appellants notice of what had been done with respect to the paupers. The sessions however quashed the order, on the ground that there was no sufficient notice of chargeability. The appeal against the second order was then called on, when the appellants insisted that the order was in fact the same as the one already quashed; and that, as the sessions had quashed one, they were bound to quash the other, inasmuch as they were substantially one and the same. Upon this the sessions decided, that the respondents were not entitled to be heard in support of the second order, and it was accordingly quashed. Lord *Denman*. "The sessions have refused to hear the only appeal in which they had jurisdiction. They ought to have known they could have nothing to do with an order bearing date 1840, unless continuances from time to time had been entered. They make an entry quashing an order of 1840, and then refuse to entertain one of 1843, because they had already decided one of 1840." The other judges concurred. Rule absolute.

Procedendo awarded.

Reg. v. *Cartworth*, 8 *Jurist*, 360. A certiorari to remove an order of sessions had been quashed, because the affidavit on which it issued omitted to state that the justices on whom it was served had been present at the making of the order. A fresh certiorari being subsequently moved for and refused, in consequence of more than six months having elapsed, application was this term made for a mandamus, commanding the justices to enter continuances and hear, &c.; but (semble) on the antecedent facts, there had been already a hearing of the appeal by the justices; on an intimation, however, that a doubt existed at the crown office as to whether it was the record or a transcript merely which had been returned and filed, the court granted a rule *nisi* for a procedendo to carry back the record to sessions.

ADDENDA.

The greater part of the Cases added here are taken from the Reports of Messrs. Carrow, Hamerton, and Allen, the publication of which was not known to the Editor until the greater part of these pages had been printed.

P. 15.—*Reg.* v. *J. of Cheshire*, 1 *Car. H. & A.* 223. Two neighbouring divisions of a parish used the same parish church, situate in one of them. Each of them had an overseer, collector of taxes, surveyor of highways, and constable, appointed out of its inhabitants, but by the parish at large; each overseer collected the poor-rates in his own division, and kept his own accounts, but these were afterwards entered in one book, and passed jointly: both divisions formed part of the same union, and the poor of both were maintained at their joint expense; but it did not appear that either had separately appointed its own overseers:—Held, that these divisions, not being separate and distinct townships as to the maintenance of their own poor, were not entitled to an appointment of separate overseers, under the 13 & 14 Car. 2, c. 12, s. 21. See 7 & 8 Vic. c. 101, s. 22.

Evidence of townships not being distinct.

P. 55.—When the commissioners have ordered a workhouse to be built, and land to be purchased, the Court of Queen's Bench will not inquire into the propriety of their order. It was alleged that one of the parishes had already a workhouse suited to the purpose. (*Rex* v. *Poor Law Commissioners, Newport Union*, 6 *A. & E.* 54.)

Q. B. will not inquire into the propriety of an order for building a workhouse.

P. 101.—*Rex* v. *Morten*, 1 *Car. H. & A.* 69. An order for the maintenance of A., B., and C., three grandchildren, "for so long time *as the said A., B., and C. shall be chargeable* to the parish of B." is bad: as "the words not able to work," and the word "chargeable," are not convertible terms; and because the adjudication ought to have been made with respect to each child individually.

What is not a valid order of maintenance on a relation.

P. 291.—*Reg.* v. *Grand Junction Railway Company*, 1 *Car. H. & A.* 207. The Grand Junction Railway Company, by a rate made for the poor of Leighford, on the 6th day, were rated for their Railway passing through the parish, and land adjoining, in 1050*l.* Rate confirmed. Case:—The Grand Junction Railway was formed under several acts, containing sections similar to those in *Reg* v. *London and South-Western Railway Company*, p. 291. Under these acts, not only has the railway originally contemplated from Warrington to Birmingham been constructed and opened for public use, but other railways, made by other parties, from Warrington to Newton, and from Crewe to Chester, and long since opened, have become the property of the appellants, and these now form part of the Grand Junction Railway, and the whole is managed, as to accounts and otherwise, as one entire business. Over all these railways, and also over the Liverpool and Manchester Railway between Newton and Liverpool in the one direction, and Newton and Manchester in the other, the appellants exercise the right of carriers on their

A railway company is rateable for their railway at an amount equal to the rent which a lessee would pay, making the same uses of the railway as the company, including their profits as carriers, and the amount of tolls they received from other carriers on the railway.

A Rate founded on the amount chargeable in respect of tolls only, is erroneous.

Addenda.

Deductions may be made for the interest on the capital employed in engines, &c. as carriers.

For tenant's profits and profits of trade.

For the depreciation of such stock, beyond usual repairs.

For the annual cost of conducting the business.

For the land occupied by stations, separately rated in the parishes in which they are situate.

And for the reproduction of rails, chairs, sleepers, &c.

The amount is a question for the sessions.

No station in appellant parish.

Their calculation of the rateable value.

own account of passengers and goods, providing for themselves stations or stopping-places, locomotive-power, carriages, coke, and watering-places, and all other things necessary for the conveyance of passengers and goods, and charging for such conveyance reasonable freights in addition, as regards the Grand Junction Railway, to the tolls or tonnage which they are authorised to take; and by this carrying trade, as well as by the tolls, the appellants make profits. Other parties also exercise the right of carriers over various parts of the Grand Junction Railway, and, amongst others, over that part which is in the respondent parish, providing for themselves, without the consent or concurrence of the appellants, and independently of them, subject, however, to the control of the appellants under several acts, locomotive power, carriages, coke, and watering places, and all other things convenient for the conveyance of passengers and goods, and separate stations and stopping-places adjoining the railway, and the needful branches into, or communications with the same; and they, like the appellants, make profits of their trade so carried on by them over the railway: and they pay to the appellants the tolls or tonnage duly fixed by the appellants pursuant to the acts, and being the same tolls as form the basis of the calculations hereinafter mentioned, as contended for by the appellants. A third class of carriers over the Grand Junction Railway hire from the Grand Junction Railway Company locomotive engines, and the use of stations, &c., but find their own carriages; and they likewise make profits over the railway: these also pay to the appellants the said tolls or tonnage, besides a compensation for the use of the power, stations, and other accommodations provided for them. The total length of so much of the Grand Junction Railway as lies between Birmingham and Newton is eighty-four miles, and from Crewe to Chester twenty-one miles, making together one hundred and five miles, and the distance along the Liverpool and Manchester Railway from Newton to Liverpool is fifteen miles, and from Newton to Manchester sixteen miles; the length of railway within the respondent parish is one mile, and there is no station, stopping-place, or property of the appellants other than the railway itself in the said parish. The appellants have duly caused toll-boards or lists to be made and published, as required by statute. The appellants have also duly kept the accounts of tolls, and free access has been afforded to them as required by the statutes. The fares and charges for the conveyance of passengers, goods, parcels, &c., by the appellants as carriers, are regulated by the number of miles through which they are carried, as well as by weight, bulk, value, &c., and various other circumstances, in like manner as the fares and charges of other carriers. The gross sum received by the appellants as tolls, rates, or duties, including both what they receive from other companies or persons using the railway as carriers, and also the gross sum of the tolls, rates, or duties, of which an account is also kept, calculated upon all the passengers, goods, &c., as aforesaid, carried by them for their own profit, added together, amount actually to the sum of 1,500*l.*, in respect of so much of the railway as lies in the respondent parish, for the current year of rating: and this is the gross produce of the land which the appellants, if not carriers, or which a lessee of the tolls, rates, and duties would in fact have received as such lessee, howsoever, or by whomsoever the carrying business of the railway was conducted; and the appellants contended that this sum, (1,500*l.*,) so found, ought to form the basis of any rate upon them in respect of their rateable property in the respondent parish. The gross yearly receipts of the company, including as well the tolls actually received by them as the tolls, fares, freights, and profits of every kind derived by them as carriers upon, and owners of the Grand Junction Railway, and its appurtenances, in all the parishes between Birmingham and Newton, and Crewe and Chester, excluding their receipts over the Liverpool and Manchester, and other railways which do not belong to them, but for passing over which, as carriers, they pay toll in the same way as the independent carriers over the Grand Junction Railway; and including also the profits of

their stock in trade and personal property used by them as carriers in connection with and upon the entire Grand Junction Railway, and their working over and along it; and also the rents, profits, and value of all their stations and other conveniences at and between Birmingham and Newton, and Chester and Crewe, are agreed, for the purposes of this case, to amount to the sum of 440,366*l.* for the current year of rating; and adopting the principle of a mileage division thereof, that is to say, dividing the same by 105, being the total length of the Grand Junction Railway, the amount is 4193*l.* (and a fraction) in respect of so much thereof as lies in the respondent parish; and it is for the purpose of the present case admitted that the mileage principle of division is fair and equal as respects the respondent parish. It was admitted and agreed, (subject to the opinion of the court as to the propriety and principle of each item of deduction), that, if the 1500*l.* (that is to say, the amount of tolls) is to be adopted as the basis of calculation, then the full net annual value of the appellant's rateable property within the respondent parish will be 712*l.* 10*s.*, being the 1500*l.* minus the following deductions which the court of quarter sessions find to be reasonable in fact, viz.:—

Deductions claimed by appellants.

First, 20*l.* per cent. thereof for the tenant's subsistence and profits, regard being had in this case to the extensive amount of responsibility, risk, &c.

Secondly, 2*l.* 10*s.* per cent. for the collection of the tolls.

Thirdly, 350*l.* per mile for the maintenance of the railway with the works and fences, and for gatekeepers, and also for engineering and police, as to so much of the two latter items as are fairly chargeable on the proprietors of the railway as such.

Fourthly, 70*l.* per mile for poor-rates, highway-rates, church-rates, and tithe commutation rent-charge.

Fifthly, 30*l.* per mile for renewing or reproducing those portions of the subject of the rate which are of a perishable nature, such as the rails, chairs, sleepers, &c., when rendered necessary by accident or decay.

Calculation of rateable value allowed by the Sessions, and confirmed by Q. B.

The parish officers adopted, and the court of quarter sessions sanctioned, by their judgment, a different mode of arriving at the net annual rateable value of the property of the appellants in the parish. They ascertained the gross yearly receipts of the company throughout the railway as stated above, viz. the sum of 440,366*l.*, and then made therefrom the following deductions, the propriety, principle and completeness of such deductions, as well as the propriety and principle of the respondents' mode of arriving at the net annual rateable value of the rateable property of the appellants in the parish, being referred to the opinion of this court; and the court of quarter sessions finding such deductions to be reasonable in fact, viz.:—

First, 5*l.* per cent. for interest on 255,000*l.*, being the capital necessary for, and actually invested by the appellants in the purchase of engines, carriages, and all the other moveable stock necessary for the business of carriers as conducted by them in manner aforesaid.

Secondly, 20*l.* per cent. on the same sum, for the tenant's profits, and the fair profits of such trade carried on by means of so large a capital, and with such large risks, &c.

Thirdly, 12*l.* 10*s.* per cent. on the said last-mentioned sum, as the fair annual amount of the depreciation of such stock considered to be in the hands of a tenant from year to year, beyond all needful and usual annual repairs and expenses.

Fourthly, 198,962*l.* per annum, being the appellants' reasonable annual cost of conducting their business during the same year, in which their earnings as aforesaid amounted to 4193*l.* per mile in Leighford; namely, in the coaching department, wages of guards, conductors, porters, station-keepers, clerks, and policemen, repairs of carriages, trucks, and horse-boxes, horsing, parcel-carts, oil, grease, &c. for carriages, and duty on passengers, &c.; and in the merchandise department, salaries and wages of agents, clerks, porters, &c., repairs of waggons, &c., carriage of live stock, and expenses in both departments, and generally locomotive power, enginemen's and firemen's wages, engineering, repairing, and cost of materials,

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including coke, maintenance of way, repairs of stations and buildings, office and general expenses, including insurance, and advertising, charge for direction, compensation account, rates and taxes, law expenses, and general petty disbursements attendant on the several businesses of railway owners and of railway carriers.

Fifthly, as the stations, offices, stores, and buildings, and repairing works and premises throughout the railway, have been and are separately rated in the several parishes in which they are situated, although necessarily used and occupied for the purposes of, and in connection with it, and the conduct of traffic upon it, the respondents further deducted the fair annual value thereof, viz. 9150*l.*

Sixthly, 30*l.* per mile for renewing or reproducing rail, chairs, sleepers, &c., as before.

The balance, amounting to the net sum of 135,589*l.*, was taken to be the net annual value of the whole railway, independently of the stations and other buildings, &c., rated separately; and the sessions found, as an inference from the above facts, that the railway and other corporeal hereditaments of the company in connection with the railway might reasonably be expected to let to a tenant from year to year at the last-mentioned sum of 135,589*l.*, exclusive of the rent of the stations and other buildings rated separately, such tenant being assumed to have the power of using the railway and all its appurtenances, now the property of the company, under the same circumstances as the company, and with no other privileges and advantages than the company now possess. The principle of mileage being agreed upon by both parties as fair for the purposes of this rate, both as applied to the expenses and deductions, as well as receipts, the net annual rateable value of so much of the railway as lies in the respondent parish is to be taken at 1050*l.*, at least, supposing the principle of rating adopted by the parish officers in that case to be just and correct. Of the total net receipts of the company only about 30,000*l.* per annum are received in the shape of tolls from other parties using the railway on their own account. All the other rateable property in the respondent parish is rated upon an estimate of the net annual value thereof according to the Parochial Assessment Act, and without directly taking into account any receipts, expenses, or allowances having reference to the amount of actual profit made thereon. The appellants have not any stations or buildings in the respondent parish. In various parishes along the line of railway, the parties who, as before-mentioned, use the railway as carriers, and have stations with buildings and with branches into the railway, and other conveniences connected with the railway, are not rated (in particular parishes or elsewhere) upon or in respect of, or with reference to, the Grand Junction Railway, but solely for their stations. The appellants derive no pecuniary profit whatever from their land in the respondent parish, except from the tonnages and tolls, and from their fares and other receipts hereinbefore mentioned, and their trade as carriers in common with all other carriers over the same, if, indeed, these latter profits are to be considered as profits arising from the land, which the appellants contend that they are not. The appellants contend, that, even supposing the rate to be founded on a just principle and proper basis, the deductions allowed by the respondents do not include all the items necessary to bring out the net annual value, that is to say, the rent at which what the respondents contend the appellants' rateable property might reasonably be expected to let from year to year, amongst which omitted deductions the appellants instance, by way of example, an annual allowance for goodwill. The sessions adopted the principle of rating and the deductions contended for by the respondents, as furnishing the net annual value of the appellants' rateable property pursuant to the Parochial Assessment Act, and confirmed the rate accordingly, but granted a case on the several questions, the Queen's Bench to have the power of amending or of quashing or otherwise dealing with the rate as they deem right. Lord *Denman* now delivered the judgment of the Court:—"This was a case of an appeal against the poor-rates: it was argued in Michael-

The judgment.

mas term last, and again on a concilium in Hilary term, and has been heard by all the members of the court. Independent of certain questions of detail, which we will consider hereafter, the main arguments of the appellants were directed to shew that this case was distinguishable from the case of *Reg.* v. *The London and South Western Railway Company*, in points which went to the principle of the judgment in that case; while the respondents contended, that the two cases were in principle the same, and that that judgment must govern the court in this case. It is necessary, therefore, in the first place, to compare the two cases: if they shall be found to be different in material circumstances, the principle of that decision may lead to a contrary one in this; at all events, that decision will not bind in the present case. If they shall be found to be substantially the same, it may be necessary to consider whether our own reflection, or anything urged in the argument, should induce the court to depart from their former decision. In that case the facts found (and it must never be forgotten, that the propriety of a poor-rate can only be determined with reference to the facts found to be actually existing when it was made) were, that the company were in the sole and exclusive occupation of the railway, warehouses, stations, and landing-places, and, being so, were solely and exclusively carrying on a large business as carriers thereon. That, although their act had, under certain limitations, made the railway a highway for all the liege subjects, and given them under these a right to use it as such, either as carriers or for individual travelling, and in such case provided for the payment of tolls to the company; yet that, in fact, no one having availed himself of this right, nor, as we thought, having the power of doing so conveniently or effectually, no tolls were in fact earned. To this state of facts we applied the established principle of rating, that the rate is to be on the occupier in respect of the beneficial nature of his occupation; upon estimating which as to the amount, or, to put it in other words, in ascertaining how much net rents such and such an occupation may be expected to command, parish officers are to consider, not drily and only what would legally pass by the demise of it, but all the existing circumstances, whether permanent or temporary, wherever situated, however arising or secured, which would reasonably influence the parties to the negotiation for a tenancy as to the amount of the rent. We therefore thought it impossible, in that case, to separate the three or four miles of the railway within the respondent parish from the whole line running through many other parishes; or that whole line from warehouses, stations, and landing-places; or those again from the consideration of the peculiar convenience which the tenant would have for carrying on (as occupier) a lucrative business, if not the effective monopoly, which the provisions of the act appear to give to the occupier for carrying on such a trade. What under the act was possible by law, what in point of fact might be in future, (however near), we thought immaterial as to the principle, although very fit to be taken into account when making the calculation as to the quantum; but, in principle, the parish officers were to look at the actual state and value of the occupation. In the case now under consideration, there are some facts entirely different from those which we have just mentioned. The case finds that other parties, as well as the appellants, exercise the right of being carriers over various parts of the railway, including therein that part of it which is within the respondent parish: providing for themselves, independently of the company, (subject, however, to its control under the act of Parliament), carriages, fuel, and all things necessary and convenient for the conveyance of passengers and goods, and separate stations, and the needful branches into, and communications with, the railway. They make profits of their carrying trade, as do the appellants, and pay them the tolls which they have fixed under the powers given them by their act. Besides these, another class of carriers hire from the appellants engines, and the use of the stations, landing places, &c., but find their own carriages; these also make profit of their carrying trade on the railway, and pay toll, and a compensation for the use of the engines, stations,

The principle on which the *Reg.* v. *L. & S. W. Railway Company* was decided.

The difference in the facts of the two cases.

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and other accommodations provided for them. As the appellants receive tolls from these two classes of persons in respect of the goods and passengers conveyed by them on the railway, so they keep an account, as directed by their act, of the toll which would have been produced by them for the conveyance of goods and passengers not on their own account. These, added to the compensation above mentioned, form the total produce of the land which the company, if not carriers or lessees of the railway, carrying on no trade upon it, would receive; and upon the aggregate of these alone, after due deductions, the company contend the rate ought to be imposed. We understand them, although it is not precisely so stated, to admit the principle of considering the whole line as entire, and to arrive at the exact sum at which they contend the rate in the respondent parish should be fixed, by a mileage division of the whole line,—a principle very convenient in itself, and rightly adopted by consent. It is unnecessary, after this statement, to point out the difference in fact between the two cases, but we cannot perceive how this difference bears upon the principle on which the rate is to be imposed, or which governed the court in the former decision, which proceeded entirely on the then existing state of facts. Each of the two companies must be rated in respect of the occupation of the land: one of them derives no benefit from that occupation, except by carrying on upon the land the business of conveying goods and passengers, and the division of that profit into tolls and fares we think nominal; the other, in addition to this mode of profit of occupation, also derives a profit from allowing others to carry goods and passengers on the land also, and this latter profit is properly called toll; still in both the inquiry must be the same, what is the value of the occupation, from whatever source derived? In neither can the profits of trade, as such, be brought into the rate; but if the ability to carry on a gainful trade on land adds to the value of the land, that value cannot be excluded merely on the ground that it is referable to the trade. Suppose a house occupied by a private family to-day, which having great advantages of situation for the purpose of trade is turned into a shop to-morrow, and in consequence let for double or treble the former rent, would not the rate be properly increased in proportion? Could it be objected that to do so would be to rate the profits of trade? Again, supposing the occupier were to let out different rooms to other persons carrying on the same trade as himself, and this mode of occupying was still to increase the value of the house to let, would this at all vary the principle on which he was rated, although it would increase the quantum. Lastly, supposing instead of this species of underletting being at the option of the occupier, all persons using the same trade had the right by some statute, under certain restrictions, to carry it on in the different rooms of the house, paying a large compensation to the occupier, would not the principle of the rate be still the same? would it be material to inquire how the occupation became more valuable, except for the purpose of making greater or less deductions which the nature of the occupation would make just? We may all remember when the premises in Soho-square, now used as a bazaar, were occupied as a private residence; the present mode of occupation no doubt increases the rent, but whether one man, being the tenant, alone carried on the various trades now exercised there, or sold goods himself at part of the stands and let out others, and so derived his profit in part directly from trade, in part from the rent paid him by the traders, or let out all the stands and so earned no profit but from the rents paid him by the traders, the result would be in either case exactly the same. The overseers could only inquire what was the fair rateable value of the thing so occupied, nor, as we have said before, could the inquiry be at all affected if the occupier of the bazaar held it under some statutable license, which compelled him to let his stands to all persons paying certain rents, and submitting to certain regulations. But it is said that in the case supposed all is referable to the occupation under the supposed lease, that conveys the exclusive dominion, and thence flow entirely the means of making profit. We have, in truth, already given the answer to this, but it will be plainer if we observe, that

The company is rateable for the land increased in value by the tolls taken from carriers:

and is not a rating of stock in trade.

Bazaar in Soho Square.

there is a fallacy in confounding that which the lease conveys the legal title to, and that which it gives the lessee the means of doing or enjoying. No two things can be more distinguishable, and it is the latter which regulates the rent a tenant will give, and not the former. Suppose two estates of equal size, and in all respects of equal fertility, but one surrounded by good roads, a canal near to it, and a large market, and the other without these advantages: of course the rent and rateable value of the one would be larger than of the other, yet a tenant would take no more by the lease of one than he would by the other; the lease would give him no legal title which he had not before, to use the roads, the canal, or the market. Or suppose a more peculiar case; A., the owner and occupier of Blackacre, and having the command of a stream of water which he can turn over Whiteacre, on that account desires to rent it, to him it will be more valuable than to any other occupier, because he fertilises it at very little expense; he will therefore give a larger rent than any other person, yet by the lease he would take no more than any other person, although he ought undoubtedly to pay a higher rate. Apply the principle of these cases to the railway of the appellants, and it is quite true that if they were to let it to a tenant the lease would convey the land and railway only, and give a title to the tolls only, but the lessees would undoubtedly consider the facilities and advantages which the occupation as tenants would afford them for carrying on a lucrative trade as carriers, and in whatever proportion that consideration would increase the rent, in the same, after due allowance, would the rate be raised also. The two propositions are equally true, that the rate is not to be imposed in respect of the profits of trade, and that it is to be imposed in respect of the value of the occupation; and two propositions that are true and applicable to the same subject-matter cannot be inconsistent, and we think the respondents in the present case, by the scheme they propose, have shown that they are not so. The gross yearly receipts of the company, as occupiers of and carriers on the railway, must include the proper subject-matter of the rate; they have therefore taken a sum agreed to represent them, as the first point to start from; they then assume an amount of capital employed in the trade, and deduct from the former sum two percentages, on the latter, 5*l.* per cent. for the interest of this capital, and 20*l.* per cent. for the profits which ought to be made upon it; and a third for the depreciation of stock beyond the usual repairs and expenses; fourth, they deduct from the gross receipts the annual cost of conducting the trade; fifth, they deduct the annual value of all the lands occupied by stations, &c., elsewhere rated; and, sixth, a sum per mile for the reproduction of rails, chairs, sleepers, &c. These deductions taken together seem to us to include whatever is properly referable to the trade, and distinguishable from the increased value which that trade gives to the land; we do not now speak of the amount allowed under each item, and we are not competent to give any opinion on this point, which is properly for the sessions; but, if these are the proper heads of deductions, then the residue must represent the value of the occupation; and, if so, this alone is brought into the rate, and the profits of the trade are excluded. Accordingly, the sessions have found, as an inference from the facts, that the residue is the sum which a tenant from year to year might reasonably be expected to give for the railway and corporeal hereditaments now occupied by the company, in connection with the railway, exclusive of the stations and other buildings rated separately, such tenant being assumed to have the same and no other power of using the railway, the same and no other advantages and privileges, as the company now possess. If the deductions exhaust that portion of receipts referable to trade, the inference of the sessions is fair. If the advantages and privileges which the company possess are attributable to their occupation, and would pass with it, their assumption is well founded. We agree with them in both. The appellants, however, contend, that, even if the principle of the rate be fair, some reasonable deductions are omitted. We have used the sufficiency of the deductions made as a mode of trying the principle, but the objection of the appellants

Deductions referable to *the trade*, and not to the value of the land.

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now to be considered is one of detail; the only instance which they specify and rely upon, is, that an allowance ought to be and is not made for goodwill. We presume by this it is meant, that a person bargaining with the company to become the yearly tenant of their railroad, in the expectation of succeeding to their trade as a probable consequence of succeeding to their occupation, would properly be called upon to pay them something for the goodwill of that trade, and that this would be in the nature of an outgoing and deduction from the profit. This objection appears capable of two answers: the first and decisive one is, that the purchase of goodwill implies that a trade is sold, that the company are to be bound to surrender their trade to the lessee, and no longer to be carriers on the line. But the calculation of the sessions proceeds on no such supposition; all those special advantages, indeed, for carrying it on, which the occupation gives them, whatever they may be, they must necessarily surrender; but the moment they have leased the railway, they would become part of the public, and have the right of carrying on their trade, retaining all the goodwill, with all those advantages which were carefully reserved to the public. Secondly, although the supposition of a tenancy is to be made, yet what the incidents of the tenancy must be, as to the actual terms and allowances, must be determined, for the purpose of fixing the amount of the rate, by the actual state of things; for this supposition of a tenancy is only a mode of ascertaining the existing value of the occupation to the existing occupier. Now, here, there is no tenancy in fact, no goodwill is, in fact, paid for, and therefore no deduction ought, in fact, to be made on account of its price. Again, it is contended, that the existing facts of the case show the unreasonableness of the rate. The carrying trade of the company goes beyond their own line, upon the railways of other sets of proprietors, but the receipts arising from this have been excluded from the rate: this, it is said, is inconsistent. How can the profit which the same engine earns, by drawing goods over one mile, be of a different character from that it would earn in the same employment over the next mile? So far from there being any inconsistency, it is necessarily involved in the principle on which the rate rests; that the distinction can be made, and has been made, is no slight proof of the soundness of that principle. The moment the engine leaves the railway of the company, what it earns ceases to have any connection with their occupation of the railway; it may, and of course does, increase the value of the occupation of that other line, on which it then works, and will, of course, in the shape of toll, proportionately increase the rate which the occupier will pay; but, if it were allowed to swell the charge on the company, it could only do so in respect of the profits of the trade, and this our principle excludes. But it is said, lastly, that this principle works injustice between the company and the other corporations, or individuals who carry upon their line; their engines and their trade are said to pay nothing to the poor's rate directly, and indirectly only in respect of their toll, which may be supposed to be calculated so as to bear its own rate, whereas the company pay on their tolls and on their fares. Colour is given to this objection from the fact, which might seem to explain it, that the company fill two characters, the other party one only; but the proper answer is a denial of the fact,—the company do not pay directly or indirectly on their fares, they pay only on the increased value of their occupation of the land, occasioned by whatever circumstances. If a trader should underlet to a lodger a room in his house, in which he derives the most profitable trade imaginable, such lodger would pay no poor-rate at all, but, as the trader would proportion the rent at which he let the lodging to the advantages which such lodger derived from them, the total rent which a trader would pay, and the rate which could be imposed on it, would be proportionably increased; but could he complain of any injustice, or say that he carried on his own trade in the rest of his house to disadvantage, because in his rate the value which the trade so carried on in the residue gave to the occupation was also taken into account in fixing the quantum of the rate? Yet those parties who carry

No deduction allowed for goodwill.

The receipts as carriers on another railway properly excluded.

The rate is not on the *fares*, but the increased value of the land.

on a trade on the company's line are in effect but in the nature of lodgers, or parties enjoying a profitable easement on the line, and, by the consideration they pay, increase its general value. In the examination which the case has compelled us to make, we have been necessarily led into a reconsideration of the principles on which the decision in the case of the South-Western Railway Company proceeded. That decision was not directly impugned, but the distinction of facts relied on has appeared to us on examination so unsubstantial, that it was necessary, in order to a decision against this rate, to examine the principles on which that was upheld; and in a matter of such vast importance and such apparent novelty, where, too, the decision of this court cannot be reviewed in a court of error, we were not unwilling again to examine the question. Upon the whole, we are satisfied with the decision of the sessions; it appeared to us founded upon a just application of established principles, and in accordance with many decided cases, and conflicting with none." Judgment for the respondents.

Profits of locks rateable in the parish where the locks are situate

P. 310.—*Rex* v. *Lower Mitton*, 9 *B. & C.* 810. The facts are stated in the judgment delivered by *Bayley*, J. "The question is, whether the profits of the locks situated in Lower Mitton are rateable in all the parishes through which the canal runs, in proportion to the length of each parish, or not. The sessions were of opinion that they were, and we think that their decision was wrong. It is now fully established in *Rex* v. *Milton* (p. 191), and *Rex* v. *Palmer* (p. 306), that the proprietors of a canal or navigation are rateable as the occupiers of land covered with water, in the particular parish in which the land lies; and it follows from thence, and it was so decided in *Rex* v. *Kingswinford* (p. 310), that they are rateable in each parish in proportion to the profit which that part of the land covered with water, which lies in the parish, produces. If it is more productive than other parts of the canal, either because there is more traffic, or because larger tolls are due upon it, or because the outgoings and expenses there are less, it must be assessed at a higher proportionate value. It is, however, contended, that there is a distinction between the case of a canal or navigation and a lock; and that the lock is profitable, because it is supplied with water from the rest of the canal lying in other parishes. This argument, supposing it to be well founded, only proves that a part of the source of profit is derived from the other parishes in which the canal lies, and that consequently a part only of the lockage dues ought to be ascribed to those parishes, for the dues are payable as well for the use of water derived from the Severn, as from the canal; and also for the use of the soil and fixed machinery of the locks; and therefore the rule adopted by the sessions, even according to the argument used by the respondents, was wrong. We are, however, of opinion, that there is no distinction, as to the principle of its rateability, between a lock and a portion of a canal or river navigation; and, that whether the subject-matter of the occupation be productive of itself, or rendered productive by something brought from another parish, or by being used in conjunction with property in another parish, no difference is to be made in the mode of rating. Thus, whether the water in the canal be brought from the same parish or another parish, whether conveyed in pipes, or carts, or by engines, makes no difference, if the land in which it is placed be thereby rendered more valuable. It makes no difference whether it remains comparatively still, as in a canal, or moves constantly, as in a river, or occasionally, as in a lock; nor does it make any difference that unless there was a canal in another parish, connected with the lock, no profit would be gained. It might as well be contended, that the profits of a bridge, which would not arise unless there were roads to it, or of land rendered more valuable by roads in an adjoining parish, should be rated in part only in the parish in which such bridge or land is situate."

No distinction between the profits of a lock and other parts of a canal.

Where a poor-rate had not been signed by a majority of the

P. 322.—*Reg.* v. *Lord Godolphin*, 1 *Car. H. & A.* 1. On a motion for a mandamus to compel two justices to allow a rate for the relief of the poor, it appeared, that there were two overseers and two churchwardens in the

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parish officers, a mandamus issued commanding the justices to sign and allow the rate.

A rate is made when it is allowed and published, although the declaration is not attached to it. The appeal must be to the Sessions next after the allowance, not after the declaration made.

parish; but that the churchwardens had never been sworn, and had not acted. The rate had been made by the overseers, and signed by them: but the justices refused to sign and allow it, because it was not signed by a majority of the parish officers, and *Williams*, J., granted a rule absolute in the first instance.

P. 334.—*Reg* v. *The Great Western Railway Company*, 1 *Car. H. & A.* 310. Two rates, in which a railway company were assessed to the relief of the poor, were made on the 22nd of November, 1842, and the 24th of February, 1843, and allowed by two justices, and published. It being afterwards discovered by the parish officers that they had omitted the declaration required by the 6 & 7 Will. IV. c. 96, s. 2, they cancelled the above allowance, and supplied the requisite declaration, and the rates were afterwards, on the 25th of March, and 1st of April, again allowed by two justices, and published. There was no appeal against them at the Easter sessions (held April 3rd), but at the Midsummer sessions a rate-payer appealed, whereupon the sessions ordered both rates to be quashed, and two new ones to be made in their stead, which, on the 14th and 22nd of July, were made accordingly. At the Michaelmas sessions the company appealed against these latter rates, but the sessions ordered them to be confirmed. All the orders of sessions were removed into this court by certiorari (granted on the application of the company, though they had been no party to the first appeals). Held, that the first order was void, as the justices at the Midsummer sessions had no jurisdiction to entertain the appeal; the right of appealing being confined to the next practicable sessions after the rate is made; and that the re-allowance and re-publication of the rates, with the requisite declaration, did not give those sessions jurisdiction. And that as the validity of the July rates depended on that of the Midsummer orders, which were void for want of jurisdiction, the order of the Midsummer sessions, confirming the July rates, was also void.

Appeal against poor-rate adjourned, and grounds of appeal stated in order of respite: no further notice held necessary at the following sessions.

P. 343.—*Rex* v. *J. Hertfordshire*, 4 *B. & Ad.* 561. S. Baxter, intending to appeal against a poor-rate, served his notices in time for the October sessions, 1832, and attended there ready to try, and to prove notice. The appeal being called on, counsel appeared for the respondents, and prayed a respite, alleging that the respondents had not had time to prepare their defence to the grounds of appeal stated in the notice, which were fifteen in number. The appellant opposed the respite, but it was granted, on payment of costs. Notice of appeal was not proved, nor an admission of it required. One of the notices was handed by the respondents' counsel to the clerk of the peace, and was thereupon (as the appellant represented) filed with the records of the sessions; but the respondents alleged that it was merely furnished to the clerk of the peace for his convenience, to assist him in making out the order of respite. This order (which set forth the grounds of appeal stated in the notice) was served on the churchwardens and overseers of the respondent parish on the 21st of December; but they had no further notice of appeal. At the next sessions (31st of December) the appeal was called on, and the respondents' counsel objected to its being heard without proof of the original notice. This the appellant was not prepared to give, conceiving that the fact had been admitted at the former sessions, and proof of it now was unnecessary; but he offered to prove the order of respite. The sessions held this insufficient, and confirmed the rate with costs. A rule *nisi* was obtained for a mandamus to hear the appeal. *Per curiam.* "The respondents had acted upon the notice, so as to make further proof unnecessary. The sessions ought to hear the appeal." Rule absolute.

Justices of the peace may examine accounts, and allow items disallowed by the auditor.

P. 368.—*Reg.* v. *J. Staffordshire*, 1 Car. H. & A. 128. The facts of this case appear from the judgment delivered by Lord *Denman*. "This was an application for a writ of mandamus to certain justices, commanding them to make an order upon the late overseers of West Bromwich to pay over to the present overseers the sum of 100*l.* and upwards, or, if necessary, to issue a distress-warrant for levying the same. It first seemed as if this application had been founded on the 50 Geo. III., c. 49, s. 1, by which the

overseers are directed, within fourteen days after the expiration of their year of office, to submit their accounts to two justices at special sessions, who are authorised to examine the same, and to allow or disallow the various charges. It is there provided, 'that, in case such overseers shall neglect or refuse to pay to their successors, within fourteen days from the signing and attesting the account, any sum or sums of money, or arrearages, which, on examination and allowance of such account in manner aforesaid, shall appear to be found to be due and owing from such overseers, or any of them, or remaining in their hands, it shall and may be lawful for the subsequent overseers, by warrant from any two or more justices of the peace, to levy all such sum or sums of money by distress and sale of the offenders' goods.' It is plain from this section the justices are only to issue their warrant for such sum as is found to be due on the examination and allowance of the overseers' accounts by two or more justices at special sessions, within fourteen days of such overseers going out of office. It appears by the affidavits in this case, that the sum in question has not been found so to be due and owing; on the contrary, the charges in the account were allowed by the justices on their examination, as it is said, improperly; but, at all events, they were allowed, and no such sum was found to be due and owing; therefore the justices have no power to issue their warrant under the 50 Geo. III., c. 49, and so, of course, this court cannot command them to do that which by law they have no power to do. There is no other act, previous to the Poor Law Amendment Act, the 4 & 5 Will. IV., c. 76, that authorises them to issue such warrant. The 43 Eliz. c. 2, s. 2, directs the overseers, within fourteen days after the end of their year, and after other overseers are appointed, to make and yield up a true and perfect account to two justices, and to pay over such sums as shall be in their hands to their successors; but that act gives no remedy by distress, but applies only to the balance appearing in their accounts. The 17 Geo. II, c. 38, s. 1, directs the overseers to deliver an account to their successors, verified on oath; and sect. 2 enables two justices to commit the overseers until they shall give an account or pay up the money in their hands: but that act gives no remedy by distress, and applies only to the balance appearing in the overseers' accounts. The next act is the 50 Geo. III., c. 49, on which I have already remarked: and the last act, the 4 & 5 Will. IV., c. 76, s. 47, directs the overseers to deliver, in addition to the annual account then by law required, accounts, once in every quarter, to the auditor, or such other person as by any statute, or by the rules, orders, or regulations of the Poor Law Commissioners, shall be appointed to examine, audit, allow, or disallow such accounts, and provides that all the balances may be recovered in the same manner as any penalties or forfeitures under this act. By sect. 99, the penalties and forfeitures under the act are to be levied by distress and sale of the goods of the person ordered to pay the same by warrant under the hands of two justices. And by the 101st section power is given to the justices to summon the party, and hear and determine the complaint, and adjudge him to pay the penalty or forfeiture incurred. It should seem the auditor mentioned in the affidavits was appointed by the Poor Law Commissioners, and the quarterly accounts were rendered to him, and he disallowed the charges in question, to the amount of 82*l.* 11*s.* 4*d.*, in January, and subsequently the whole amount of 103*l.* 0*s.* 9*d.*, on the 24th of April, 1843. He considered them to be contrary to the provisions of that act, and at variance with the rules, orders, and regulations of the Poor Law Commissioners; and if so, no doubt they ought also to have been disallowed by the justices, when the annual accounts were rendered to them, for the 89th sect. of the 4 & 5 Will. IV., c. 76, expressly provides that the justices shall disallow such items. The justices, however, considered the charges not contrary to the provisions of the act, nor to the rules, orders, and regulations of the Commissioners, and allowed them, as I have before observed. Against this allowance there was an appeal to the quarter sessions, and that seems to be given by the 3rd section of the 50 Geo. III.,

Under 50 Geo. III. c. 49, a distress can be made only for such sums as the justices find to be due.

The 43 Eliz. gives no remedy by distress.

Nor the 17 Geo. II.

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c. 49, and the 17 Geo. II., c. 38, s. 4. On that appeal the allowance by the justices was confirmed. Notwithstanding this, the auditor summoned the overseers before two justices, under the 101st section of the 4 & 5 Will. IV., c. 76, to compel them to pay over the sum which the auditor had so disallowed, and which the justices at special sessions had so allowed. The justices refused to make the order, and we are now asked to issue a writ of mandamus, commanding them to make such order, and, if necessary, to issue their warrant under the 99th section. This we cannot do, unless we are prepared to say that the power of two justices, under the 50 Geo. III., c. 49, to allow the overseers' accounts, subject to the appeal to the quarter sessions, is wholly taken away and rendered inoperative by the 47th section of the 4 & 5 Will. IV., c. 76, and that that section has transferred that power to the auditors appointed by the Poor Law Commissioners. The late Attorney-General, in the course of his argument, distinctly contended that the justices had now no power to allow in the annual account any items that had been disallowed by the auditor in the quarterly account, although they might have a power, perhaps, to disallow what the auditor had allowed. The 47th section does not in terms authorise the auditor to disallow any item in the overseers' accounts, but it appears the rule of the Poor Law Commissioners does, which, under sect. 42, has the authority of an act of Parliament. Here there are apparently concurrent authorities, and in the case of a conflict between them, as in this case, it is difficult to say which view it was intended by the Legislature was to prevail. The authority of the justices must have been well known to the framers of the 4 & 5 Will. IV., c. 76. The mode in which this authority is to be exercised is clearly laid down by the 50 Geo. III., c. 49, and applies as well to overseers as to any other person who may be aggrieved. This authority is evidently intended to be preserved, as the 4 & 5 Will. IV., c. 76, s. 47, directs the quarterly accounts to be rendered in addition to the annual accounts, thereby preserving the annual account, and by consequence preserving all that by law ought to be done, or might be done, upon it. Section 89 further confirms the authority of the justices, and directs them to disallow, not what the auditors had already disallowed, but all payments, charges, or allowances contrary to the provisions of the act, or to the known rules, orders, and regulations of the Commissioners, leaving it to them, the justices, to determine what charges are so contrary, and not mentioning the authority of the auditors. Then the section contains this remarkable provision, 'that no allowance by any justice shall exonerate or discharge such overseer or guardian from any penalty or legal proceeding to which he may have rendered himself liable by having acted contrary to the rules, orders, and regulations of the said Commissioners, or to the provisions of this act;' as if the Legislature had contemplated that the justices, either from ignorance of the rules, orders, and regulations of the Poor Law Commissioners, or from a misinterpretation of them, might happen to allow improper charges, and intended to guard against the shielding the overseers from a penalty, though the charges might stand good as items of their account by reason of the allowance of the justices. Seeing, then, that this authority in the justices is evidently intended to be preserved, and that no provision had been made by which that authority has been made subordinate to that of the auditors, nor any provision by which the exercise of such authority as the Commissioners may think fit to give the auditors can be reviewed by way of appeal, we are of opinion, whatever effect was intended to be given to the examination of the overseers' accounts by the auditors, that ultimately the allowance or disallowance of them is still vested in the justices, subject to an appeal to the sessions. We are reminded of the stat. 6 & 7 Vict., c. 67, s. 3, by which all persons are protected from actions in respect of anything done in obedience to a peremptory mandamus, and therefore we are asked to let this writ go, if there is any doubt, inasmuch as the justices are bound to make a return, and if the return is badly made, under a peremptory mandamus, they are protected

Rules of the commissioners have the authority of a statute.

Protection to persons acting in obedience to a mandamus.

from any action for anything done in obedience to it. We feel no doubt in the case, nor does the act of Parliament say that the justices are to make a return to a mandamus instead of obeying it, for the sake of protecting themselves under the act." Rule discharged.

A person was hired for a year, and afterwards told by the master "he shall go away a fortnight at Michaelmas because of his settlement," and at the year's end he was paid a year's wages. This is a dispensation, and not an exception.

P. 529.—*Rex* v. *Sulgrave*, 2 *T. R.* 376. The pauper, D. Plester, was hired in February, to Mr. Howes, of Stuchbury, till Old Michaelmas, and served him accordingly. On the Friday before Old Michaelmas his master asked him if he would stay again; the pauper said he would if they could agree about wages, and asked five guineas, which the master thought too much. The pauper immediately went away, and having gone about ten yards, returned for something he had forgotten; he then met his master again, who said he would give him the five guineas, and gave him one shilling earnest. The master, while he was putting his hand into his pocket for the shilling, said, you shall go away a fortnight at Michaelmas, because of your settlement, and I will give you that fortnight to get what you can; to which the pauper agreed, and he accordingly went to his father's, and stayed a fortnight, during which time he worked for Mr. Chester in digging sand on Howes's land, and received fromChester 1*s.* a day, and once or twice during the fortnight he ate at Howes's; at the end of the fortnight he went to Howes's and continued to serve him at Stuchbury till Lady-day, when Howes removed, and the pauper with him, to Culworth. Howes soon after died, and the pauper continued to serve Mrs. Howes in Culworth, received his wages for that time, and he believes there was nothing deducted for the fortnight, but he does not remember what sum he received. The pauper apprehended that his master would not have hired him if he had not agreed to go away for a fortnight. *Ashurst*, J. "The rule established in these kind of cases is this: 'where there is a *bona fide* exception of part of the time at the *time* of the hiring, that is not a hiring for a year; but if there be no exception at the time of making the original contract, then a permissive absence is considered as a dispensation of part of the service by the master;' and it does not operate in the same way as an exception out of the original contract, which defeats the settlement. And the question whether it be one or the other must depend upon the particular circumstances of each case. In this case there was a complete hiring for a year at the time. The parties having disagreed on the terms proposed, the pauper went away, but on his return his master said he would give him the five guineas, which he agreed to accept, and gave him one shilling earnest. It is likewise stated, that while the master was putting his hand into his pocket he told the pauper he should go away for a fortnight; *but the contract was complete before that time*, and what passed afterwards can only be considered as a dispensation from the service: for at that time the master had a complete right to his service for a year, and the pauper had agreed to serve him for that time, and the shilling earnest was to bind the agreement for one year for five guineas; otherwise it appears to be giving the servant more than he originally asked for the whole year, for serving him for a shorter period. If then the contract was complete before anything was said relative to the fortnight's absence, this was a dispensation with the service, and not an exception out of the original contract. An exception is a stipulation on the part of the person for whose benefit it is introduced; but here it was not made on the request of the servant, but as the offer of the master, and he said it was for the express purpose of preventing the pauper gaining a settlement. That is not such a reason as the court will give much countenance to. Whether the sessions might not have determined this on the ground of fraud, was for their consideration. As it is, there is no occasion to go into that ground, as we think this is a dispensation from service. As to the servant's apprehension, that cannot vary the case: we are to decide on the terms of the contract, not on the apprehension of the pauper."

P. 529.—*Rex* v. *Willoughby*, K. B. Easter T. 11 G. IV. MS. The facts were precisely the same as the above, and the sessions found that it was an exceptive hiring, and the court confirmed it; *Parke*, J., observing "that

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the gift of the earnest being after the stipulation for absence, showed that the contract was not till then completed."

Facts from which the court of Q. B. will not infer an appropriation of payments to the rent of a particular year.

P. 823.—*Reg.* v. *Cranbrook.*—1 Car. *H. & A.* 5. R. Ellis was removed from Cranbrook to Hawkhurst. Order quashed. Case:—On the 21st of December 1838, the pauper agreed with S. Dobell, as agent to T. Smith, to rent a tenement in Cranbrook, consisting of a house, in two dwellings, with some land, at 18*l.* a year. He occupied it from Christmas, 1838, to April 1841, and during the whole of that time underlet a part of the premises to West, who occupied such part at a rent of 5*l.* 4*s.* a year. West having been an under-tenant to Ellis of a part of the same premises previously to the making of the above agreement, and having had his furniture distrained upon in consequence of Ellis not having paid his rent to the owner of the premises, he (West) paid his year's rent, which became due in 1839, by a cheque obtained from his (West's) employer, which cheque was handed over by Ellis to Dobell; and Ellis also in that year paid the further sum of 3*l.* 2*s.* 6*d.* to Dobell, making together the sum of 8*l.* 6*s.* 6*d.* paid during that year on account of the rent which accrued due at Christmas, 1839. During this year Ellis paid no rate whatever. In the second year of the pauper's tenancy, from Christmas, 1839, to Christmas, 1840, the under-tenant, West, paid his rent of 5*l.* 4*s.* for that year direct to the owner of the premises. In October, 1840, Ellis was rated to a poor's rate for the premises in question, in 7*s.* 3*d.*, which rate he paid in January, 1841, and subsequently resided on the premises more than forty days. The question was, whether he acquired a settlement by payment of rates. Lord *Denman.* "If the sessions wished us to draw an inference from the facts stated, I should say that this was not a payment on account of the first year's rent. If they did not, they should have found the fact expressly. It would be extremely objectionable to send such a case back to be re-heard, as it would invite tampering with witnesses." Order of sessions quashed.

Relief given in a *workhouse situated in another parish*, is no evidence of a settlement.

P. 1004.—*Reg* v. *St. Giles in the Fields*, 1 *Car. H. & A.* 137. W. Conquorer was removed from Ashton-under-Lyne to St. Giles in the Fields. Order confirmed. Case:—In 1823, the pauper being in St. Giles, was sent to Cresbrook in Derbyshire, at the expense of the said parish, and remained at Cresbrook until July, 1829, when, being destitute, he went from Cresbrook to St. Giles to obtain relief. On his arrival in St. Giles, he applied to the parish officers there for relief, stating that he had just come out of Derbyshire; and he received from them a pair of shoes, and was desired by them to go back into the country, and get something to do. He applied again for relief at their board, and received 1*s.*, after an inquiry made at the board whether he belonged to their parish. He received a shilling from them more than once during several weeks. In the winter, being again chargeable to St. Giles whilst living there, he was taken into the workhouse of the said parish, which is situate within the limits thereof, and remained there for some months, until he was sent from thence with other paupers to Islington, out of the limits of the parish of St. Giles in the Fields, to the establishment of one Perry, a contractor for the maintenance of paupers on behalf of that and other parishes, where he was maintained for some time at the expense of St. Giles. Shortly after leaving that establishment, he becoming again chargeable to St. Giles, was admitted, by order of the parish officers into the Surrey Asylum, which is a similar establishment, and locally situate out of St. Giles. Lord *Denman.* "It appears to me that the sessions have properly placed the question before us, whether there was any evidence of relief out of the parish so as to create an acknowledgment of a settlement; and I am of opinion that there was no such evidence. *Rex* v. *Chatham*, p. 1004, and *Rex* v. *Coleorton*, p. 1005, are authorities upon this subject. In *Rex* v. *Chadderton*, p. 1004, there was only one act of relief to the pauper by the parish while he resided in it, which it was held might well be considered as casual relief, and therefore no evidence of his settlement there. And the reason is obvious; the parish officers are bound to relieve casual poor, and if they

were to be prevented doing what motives of humanity would dictate, by fear of a settlement being admitted by it, the pauper might die for want of assistance. With reference to the argument, that it ought to be shewn that the statutory provisions for workhouses out of the parish have been complied with, that seems to me immaterial. I think this house was in point of fact a parish house, and may be considered as the workhouse, and that, therefore, this is quite a case of relief within the parish, and against the supposition of its being any acknowledgment of a settlement by giving relief out of the parish" (*a*). *Williams*, J. "The question submitted to us is, whether there was any evidence at all of the fact that relief was given to the pauper out of the parish. This is rather an inference of law, than of fact. From the time of the decision of Lord *Kenyon*, C. J., in *Rex* v. *Chadderton*, to the present, the bare fact of relieving a pauper in a parish is no acknowledgment of his having a settlement there. I think it better strictly to abide by this rule, and am of opinion therefore that the sessions were clearly wrong. It is suggested that such acts of relief might grow into proof of a settlement. If so, where is the line to be drawn; would five or ten payments be necessary, and would it make any difference whether ten shillings was paid at once, or at ten payments of a shilling each? Here, instead of giving the pauper relief in their parish, the overseers transfer him to their own establishment out of it. It can make no difference whether that establishment is locally situate in or out of the parish." *Wightman*, J. "I am of the same opinion. I cannot agree that this can be considered as relief given out of the parish. They first relieve the pauper in the parish, and afterwards transfer him to an establishment where they keep their own poor. *Rex* v. *Chatham* and *Rex* v. *Coleorton* distinctly shew that no such inference as is suggested is to be drawn from such circumstances." Order quashed.

Chargeability not stated in the examination.

Reg. v. *Lidford*, 1 *Car. H. & A.* 244. G. Leaman was removed from Widdecombe to Lidford. Order confirmed. Case:—The examination was headed of A. B. as to the settlement of G. Leaman, residing in and now chargeable to Widdecombe. The pauper said, "I am now residing at Widdecombe and chargeable to the parish. I am confined to bed and incapable of being moved from a broken leg." It was objected that there was no proof of the pauper being chargeable, and Lord *Denman* said the objection must prevail. The other judges concurred. Order quashed.

An examination stating that a pauper, "whilst unmarried, and not having a child or children, lived at Spenser's Hotel, in Bow Street, Covent Garden, for several years, as chamber-maid, under a general hiring, and quitted there a few months previous to her marriage is bad, as it does not show that the pauper was unmarried at the time of *hiring*. *Quære*, if "Spenser's Hotel, Covent Garden," is a sufficient designation of the master.

Reg. v. *St. Paul's, Covent-Garden*, 1 *Car. H. & A.* 20. S. Bull, widow, was removed from St. Luke, Chelsea, to St. Paul, Covent Garden. Order confirmed. Case:—The order was made on the examination of the pauper who said that she was lawfully married to Edward Bull, at Arundel Church, Sussex, in 1814, and who died in 1834. That he never did any act to gain a parochial settlement since her marriage, and that she has no knowledge of his place of settlement. That, whilst unmarried, and not having a child or children, she lived at Spenser's Hotel, in Bow-street, in the parish of St. Paul, Covent-Garden, Middlesex, for several years as chambermaid under a general hiring, and quitted there a few months previously to her marriage. During the argument it was observed that the landlord of the hotel might have shifted two or three times, and therefore the master's name was not sufficiently specified. No judgment was given on that point, for it was objected that the examination did not show the pauper was unmarried at the time of her *hiring*. Lord *Denman*. "It certainly does not. It is quite consistent with this statement that she may have had another husband. She does not say she was unmarried at the time of her general hiring; only that, whilst she was unmarried, she served under a hiring made before. I think the examination bad." Order quashed.

Examinations from which no hiring could be inferred.

Reg. v. *Catteral*, 1 *Car. H. & A.* 167. W. Nuttall was removed from Catteral to Dutton. Order quashed. Case:—The examinations were as follow:—W. Bourn said, "I am a farmer in the township of Dilworth, in

(*a*) *Patteson*, J., being an inhabitant of St. Giles, took no part in the proceedings.

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this county, and reside at a farm called Written Stone. I was married in December, 1833. I lived at home with my father for about a year and a half after my marriage, when I went to live at the farm I now reside at. My father's name is also William Bourn, and he lives at a farm in Dutton, in this county, called Gudgeons, which he has lived upon for upwards of thirty years. Better than two years before I was married, the pauper came to live with my father as a farm servant; he was not engaged for any particular time, but my father found him board, washing, lodging, and clothes for so long a time as he stayed. He continued in my father's service, in that manner, without leaving, from the two years before I was married until after I left home to live at Written Stone Farm, during all which time he lived and slept at my father's farm in Dutton, and was a bachelor. There never was any other agreement come to whilst I lived at home; but my father found him with board, washing, clothing, and lodging, during the said service." The pauper said, "Better than two years before the witness, W. Bourn, was married, I went to his father's, of Dutton, farmer, as a farm servant. There was no agreement made as to the length of my service, but I was found with board, lodging, clothing, and washing whilst I stayed. I continued in the service from the time I went until the witness, W. Bourn, left home to live at Written Stone Farm, being altogether upwards of three years and a half, during all which time my said master found me board, lodging, clothing, and washing, and I slept at his farm, and was a bachelor during such my servitude." Lord *Denman*. "There is no statement here that the pauper was hired, or contracted or agreed to stay with his master. It is a very different thing to infer a hiring for a year from a general hiring, and to infer a hiring from the fact of finding food and lodging." *Patteson*, J. "The proper construction of this agreement, as stated, is, that it was no contract of hiring at all." *Williams* and *Wightman*, Js., concurred. Order of sessions confirmed.

Evidence of another settlement disclosed in the examination, does not justify the sessions in refusing to hear the case.

Reg. v. *Whitwick*, 1 *Car. H. & A.* 22. It is no objection to an order of removal, that the examination upon which it is founded discloses evidence (by relief) of a subsequent settlement of the pauper in a third parish. And, therefore, where the examination stated an acknowledgment of a settlement in S., the appellant parish, by relief, and a subsequent acknowledgment by relief in C., and the sessions refused to enter into the question of the settlement in S., on the ground that they were concluded by the statement of a subsequent settlement in C., and therefore quashed the order of removal, this court quashed the order of sessions.

The examinations must state wife's consent to be separated from her husband. The examination of the pauper's husband for the removal of his wife and children, was headed "touching the place of his settlement." The other examinations were headed, "at the time, place, and in manner aforesaid." This is sufficient. The examination of the overseer, that he "had made diligent search and inquiry if J. M. had any legal settlement, and had not been able to discover any," is sufficient. The pre-

Reg. v. *Leeds*, 1 *Car. H. & A.* 257. (*Washton* v. *Leeds.*) An order for the removal of Lydia Morgan and her four children from Leeds to Washton was quashed. Case:—The following were the examinations:—"Borough of Leeds, in the county of York.—The examination of John Morgan, of Leeds, taken upon oath, &c., *touching the place of his lawful settlement*, who saith, 'I have a wife called Lydia, whose maiden name was Lydia Miller; I have four children by her, all born in lawful wedlock, namely, Margaret, aged twelve years; Thomas, aged eight years; John, aged four years; and Ann, aged one year and nine months; all of whom are unemancipated, and never gained settlements for themselves. I am now living, residing, and inhabiting, with my said wife and children, in, and we are now actually chargeable to, the township of Leeds. I never gained a settlement in my own right; my father and mother were called James Morgan and Ellen Morgan; I never heard where they were married. They neither of them ever gained settlements in England, or had any place of settlement in England to my knowledge or belief, either derivative or acquired; I never knew the place of my birth, though I have made diligent search and inquiry to ascertain it; my father died about twenty-four years ago, and my mother about eight years; I am now aged thirty-two years. In the month of October last I assisted George Smith in endeavouring to discover my place of settlement, and inquiry after the place of settlement, if any, of my father and mother; and we inquired of all persons, and searched in all likely places to find a place of settlement for me, but without success;

we could not discover any settlement for me, and I believe I never had any. I hereby consent and agree that my said wife and children shall, without me, be removed to the township of Washton, that being the last place of her maiden settlement at and immediately before my intermarriage with her; and I pray that such removal may be forthwith ordered and made according to law.' The examination of Lydia Morgan, taken upon oath at the time, place, and in the manner aforesaid: who says as follows:—'I am the wife of the above-named John Morgan; I never gained a settlement for myself; I am now aged thirty-two years; I am the lawful daughter of the undermentioned John Miller.' The examination of John Miller, taken upon oath, at the time, place, and in manner aforesaid; who says:—'The above-named Lydia Morgan is my daughter, and was born in lawful wedlock. She is my daughter by my present wife.' [Miller's examination then proved that his own settlement, a derivative one, was in Washton.] The examination of George Smith, one of the overseers of the poor of the township of Leeds, in the said borough, taken upon oath, &c., touching the last place of the legal settlement of John Morgan and Lydia, his wife, and their children, who saith as follows:—'I have, together with the said John Morgan, made diligent search and inquiry with the object of discovering and ascertaining whether the said John Morgan hath any legal settlement; and I have not been able to discover or ascertain that the said John Morgan hath, either by his own act, or the act of his parents or their ancestors, or otherwise, acquired any settlement, or, if any such settlement have been acquired, I verily believe it is not known, and cannot in any manner be ascertained'." Lord *Denman* delivered the judgment: "This was an attempt to induce the court to revise the decision of *Rex* v. *Eltham*, but we are of opinion that the question cannot arise in this statement of the case, on account of the wife's consent not appearing. The order of sessions, therefore, must be confirmed." An application was afterwards made to have the order discharged as regarded two of the children, who appeared to be above the age of nurture; and Lord *Denman* gave a further judgment: "In this case the order of sessions was confirmed upon the single ground, that the wife had not consented to be removed without the husband, and that such consent was necessary to a valid removal, assuming that it could be valid under any circumstances. The court did not then recollect that this ground of decision does not apply to two of the children above the age of nurture, as to whom it is necessary to consider the other points of the case. The one arises on the examinations of the father and mother, and one Miller, which were taken touching the lawful settlement of the father, whereas the order of removal is of the wife and children to the wife's maiden settlement, and the examination should have been headed accordingly. We think this point is not tenable. An inquiry into the father's settlement was necessary in this case, and was the foundation of the proceeding; for, until it appeared that his settlement could not be discovered, the wife's settlement would be immaterial; and when it did so appear, the rest of the inquiry followed as of course. The heading of an examination may be important with regard to an indictment for perjury, and to show that it was taken in a matter in which the magistrates have jurisdiction. Here the heading shows jurisdiction, and it is true as far as it goes, for there was an inquiry touching the settlement of the father, and also a further inquiry arising out of the first inquiry. If that further inquiry had been unconnected with the first, the case would have been very different; but, as it is, we think it so naturally arose out of the first inquiry, that we must hold that the examination was sufficiently taken. The second point we also think untenable. It appears from the examinations that diligent inquiry was made to ascertain the father's settlement; the precise nature of those inquiries need not be stated. Then it is said, that the examinations do not negative the father being born in Scotland, Ireland, or the islands of Man, Scilly, Jersey, or Guernsey. It is obviously impossible to negative his birth in the places mentioned, except by showing where he was born. It is

cise inquiries need not be stated; nor is it necessary to negative the birth of J. M. in Scotland, Ireland, &c.

An order for the removal of a mother and children, may be good, as to the children only.

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absurd to require a search in Ireland, Scotland, or these other places; and, even if such search were made, the same necessity applies to searching every parish register in England. We are, therefore, of opinion, that the order of removal is good, and ought to be confirmed with regard to two of the children; and that, as to the two above the age of nurture, the order should be quashed as regards them and the wife, but remained confirmed as regards the other children."

The grounds of appeal that the party was charged with the rate.

P. 1127.—*Reg.* v. *St. Olave, Southwark*, 1 *Car. H. & A.* 188. Grounds of appeal allege that a pauper "had occupied a house, and resided therein, for upwards of seven months, and paid one or more of the parochial rates or taxes in respect of such house," are insufficient, because they do state that he was "*charged with*" such rates or taxes.

A certificate of chargeability must be sealed with the seal of the board of guardians. An objection that it was not sealed as *required by the statute*, entitles the appellant to be heard on such objection.

P. 1131.—*Reg.* v. *Farthinghoe*, 1 *Car. H. & A.* 238. W. Whitmill was removed from Newington, Oxford, to Farthinghoe. Order confirmed. Case:—The examinations on which the order was made, were that of the pauper, who said, "For twelve weeks past, I and my family have been in the workhouse of the Banbury Union. Before that time I was residing in Newington. I have heard the certificate now produced read by Mr. Moore, clerk to the guardians of the Banbury Union, and I am the person therein mentioned." Certificate of chargeability, Banbury Union, weekly meeting, the 30th day of March, 1843:—"The guardians of the poor of the Banbury Union, in the counties of Oxon, Northampton, Gloucester, and Warwick, do hereby certify, that W. Whitmill, now residing at the workhouse of the union, in the township of Nesthrop, in the county of Oxon, are now, and have been for twelve weeks past, chargeable to the township of Newington, and within the union aforesaid. Given under the seal of the board of guardians of the Banbury Union, at a meeting of the guardians, held on the day and year aforesaid.—H. R. Brayne, presiding chairman (L. S.), G. Moore, clerk to the board of guardians of the Banbury Union." G. Moore said, "I was present at a meeting of the guardians of the Banbury Union, held at the workhouse of the union, and did see H. R. Brayne, the presiding chairman of the meeting, sign the above certificate; I did also, at the said meeting, as the clerk to the board, countersign the certificate; the names 'H. R. Brayne' and 'G. Moore' subscribed to the certificate are the handwriting of the said H. R. Brayne, and of me, this deponent, respectively." One ground of appeal was, "That it does not appear by any legal evidence that the certificate of chargeability was signed and sealed, as required by the statute, by the presiding chairman of the board of guardians of the Banbury Union, or of a district board." Lord *Denman*. "I am of opinion that this objection is good. The only doubt was whether it could be taken advantage of in this manner. But that would not be an ingenuous way of dealing with it. Whoever put the seal, whether the chairman or anybody else, would make little difference. We ought to take the proper meaning of the objection to be, that the seal was not placed in the manner required by the statute." *Patteson*, J. "I do not see how to get over the objection; unless it can be contended that the seal proves itself, there must be some evidence of it. (*a*) If any evidence is required that the signature is that of the proper person, then it must also be proved that the seal is the proper seal." *Williams*, J. "It stands admitted that we must read it, that the certificate was not signed and sealed as directed by the statute. I understand the fact to be, that the chairman of the board signed it; but it was not signed and sealed as required by the statute, because the common seal was not proved to be put on it." *Coleridge*, J. "I have no doubt that the objection is a good one, but the difficulty I have had, and which I still feel, is whether it is properly stated. It is not the formal ground of objection, but only a point taken by counsel. I do not know that we should look at the statute at all for this purpose. The question seems to be, whether the affixing the seal by the chairman of the board means the same thing as affixing the seal of the

(*a*) Not now, 7 & 8 Vict. c. 101, s. 66.

union. If the act required the seal to be affixed by the presiding chairman, the objection could not have been taken in better language. But I think we cannot model the objection to suit the act of Parliament, and I therefore doubt if this is well taken." Order quashed.

Under what circumstances the respondents are precluded from showing that the persons who sign the notice of appeal are not the proper parish officers.

P. 1146.—*Reg.* v. *Leominster*, 1 *Car. II. & A.* 80. The facts appear in the judgment delivered by Lord *Denman*: "On the trial of the appeal in this case, the respondents objected that the persons by whom the notice of appeal had been signed did not legally constitute either the churchwardens and overseers, or the churchwardens or overseers of the poor of the appellant parish; that there was nobody in office competent to give the said notice. It appeared that one Clare was one of the churchwardens, and that another person had been appointed churchwarden, who died before the notice of appeal was given, and no successor had been appointed. Clare signed the notice twice, once as churchwarden, and once as overseer. We think the sessions perfectly right in proceeding to try that appeal, in spite of this novel objection; for which there can be no reasonable foundation, unless the appellant parish legally was free to repudiate the acts of the officers, by whom it was represented; but this we think the parish could not do: we are clearly of opinion that it was bound by their acts, and must submit to any judgment against those whom they have represented as having power to act for them, although they may have been irregularly appointed, unless the document is invalid on the face of it. The respondents would, therefore, have all the benefit of a decision on the merits of the case in their favour, and are not at liberty to enter into the consideration of the legality of the several appointments in the adverse parish on the trial of an appeal." Order of sessions confirmed.

Where the appellants produced a former order between the same parties, which had been quashed generally, the respondents may prove that they had abandoned it on account of some defect in form.

Reg. v. *J. Flintshire*, 1 *Car. H. & A.* 288. On an application for a mandamus to hear an appeal against an order for the removal of Harriet Royle, from Cwm to Llangerniew, it appeared that a previous order of removal of the pauper from Cwm had been obtained and served upon Llangerniew, and which order was on appeal quashed. On the trial of this appeal the session book was produced, in which the former order was entered as quashed generally, and when the respondents tendered evidence to explain that the former order was quashed for form (namely on account of the defective examination of Harriet Royle, which consisted of hearsay evidence), the sessions held that such explanatory evidence could not be received because there was no entry on their minutes that the former order of removal was quashed for want of form, and accordingly quashed the second order. The respondents proposed to prove that, previous to the trial of the appeal against the former order, the attorney for the respondents called on the attorney for the appellants, and stated that inasmuch as he had discovered that the examination on which the order was founded consisted mainly of hearsay evidence, the respondents would abandon their order. A form of abandonment and consent was then agreed to between the parties, and it was arranged that the attorney for the appellants should attend at the following sessions and have the appeal quashed. As to the mode in which the order was to be quashed, the affidavits on each side were contradictory, that of the respondents stating that they consented to have the order quashed only on the understanding that it was to be quashed for the defect in form above mentioned, the appellants stating that no such understanding was expressed, and the consent was to quash generally. *Coleridge*, J. "I regret that this case has been heard by me sitting alone in this court. I am asked however for a judgment and will give one, trusting at the same time, that as I shall decide on broad principles my decision will do no harm. If the court below had heard the case then, as this is not a court of appeal from that, we could not have interfered; but if the sessions refuse to hear, then we have the power to set them in motion. Has there then, or has there not, been a hearing? A previous order, quashed on appeal by the same parties, was put in their way. This it is contended was conclusive, but I think it was not. The next step was to tender evidence to explain that order, and the sessions were wrong in refusing

Addenda.

to admit it. It is said that if the evidence had been heard it would have turned out to be no evidence at all; we must look however at the substance of the whole of the proceedings, and when we do so it is impossible not to see that the justices exercised no judgment in the matter. Possibly when they had heard both sides they might have thought the order of removal ought to have been quashed, still there should have been a hearing, and then this court would not disturb their decision. There is a fallacy in arguing here on the effect of the evidence tendered, when the sessions have used to receive it." Rule absolute. (*a*)

(*a*) See *Regina* v. *The Justices of Cornwall*, 1 *Car. H. & A.* 314.

APPENDIX.

I. *Of Statutes.*
II. *Of Forms.*

I. OF STATUTES.

4 & 5 Will. IV. Cap. 76.

An Act for the amendment and better Administration of the Laws relating to the Poor in England and Wales. (*a*) [14*th August*, 1834.]

Whereas it is expedient to alter and amend the laws relating to the relief of poor persons in England and Wales: Be it therefore enacted by the king's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for his Majesty, his heirs and successors, by warrant under the royal sign manual, to appoint three fit persons to be commissioners to carry this act into execution, and also from time to time, at pleasure, to remove any of the commissioners for the time being, and upon every or any vacancy in the said number of commissioners, either by removal or by death or otherwise, to appoint some other fit person to the said office; and, until such appointment, it shall be lawful for the surviving or continuing commissioners or commissioner to act as if no such vacancy had occurred. See also 5 & 6 Vic. c. 57, s. 2, *post*.

Appointment and removal of commissioners.

2. And be it further enacted, that the said commissioners shall be styled "The Poor Law Commissioners for England and Wales;" and the said commissioners, or any two of them, may sit from time to time, as they deem

Style of commissioners; who may sit as a board, with power to

(*a*) Whilst these pages were passing through the press, the 7 & 8 Vic. c. 101, has been passed to amend this Act, the whole of which will be found in the Appendix.

The first eleven sections relate to orders on the putative father, which may be obtained at the petty sessions.

The 13th section abolishes all compulsory apprenticeship.

Several succeeding sections relate to the right of voting for guardians, and the distribution of large districts into wards, for the election of a guardian.

The 22nd section prohibits the appointment of overseers for any township not having separate overseers before this Act.

The wife of a person beyond the seas, in custody, or confinement as a lunatic, shall receive relief as if she was a widow, sec. 25.

The burials of paupers is regulated by section 31.

The election of auditors by 32 and following sections, and where such an auditor may be appointed, the authority of the justices to audit the accounts is abolished, section 37.

A power is given to the clerk of the peace to tax an attorney's bill for business performed on behalf of any parish or union, section 39.

School districts may be found, by the commissioners, to be under the control of district boards, sections 40, 43.

District asylums for the houseless in certain specified great cities, sec. 41.

Relief given to persons found destitute in places having no district asylum, and those just discharged from any gaol or hospital, is to be charged to the common fund of the union, section 54.

The workhouse to be deemed to be situated in the parish to which the pauper belongs, section 56.

The guardians may order the costs of certain prosecutions, section 59.

Expenses of making jury lists, and maintaining boundaries of parish, may be charged on the poor-rates, section 60.

4 & 5 *Will. IV. c.* 76.

expedient, as a board of commissioners for carrying this act into execution; and the said commissioners acting as such board shall be and are hereby empowered, by summons under their hands and seals, to require the attendance of all such persons as they may think fit to call before them upon any question or matter connected with or relating to the administration of the laws for the relief of the poor, and also to make any inquiries and require any answers or returns as to any such question or matter, and also to administer oaths, and examine all such persons upon oath, and to require and enforce the production upon oath of books, contracts, agreements, accounts, and writings, or copies thereof respectively, in anywise relating to any such question or matter; or, in lieu of requiring such oath as aforesaid, the said commissioners may, if they think fit, require any such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined: provided always, that no such person shall be required, in obedience to any such summons, to go or travel more than ten miles from the place of his abode: provided also, that nothing herein contained shall extend or be deemed to extend to authorise or empower the said commissioners to act as a court of record, or to require the production of the title, or of any papers or writings relating to the title, of any lands, tenements, or hereditaments, not being the property of any parish or union.

summon and examine witnesses, and call for production of papers, on oath;

or to substitute a declaration for an oath;

but not to inquire into any title.

To have a common seal.

3. And be it further enacted, that the said commissioners shall cause to be made a seal of the said board, and shall cause to be sealed or stamped therewith all rules, orders, and regulations made by the said commissioners in pursuance of this act; and all such rules, orders, and regulations, or copies thereof, purporting to be sealed or stamped with the seal of the said board, shall be received as evidence of the same respectively, without any further proof thereof; and no such rule, order, or regulation, or copy thereof, shall be valid, or have any force or effect, unless the same shall be so sealed or stamped as aforesaid.

Rules, &c. purporting to be sealed with such seal to be received as evidence. (*a*)

Commissioners to record their proceedings.

4. And be it further enacted, that the said commissioners shall make a record of their proceedings, in which shall be entered in writing a reference to every letter received, from whence, its date, the date of its reception, and the subject to which it relates, and a minute of every letter written or order given by the said commissioners, whether in answer to such letters received or otherwise, with the date of the same, and a minute of the opinion of each of the members of the board of commissioners, in case they should finally differ in opinion upon any order to be given or other proceeding of the board; and such record shall be submitted to one of his Majesty's principal secretaries of state once in every year, or as often as he shall require the same.

Commissioners to make a general report to the secretary of state yearly;

5. And be it further enacted, that the said commissioners shall, once in every year, submit to one of the principal secretaries of state a general report of their proceedings; and every such general report shall be laid before both houses of parliament within six weeks after the receipt of the same by such principal secretary of state, if parliament be then sitting, or if parliament be not sitting, then within six weeks after the next meeting thereof.

and to report proceedings to secretary of state when required.

6. And be it further enacted, that the said commissioners shall from time to time, at such times as any one of his Majesty's principal secretaries of state shall direct, give to the principal secretary of state requiring the same such information respecting their proceedings, or any part thereof, as the said principal secretary of state shall require.

Power to appoint assistant commissioners;

and to remove same.

7. And be it further enacted, that the said commissioners shall, and they are hereby empowered from time to time to appoint such persons as they may think fit, to be assistant commissioners for carrying this act into execution, at such places and in manner as the said commissioners may direct, and to remove such assistant commissioners, or any of them, at their discretion, and on every or any vacancy in the said office of assistant commissioner, by removal or by death or otherwise, to appoint, if they see fit, some other person to the said office: provided always, that it shall not be lawful for the said commissioners to appoint more than nine such assistant commissioners to act at any one time, unless the lord high treasurer, or the commissioners of his Majesty's treasury for the time being, or any three or more of them, shall consent to the appointment of a greater number.

Not more than nine to be appointed, without consent of Treasury.

(*a*) The court will not take judicial notice of them. But a copy of the rules, printed by the Queen's Printer, shall, after fourteen days from the date thereof, be judicially noticed, and deemed sufficient proof thereof, 7 & 8 Vic. c. 101, s. 71.

8. And be it further enacted, that no commissioner or assistant commissioner, appointed as aforesaid, shall, during his continuance in such appointment, be capable of being elected or sitting as a member of the House of Commons.

Commissioners not to sit in parliament.

9. And be it further enacted, that the said commissioners may and they are hereby empowered from time to time to appoint a secretary, assistant secretary or secretaries, and all such clerks, messengers, and officers as they shall deem necessary, and from time to time, at the discretion of the said commissioners, to remove such secretary, assistant secretary or secretaries, clerks, messengers, and officers, or any of them, and to appoint others in their stead: provided always, that the amount of the salaries of such secretary, assistant secretary or secretaries, clerks, messengers, and officers, shall from time to time be regulated by the lord high treasurer, or the commissioners of his Majesty's treasury, or any three or more of them.

Commissioners to appoint secretary, assistant secretary or secretaries, clerks, and other officers.

10. And be it further enacted, that no commissioner to be appointed by his Majesty, nor any assistant commissioner, secretary, or other officer or person to be appointed by the said commissioners, under and by virtue of the provisions of this act, shall continue to hold his respective office, or exercise any of the powers given by this act, for a longer period than *five years* (*a*) next after the day of the passing of this act, and thenceforth until the end of the then next session of parliament; and from and after the expiration of the said period of five years, and of the then next session of parliament, so much of this act as enables his Majesty to appoint any commissioner or commissioners shall cease to operate or have any effect whatever.

Appointment of commissioners, &c. limited to five years.

11. And be it further enacted, that every commissioner and assistant commissioner to be appointed from time to time as aforesaid, shall, before he shall enter upon the execution of his office, take the following oath, before one of the judges of his Majesty's Courts of King's Bench or Common Pleas, or one of the barons of the Court of Exchequer; (that is to say,)

Commissioners and assistant commissioners to take oath.

"*I, A. B., do swear, that I will faithfully, impartially, and honestly, according to the best of my skill and judgment, execute and fulfil all the powers and duties of a commissioner* [or *assistant commissioner*, as the case may be,] *under an act passed in the fifth year of the reign of King William the Fourth, intituled* [here set forth the title of this act]."

Form of oath.

And the appointment of every such commissioner and assistant commissioner, together with the time when and the judge or baron before whom he shall have taken the oath aforesaid, shall be forthwith published in the London Gazette; and a notification of such appointment, and of the taking of such oath, shall from time to time be sent, under the hands and seal of the said commissioners, to the clerk of the peace of every county in England and Wales, who shall and is hereby required as soon as conveniently may be to cause the same to be advertised once in some newspapers, published or circulated in such county; and such notification as aforesaid shall be kept and preserved by such clerk of the peace with the records of such county.

Notification of appointment of commissioners to be sent to clerks of the peace, and published.

12. And be it further enacted, that it shall be lawful for the said commissioners to delegate to their assistant commissioners, or to any of them, such of the powers and authorities hereby given to the said commissioners (except the powers to make general rules) as the said commissioners shall think fit; and the powers and authorities so delegated, and the delegation thereof, shall be notified in such manner, and such powers and authorities shall be exercised at such places, for such periods, and under such circumstances, and subject to such regulations, as the said commissioners shall direct; and the said commissioners may at any time revoke, recall, alter, or vary all or any of the powers and authorities which shall be so delegated as aforesaid; and, notwithstanding the delegation thereof, may act as if no such delegation had been made; and the said assistant commissioners may and are hereby empowered to summon before them such persons as they may think necessary for the purpose of being examined upon oath (which oath such assistant commissioners are hereby empowered to administer) upon any question or matter relating to the poor, or their relief, or for the purpose of producing and verifying upon oath any books, contracts, agreements, accounts, and writings, or copies of the same, in anywise relating to such question or matter, and not relating to or involving any question of title to lands, tenements, or hereditaments not being the property of any

Commissioners may delegate powers to assistant commissioners, and revoke them.

Assistant commissioners may summon persons and examine them upon oath;

(*a*) Continued for five years more, 2 & 3 Vic. c. 163; and see 5 & 6 Vic. c. 57, *post*.

4 & 5 Will. IV. c. 76.

parish or union, as such assistant commissioners may think fit, but so that no such person shall be required, in obedience to any such summons, to go or travel more than ten miles from the place of his abode: provided, nevertheless, that in lieu of requiring such oath as aforesaid the said assistant commissioners may, if they think fit, require such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined; and all summonses and orders made by any such assistant commissioner in pursuance or exercise of such delegated powers and authorities, shall be obeyed, performed, and carried into effect by all persons, as if such summons or order had been the summons or order of the said commissioners, and the breach, non-observance, or non-performance thereof shall be punishable in like manner.

of a declaration may be substituted for an oath.

Persons giving false evidence guilty of perjury; refusing to attend, &c. guilty of misdemeanor.

13. And be it further enacted, that if any person, upon any examination under the authority of this act, shall wilfully and corruptly give false evidence, he shall be deemed guilty of perjury; and if any person shall make or subscribe a false declaration, he shall, on being convicted thereof, suffer the pains and penalties of perjury; and if any person shall wilfully refuse to attend, in obedience to any summons of any commissioner or assistant commissioner, or to give evidence, or shall wilfully alter, suppress, conceal, destroy, or refuse to produce any books, contracts, agreements, accounts, and writings, or copies of the same, which may be so required to be produced before the said commissioners or assistant commissioners, every person so offending shall be deemed guilty of a misdemeanor.

Reasonable expenses of witnesses to be paid, and by whom.

14. And be it further enacted, that it shall be lawful for the said commissioners, in any case where they see fit, to order and allow such expenses of witnesses, and of or attending the production of any books, contracts, agreements, accounts, or writings, or copies thereof, to or before the said commissioners or assistant commissioners, as such commissioners may deem reasonable, to be paid as follows: that is to say, out of the poor-rates of the respective parish or union which in the opinion of the said commissioners shall be interested or concerned in such attendance or production respectively, in all cases in which such witnesses shall not go or travel more than ten miles from the respective parish or union which shall be interested or concerned as aforesaid; and in all other cases, the expenses so ordered or allowed shall be deemed as part of the incidental expenses attending the execution of this act, and be paid accordingly.

Administration of relief to the poor to be under control of the commissioners; who are to make rules and regulations for the management of the poor, and administration of the laws for their relief, &c.

15. And be it further enacted, that from and after the passing of this act the administration of relief to the poor throughout England and Wales, according to the existing laws, or such laws as shall be in force at the time being, shall be subject to the direction and control of the said commissioners; and for executing the powers given to them by this act, the said commissioners shall and are hereby authorised and required, from time to time as they shall see occasion, to make and issue all such rules, orders, and regulations for the management of the poor, for the government of workhouses, and the education of the children therein, and for the management of parish poor children under the provisions of an act made and passed in the seventh year of the reign of his late Majesty King George the Third, intituled "An Act for the better regulation of Parish Poor Children of the several Parishes therein mentioned within the Bills of Mortality," and the superintending, inspecting, and regulating of the houses wherein such poor children are kept and maintained, and for the apprenticing the children of poor persons, and for the guidance and control of all guardians, vestries, and parish officers, so far as relates to the management or relief of the poor, and the keeping, examining, auditing, and allowing of accounts, and making and entering into contracts in all matters relating to such management or relief, or to any expenditure for the relief of the poor, and for carrying this act into execution in all other respects, as they shall think proper; and the said commissioners may, at their discretion, from time to time suspend, alter, or rescind such rules, orders, and regulations, or any of them (a): provided always, that nothing in this act contained shall be construed as enabling the said commissioners, or any of them, to interfere in any individual case for the purpose of ordering relief.

Commissioners may suspend or alter rules, &c.

General rules to be submitted to secretary of state forty days before

16. And be it further enacted, that no general rule of the said commissioners shall operate or take effect until the expiration of forty days after the same, or a copy thereof, shall have been sent, signed and sealed by the said commissioners,

(a) A general rule cannot be altered by a particular rule, 5 & 6 Vic. c. 57, s. 3.

to one of his Majesty's principal secretaries of state; and if at any time after any such general rule shall have been so sent to such principal secretary of state, his Majesty, with the advice of his privy council, shall disallow the same or any part thereof, such general rule or the part thereof so disallowed, shall not come into operation, if such disallowance be notified to the said commissioners at any time during the said period of forty days; but if such disallowance be made at any time after that period, such disallowance shall, by one of his Majesty's principal secretaries of state, be notified to the said commissioners, and from and after such disallowance shall have been so notified, then such general rule, so far as the same shall have been so disallowed, shall cease to operate, subject however and without prejudice to all acts and transactions under or in virtue of the same previously to such disallowance having been so notified.

coming into operation.

If disallowed by king in council during the forty days, not to come into operation.

If disallowed afterwards.

17. And be it further enacted, that all general rules for the time being in force at the commencement of every session of parliament, and which shall not previously have been submitted to parliament, shall from time to time, within one week after the commencement of every such session, be laid by one of his Majesty's principal secretaries of state before both houses of parliament.

General rules to be laid before parliament.

18. And be it further enacted, that a written or printed copy of every rule, order, or regulation of the said commissioners shall, before the same shall come into operation in any parish or union, be sent by the said commissioners by the post, or in such manner as the commissioners shall think fit, sealed or stamped with their seal, addressed to the overseers of such parish, the guardians of such union or their clerk, and to the clerk to the justices of the petty sessions held for the division in which such parish or union shall be situate; and such overseers, guardians, or their clerk, and clerks to the justices aforesaid, are hereby required to keep and preserve, notify and give publicity to such rules, orders, and regulations, in such manner as the said commissioners shall direct, and also to allow every owner of property, or his agent, or any rate-payer, in every such parish or union, to inspect the same at all reasonable times, free of any charge for such inspection, and to furnish copies of the same, being paid for such copies at and after the rate of threepence for every folio of seventy-two words, and to allow copies or extracts thereof to be taken, on being paid for so doing after the rate of three-halfpence for every folio of seventy-two words; and in case any such overseer, guardian, clerk, or clerk to the justices, to whom such rules, orders, or regulations, or copies thereof, shall be sent as aforesaid, shall neglect to keep and preserve, notify and give publicity to the same in the mode prescribed or directed by the said commissioners, or shall refuse such inspection, or to furnish or allow such copies thereof to be taken as aforesaid, every person so offending shall, for every such offence, be subject and liable to a penalty not exceeding the sum of ten pounds nor less than forty shillings, to be recoverable in the same manner as any penalties are by this act directed to be recovered: provided also, that if any such rule shall, after the same shall have come into operation, be disallowed in manner hereinbefore mentioned, or revoked by the said commissioners, then and in every such case the said commissioners shall send, by the post, or in such manner as they shall think fit, to every parish or union affected by the said rule, notice of such disallowance or revocation; such notice of disallowance or revocation to be addressed, kept, preserved, notified, and publicly inspected, and copies thereof furnished or allowed to be taken in such and the same manner, and subject to the same penalties as are hereinbefore mentioned respecting the rules, orders, and regulations of the said commissioners.

Rules, orders, &c. to be sent to overseers, &c. before they shall come into operation. (*a*)

Publicity to be given to rules, &c. in manner directed by commissioners.

Penalty on overseer, &c. neglecting to give publicity, &c.

Disallowance of rule to be notified in like manner.

19. And be it further enacted, that no rules, orders, or regulations of the said commissioners, nor any bye-laws at present in force or to be hereafter made, shall oblige any inmate of any workhouse to attend any religious service which may be celebrated in a mode contrary to the religious principles of such inmate, nor shall authorise the education of any child in such workhouse in any religious creed other than that professed by the parents or surviving parent of such child, and to which such parents or parent shall object, or, in

No inmate of a workhouse obliged to attend any religious service contrary to his religious principles, &c.

(*a*) It is not necessary to *prove* that the rule was sent, except to the clerk of the board, and, if there is no board, to the overseers, and even that is unnecessary, unless previous notice has been given of the intention to require such proof, and the party may be required to pay the expense of such proof, 7 & 8 Vic. c. 101, s. 72.

4 & 5 *Will. IV. c.* 76.

the case of an orphan, to which the godfather or godmother of such orphan shall so object: provided also, that it shall and may be lawful for any licensed minister of the religious persuasion of any inmate of such workhouse, at all times in the day, on the request of such inmate, to visit such workhouse for the purpose of affording religious assistance to such inmate, and also for the purpose of instructing his child or children in the principles of their religion.

Orders or regulations of assistant commissioners to be approved and sealed by commissioners.

20. And be it further enacted, that no order or regulation made by any assistant commissioner shall be in force, unless and until the same shall have been adopted by the said commissioners, and sealed or stamped with their seal, and thereupon every such order or regulation shall be considered as made by the said commissioners; and that no rule, order, or regulation of the said commissioners, except orders made in answer to the statements and reports hereinafter authorised to be made by overseers or guardians to the said commissioners, shall be in force, until the expiration of *fourteen* days after a written or printed copy of the same shall have been sent by the said commissioners, sealed or stamped and addressed as lastly hereinbefore is mentioned. See 5 & 6 Vic. c. 57, s. 4.

Powers of 22 Geo. III. c. 83, 59 Geo III. c. 12, and of all other acts relating to workhouses, and to borrowing money, to be exercised under control of commissioners, and be subject to their orders. (*a*)

21. And be it further enacted, that, except where otherwise provided by this act, all the powers and authorities given in and by a certain act of parliament passed in the twenty-second year of the reign of his late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," and in and by a certain other act passed in the fifty-ninth year of the reign of his said late Majesty, intituled "An Act to amend the Laws for the Relief of the Poor," and all acts for amending such acts respectively, and also all the powers and authorities given by every other act of parliament, general as well as local, for or relating to the building, altering or enlarging of poorhouses and workhouses, and to the acquiring, purchasing, hiring, holding, selling, exchanging, and disposing thereof, or of land whereon the same may have been or may hereafter be erected, and of preparing such houses for the reception of poor persons, and the dieting, clothing, employing, and governing of such poor, and the raising or borrowing of money for any of the purposes aforesaid, and for repaying the same, and all powers of regulating and conducting all other workhouses whatsoever, and of governing, providing for, and employing the poor therein, and all powers auxiliary to any of the powers aforesaid, or in any way relating to the relief of the poor, shall in future be exercised by the persons authorised by law to exercise the same, under the control, and subject to the rules, orders, and regulations of the said commissioners; and the said commissioners and assistant commissioners respectively, and every of them, shall be entitled to attend at every parochial and other local board and vestry, and take part in the discussions, but not to vote at such board or vestry: provided always, that nothing herein contained shall be construed to give the said commissioners or assistant commissioners any power to order the building, purchasing, hiring, altering, or enlarging of any workhouse, or the purchasing or hiring of any land at the charge or for the use of any parish or union, save and except so far as such powers are expressly given by this act. P. 391.

Commissioners, &c. to be entitled to attend local boards and vestry; but not to order the building or hiring of work houses, except under limitations.

No additions or alterations to be made to the rules contained in the schedule to 22 Geo. III. c. 83, or in any other act until confirmed by commissioners.

22. And whereas by the said act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, it is (among other things) enacted that the rules, orders, and regulations specified and contained in the schedule thereunto annexed, should be duly observed and enforced at every poorhouse or workhouse to be provided by virtue of the said act, with such additions as should be made by the justices of the peace of the limit wherein such house or houses should be situate, at some special session, provided that such additions should not be contradictory to the rules, orders, and regulations established by that act, and provided that the same should not be repealed by the justices at their quarter sessions of the peace: and it is expedient that such additions, or other rules, orders, or regulations, under that or any local or other act, should not in future be made without the sanction of the said commissioners: be it therefore enacted, that no additions or alterations shall hereafter be made to or in the rules, orders, and regulations contained in the schedule to the said recited act, and no rules, orders, and regulations

(*a*) Under this section the commissioners have a power to prohibit the guardians, under a local act, from enlarging the workhouse, the guardians refusing to submit their plans to them. *Reg.* v. *Brighton*, 3 *Q. B.* 325.

shall hereafter be made under the authority of the said recited act, or of any act made for altering, amending, or extending the same, or any local or other act relating to poorhouses, workhouses, or the relief of the poor, until the same shall have been submitted to and approved and confirmed by the said commissioners; and that the same, when so confirmed, shall be legally valid and binding upon all persons; and no justice or justices shall have power to repeal the same.

Commissioners empowered to order workhouses to be built, hired, altered or enlarged with consent, &c.

23. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered, from time to time when they may see fit, by any writing under their hands and seal, by and with the consent in writing of a majority of the guardians of any union, or with the consent of a majority of the rate-payers and owners of property entitled to vote in manner hereinafter prescribed, in any parish, such last-mentioned majority to be ascertained in manner provided in and by this act, to order and direct the overseers or guardians of any parish or union not having a workhouse or workhouses, to build a workhouse or workhouses, and to purchase or hire land for the purpose of building the same thereon, or to purchase or hire a workhouse or workhouses, or any building or buildings for the purpose of being used as or converted into a workhouse or workhouses; and, with the like consent, to order and direct the overseers and guardians of any parish or union having a workhouse or workhouses, or any buildings capable of being converted into a workhouse or workhouses, to enlarge or alter the same in such manner as the said commissioners shall deem most proper for carrying the provisions of this act into execution, or to build, hire, or purchase any additional workhouse or workhouses, or any building or buildings for the purpose of being used as or converted into a workhouse or workhouses, or to purchase or hire any land for building such additional workhouse or workhouses thereon, of such size and description, and according to such plan, and in such manner as the said commissioners shall deem most proper for carrying the provisions of this act into execution; and the overseers and guardians, to whom such order shall be directed, are hereby authorised and required to assess, raise, and levy such sum or sums of money as may be necessary for the purposes specified in such order, by such powers, ways, and means as are now by law given to or vested in churchwardens or overseers or guardians of the poor for purchasing or hiring land, or for building, hiring, and maintaining workhouses for the use of the poor, in their respective parishes or unions, or to borrow money (*a*) for such purposes under the provisions of this or any other act or acts.

Sums to be raised for purposes of building workhouses to be charged on poor-rates; not to exceed one year's amount of poor-rates. (*b*)

24. And be it further enacted, that for the better and more effectually securing the repayment of any sum or sums of money which may be borrowed for the purposes aforesaid, with interest, it shall be lawful for the said overseers or guardians to charge the future poor-rates of such parish or union with the amount of such sum or sums of money: provided always, that the principal sum or sums to be raised for such purposes, whether raised within the year or borrowed, shall in no case exceed the average annual amount of the rates raised for the relief of the poor in such parish or union for three years ending at the Easter next preceding the raising of such money; and that any loan or money borrowed for any of the purposes aforesaid shall be repaid by annual instalments of not less than *one-tenth* (*c*) of the sum borrowed, with interest on the same, in any one year.

Power to order workhouses to be altered or enlarged, without consent, &c.

25. And be it further enacted, that it shall be lawful for the said commissioners, and they are hereby empowered, without requiring any such consent as aforesaid, by any writing under the hands and seal of the said commissioners, to order and direct the overseers or guardians of any parish or union having a workhouse or workhouses, or any building capable of being converted into a workhouse or workhouses, to enlarge or alter the same, according to such plan and in such manner as the said commissioners shall deem most proper for carrying the provisions of this act into execution; and the overseers or guardians to whom any such order shall be directed are hereby authorised and required to assess, raise, and levy such sum or sums of money as may be neces-

(*a*) It may be borrowed of corporations, 1 & 2 Vic. c. 25.

(*b*) If this money is not paid, a mandamus will lie to compel the payment, and the statute of limitations is no bar, 6 *A. & E.*

(*c*) So that the whole amount would have been paid off in ten years. This has been extended to twenty years, by 6 & 7 Will. IV. c. 107.

4 & 5 *Will. IV. c.* 76.

sary for the purposes specified in such order, by such powers, ways, and means as are now by law given to or vested in churchwardens and overseers or guardians of the poor for altering, enlarging, and maintaining workhouses for the use of the poor in their respective parishes or unions: provided always, that the principal sum or sums to be raised for such purposes, and charged upon any parish, shall not exceed in the whole the sum of fifty pounds, nor in any such case exceed one-tenth of the average annual amount of the rates, raised for the relief of the poor in such parish for the three years ending at the Easter next preceding the raising of such money.

Sums to be raised for such purposes not to exceed one-tenth of one year's rates, or 50*l.*

Parishes may be united by commissioners. (*a*)

26. And be it further enacted, that it shall be lawful for the said commissioners, by order under their hands and seal, to declare so many parishes as they may think fit to be united for the administration of the laws for the relief of the poor, and such parishes shall thereupon be deemed a union for such purpose, and thereupon the workhouse or workhouses of such parishes shall be for their common use; and the said commissioners may issue such rules, orders, and regulations as they shall deem expedient, for the classification of such of the poor of such united parishes in such workhouse or workhouses, as may be relieved in any such workhouse, and such poor may be received, maintained and employed in any such workhouse or workhouses, as if the same belonged exclusively to the parish to which such poor shall be chargeable; but, notwithstanding such union and classification, each of the said parishes shall be separately chargeable with and liable to defray the expense of its own poor, whether relieved in or out of any such workhouse.

Each parish chargeable for its own poor. (*b*)

Justices may order out-door relief to aged and infirm persons wholly unable to work.

27. And be it further enacted, that in any union which may be formed under this act, it shall be lawful for any two of his Majesty's justices of the peace usually acting for the district wherein such union may be situated, at their just and proper discretion, to direct, by order under their hands and seals, that relief shall be given to any adult person who shall from old age or infirmity of body be wholly unable to work, without requiring that such person shall reside in any workhouse: provided always, that one of such justices shall certify in such order, of his own knowledge, that such person is wholly unable to work, as aforesaid; and provided further, that such person shall be lawfully entitled to relief in such union, and shall desire to receive the same out of a workhouse.

When a union of parishes shall be proposed, commissioners to inquire the expense of poor belonging to each parish for three years preceding.

28. And be it further enacted, that when any union of parishes for the administration of the laws for the relief of the poor, shall be proposed to be made or shall be made under the provisions of this act, it shall be lawful for the said commissioners, and they are hereby required, from time to time, by such means and in such manner as they may think fit, to inquire into and ascertain the expense incurred by each parish proposed to form part of such union for the relief of the poor belonging to such parish, whether such relief shall have been given in or out of any workhouse, for the three years ending on the twenty-fifth day of March next preceding such inquiry, and thereupon the said commissioners shall proceed to calculate and ascertain the annual average expense of each parish for that period; and the several parishes included or proposed to be included in such union, shall from the time of effecting the same, contribute and be assessed to a common fund for purchasing, building, hiring or providing, altering or enlarging any workhouse or other place for the reception and relief of the poor of such parishes, or for the purchase or renting of any lands or tenements, under and by virtue of the provisions of this act, of or for such union, and for the future upholding and maintaining of such workhouses or places aforesaid, and the payment or allowance of the officers of such union, and the providing of utensils and materials for setting the poor on work therein, and for any other expense to be incurred for the common use or benefit or on the common account of such parishes, in the like proportions as on the said annual average of the said three years such relief had cost each such parish separately, until such average shall be varied or altered as hereinafter provided;

(*a*) When the parish is managed by guardians under a local act, and contains more than 20,000 persons, the commissioners cannot unite it to another parish, without the consent of two-thirds of such guardians, 7 & 8 Vic. c. 101, s. 65.

(*b*) An overseer wilfully neglecting to collect such money as the guardians require, whereby any relief is delayed for forty days, is guilty of a misdemeanor, 7 & 8 Vic. c. 101, s. 63.

Mandamus (semble) will be granted to compel the payment of the parish quota; and it is no answer to say "that the guardians were not duly elected." *Reg.* v. *St. Andrew's*, 10 *A. & E.* 736.

provided always, and the said commissioners are hereby authorised, if they shall so think fit, but not otherwise, from time to time, either upon the application of the guardians of such union or of the overseers of any parish forming part of the same, or without such application, to cause a like inquiry and calculation to be made and average ascertained for the three years ending on the twenty-fifth day of March next preceding such inquiry; and from and after the ascertaining of any such average, or of any succeeding average, the respective parishes of such union shall contribute and be assessed to the common fund thereof, for the purposes aforesaid, in the proportions which the expense of such parishes shall be found to have borne to each other during such period upon the average which shall have been so last ascertained, until a like inquiry shall be again made, and a new average and proportion ascertained for the future assessment of such parishes. (*a*)

Power for taking future averages.

29. And whereas in divers unions formed under the said recited act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or under local acts of incorporation, the whole of the expense, as well of upholding the united workhouses therein, as of maintaining and relieving the poor of the respective parishes of such unions, is assessed upon such parishes in the respective proportions fixed at the period when such unions were formed, and in others a part of such expenses is so levied, and a part subjected to variations at stated periods: and whereas some of the parishes of such unions have contributed and still continue to contribute, as their fixed proportion of the general fund, a sum much larger, and others a sum much less, than the actual expense incurred for the relief of the poor belonging to them respectively; for remedy thereof be it enacted, that it shall be lawful for the said commissioners, as soon as conveniently may be after the passing of this act, to cause an inquiry to be made and an account rendered, as it may be practicable to render the same, by the visitors, directors, acting guardians, or other officers of such parishes or unions respectively, of the expense incurred for the relief of the poor belonging to each parish within any such union, whether such poor shall have been relieved in or out of such parish respectively, or in or out of any united workhouse, and whether such expense has been paid by the general fund of such union or the parochial funds of any of the parishes thereof, or by any private rate, or general subscription in lieu of a rate among the rate-payers of any such parish, and whether passed through the books or paid under the control of the managers or officers of such union, or not, for the period of three years ending on the twenty-fifth day of March, one thousand eight hundred and thirty-four, including therein a due proportion of the expense of maintaining the united workhouses and establishment of such union, calculated according to the actual expense otherwise incurred for the relief of the poor belonging to each such parish; and the average annual amount of such expense shall be deemed and taken to have been the annual expense incurred by such parish on account of its poor, notwithstanding such parish may have contributed a greater or smaller sum than such annual average to the general funds of the union during such period; and such annual average, so ascertained as aforesaid, shall, if the said commissioners shall see fit, and to such extent only as they may direct, be deemed and taken as the fixed proportion to be contributed and paid by each such parish respectively towards a common fund for the future hiring, maintaining, and upholding, repairing, altering, or enlarging of any workhouse, and the renting of any land used by such union at the passing of this act, and for the purchasing, building, hiring, maintaining, upholding, repairing, altering, or enlarging of any new workhouse or workhouses, or other place for the reception and relief of the poor belonging to the parishes of such union, and for the renting or purchase of any lands or tenements under or by virtue of the provisions of this act, and the payment or allowance of any officers of such union, and the providing of utensils or materials for setting the poor on work therein, and for any other expense to be in future incurred for the common use or benefit of such parishes, and in addition to the cost or proportion of cost of the poor of such parishes who shall be maintained or relieved in or out of any workhouse of such union, for which each such parish shall in future be charged separately; any provision or enactment in the said recited act or in any such local acts to the contrary notwithstanding; provided always, and the said commissioners are hereby authorised, if they see fit, but not otherwise, upon the application of the

The like provision in unions effected under local acts of incorporation. 22 Geo. III. c. 83.

Power for taking future averages.

(*a*) For the power to compel payment, *post*, 2 & 3 Vic. c. 84.

4 & 5 *Will. IV. c.* 76.

guardians of any such last-mentioned union, or of the overseers of any parish forming part of the same, or without such application, from time to time to cause an inquiry and calculation to be made, and average ascertained for the three years ending on the twenty-fifth day of March next preceding such inquiry, of the expense incurred by each such parish, as well in respect of its contribution to such common fund as of the cost or proportion of cost of its poor which shall have been maintained or relieved in or out of any workhouse of such union during such period of three years; and from and after the ascertaining of such average or of any succeeding average, the respective parishes of such union shall contribute and be assessed to the common fund thereof, for the purposes of which such common fund is hereinbefore declared to be applicable, in the proportions which the expense of such parishes shall be found to have borne to each other during such period, upon the average which shall have been so last ascertained, until a like inquiry shall be again made, and a new average and proportion ascertained for the future assessment of such parishes to such common fund; provided always, that nothing herein contained shall extend to any parishes already formed or hereafter to be formed into a union for the purposes of settlement or rating, or where the annual assessment is directed to be indifferently proportioned between the several parishes composing such union.

Parliamentary returns to be evidence of actual expense of poor to each parish.

30. And for facilitating the inquiries directed by this act, be it enacted, that unless and until they shall be proved to the satisfaction of the said commissioners to be incorrect, the returns made to parliament of the sums expended for the relief of the poor of any parish for the last three years previous to the passing of this act, shall be deemed to be the actual expense incurred by each such parish respectively during that period for the purposes aforesaid, and on account of the poor belonging to such parish respectively, and shall be taken as the ground on which such averages shall be calculated and ascertained.

Repeal of 22 Geo. III. c. 83, s. 5, and 56 Geo. III. c. 129, part of s. 1, restraining parishes from contributing to workhouse at a greater distance than ten miles; and of 22 Geo. III. c. 83, s. 29, limiting class of persons to be sent to workhouses.

31. And be it further enacted, that from and after the passing of this act, so much of the said recited act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," as provides that no parish, township, hamlet, or place which shall be situate more than ten miles from any poorhouse or workhouse to be provided under the authority of that act shall be permitted to be united for the purposes therein mentioned with the parishes, townships, hamlets, and places which shall establish such poorhouse or workhouse as therein mentioned, and as limits the class or description of persons who shall be sent to such poorhouse or workhouse; and so much of a certain act made and passed in the fifty-sixth year of the reign of his said late Majesty King George the Third, intituled "An Act to repeal certain provisions in Local Acts for the Maintenance and Management of the Poor," as repeals all enactments and provisions contained in any act or acts of parliament since the commencement of the reign of his late Majesty King George the First, whereby any parish, township, or hamlet, at a greater distance than ten miles from any house of industry or workhouse, shall hereafter be empowered or authorised to become contributors to or to take the benefit of such house of industry or workhouse, shall be and the same is hereby repealed.

Power to dissolve, add to, or take from any union;

32. And be it further enacted, that it shall be lawful for the said commissioners, from time to time, as they may see fit, by order under their hands and seal, to declare any union, whether formed before or after the passing of this act (except when united for the purposes of settlement or rating), to be dissolved, or any parish or parishes, specifying the same, to be separated from or added to any such union, and, as the case may be, such union shall thereupon be dissolved, or such parish or parishes shall thereupon be separated from or added to such union accordingly; and the said commissioners shall in every such case frame and make such rules, orders, and regulations as they may think fit for adapting the constitution, management, and board of guardians of every such union, from or to which there shall be such separation or addition as aforesaid, to the altered state of the same, and every such union shall after any such alteration be constituted, managed, and governed as if the same had been originally formed in such altered state; and in case any union shall be wholly or partially dissolved as aforesaid, then the parishes constituting, or, in case of a partial dissolution, separated from any such union, shall thenceforth be subject to be re-united, or united with other parishes or unions, or otherwise dealt with according to the provisions of this act as the said commissioners shall think fit: provided always, that in every such case the said commissioners shall

and thereupon to make such rules as may be adapted to its altered state.

Rights and in-

4 & 5 *Will. IV. c.* 76.

and they are hereby required to ascertain the proportionate value to every parish of such union of the workhouses or other property held or enjoyed by such union for the use of the poor or benefit of the rate-payers therein, and also the proportionate amount chargeable on every parish in respect of all the liabilities of such union existing at the time of such dissolution or alteration of the same, and the said commissioners shall thereupon fix the amount to be received, or paid or secured to be paid, by every parish affected by such alteration; and the sum to be received, if any, by such parish, shall be paid, or as the said commissioners shall direct, be secured to be paid to the overseers or guardians of the same, for the benefit of such parish, and in diminution of the rates thereof and of the expense attending such alteration; and the sum to be so paid or secured to be paid by every such parish shall be raised under the direction of the said commissioners, by the overseers or guardians of such parish, or charged on the poor-rates of such parish, as the said commissioners may see fit, and shall be paid or secured for the use and benefit of the union from which the same parish shall have been so separated, or of the persons or parishes otherwise entitled thereto, as the case may be: provided always, that no such dissolution or alteration of the parishes constituting any such union, nor any addition thereto as aforesaid, shall in any manner prejudice, vary, or affect the rights or interests of third persons, unless such third persons, by themselves or their agents, shall consent in writing to such dissolution or proposed alteration or addition; *and that no such dissolution, alteration, or addition shall take place or be made, unless a majority of not less than two-thirds of the guardians of such union shall also occur therein* (*a*); and in every such case, when the said majority of the guardians of such union shall so concur in such proposed alteration, the terms on which such concurrence shall have been given, if approved by the said commissioners, shall be binding and conclusive on the several parishes of such union. P. 48.

terests of parishes, and claims on them, to be ascertained and secured.

Dissolution or alteration not to affect rights of third parties.

33. And be it further enacted, that in any union already formed or which may hereafter be formed in pursuance of or under the provisions of this act, it shall and may be lawful for the guardians elected by the parishes forming such union, by any writing under the hands of all such guardians, to agree, subject to the approbation of the said commissioners, for or on behalf of the respective parishes forming such union, that for the purposes of settlement such parishes shall be considered as one parish; and in such case such agreement, having been first signed by the said guardians, shall be signed and sealed by the said commissioners, and one part thereof shall be deposited with the said commissioners and a counterpart or counterparts thereof, signed by the said guardians, and signed and sealed by the said commissioners, deposited with the clerk of the peace of the county, riding, division, district, or liberty, in which the parishes of such union shall be respectively situate; and the said clerk of the peace shall and is hereby required, upon the receipt of such agreement, or counterpart or counterparts thereof, to file the same with the records of such county, riding, division, district, or liberty; and from and after the depositing of the same as aforesaid the said agreement shall for ever thereafter be binding on each of such parishes, and shall not be revoked or annulled; and the settlement of a poor person in any one of the parishes of such union, shall be considered, as between such parishes, a settlement in such union; and the expense of maintaining, supporting, and relieving every such poor person, and all other expenses of maintaining, supporting, and relieving the poor to which any one of such parishes shall be liable after the depositing of such agreement, part or counterpart aforesaid, or of ascertaining, litigating, or adjudging the settlement of any poor person in any of such parishes, shall form part of the general expenses and be paid out of the common funds of such union: provided always, that wherever such agreement is entered into as aforesaid, the rate or proportion of contribution to such common funds to be thereafter paid by each of the parishes of such union, shall be ascertained and fixed in like manner as in and by this act is provided for in cases where any union of parishes is made or proposed to be made under the provisions thereof, and shall not be subject to further variation.

United parishes may be one parish for purposes of settlement.

34. And be it further enacted, that where the parishes of any union shall be situate within the same county, riding, division, district, or liberty, under the

Union may be one parish for purpose of rating with

(*a*) This is repealed, and the commissioners may separate or add a parish without the consent of the guardians, 7 & 8 Vic. c. 101, s. 66.

4 & 5 *Will. IV. c.* 76.

jurisdiction of the same justices of the peace, it shall and may be lawful for the guardians elected by the parishes forming such union, by any writing under the hands of all such guardians, to agree, with the approbation of the said commissioners, for or on behalf of the respective parishes for which they shall so act as guardians, that for the purposes of raising in common the necessary funds for the relief of the poor of such union, such parishes shall be considered one parish; and in such case such agreement, having been first signed by the said guardians, shall be signed and sealed by the said commissioners, and one part thereof deposited with the said commissioners, and a counterpart or counterparts thereof, signed by the said guardians, and signed and sealed by the said commissioners, deposited with the clerk of the peace of the county, riding, division, district, or liberty, counties, district, or districts, in which the said parishes of such union shall be situate; and the said clerk or clerks of the peace shall and is and are hereby required, upon the receipt of such agreement, part, or counterpart, to file the same with the records of such county, riding, division, district, or liberty, or counties, district, or districts, and from and after the depositing and filing of such last-mentioned agreement or counterpart, the same shall be for ever binding upon such parishes, and shall not be revoked or annulled.

consent of guardians. (*a*)

Agreement or counterpart for such rating to be deposited with clerk of the peace.

Guardians to ascertain and assess value of property.

35. And be it further enacted, that from and after such depositing and filing of the said agreement, part, or counterpart, the said guardians shall, under such regulations as the said commissioners shall in that respect prescribe, proceed to ascertain and assess the value of the property in the several parishes of such union rateable to the relief of the poor, and to cause to be made such surveys and valuations of the said property, or any part thereof, as may be necessary, from time to time, to make a fair and just assessment upon the said united parishes in respect of such property so rateable as aforesaid; and all rates grounded on every such valuation or assessment shall be made, allowed, published, and recovered in such and the same manner as rates for the relief of the poor are now by law made, allowed, published and recovered; and the rate-payers shall have the like power of appeal against such last-mentioned rates as any persons now have against rates made for the relief of the poor.

Rates grounded on such assessment to be allowed as poor rates.

In such cases all expenditure for the poor to be in common.

36. And be it further enacted, that from and after any such common rate shall have come into operation, the proportions or contribution fixed at the period of uniting such parishes, or existing at the time of such last-mentioned agreement for a common rate, shall wholly cease; and all expenditure in respect of the poor of such union, or chargeable in any way on the poor rates of the respective parishes thereof, shall be deemed and be the common expenditure of such union, and be chargeable upon and paid out of the common or general fund to be raised upon such parishes under such common rate, according to the valuation or assessment of the rateable property in such parishes so ascertained, confirmed, and allowed by the said justices from time to time in manner hereinbefore provided: provided always, that the expense of every such valuation shall at all times be a charge on the common rate of such parishes: provided always, that in case any parish of any union, at the period of entering into such agreement for the purposes of settlement or a common rate, shall not be represented by a guardian elected solely by such parish, such parish shall not be bound by any such agreement, unless a majority of the owners of property and rate-payers in such parish, entitled to vote in the manner provided by this act, shall, by their votes in writing, testify their assent to such agreement, in such form as the said commissioners shall prescribe; and in case such assent shall not be so given, such parish shall be wholly omitted from such agreement, and be liable to pay such proportion only of the common assessment as it was bound to pay upon the forming of the union of such parishes.

Expense of valuation.

Proviso for consent of parishes not represented by guardian.

No union to be so formed without consent of commissioners.

37. And be it further enacted, that from and after the passing of this act, no union or incorporation of parishes shall be formed under the provisions of the said act made and passed in the twenty-second year of the reign of his late Majesty King George the Third, without the previous consent of the said commissioners testified under their hands and seal.

(*a*) The commissioners are also empowered to form parishes into school districts (7 & 8 Vic. c. 101, sect. 40, *et seq.*) and asylums for the houseless poor within the metropolitan district, sect. 41. Persons returning after removal to the district deemed to be vagrants, s. 55.

38. And be it further enacted, that where any parishes shall be united by order or with the concurrence of the said commissioners for the administration of the laws for the relief of the poor, a board of guardians of the poor for such union shall be constituted and chosen, and the workhouse or workhouses of such union shall be governed, and the relief of the poor in such union shall be administered, by such board of guardians (*b*); and the said guardians shall be elected by the rate-payers, and by such owners of property in the parishes forming such union as shall in manner hereinafter mentioned require to have their names entered as entitled to vote as owners in the books of such parishes respectively; and the said commissioners shall determine the number and prescribe the duties of the guardians to be elected in each union, and also fix a qualification, without which no person shall be eligible as such guardian, such qualification to consist in being rated to the poor rate of some parish or parishes in such union, but not so as to require a qualification exceeding the annual rental of forty pounds, and shall also determine the number of guardians which shall be elected for any one or more parishes, having due regard to the circumstances of each such parish (*c*): provided always, that one or more guardians shall be elected for each parish included in such union; and such guardians, when so elected, shall continue in office until the twenty-fifth day of March next following their appointment, or until others are appointed in their stead, and on such twenty-fifth day of March, or if that day should fall on a Sunday or a Good Friday, then on the day next following, or within *fourteen days* (*d*) next after the said twenty-fifth day of March in every year, such guardians shall go out of office, and the guardians for the ensuing year shall be chosen; and in the event of any vacancy occurring in such board, by the death, removal or resignation, or refusal or disqualification to act of any elected guardian between the periods of such first and the next and any subsequent annual election, or in case the full number of guardians shall not be duly elected at such subsequent election of guardians for the time being, the other or remaining members of the said board shall continue to act until the next election, or until the completion of the said board, as if no such vacancy had occurred, and as if the number of such board were complete; and every justice of the peace residing in any such parish (*e*), and acting for the county, riding, or division in which the same may be situated, shall be an ex officio guardian of such united or common workhouses, and shall, until such board of guardians shall be duly elected and constituted as aforesaid, and also, in case of any irregularity or delay in any subsequent election of guardians, receive and carry into effect the rules, orders, and regulations of the said commissioners; and after such board shall be elected and constituted as aforesaid, every such justice shall ex officio be and be entitled, if he think fit, to act as a member of such board, in addition to and in like manner as such elected guardians: provided always, that, except where otherwise ordered by the said commissioners, and also except for the purpose of consenting to the dissolution or alteration of any union or any addition thereto, or to the formation of any union for the purposes of settlement or rating, no ex officio or other guardian of any such board as aforesaid shall have power to act in virtue of such office, except as a member and at a meeting of such board; and no act of any such meeting shall be valid unless three members shall be present and concur therein: provided also, that nothing herein contained shall prevent such owners and rate-payers from re-electing the same persons or any or either of them to be guardians for the year next ensuing, nor from electing as a guardian any person who may already have been chosen as a guardian of any other parish.

Constitution and election of board of guardians for unions. (*a*) P. 48.

(*d*) "40 days," 7 & 8 Vic. c. 101, s. 17.

No guardian to have power except at a local board, unless otherwise directed by the commissioners.

Guardians may be re-elected.

39. And be it further enacted, that if the said commissioners shall, by any order under their hands and seal, direct that the administration of the laws for the relief of the poor of any single parish should be governed and administered by a board of guardians, then such board shall be elected and constituted, and

The like for single parishes.

(*a*) Guardians under local acts must conduct their proceedings according to this act, 7 & 8 Vic. c. 101, s. 61.

(*b*) If a parish is more than four miles from the place of meeting of guardians, a relief district may be formed, 5 & 6 Vic. c. 57, s. 7. See many alterations as to the election of guardians, 9, 10, 11, 12, 13, 14, 15, sections of the same act.

(*c*) The commissioners may alter the number of guardians for any parish, without the consent required by this act, 7 & 8 Vic. c. 101, s. 18.

(*e*) Justices resident in an extra-parochial place to be guardians of that union which includes or adjoins the boundary of the place, 7 & 8 Vic. c. 101, s. 24.

4 & 5 *Will. IV. c.* 76.

authorised and entitled to act, for such single parish, in like manner and in all respects as is hereinbefore enacted and provided in respect to a board of guardians for united parishes; and every justice of the peace resident therein, and acting for the county, riding, or division in which the same is situated, shall be and may act as an ex officio member of such board.

At elections of guardians votes to be taken in writing, and *owners* (*a*) as well as occupiers to vote.

40. And be it enacted, that in all cases of the election of guardians under this act, or wherever the consent of the owners of property or rate-payers in any parish or union shall be required for any of the purposes of this act, except when otherwise expressly provided for in this act, the votes of such owners and rate-payers shall be given or taken in writing, collected, and returned, in such manner as the said commissioners shall direct; and in every such case *the owner*, as well as the rate-payer, in respect of any property in such parish or union, shall be entitled to vote, and *the owner shall have the same number and proportion of votes respectively as is provided for inhabitants and other persons in and by an act made and passed in the fifty-eighth year of the reign of his said late Majesty King George the Third, intituled, "An Act for the Regulation of Parish Vestries," and in and by an act to amend the same, made and passed in the fifty-ninth year of his said late Majesty; and the rate-payers under two hundred pounds shall each have a single vote: and the rate-payers rated at two hundred pounds or more, but under four hundred pounds, shall each have two votes; and the rate-payers rated at four hundred pounds or more, shall each have three votes;* and the majority of the votes of such owners and rate-payers which shall be actually collected and returned shall in every such case be binding on such parish: and for the purpose of ascertaining the number of votes to which each such owner shall be entitled, the aggregate amount of the assessment for the time being of any property belonging to such owner in such parish, or on any person or persons in respect of the same, to the poor-rate shall be deemed to be and be taken as the annual value of such property to such owner; and where any such owner shall be the bonâ fide occupier of any such property, he shall be entitled to vote as well in respect of his occupation as of his being such owner: provided always, that it shall be lawful for any owner from time to time, by writing under his hand, to appoint any person to vote as his proxy; and every such appointment shall remain in force until revoked or recalled by such owner; but no owner shall be entitled to vote, either in person or proxy, unless he shall, *previous to the day* (*c*) *on which he shall claim to vote*, have given a statement in writing of his name and address, and the description of the property in the parish as owner whereof, or proxy for the owner whereof, he claims to vote, and if such proxy, the original or an attested copy of the writing appointing him such proxy, to the overseers of such parish; and the said overseers are hereby required to enter in the rate books of such parish, or in some other book to be from time to time provided for that purpose, the names and addresses of the owners and proxies who shall send such statements, and the assessment of the rate for the relief of the poor of the property in respect whereof they respectively claim to vote: provided also, that every person who shall not vote, or who shall not comply with the directions to be made by the said commissioners for the giving, taking, or returning of votes, shall be omitted in the calculation of votes, and considered as having had no vote on the question whereon he might have voted: provided also, that no person shall be deemed a rate-payer, or be entitled to vote, or do any other act, matter, or thing as such, under the provisions of this act, unless he shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such rate-payer, and shall

58 Geo. III. c. 69.

Scale of voting.

Votes may be given by proxy. (*b*)

Fourteen days.

No rate-payer to vote unless rated one year.

(*a*) The parts of this section printed in italics are repealed, and the following provisions substituted for them, by 7 & 8 Vic. c. 101, s. 14, which enacts, "That every owner and rate-payer of property rated upon a rateable value of less than 50*l.* shall have one vote, if 50*l.* and less than 100*l.* two votes, of 100*l.* and less than 150*l.* three votes, if 150*l.* and less than 200*l.* four votes, if 200*l.* and less than 250*l.* five votes, if it exceed 250*l.* six votes.

(*b*) No owner can vote by person or proxy during the year following the 25th March, unless before the 1st of February he gives the required statement, nor until fourteen days after he has made his claim. The statement must contain the nature of his interest, and all rentservice, and to whom payable. Proxies may be appointed. Persons claiming to vote may be objected to; the clerk to the guardians to hear the objections.

(*c*) Applicable to the poor-rates only, 7 & 8 Vic. c. 101, s. 16.

have paid the parochial rates and assessments made and assessed upon him for the period of one whole year, as well as those due from him at the time of so voting or acting, except such as shall have been made or become due within the six months immediately preceding such voting or acting: provided always, that in cases of property belonging to any corporation aggregate, or to any joint-stock or other company, no member of such corporation, or proprietor of or interested in such joint-stock or other company, shall be entitled to vote as such owner in respect thereof; but any officer of such corporation, joint-stock, or other company, whose name shall be entered by the direction of the governing body of such corporation or company in the books of the parish, in the manner hereinbefore directed with respect to the owner of property, shall be entitled to vote in respect of such property in the same manner as if he were the owner thereof. (*a*)

Elections of guardians, visitors, and other officers under the act 22 Geo. III. c. 83, or any local act to be made according to the provisions of this act. (*b*)

41. And be it further enacted, that all elections of guardians, visitors, and other officers for the execution of any of the powers or purposes of the said recited act made and passed in the twenty-second year of the reign of his said late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or of any local act of parliament relating to poorhouses, workhouses, or the relief of the poor, or any act to alter or amend the same respectively, shall hereafter, so far as the said commissioners shall direct, be made and conducted according to the provisions of this act: provided always, that it shall be lawful for the said commissioners, if they shall so think fit, from time to time, with the consent of the majority of the owners of property and rate-payers of any parish, or of any union now existing or to be formed under the provisions of this act, to alter the period for which the guardians to be appointed under the provisions of this act for such parish or union, or any of them, would under the provisions of this act hold office, for such other period or periods as to the said commissioners, with such consent as aforesaid, shall seem expedient, and also to make such alterations in the number, mode of appointment, removal, and period of service of the guardians, or any of them, of any parish, or of any union now existing or to be formed under the provisions of this act, as to the said commissioners, with such consent as aforesaid, shall deem expedient.

Commissioners may make rules, &c. for present or future workhouses, and vary bye-laws already in force or to be made hereafter.

42. And be it further enacted, that the said commissioners may and are hereby authorised, by writing under their hands and seal, to make rules, orders, and regulations, to be observed and enforced at every workhouse already established by virtue of the said recited act made and passed in the twenty-second year of the reign of his said late Majesty King George the Third, intituled, "An Act for the better Relief and Employment of the Poor," or any general or local act of parliament, or hereafter to be established by virtue of such acts, or of any of them, or of this or any other act of parliament relating to the relief of the poor, for the government thereof, and the nature and amount of the relief to be given to and the labour to be exacted from the persons relieved, and the preservation therein of good order, and from time to time to suspend, alter, vary, amend, or rescind the same, and make any new or other rules, orders, and regulations, to be observed and enforced as aforesaid, as they from time to time shall think fit, and to alter at their discretion, any of the rules, orders, and regulations contained in the schedule to the said recited act, and also to alter or rescind any rules, orders, and regulations heretofore made in pursuance of the said recited act, or any local act of parliament relating to workhouses or the relief of the poor: and that all rules, orders, and regulations to be from time to time made by the said commissioners under the authority of this act shall be valid and binding, and shall be obeyed and observed as if the same were specifically made by and embodied in this act; subject, nevertheless, to the said power of the said commissioners from time to time to rescind, amend, suspend, or alter the same: provided always, that if any such rule, order, or regulation shall be, at the time of issuing the same, directed to and affect more than one union, the same shall

Rules, &c. affecting more than one union to be deemed general rules. (*c*)

(*a*) Large parishes may be divided into wards, for the election of guardians, 7 & 8 Vic. c. 101, sects. 19, 20, 21.

(*b*) The commissioners may appoint districts for the auditors. The mode of appointment, and the power of the auditors, are pointed out by the 32nd and following sections of 7 & 8 Vic. c. 101. The guardians may appoint collectors to do the duties of assistant overseers (s. 61), and parishes with a population exceeding 20,000, managed under local acts, may elect permanent paid auditors, s. 65.

(*c*) A *general* rule cannot be altered by a *particular* rule, 5 & 6 Vic. c. 57, s. 3.

4 & 5 Will. IV. c. 76.

be considered as a general rule, and subject and liable to all the provisions in this act contained respecting general rules.

Justices empowered to see bye-laws enforced, and to visit workhouses, pursuant to 30 Geo. III. c. 49.

43. And be it further enacted, that where any rules, orders, or regulations, or any bye-laws, shall be made or directed by the said commissioners to be observed or enforced in any workhouse, it shall and may be lawful for any justice of the peace acting in and for the county, place, or jurisdiction in which such workhouse shall be situate, to visit, inspect, and examine such workhouse at such times as he shall think proper, for the purpose of ascertaining whether such rules, orders, regulations, or bye-laws, are or have been duly observed and obeyed in such workhouse, as well as for such other purposes, as justices are now authorised to visit workhouses under and by virtue of a certain act made and passed in the thirtieth year of the reign of his said late Majesty King George the Third, intituled, "An Act to empower Justices and other Persons to visit Parish Workhouses or Poorhouses, and examine and certify the State and Condition of the Poor therein to the Quarter Sessions;" and if in the opinion of such justice such rules, orders, regulations, or bye-laws, or any of them, have not been duly observed and obeyed in such workhouse, it shall be lawful for such justice to summon the party offending in such respect to appear before any two justices of the peace, to answer any complaint touching the non-observance of such rules, orders, regulations, and bye-laws, or any of them, and upon conviction before such two justices of the party so offending, such party shall forfeit and be liable to such penalties and punishments as are hereinafter prescribed and provided against parties wilfully neglecting or disobeying the rules, orders, or regulations of the said commissioners: provided always, that where no such rules, orders, regulations, or bye-laws, shall have been directed by the said commissioners to be enforced and observed in the workhouse of any parish, nothing in this act contained shall be construed to restrain or prevent any justice of the peace, physician, surgeon, or apothecary, or the officiating clergyman of any parish, from visiting such workhouse, and examining and certifying the state and condition of the same, and of the poor therein, in such manner as they or any of them are authorised to do in and by the said last-recited act.

The power given to justices, &c. to visit workhouses reserved where commissioners' rules, &c. are not in force.

Buildings taken for workhouses to be within the jurisdiction of the place to which they belong, though situated without. (a)

44. Whereas the jurisdiction of certain cities, boroughs, and corporate towns, is not always co-extensive with the parish in which it exists; be it therefore enacted, that every house or building which shall be erected, purchased, or hired as and for a workhouse, together with all premises and appurtenances thereto belonging, and the land or lands occupied therewith, shall be deemed and held to be within and subject to the local jurisdiction of such incorporated city, borough, or town to which they may respectively belong, though the same may be situated in such part of the respective parishes as may not be within the chartered boundaries thereof.

No lunatic, insane person, or dangerous idiot, to be detained in a workhouse more than fourteen days.

45. And be it further enacted, that nothing in this act contained shall authorise the detention in any workhouse of any dangerous lunatic, insane person, or idiot, for any longer period than fourteen days; and every person wilfully detaining in any workhouse any such lunatic, insane person, or idiot, for more than fourteen days, shall be deemed guilty of a misdemeanor: provided always, that nothing herein contained shall extend to any place duly licensed for the reception of lunatics and other insane persons, or to any workhouse being also a county lunatic asylum.

Commissioners may direct overseers and guardians to appoint paid officers for parishes or unions; (b)

46. And be it further enacted, that it shall be lawful for the said commissioners, as and when they shall see fit, by order under their hands and seal, to direct the overseers or guardians of any parish or union, or of so many parishes or unions as the said commissioners may in such order specify and declare to be united for the purpose only of appointing and paying officers, to appoint such paid officers with such qualifications as the said commissioners shall think necessary for superintending or assisting in the administration of the relief and employment of the poor, and for the examining and auditing, allowing or disallowing of accounts in such parish or union, or united parishes, and otherwise carrying the provisions of this act into execution; and the said commissioners may and they are hereby empowered to define and specify and direct the execution of the respective duties of such officers, and the places or limits within which the same shall be performed, and direct the mode of the appointment and

and fix their duties, and the mode of appointment and dismissal, and the security;

(a) For the purposes of relief, settlement, removal, and burial of the poor, the workhouse and district school shall be considered as situated in the parish to which the pauper is chargeable, 7 & 8 Vic. c. 101, s. 56.

(b) As to the power of the commissioners under this act, see pp. 38, 43.

determine the continuance in office or dismissal of such officers, and the amount and nature of the security to be given by such of the said officers as the said commissioners shall think ought to give security, and, when the said commissioners may see occasion, to regulate the amount of salaries payable to such officers respectively, and the time and mode of payment thereof, and the proportions in which such respective parishes or unions shall contribute to such payment; and such salaries shall be chargeable upon and payable out of the poor-rates of such parish or union, or respective parishes, in the manner and proportions fixed by the said commissioners, and shall be recoverable against the overseers or guardians of such parish or union, or parishes, by all such ways and means as the salaries of assistant overseers or other paid officers of any parish or union are recoverable by law; and all such payments shall be valid, and shall be allowed in the accounts of the overseers or guardians paying the same.

and regulate their salaries.

Overseers, &c. to pass accounts quarterly. (*a*)

47. And be it further enacted, that every overseer, treasurer, or other person having the collection, receipt, or distribution of the moneys assessed for the relief of the poor in any parish or union, or holding or accountable for any balance or sum of money, or any books, deeds, papers, goods, or chattels relating to the relief of the poor, or the collection or distribution of the poor-rate of any parish or union, shall once in every quarter, in addition to the annual account now by law required, and where the rules, orders, and regulations of the said commissioners shall have come in force, then as often as the said rules, orders, and regulations shall direct, but not less than once in every quarter, make and render to the guardians, auditors, or such other persons as by virtue of any statute or custom, or of the said rules, orders, or regulations, may be appointed to examine, audit, allow, or disallow such accounts, or in default of any such guardian, auditor, or other person being so appointed as aforesaid, then to the justices of the peace at their petty sessions for the division in which such parish or union shall be situate, a full and distinct account in writing of all moneys, matters, and things committed to their charge, or received, held, or expended by them on behalf of any such parish or union, and if thereunto required by the justices, guardians, auditors, or other persons authorised in that behalf, shall verify on oath the truth of all such accounts and statements, from time to time respectively, or subscribe a declaration to the truth thereof, in manner and under the penalties in this act provided for parties giving false evidence or refusing to give evidence under the provisions of this act; and all balances due from any guardian, treasurer, overseer, or assistant overseer, or other person having the control and distribution of the poor-rate, or accountable for such balances, may be recovered in the same manner as any penalties and forfeitures are recoverable under this act: provided, nevertheless, that no such proceeding, shall exonerate or discharge the liability of the surety of any such treasurer, overseer, assistant overseer, or other person as aforesaid.

Recovery of balances.

Surety not to be discharged.

Masters of workhouses and parish officers to be under order of board, and removable by them.

48. And be it further enacted, that the said commissioners may and they are hereby authorised and empowered, as and when they shall think proper, by order under their hands and seal, either upon or without any suggestion or complaint in that behalf from the overseers or guardians of any parish or union, to remove any master of any workhouse, or assistant overseer, or other paid officer of any parish or union whom they shall deem unfit for or incompetent to discharge the duties of any such office, or who shall at any time refuse or wilfully neglect to obey and carry into effect any of the rules, orders, regulations, or bye-laws of the said commissioners, whether such union shall have been made or such officer appointed before or after the passing of this act, and to require from time to time the persons competent in that behalf to appoint a fit and proper person in his room; and that any person so removed shall not be competent to be appointed to or to fill any paid office connected with the relief of the poor in any such parish or union, except with the consent of the said commissioners under their hands and seal: provided always, that no person shall be eligible to hold any parish office, or have the management of the poor in any way whatever, who shall have been convicted of felony, fraud, or perjury.

(*a*) This clause did not supersede the annual account required by the 50 G. III. c. 49, but the 7 & 8 Vic. c. 101, s. 37, enacts, "That where a district auditor has been appointed, the power of the justices to allow or disallow accounts shall cease."

The accounts must be passed as often as the commissioners shall direct, but not less than half-yearly, *Ib.* s. 36.

For an indictment under this section see p. 366.

4 & 5 *Will. IV.* c. 76.

Contracts not to be valid unless conformable to the rules of commissioners. (*a*)

49. And be it further enacted, that any contract which shall be entered into by or on behalf of any parish or union, for or relating to the maintenance, clothing, lodging, employment, or relief of the poor, or for any other purpose relating to or connected with the general management of the poor, which shall not be made and entered into in conformity with the rules, orders, or regulations of the said commissioners in that behalf in force at thetime of making and entering into the same, or otherwise sanctioned by them, shall be voidable, and, if the said commissioners shall so direct, shall be null and void; and all payments made under or in pursuance of any contract not made and entered into in conformity with such rules, orders, or regulations at any period after the said commissioners shall have declared the same to be null and void as aforesaid, shall be disallowed in passing the accounts of the overseer, guardian, or other officer by whom such payments shall have been made.

Repeal of 45 Geo. III. c. 54, as to contracts.

50. And be it further enacted, that from and after the passing of this act, a certain act made and passed in the forty-fifth year of the reign of his said late Majesty King George the Third, intituled, "An Act to amend an Act made in the ninth year of King George the First, for amending the Laws relating to the Settlement, Employment, and Relief of the Poor, so far as the same respects Contracts to be entered into for the Maintenance and Employment of the Poor," shall be and the same is hereby repealed: provided always, that nothing in this act contained shall extend or be construed to extend to affect or make void any bond or other security which shall have been entered into or given before the passing of this act, under or in pursuance of the provisions of the said act hereby repealed.

The penalty imposed by 55 Geo. III. c. 137, on persons having the management of the poor being concerned in any contract extended to persons appointed under this act.

51. And be it further enacted, that so much of a certain act made and passed in the fifty-fifth year of the reign of his said late Majesty King George the Third, intituled "An Act to prevent poor Persons in Workhouses from embezzling certain Property provided for their Use; to alter and amend so much of an Act of the thirty-sixth year of his present Majesty as restrains Justices of the Peace from ordering Relief to poor Persons in certain cases for a longer period than one Month at a time; and for other purposes therein mentioned, relating to the Poor," as inflicts a penalty on persons having the management of the poor if concerned in providing or in any contract for the supply of any goods, materials, or provisions for the use of any workhouse or workhouses, or otherwise for the support or maintenance of the poor for their own profit, and all remedies for the recovery of such penalties, shall apply, and the same are hereby extended and made applicable to every commissioner, assistant commissioner, guardian, treasurer, master of a workhouse, or other officer to be appointed under the provisions of this act.

Commissioners to regulate the relief to able-bodied paupers and their families out of the workhouse.

52. And whereas a practice has obtained of giving relief to persons or their families, who at the time of applying for or receiving such relief were wholly or partially in the employment of individuals, and the relief of the able-bodied and their families is in many places administered in modes productive of evil in other respects; and whereas difficulty may arise in case any immediate and universal remedy is attempted to be applied in the matters aforesaid; be it further enacted, that from and after the passing of this act it shall be lawful for the said commissioners, by such rules, orders, or regulations as they may think fit, to declare to what extent and for what period the relief to be given to able-bodied persons or to their families in any particular parish or union may be administered out of the workhouse of such parish or union, by payments in money, or with food or clothing in kind, or partly in kind and partly in money, and in what proportions, to what persons or class of persons, at what times and places, on what conditions, and in what manner such out-door relief may be afforded; and all relief which shall be given by any overseer, guardian, or other person having the control or distribution of the funds of such parish or union, contrary to such orders or regulations, shall be, and same is hereby declared to be unlawful, and shall be disallowed in the accounts of the person giving the same, subject to the exceptions hereinafter mentioned: provided always, that in case the overseers or guardians of any parish or union to which such orders or regulations shall be addressed or directed shall, upon consideration of the special circumstances of such parish or union, or of any person or class of persons therein, be of opinion that the application and enforcing of such

Relief contrary to their regulations to be disallowed.

But overseers may delay the operation of such regulations under special circumstances, and make report thereof to commissioners.

(*a*) The notices of contracts required by 55 Geo. III. c. 137, s. 7, is repealed, by 7 & 8 Vic. c. 101, s. 67.

orders or regulations, or of any part thereof, at the time or in the manner prescribed by the said commissioners, would be inexpedient, it shall be lawful for such overseers or guardians to delay the operation of such orders or regulations, or of any part thereof, for any period not exceeding the space of thirty days, to be reckoned from the day of the receipt of such orders or regulations; and such overseers or guardians shall, twenty days at the least before the expiration of such thirty days, make a statement and report of such special circumstances to the said commissioners; and all relief which shall be given by such overseers or guardians, before an answer to such report shall have been returned by the said commissioners, if otherwise lawful, shall not be deemed unlawful, although the same shall have been given contrary to such orders or regulations, or any of them; but in case the said commissioners shall disapprove of such delay, or think that for the future such orders or regulations ought to come into operation, notwithstanding the special circumstances alleged by such overseer or guardian, it shall be lawful for the said commissioners, by a peremptory order, to direct that from and after a day to be fixed thereby such orders and regulations, or such parts or modifications thereof as they may think expedient and proper, shall be enforced and observed by such overseers and guardians; and if any allowance be made or relief given by such overseers or guardians after the said last-mentioned period, contrary to any such last-mentioned order, the amount of the relief or allowance so given shall be disallowed in the accounts of the party giving the same: provided also, that a quarterly report of all such cases as shall occur in any quarter shall, at the end of every such quarter, be laid by the said commissioners before one of his Majesty's principal secretaries of state: provided also, that in case the overseers or guardians of any parish or union in which such orders or regulations shall be in force shall depart from them or any of them in any particular instance or instances of emergency, and shall within fifteen days after every such departure report the same and the grounds thereof to the said commissioners, and the said commissioners shall approve of such departure, or if the relief so given shall have been given in food, temporary lodging, or medicine, and shall have been so reported as aforesaid, then and in either of such cases the relief granted by such overseers or guardians, if otherwise lawful, shall not be unlawful or subject to be disallowed.

If commissioners disapprove of delay, they may fix a day from which all such relief shall be disallowed.

Cases of emergency.

53. And be it further enacted, that an act passed in the thirty-sixth year of the reign of his late Majesty King George the Third, intituled "An Act to amend so much of an Act made in the ninth year of the reign of King George the First, intituled 'An Act for amending the Laws relating to the Settlement, Employment, and Relief of the Poor,' as prevents the distributing occasional Relief to poor Persons in their own Houses, under certain circumstances and in certain cases;" and so much of an act made and passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled "An Act to prevent poor Persons in Workhouses from embezzling certain Property provided for their use, to alter and amend so much of an act of the thirty-sixth year of his present Majesty as restrains Justices of the Peace from ordering Relief to poor Persons in certain cases for a longer period than one Month at a time, and for other purposes therein mentioned relating to the Poor," as extends the period for which occasional relief may be ordered by any justice, or justices to poor persons at their own homes; and so much of the said act made and passed in the fifty-ninth year of the reign of his late Majesty King George the Third, intituled "An Act to amend the Laws for the Relief of the Poor," as empowers any justice or justices to order relief in certain cases for a limited time, or in cases of urgent necessity, or in cases where parishes are under the management of guardians, governors, or directors appointed by special or local acts, or in cases where parishes have not a select vestry, shall be and the same are hereby repealed.

Repeal of 36 Geo. III. c. 23; 55 Geo. III. c. 137, ss. 3 & 4; and 59 Geo. III. c. 12, ss. 2 & 5, enabling justices, guardians, vestries, &c., ordering relief.

54. And be it further enacted, that from and after the passing of this act, the ordering, giving and directing of all relief to the poor of any parish, which according to the provisions of any of the said recited acts, or of an act passed in the first and second years of the reign of his present Majesty, intituled "An Act for the better regulating of Vestries, and for the appointment of Auditors of Accounts in certain Parishes in England and Wales," or of this act or of any local acts, shall be under the government and control of any guardians of the poor, or of any select vestry, and whether forming part of any union or incorporation or not, (but subject in all cases to, and saving and excepting the powers of, the said commissioners appointed under this act,) shall appertain and belong

No relief to be in future given, except by board of guardians, &c. P. 971, n.

4 & 5 *Will. IV. c.* 76.

exclusively to such guardians of the poor, or select vestry, according to the respective provisions of the acts under which such guardians or select vestry may have been or shall be appointed; and it shall not be lawful for any overseer of the poor to give any further or other relief or allowance from the poor-rate than such as shall be ordered by such guardians or select vestry, except in cases of sudden and urgent necessity, in which cases he is hereby required to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief or not: provided always, that in case such overseer shall refuse or neglect to give such necessary relief in any case of necessity to poor persons not settled nor usually residing in the parish to which such overseer belongs, it shall and may be lawful for any justice of the peace to order the said overseer, by writing under his hand and seal, to give such temporary relief in articles of absolute necessity, as the case shall require, but not in money; and in case such overseer shall disobey such order, he shall, on conviction before two justices, forfeit any sum not exceeding five pounds which such justices shall order: provided always, that any justice of the peace shall be empowered to give a similar order for medical relief (only) to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it; and any overseer shall be liable to the same penalties as aforesaid for disobeying such order; but it shall not be lawful for any justice or justices to order relief to any person or persons from the poor-rates of any such parish, except as hereinbefore provided.

Except in sudden and urgent necessity.

Any justice may give order for medical relief in dangerous illness.

Masters of workhouses and overseers to keep registers.

55. And be it enacted, that from and after the passing of this act the master of every workhouse, or such other paid officer of the parish or union as the said commissioners may direct, shall, on such day and in such form as the said commissioners shall appoint, take an account of, and register in a book to be provided at the expense of the parish or union to which such workhouse shall belong, and to be kept specially for that purpose, the name of every poor person who shall on such days be in the receipt of relief at or in such workhouse, together with such particulars respecting the families and settlement of every such poor person, and his and their relief and employment, as the said commissioners shall think fit; and in like manner, on such day as the said commissioners shall appoint, the overseer of the poor of every such parish shall register in a book, to be provided and kept as aforesaid, the name of every poor person then in the receipt of relief in such parish out of the workhouse, together with such particulars respecting the family and settlement of every such poor person, and his and her relief and employments, as the said commissioners shall think fit; and after such account shall have been so taken and registered as aforesaid a similar register and account shall be kept by the like persons respectively of all persons who shall receive relief at or in or out of a workhouse, when and as often as such relief shall be granted.

Poor persons liable for relief to wife or children.

56. And be it further enacted, that from and after the passing of this act that all relief given to or on account of the wife, or to or on account of any child or children under the age of sixteen, not being blind or deaf and dumb, shall be considered as given to the husband of such wife, or to the father of such child or children, as the case may be, and any relief given to or on account of any child or children under the age of sixteen of any widow, shall be considered as given to such widow: provided always, that nothing herein contained shall discharge the father and grandfather, mother and grandmother, of any poor child, from their liability to relieve and maintain such poor child in pursuance of the provisions of a certain act of parliament passed in the forty-third year of the reign of her late Majesty Queen Elizabeth, intituled "An Act for the Relief of the Poor."

43 Eliz. c. 2.

Husband liable to maintain children of wife born before marriage. (a)

57. And be it further enacted, that every man who from and after the passing of this act shall marry a woman having a child or children at the time of such marriage, whether such child or children be legitimate or illegitimate, shall be liable to maintain such child or children as a part of his family, and shall be chargeable with all relief, or the cost price thereof, granted to or on account of such child or children, until such child or children shall respectively attain the age of sixteen, or until the death of the mother of such child or children; and

(a) Not so by the common law. *Tubb* v. *Harrison*, 4 *T. R.* 118; *Cooper* v. *Martin*, 4 *East*, 76. The children are not removable to the husband's settlement, (*ante*, p. 429); but may be removed to their own (pp. 429, 430), if the removal does not effect the separation of parent and child, p. 432.

such child or children shall, for the purposes of this act, be deemed a part of such husband's family accordingly.

Such relief as commissioners may direct to be considered as loan. (*a*)

58. And be it further enacted, that from and after the passing of this act, any relief, or the cost price thereof, which shall be given to or on account of any poor person above the age of twenty-one, or to his wife, or any part of his family under the age of sixteen, and which the said commissioners shall by any rule, order, or regulation declare or direct to be given or considered as given by way of loan, and whether any receipt for such relief, or engagement to repay the same, or the cost price thereof, or any part thereof, shall have been given or not by the person to or on account of whom the same shall have been so given, shall be considered and the same is hereby declared to be a loan to such poor person.

Power to justices to attach wages in hands of master or employer.

59. And be it further enacted, that in all cases where any relief shall have been given by way of loan, or where any relief, or the cost price thereof, shall be treated as a loan, under the rules, orders, and regulations of the said commissioners, or the provisions of this act, it shall be lawful for any justice, upon the application of the overseers or guardians of the parish or union providing such relief, and upon proof of the same having been given to or on account of any such person, his wife or family, as aforesaid, and of the same, or any part thereof, still remaining due, to issue a summons, requiring such person, as well as the master or employer of such person, or some person on his behalf, to appear before any two justices, at a time and place to be named in such summons, to show cause why any wages due, or which may from time to time become due, from such master or employer, should not be paid over, in whole or in part, to such overseers or guardians; and if no sufficient cause be shown to the contrary, or if such person, or some one on his behalf, shall not appear on the return of such summons, then the said justices shall, by order under their hands, direct the master or employer for the time being, from whom any wages shall be due or from time to time become due or payable to such poor person, to pay, either in one sum, or by such weekly or other instalments as the said justices shall in their discretion think fit, taking into consideration the circumstances of such poor person and his family, out of such wages, to such overseers or guardians, the amount of such relief, or so much thereof as shall from time to time be due or unpaid; and the payment to and receipt of any such overseer or guardian shall be a good discharge to such master or employer for so much of any such wages as shall be so paid by virtue of any such order; and if any such master or employer shall refuse or neglect to pay to the overseer or guardian producing any such order the money thereby directed to be paid, according to the terms of such order, and at the periods thereby fixed for such payment, the same may be levied and recovered, and the payment thereof from time to time enforced against such master or employer, in such and the like manner as penalties and forfeitures are recoverable under this act.

Mode of proceeding against masters for recovery thereof.

Repeal of so much of 43 Geo. III. c. 47, as requires relief to be given to wives and families of substitutes, hired men, or volunteers of militia.

60. And be it further enacted, that from and after the passing of this act so much of an act passed in the forty-third year of the reign of his said late Majesty King George the Third, intituled "An Act for consolidating and amending the several Laws for providing Relief for the Families of Militiamen in England when called out into actual Service," as directs overseers of the poor, by order of some one justice of the peace, to pay to the family of any person serving or enrolled as a balloted man, substitute, hired man, or volunteer in the militia of England, a weekly allowance, or as authorises any justice or justices to order such allowance to be paid under the rules and conditions in the said recited act provided, or as in any way discharges such balloted man, substitute, hired man, or volunteer from the liability to maintain or repay the costs of maintenance of his family or any part thereof, or as prevents such families or any part thereof from being removable to their place of legal settlement, or sent to any workhouse, by reason of their receiving any allowance or being chargeable, shall be and the same is hereby repealed.

Justices to certify that rules of commissioners have been complied with in binding poor children apprentices. (*b*)

61. And be it further enacted, that from and after the period at which any

(*a*) Relief given to the wife of a person beyond the seas, or in prison, or confined in a lunatic asylum, subject to the same rules as if she was a widow, 7 & 8 Vic. c. 101, s. 25; and by s. 26, widows in certain cases may be relieved, although they are not resident in the union.

(*b*) The commissioners may prescribe the duties of masters of apprentices, and the terms and conditions of the indenture, and a penalty of 20*l.* is attached to the wilful neglect of them, 7 & 8 Vic. c. 101, s. 12. All statutes *compelling* persons to receive apprentices are repealed, s. 13.

4 & 5 *Will. IV. c.* 76.

rule, order, or regulation of the said commissioners shall come into operation for the binding of poor children apprentices, in addition to such assent or consent, order or allowance of justices, as are now required by law, such justices or any one justice are and is hereby authorised and required to examine and ascertain whether the rules, orders, or regulations of the said commissioners then in force for the binding of poor children apprentices have been complied with, and to certify the same at the foot of every such contract or indenture, and of the counterpart thereof, in such form and manner as the said commissioners by such rules, orders, or regulations may direct, and until so certified no such contract or indenture of apprenticeship shall be valid: provided nevertheless, that nothing in this act, or in any rule, order, or regulation of the said commissioners, shall affect the jurisdiction of any justices of the peace over any master or apprentice during the period of apprenticeship.

Justice's power reserved as between master and apprentice.

Power to owners and rate-payers to raise money on security of rates for purposes of emigration. (*a*)

62. And be it further enacted, that it shall and may be lawful for the rate-payers in any parish, and such of the owners of property therein as shall in manner hereinbefore mentioned have required their names to be entered in the rate books of such parishes respectively as entitled to vote as owners, assembled at a meeting to be duly convened and held for the purpose, after public notice of the time and place of holding such meeting, and the purpose for which the same is intended to be held, shall have been given in like manner as notices of vestry meetings are published and given, to direct that such sum or sums of money, not exceeding half the average yearly rate for the three preceding years, as the said owners and rate-payers so assembled at such meeting may think proper, shall be raised or borrowed as a fund, or in aid of any fund or contribution for defraying the expenses of the emigration of poor persons having settlements in such parish, and willing to emigrate, to be paid out of or charged upon the rates raised or to be raised for the relief of the poor in such parish, and to be applied under and according to such rules, orders, and regulations as the said commissioners shall in that behalf direct: provided always, that no such direction for raising money for such purpose as aforesaid shall have any force or effect unless and until confirmed by the said commissioners, and that the time to be limited for the repayment of any sum so charged on such rates as aforesaid shall in no case exceed the period of five years from the time of borrowing the same: provided also, that all sums of money so raised as last hereinbefore mentioned, and advanced by way of loan, for the purposes of emigration, or such proportion thereof as the said commissioners shall by any rule, order, or regulation from time to time direct, shall be recoverable against any such person, being above the age of twenty-one years, who or whose family, or any part thereof, having consented to emigrate, shall refuse to emigrate after such expenses shall have been so incurred, or having emigrated shall return, in such and the like manner as is hereinbefore provided with respect to relief, or the cost price of relief, given or considered to be given by way of loan to any person, his wife or family.

Overseers may apply to commissioners of exchequer bills under act 57 Geo. III. c. 34, for advance of money.

63. And be it further enacted, that where it shall be lawful, under the provisions of any of the herein recited acts, or of any local act, or of this act, to raise or borrow any sum or sums of money for the purpose of purchasing, building, altering, or enlarging any workhouse or workhouses in any parish or union, or for purchasing land whereon to build the same, or for defraying the expenses of the emigration of poor persons having settlements in any parish, and being willing to emigrate, it shall be lawful for the overseers or guardians of such parish or union, with the consent of the said commissioners, to be testified under their hands and seal, to make application for an advance of any sum necessary for any such purposes to the commissioners appointed under an act made and passed in the fifty-seventh year of the reign of his late Majesty King George the Third, intituled "An Act to authorise the Issue of Exchequer Bills, and the Advance of Money out of the Consolidated Fund, to a limited Amount, for the carrying on of Public Works and Fisheries in the United Kingdom, and Employment of the Poor in Great Britain, in manner therein mentioned," and of any act or acts passed for amending or continuing the same; and the said Exchequer Bill Loan Commissioners are hereby empowered to make such advances, upon any such application as aforesaid, upon the security of the rates for the relief of the poor in such parish or union, and without requiring any further or other security than a charge on such rates.

(*a*) The guardians shall apply all money raised or borrowed for the purposes of emigration, subject to the conditions of this act, 7 & 8 Vic. c. 101, s. 29.

64. And be it further enacted, that from and after the passing of this act no settlement shall be acquired by hiring and service, or by residence under the same, or by serving an office.

4 & 5 Will. IV. c. 76.

65. And be it further enacted, that no person under any contract of hiring and service not completed at the time of the passing of this act shall acquire, or be deemed or adjudged to have acquired, any settlement by reason of such hiring and service, or of any residence under the same, (p. 476).

Repeal of settlement by hiring and service.

No settlement incomplete under hiring and service to be completed.

66. And be it further enacted, that from and after the passing of this act no settlement shall be acquired or completed by occupying a tenement, unless the person occupying the same shall have been assessed to the poor-rate, and shall have paid the same, in respect of such tenement, for one year.

No settlement acquired without paying poor-rate;

67. And be it further enacted, that from and after the passing of this act no settlement shall be acquired by being apprenticed in the sea service, or to a householder exercising the trade of the seas as a fisherman or otherwise, nor by any person now being such an apprentice in respect of such apprenticeship.

nor by being apprenticed in the sea service;

68. And be it further enacted, that no person shall be deemed, adjudged, or taken to retain any settlement, gained by virtue of any possession of any estate or interest in any parish, for any longer or further time than such person shall inhabit within ten miles thereof; and in case such person shall cease to inhabit within such distance, and thereafter become chargeable, such person shall be liable to be removed to the parish wherein, previously to such inhabitancy, he may have been legally settled, or in case he may have subsequently to such inhabitancy gained a legal settlement in some other parish, then to such other parish.

nor by possession longer than the person shall inhabit within ten miles thereof.

69. And be it further enacted, that from and after the passing of this act so much of any act or acts of parliament as enables any single woman to charge any person with having gotten her with any child of which she shall then be pregnant, or as renders any person so charged liable to be apprehended or committed, or required to give security, on any such charge, or as enables the mother of any bastard child or children to charge or affiliate any such child or children on any person as the reputed or putative father thereof, or as enables any overseer or guardian to charge or make complaint against any person as

Repeal of acts relating to liability and punishment of putative father, and punishment of mother of illegitimate children. (*a*)

(*a*) By the 2 & 3 Vic. c. 85, no application can be made to the quarter sessions, but when any bastard born since 4 & 5 Will. IV. c. 76, shall be chargeable, the guardians, and if there are none, the overseers, may apply to the justices of petty sessions for an order on putative father to reimburse the parish the expense of maintenance; and such justices have all the powers given by 4 & 5 Will. IV. c. 7. By s. 3, If the person charged as the putative father declares that he wishes the case to be heard at the quarter sessions, he may do so, on entering into recognizances to pay the costs, and then the justices of petty sessions can proceed no further. But no appeal is given by this act; the order, therefore, at the petty sessions will be final. *Reg.* v. *J. W. York*, 1 *Q. B.* 325.

Where the overseers made an application for an order, which the putative father removed to the quarter sessions, but the recorder was of opinion that they were not the proper parties to apply for it, yet they are liable for the costs of the application, and it is incumbent on their part to pay them. *Reg.* v. *Recorder of Exeter*, 13 *L. J.* 7, *M. C.*

The petty sessions have no power to give costs.

But now by 7 & 8 Vic. c. 101, all powers for obtaining an order on the putative father shall cease, except as therein provided; and by the 2nd section the putative father may be summoned to the petty sessions on application by the mother; and by the 3rd section the justices may make an order, the evidence of the mother being corroborated, for the payment of a sum not exceeding 5*s.* a-week for six weeks after the birth of the child, and 2*s.* 6*d.* afterwards, with a power of distress and commitment. An appeal is given by the 4th section. The money is to be paid to the mother, unless she is in gaol, &c., or chargeable to the parish. The order ceases when the child is thirteen years of age, and after the marriage of the mother or death of the child, sec. 5. The mother is punishable as a vagrant for neglect of her child, sec. 6. The order may be obtained, although the mother dies, sec. 7. Any officer of a union or parish, by threat or promise, endeavouring to induce any person to contract a marriage, is guilty of a misdemeanor, sec. 8. Existing orders to continue in force till 1st January, 1849, sec. 9. A justice of the peace for two counties may act in one county for that part of the union which is in the other, sec. 10. Returns of applications and orders to be made, sec. 11.

4 & 5 *Will. IV. c.* 76.

such reputed or putative father, and to require him to be charged with or contribute to the expenses attending the birth, sustentation, or maintenance of any such child or children, or to be imprisoned or otherwise punished for not contributing thereto, or as in any way renders such reputed or putative father liable to punishment or contribution as such, or as enables churchwardens and overseers, by the order of any two justices of the peace, confirmed by the sessions, to take, seize, and dispose of the goods and chattels, or to receive the annual rents or profits of the lands of any putative father of bastard children, and so much of any such act or acts as renders an unmarried woman with child liable as such to be summoned, examined, or removed, or as renders the mother of any bastard liable as such to be imprisoned or otherwise punished, shall, so far as respects any child which shall be likely to be born, or shall be born a bastard, after the passing of this act, or the mother or putative father of such child, be and the same is hereby repealed.

Securities and recognizances for indemnity of parishes against children likely to be born bastards to be null and void.

70. And be it further enacted, that every security given or recognizance entered into by any person or persons, or his or their surety, before the passing of this act, to indemnify any parish or place as to any child or children likely to be born a bastard or bastards, whereof any single woman shall be pregnant at the time of the passing of this act, or to abide and perform such order or orders as might have been made touching such child or children, pursuant to an act made and passed in the eighteenth year of the reign of her said late Majesty Queen Elizabeth, concerning bastards begotten and born out of lawful matrimony, shall be and the same are hereby declared null and void; and every person who shall at the time of the passing of this act be in custody upon the commitment of any justice or justices for not having given such security or entered into such recognizance, shall be discharged upon the application of such person by any one of the visiting justices of the gaol in which such person shall be in custody under any such commitment.

Persons in custody for not giving indemnity to be discharged.

Mother of illegitimate children bound to maintain the same.

71. And be it further enacted that every child, which shall be born a bastard after the passing of this act, shall have and follow the settlement of the mother of such child, until such child shall attain the age of sixteen, or shall acquire a settlement in its own right; and such mother, so long as she shall be unmarried or a widow, shall be bound to maintain such child as a part of her family, until such child shall attain the age of sixteen; and all relief granted to such child while under the age of sixteen shall be considered as granted to such mother; provided always, that such liability of such mother as aforesaid shall cease on the marriage of such child, if a female.

Court of quarter sessions, on application of overseers, &c. may make an order on putative father of child for its support. See p. 1261, *n.*

72. And be it enacted, that when any child shall hereafter be born a bastard, and shall, by reason of the inability of the mother of such child to provide for its maintenance, become chargeable to any parish, the overseers or guardians of such parish, or the guardians of any union in which such parish may be situate, may, if they think proper, after diligent inquiry as to the father of such child, apply to the next general quarter sessions of the peace within the jurisdiction of which such parish or union shall be situate, after such child shall have become chargeable, for an order upon the person whom they shall charge with being the putative father of such child, to reimburse such parish or union for its maintenance and support; and the court, to which such application shall be made shall proceed to hear evidence thereon, and if it shall be satisfied, after hearing both parties, that the person so charged is really and in truth the father of such child, it shall make such order upon such person in that respect as to such court shall appear to be just and reasonable under all the circumstances of the case: provided always, that no such order shall be made unless the evidence of the mother of such bastard child shall be corroborated in *some material particular* (*a*) by other testimony to the satisfaction of such court; provided also, that such order shall in no case exceed the actual expense incurred or to be incurred for the maintenance and support of such bastard child while so chargeable, and shall continue in force only until such child shall attain the age of seven years, if he shall so long live: provided also, that no part of the moneys paid by such putative father, in pursuance of such order, shall at any time be paid to the mother of such bastard child, nor in any way be applied to the maintenance and support of such mother.

Moneys paid not applicable to support of mother.

No application to be heard without fourteen days' previous notice.

73. And be it enacted, that no such application shall be heard at such sessions unless fourteen days' notice shall have been given under the hands of such overseers or guardians to the person intended to be charged with being the

(*a*) This must appear on the order. *Reg.* v. *Read*, 9 *A. & E.* 619.

father of such child of such intended application; and in case there shall not, previously to such sessions, have been sufficient time to give such notice, the hearing of such application shall be deferred to the next ensuing general quarter sessions: provided always, that whenever such application shall be heard, the costs of the maintenance of such bastard child shall, in case the court shall think fit to make an order thereon, be calculated from the birth of such bastard child, if such birth shall have taken place within six calendar months previous to such application being heard; but if such birth shall have taken place more than six calendar months previously to such application being heard, then from the day of the commencement of six calendar months next preceding the hearing of such application: provided also, that if upon the hearing of such application the court shall not think fit to make any order thereon, it shall order and direct that the full costs (*a*) and charges incurred by the person so intended to be charged in resisting such application shall be paid by such overseers or guardians.

If application be heard, costs may be calculated from birth of bastard child, if within six months.

74. And be it enacted, that if such person so intended to be charged shall not appear by himself or his attorney at the time when such application shall come on to be heard before such court, according to such notice, such court shall nevertheless proceed to hear the same, unless such overseers or guardians shall produce an agreement under the hand of such person to abide by such order as such court shall make thereon, without the hearing of evidence by such court: provided always, that such court may, notwithstanding such agreement, require that evidence shall be given in support of such application, if it thinks fit, before such order is made.

In the event of party charged not appearing, court may nevertheless enter into the case.

75. And be it enacted, that whenever such overseers or guardians shall have determined to make such application as aforesaid, it shall be lawful for one justice of the peace, at the request of such overseers or guardians, to summon the person so intended to be charged with being the father of such bastard child to appear before him; and if such justice shall be satisfied that such person has any intention to abscond or keep out of the way, in order to avoid the consequences of such application, such justice may require such person to enter into a recognizance to appear and answer thereto, and in case such person shall refuse or neglect to enter into such recognizance, may commit such person to the gaol or house of correction of the county, riding, or division, within which such parish shall be situate, until he shall enter into such recognizance, or until such application shall be heard.

Party summoned, if suspected of intending to abscond, may be required to enter into a recognizance for his appearance.

76. And be it enacted, that if at any time after the expiration of one calendar month after an order shall have been made in pursuance of such application it shall appear to one justice, upon the oath of any one of such overseers or guardians, that the payments directed to be made by such order have not been made according thereto, and are in arrear, it shall be lawful for such justice or any other justice, by warrant under his hand and seal, to cause such putative father of such bastard child to be brought before two justices of the peace; and in case such putative father shall refuse or neglect to make payment of such sum of money as shall appear to such justices to be due from him under such order, together with the costs of apprehension, it shall be lawful for such or any two justices to proceed to recover such sum and costs by distress and sale of the goods and chattels of such putative father, or by attaching the wages of such putative father for the recovery of such sum and costs, in the same manner as wages may be attached under the provisions of this act.

When payments get into arrear, putative father may be proceeded against by distress or attachment of wages.

77. And be it further enacted, that it shall not be lawful for any person hereafter to be appointed in any parish or union to any office concerned in the administration of the laws for the relief of the poor, or for any person who after the twenty-fifth day of March, one thousand eight hundred and thirty-five, shall fill any such office, to furnish or supply, for his own profit or on his own account, any goods, materials, or provisions ordered to be given in parochial relief, or to furnish or supply any goods, materials, or provisions for or in respect of the money ordered to be given in parochial relief, to any person in such parish or union; and every person holding such office shall, on conviction before any two justices of the peace, be subject to a penalty of five pounds for such offence, one-half of which penalty shall be paid to the informer, and the other half in aid of the poor-rates of such parish or union.

No person employed in administration of poor laws to furnish, for his own profit, goods or provisions given in parochial relief, p. 399.

(*a*) This is still imperative on the court in those cases where the putative father elects to have the case heard at the quarter sessions. *Reg.* v. *Recorder of Exeter*, p. 1202 *n.*

4 & 5 *Will. IV. c.* 76.

Sums payable under 43 Eliz. c. 2, s. 7, by relations of poor persons, how recoverable.

78. And be it further enacted, that all sums of money which shall be assessed by any justices of the peace on the father, grandfather, mother, grandmother, child, or children of any poor person, for the relief or maintenance of such poor person, under or by virtue of the provisions of a certain act passed in the forty-third year of the reign of her late Majesty Queen Elizabeth, intituled "An Act for the Relief of the Poor," or of any act to amend the same, or of this act, and all penalties and forfeitures to which any person so assessed by such justices for such relief or maintenance, shall be liable for any default in paying the same by virtue of the provisions of any of the said recited acts or of this act, shall be recoverable against every person so assessed or charged, in like manner as penalties and forfeitures are recoverable under the provisions of this act.

No person to be removed till after notice of his being chargeable has been sent to the parish to which order of removal is directed.

Such person may be removed if order submitted to;

but not in case of appeal.

79. And be it further enacted, that from and after the first day of November, one thousand eight hundred and thirty-four, no poor person shall be removed or removable, under any order of removal from any parish or workhouse, by reason of his being chargeable to or relieved therein, until twenty-one days after a notice in writing of his being so chargeable or relieved, accompanied by a copy or counterpart of the order of removal of such person, and by a copy of the examination upon which such order was made, shall have been sent, by post or otherwise, by the overseers or guardians of the parish obtaining such order, or any three or more of such guardians, to the overseers of the parish to whom such order shall be directed: provided always, that if such overseers or guardians as last aforesaid, or any three or more of such guardians, shall by writing under their hands agree to submit to such order, and to receive such poor person, it shall be lawful to remove such poor person according to the tenor of such order, although the said period of twenty-one days may not have elapsed: provided also, that if notice of appeal against such order of removal shall be received by the overseers or guardians of the parish from which such poor person is directed in such order to be removed within the said period of twenty-one days, it shall not be lawful to remove such poor person until after the time for prosecuting such appeal shall have expired, or, in case such appeal shall be duly prosecuted, until after the final determination of such appeal.

In case of appeal the overseers to have access to such poor person touching his settlement.

80. And be it enacted, that the overseers or guardians of the parish giving such notice of appeal, or their attorney, or any other person authorised by them, shall, until such appeal shall have been heard and decided, at all proper times have free access to such poor person for the purpose of examining him touching his settlement; and in case it shall be necessary for the more effectual examination of such person that he should be taken out of the removing parish, such overseers or guardians shall be permitted to remove him therefrom for the time which may be necessary for that purpose: provided always, that the expense of such removal, and of his maintenance during the same, shall be defrayed by the appellant parish.

Grounds of appeal to be stated in notice.

81. And be it further enacted, that after the first day of November, one thousand eight hundred and thirty-four, in every case where notice of appeal against such order shall be given, the overseers or guardians of the parish appealing against such order, or any three or more of such guardians, shall with such notice, or (*a*) *fourteen days at least* before the first day of the sessions at which such appeal is intended to be tried, send or deliver to the overseers of the respondent parish a statement in writing under their hands of the grounds of such appeal; and it shall not be lawful for the overseers of such appellant parish to be heard in support of such appeal, unless such notice and statement shall have been so given as aforesaid: provided always, that it shall not be lawful for the respondent or appellant parish, on the hearing of any appeal, to go into or give evidence of any other grounds of removal, or of appeal against any order of removal, than those set forth in such respective order, examination, or statement as aforesaid.

Parish losing appeal to pay such costs as court may direct.

82. And be it further enacted, that upon every such appeal the court before whom the same shall be brought shall and may, if they think fit, order and direct the parish against which the same shall be decided to pay to the other such costs and charges as may to such court appear just and reasonable, and shall certify the amount thereof; and in case the overseers of the poor of the parish liable to pay the same, shall upon demand, and upon the production of such certificate, refuse or neglect to pay the same, the amount thereof may be reco-

(*a*) Exclusive of the day of service and the first day of the sessions, p. 1148.

vered from such overseer in the same manner as any penalties or forfeitures are by this act recoverable.

Party making frivolous or vexatious statement to pay costs.

83. And be it further enacted, that if either of the parties shall have included in the order or statement sent as hereinbefore directed any grounds of removal or of appeal, which shall in the opinion of the justices determining the appeal be frivolous and vexatious, such party shall be liable, at the discretion of the said justices, to pay the whole or any part of the costs incurred by the other party in disputing any such grounds, such costs to be recovered in the manner hereinbefore directed as to the other costs incurred by reason of such appeal.

Costs of relief to be paid by parish to which poor persons belong.

84. And be it further enacted, that the parish to which any poor person whose settlement shall be in question at the time of granting relief shall be admitted or finally adjudged to belong, shall be chargeable with and liable to pay the cost and expense of the relief and maintenance of such poor person, and such cost and expense may be recovered against such parish in the same manner as any penalties or forfeitures are by this act recoverable: provided always, that such parish, if not the parish granting such relief, shall pay to the parish by which such relief shall be granted the cost and expense of such relief and maintenance from such time only as notice of such poor person having become chargeable shall have been sent by such relieving parish to the parish to which such poor person shall be so admitted or finally adjudged to belong: provided always, that no charges or expenses of relief or maintenance shall be recoverable under a suspended order of removal, unless notice of such order of removal, with a copy of the same, and of the examination upon which such order was made, shall have been given within ten days of such order being made to the overseers of the poor of the parish to whom such order is directed.

Relief under suspended order not to be recoverable unless notice sent of such order.

Power to call for and publish accounts of trust and charity estates.

85. And be it enacted, that it shall be lawful for the said commissioners, and they are hereby empowered from time to time, as they may think fit, to require from all persons in whom any freehold, copyhold, or leasehold estates, or any other property or funds belonging to any parish, and held in trust for or applicable to the relief of the poor, or which may be applied in diminution of the poor-rate of such parish, shall be vested, or who shall be in the receipt of the rents, profits, or income of any such estate, property, or funds, a true and detailed account in writing of the place where such estate may be situate, or in what mode or on what security such other property or funds may be invested, with such details of the rents, profits, and income thereof, and of the appropriation of the same, and of all such other particulars relating thereto, as the said commissioners may direct and require; and such statement or a true copy thereof shall, under the regulations of the said commissioners, be open for the inspection of the owners of property and rate-payers in such parish: provided always, that nothing hereinbefore contained shall apply to any funds raised from time to time by the voluntary contributions of the inhabitants of any parish.

Advertisements, &c., not liable to stamp duty.

86. And be it further enacted, that no advertisement inserted by or under the direction of the said commissioners in the London Gazette or any newspaper, for the purpose of carrying into effect any provisions of this act, nor any mortgage, bond, instrument, or any assignment thereof, given by way of security in pursuance of the rules, orders, or regulations of the said commissioners, and conformable thereto, nor any contract or agreement, or appointment of any officer, made or entered into in pursuance of such rules, orders, or regulations, and conformable thereto, nor any other instrument made in pursuance of this act, nor the appointment of any paid officer engaged in the administration of the laws for the relief of the poor, or in the management or collection of the poor-rate, shall be charged or chargeable with any stamp duty whatever.

Bonds and securities made pursuant to 22 Geo. III. c. 83, and assignments thereof, exempted from stamp duty.

87. And whereas by an act passed in the twenty-second year of the reign of King George the Third, intituled "An Act for the better Relief and Employment of the Poor," the visitor and guardian of the poor of any parish, township, or place, which shall adopt the provisions of the said recited act, are authorised thereby to borrow money at interest for the purposes mentioned in the said act, and to secure such money by a charge upon the poor's rates of such parish, township, or place, in sums not exceeding fifty pounds each, in a certain form contained in the schedule to the said act, or to that or to the like effect, and which security is directed and allowed to be assigned by indorsement on the back thereof in a certain form also contained in the said schedule, or to that or the like effect: and whereas doubts have arisen touching the liability of

4 & 5 *Will. IV. c.* 76.

such securites as aforesaid, and the assignments or transfers thereof to stamp duty, and it is expedient to remove the same; be it therefore enacted and declared, that no bond or other security at any time heretofore or to be at any time hereafter made or entered into in pursuance of the said recited act, nor any assignment or transfer thereof, shall be charged or chargeable with, or be deemed to be or to have been subject or liable to any stamp duty whatsoever; anything in any act contained to the contrary thereof notwithstanding.

Letters to and from board of commissioners to be free of postage, if sent conformable hereto.

88. And be it further enacted, that the said commissioners shall and may receive and send by the general post from and to places within the United Kingdom, all letters and packets relating solely and exclusively to the execution of this act free from the duty of postage, provided that such letters and packets as shall be sent to the said commissioners be directed to the "Poor Law Commissioners," at their office in London, and that all such letters and packets as shall be sent by the said commissioners shall be in covers, with the words "Office of Poor Law Commissioners, pursuant to Act of Parliament passed in the fifth year of the reign of his Majesty King William the Fourth," printed on the same, and be signed on the outside thereof, under such words, with the name of such person as the said commissioners, with the consent of the Lords Commissioners of the Treasury, or any three or more of them, shall authorise and appoint, in his own handwriting, (such name to be from time to time transmitted to the secretaries of the General Post-office in London and Dublin,) and be sealed with the seal of the said commissioners, and under such other regulations and restrictions as the said Lords Commissioners, or any three or more of them, shall think proper and direct: and the person so to be authorised is hereby strictly forbidden so to subscribe or seal any letter or packet whatever, except such only concerning which he shall receive the special direction of his superior officer, or which he shall himself know to relate solely and exclusively to the execution of this act; and if the person so to be authorised, or any other person, shall send or cause or permit to be sent under any such cover, any letter, paper, or writing, or any inclosure, other than what shall relate to the execution of this act, every person so offending shall forfeit and pay the sum of one hundred pounds, and be dismissed from his office; one moiety of the said penalty to the use of his Majesty, his heirs and successors, and the other moiety to the use of the person who shall inform or sue for the same, to be sued for and recovered in any of his Majesty's courts of record at Westminster for offences committed in England, and in any of his Majesty's courts of record in Dublin for offences committed in Ireland, and before the sheriff or stewartry court of the shire or stewartry within which the party offending shall reside, or the offence shall be committed, for offences committed in Scotland; and if any letter, paper, or writing, or other inclosure, shall be sent under cover to the said commissioners, the same not relating solely and exclusively to the execution of this act, they are hereby strictly required and enjoined to transmit the same forthwith to the secretary of the Post-office in London, with the covers under which the same shall be sent, in order that the contents thereof may be charged with the full rates of postage.

Letters sent under cover not relating solely to the business of the act to be transmitted to post office to be charged.

Payments contrary to this act to be disallowed. (*a*)

89. And be it further enacted, that all payments, charges, and allowances made by any overseer or guardian, and charged upon the rates for the relief of the poor, contrary to the provisions of this act, or at variance with any rule, order, or regulation of the said commissioners made under the authority of this act, shall be and the same are hereby declared to be illegal, any law, custom, or usage to the contrary notwithstanding; and every justice of the peace is hereby required to disallow as illegal and unfounded all payments, charges, or allowances contrary to the provisions of this act, or to any such rule, order, or regulation of the said commissioners, which shall be contained in any account of any overseer of the poor or guardian which shall be presented for the purpose of being passed or allowed: provided always, that no allowance by any justice shall exonerate or discharge such overseer or guardian from any penalty or legal proceeding to which he may have rendered himself liable by having acted contrary to the rules, orders, and regulations of the said commissioners, or to the provisions of this act.

Service of summons.

90. And be it further enacted, that the leaving of any summons authorised to be issued by any commissioner, assistant commissioner, or justice of the

(*a*) The costs of certain civil and criminal proceedings may be paid out of the poor rates (7 & 8 Vic. c. 101, s. 5), as well as the expenses of the jury lists and perambulating boundaries, s. 60.

peace, under this act, at the usual or last known place of abode of the party to whom such summons shall be directed, shall in every case be deemed good and sufficient service of such summons.

4 & 5 *Will. IV. c.* 76.

91. And be it further enacted, that so much of an act made and passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled "An Act to repeal the Duties payable in respect of the Spirits distilled in England, and of Licences for distilling, rectifying, or compounding such Spirits, and for the Sale of Spirits, and to impose other Duties in lieu thereof, and to provide other Regulations for the Collection of the said Duties, and for the Sale of Spirits, and for the Warehousing of such Spirits without payment of Duty for Exportation," as provides that if any master or officer of any workhouse shall sell, use, lend, or give away, or knowingly permit or suffer any spirits to be sold, used, lent, or given away, in any such workhouse, or brought into the same, other than and except such spirits as shall be prescribed or given by the prescription and direction of a physician, surgeon, or apothecary, and to be supplied in pursuance of such prescriptions from the shop of some apothecary, every such master or such other officer shall for every such offence forfeit one hundred pounds, and for the second like offence lose his office; and so much of the said last-mentioned act as provides that no person shall carry or bring, or attempt to endeavour to carry or bring, any spirits, except to be used in the way of medicine, into any workhouse, under the pain of being imprisoned for every such offence for any time not exceeding three months; and also so much of the said last-mentioned act as provides that every master and chief officer of every workhouse shall procure one or more copy or copies of the clauses in the said act mentioned to be printed or fairly written and hung up in one of the most public places in the workhouse, and renew the same from time to time, so that it may be always kept fair and legible, on pain of forfeiting the sum of ten pounds for every wilful default; or as enables any justice of the peace to demand a sight of such copy so hung up in some public place, to convict such master or officer of such default; shall be and the same is hereby repealed.

Repeal of so much of 6 Geo. IV. c. 80, as relates to prohibition of spirituous liquors in workhouses.

92. And be it further enacted, that if any person shall carry, bring, or introduce, or attempt or endeavour to carry, bring, or introduce, into any workhouse now or hereafter to be established, any spirituous or fermented liquors, without the order in writing of the master of such workhouse, it shall be lawful for the master of such workhouse, or any officer of the same acting under his direction, to apprehend or cause to be apprehended such offender, and to carry him or her before a justice of the peace, who is hereby empowered to hear and determine such offence in a summary way; and upon conviction thereof the party so offending shall forfeit and pay any sum of money not exceeding ten pounds for every such offence, as such justice may direct; and in default of payment of the penalty hereby imposed such justice may and is hereby required to commit such offender to the common gaol or house of correction for the district in which such workhouse shall be situate, for any space of time not exceeding two calendar months, unless such penalty shall be sooner paid.

Penalty on persons introducing spirituous liquors into workhouses.

93. And be it further enacted, that if any master of a workhouse shall order any spirituous or fermented liquor to be carried, brought, or introduced into any workhouse, except for the domestic use of himself or of any officer of the said workhouse, or their respective families, or except by and under the written authority of the surgeon of such workhouse, or of any justice visiting the same, or of the guardians of such workhouse, or in conformity with any rules, orders, or regulations of the said commissioners; or if any such master or any other officer of any workhouse shall carry, bring, or introduce into such workhouse, or sell, use, lend, or give away therein, or knowingly permit or suffer to be carried, brought, or introduced, or sold, used, lent, or given away therein, any spirituous or fermented liquor, contrary to the rules, orders, and regulations of the said commissioners; or shall punish with any corporal punishment any adult person in such workhouse, or confine any such person for any offence or misbehaviour for any longer space of time than twenty-four hours, or such further space of time as may be necessary in order to have such person carried before a justice of the peace; or shall in any way abuse or ill-treat, or be guilty of any other misbehaviour, or otherwise misconduct himself towards or with respect to any poor person in such workhouse; every such master or officer of a workhouse so offending shall for every such offence, upon the complaint of the overseers or guardians of the parish or union to which such workhouse shall belong, or of any such poor person, and upon conviction

Penalty on masters of workhouses allowing use of spirituous liquors, or ill-treating poor persons, or misconducting himself.

4 & 5 *Will. IV. c.* 76.

of such offence before any two justices, forfeit and pay such sum of money, not being more than twenty pounds, as such justices may direct; and in default of payment of the penalty hereby imposed, such justices may and are hereby required to commit such offender to the common gaol or house of correction for the district in which such parish shall be situate for any space of time not exceeding six calendar months, unless such penalty shall be sooner paid: provided always, that if at the time when any such master or officer of a workhouse shall be so convicted of any such offence, there shall be due to him any sum of money or salary in respect of his employment as such master or officer of such workhouse, or upon any balance of account from the overseers or guardians of the parish or union to which such workhouse shall belong, it shall be lawful for such justices, upon the application of such overseers or guardians, by order in writing under their hand, to direct that such* of money, salary, or balance, so far as the same shall extend, or a sufficient part thereof, shall be retained and applied for the use of such parish or union by such overseer or guardians, in payment or part payment of any such penalty, and such order shall be a good and valid discharge to such overseers or guardians for so much money as may by such order be directed to be so retained and applied against the claim or demand of the master or other officer of such workhouse in respect of any such sum of money, salary, or balance.

Power for justices to order salaries, &c. to be stopped, and applied towards payment of penalties.

* *sic.*

Masters to hang up copies of two preceding clauses in workhouse.

94. And be it further enacted, that the master of every workhouse shall cause one or more copy or copies of the two preceding clauses to be printed or fairly written, and hung up in one of the most public places in such workhouse, and renew the same from time to time, so that it always be kept fair and legible, on pain of forfeiting the sum of ten pounds for every wilful default.

Penalties on overseers and other officers disobeying guardians.

95. And be it further enacted, that in case any overseer, assistant overseer, master of a workhouse, or other officer of any parish or union, shall wilfully disobey the legal and reasonable order of such justices and guardians in carrying the rules, orders, and regulations of the said commissioners or assistant commissioners, or the provisions of this act, into execution, every such offender shall, upon conviction before any two justices, forfeit and pay for every such offence any sum not exceeding five pounds.

No overseer to be prosecuted for not executing illegal orders of justices.

96. Provided always, and be it further enacted, that no overseer shall from henceforth be liable to any prosecution or penalty for not carrying into execution any illegal order of such justices or guardians, any law or statute to the contrary notwithstanding.

Penalty on overseers, &c. purloining, &c. goods, &c. 20*l.* and treble the value of goods purloined. p. 397.

97. And be it further enacted, that if any overseer, assistant overseer, master of a workhouse, or other paid officer, or any other person employed by or under the authority of the said guardians, shall purloin, embezzle, or wilfully waste or misapply any of the moneys, goods, or chattels belonging to any parish or union, every such offender shall, besides and in addition to such pains and penalties as such person so offending shall, independently of this act, be liable to, upon conviction before any two justices, forfeit and pay for every such offence any sum not exceeding twenty pounds, and also treble the amount or value of such money, goods, or chattels so purloined, embezzled, wasted, or misapplied; and every person so convicted shall be for ever thereafter incapable of serving any office under the provisions of this or any other act in relation to the relief of the poor.

Penalty on persons wilfully disobeying rules, orders, and regulations.

98. And be it further enacted, that in case any person shall wilfully neglect or disobey any of the rules, orders, or regulations of the said commissioners or assistant commissioners, or be guilty of any contempt of the said commissioners sitting as a board, such person shall, upon conviction before any two justices, forfeit and pay for the first offence any sum not exceeding five pounds, for the second offence any sum not exceeding twenty pounds nor less than five pounds, and in the event of such person being convicted a third time, such third and every subsequent offence shall be deemed a misdemeanour, and such offender shall be liable to be indicted for the same offence, and shall on conviction pay such fine, not being less than twenty pounds, and suffer such imprisonment, with or without hard labour, as may be awarded against him by the court, by or before which he shall be tried and convicted.

Forfeitures, costs, and charges may be levied by distress and sale.

99. And be it further enacted, that all penalties and forfeitures by this act inflicted or authorised to be imposed for any offence against the same, shall, upon proof and conviction of the offences respectively before any two justices, either by the confession of the party offending, or by the oath of any credible witness or witnesses, (which oath such justices are in every case hereby fully

authorised to administer,) or upon order made as aforesaid, be levied, together with the costs attending the information, summons, and conviction, by distress and sale of the goods and chattels of the offender or person liable or ordered to pay the same respectively, by warrant under the hands of the justices before whom the party may have been convicted, or, on proof of such conviction, by a warrant under the hands of any two justices acting for the county, riding, or division (which warrant such justices are hereby empowered and required to grant); and the overplus (if any), after such penalties and forfeitures, and the charges of such distress and sale, are deducted, shall be returned, upon demand, unto the owner or owners of such goods and chattels; and in case such fines, penalties, and forfeitures shall not be forthwith paid upon conviction, then it shall be lawful for such justices as aforesaid to order the offender or offenders so convicted to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless the offender or offenders shall give sufficient security, to the satisfaction of such justices as aforesaid, for his or their appearance before such justices on such day or days as shall be appointed for the return of such warrant of distress, such day or days not being more than seven days from the time of taking any such security, and which security the said justices as aforesaid are hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant it shall appear that no sufficient distress can be had thereupon, then it shall be lawful for any such justices as aforesaid, as the case may be, and they are hereby authorised and required, by warrant or warrants under their hands, to cause such offender or offenders to be committed to the common gaol or house of correction of the county, riding, or place where the offender shall be or reside, there to remain, without bail or mainprize, for any term not exceeding three calendar months, unless such penalties and forfeitures, and all reasonable charges attending the same, shall be sooner paid and satisfied; and the penalties and forfeitures, when so levied, shall be paid to or for the use of the parish or union where such offence shall have been committed, to be applied in aid of the poor-rate of such parish or union.

In what manner to be applied.

100. And be it further enacted, that no owner of property, rate-payer, or inhabitant of any parish or union shall be deemed an incompetent witness in any proceeding for the recovery of any penalty or forfeiture inflicted or imposed for any offence against this act, notwithstanding such penalty or forfeiture, when recovered, shall be applicable in aid of the poor-rate of such parish or union.

Owners, rate-payers, &c. may be competent witnesses.

101. And be it further enacted, that in all cases in which any penalty or forfeiture is recoverable before the justices of the peace under this act it shall and may be lawful for any commissioner or assistant commissioner, or any justice, to whom complaint in writing shall be made of any such offence, to summon the party complained against to appear before any two justices, and on such summons the said two justices may hear and determine the matter of such complaint, and on proof of the offence convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover the same.

Justices may proceed by summons for the recovery of penalties. (*a*)

102. And be it further enacted, that where any distress shall be made for any sum of money to be levied by virtue of this act the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any default or want of form in any proceedings relating thereto, nor shall the party distraining be deemed a trespasser *ab initio* on account of any irregularity which shall afterwards happen in making the distress, but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case: provided always, that no plaintiff shall recover in any action for any irregularity, trespass, or wrongful proceedings, if tender of sufficient amends shall be made by or on behalf of the party who shall have committed or caused to be committed any such irregularity, trespass, or wrongful proceedings, before such action shall have been brought; and in case no such tender shall have been made it shall and may be lawful for the defendant in any such action, by leave of the court where such action shall depend, at any time before issue joined, to pay into court such sum of money as he shall see fit, whereupon such proceedings, or orders and judgment, shall be had, made, and given in and by such court as in other actions where the defendant is allowed to pay money into court.

Satisfaction recoverable for special damage, but distress not unlawful for want of form in the proceedings.

Plaintiff not to recover for irregularity, if tender of amends be made.

(*a*) Clerks of the board may conduct certain proceedings before justices, although they are not attornies, 7 & 8 Vic. c. 101, s. 65.

4 & 5 Will. IV. c. 76.

Appeal to the quarter sessions against order of justices within four calendar months after cause of complaint, &c.

103. Provided also, and be it further enacted, that if any person or persons shall find himself, herself, or themselves aggrieved by any order or conviction of any justice or justices, where such person or persons shall be convicted in any penalty or penalties exceeding five pounds, or if any person shall find himself aggrieved by any order made under the provisions of this act on such person as the putative father of any bastard child, it shall be lawful for such person or persons to appeal to any general or quarter sessions of the peace to be held in and for the county, riding, or division in which such order shall have been made or conviction taken place within four calendar months next after the cause of complaint shall have arisen, or if such session shall be held before the expiration of one calendar month next after such cause of complaint, then such appeal shall be made to the next following sessions, either of which court of sessions is hereby empowered to hear and finally determine the matter of the said appeal, and to make such order therein as to them shall seem meet; which order shall be final and conclusive to and upon all parties: provided that the person or persons so appealing shall give or cause to be given at least fourteen days' notice in writing of his, her, or their intention of appealing as aforesaid, and of the matter or cause thereof, to the respondent or respondents, and within five days after such notice shall enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever.

Fourteen days' notice in writing to be given, &c. and recognizance to be entered into.

Limitation of actions. (a)

104. And be it further enacted, that no action or suit shall be commenced against any commissioner, assistant commissioner, or any other person, for anything done in pursuance of or under the authority of this act, until twenty-one days' notice has been given thereof in writing to the party or person against whom such action is intended to be brought, nor after sufficient satisfaction or tender thereof shall have been made to the party aggrieved, nor after three calendar months next after the act committed for which such action or suit shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other county or place; and the defendant in such action or suit may plead the general issue, and give this act and any special matter in evidence, at any trial which shall be had thereupon; and if the matter or thing shall appear to have been done under or by virtue of this act, or if it shall appear that such action or suit was brought before twenty-one days' notice thereof given as aforesaid, or that sufficient satisfaction was made or tendered as aforesaid, or if any action or suit shall not be commenced within the time before limited, or shall be laid in any other county than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff in such action or suit shall become nonsuit, or suffer a discontinuance of such action, or if, upon any demurrer in such action, judgment shall be given for the defendant therein, then and in any of the cases aforesaid, such defendant shall have costs, charges, and expenses as between attorney and client, and shall have such remedy for recovering the same as any defendant may have for his or her costs, in any other case by law.

Defendant may plead the general issue.

Costs. (b)

Rules, &c. to be removable by certiorari to Court of King's Bench.

Rules, &c. so removed to continue in force until declared illegal.

105. And be it further enacted, that no rule, order, or regulation of the said commissioners or assistant commissioners, or any of them, shall be removed or removable by writ of certiorari into any court of record, except his Majesty's Court of King's Bench at Westminster; and that every rule, order, or regulation which shall be removed by writ of certiorari into the said Court of King's Bench, shall, nevertheless, unless and until the same shall be declared illegal by that court, continue in full force and virtue, and be obeyed, performed, and enforced, in such and the same manner, and by such and the same ways and means, as if the same had not been so removed.

Notice to be given to commissioners of application for writ of certiorari, &c. (c)

106. And be it further enacted, that no application shall be made for any writ of certiorari for the removal of any such rule, order, or regulation except

(a) See *Carter* v. *Filleter*, 1 *C. & Marsh.* 498.

(b) See now 5 & 6 Vic. c. 97, p. 394, n.

(c) As to the title of the affidavits, 12 *A. & E.* 130.

to the judges when sitting in the said court, nor unless notice in writing shall have been left at the office of the said commissioners at least ten days previous to such application being made, and in which notice shall be set forth the name and description of the party by or on behalf of whom and the day on which it is intended to make such application, together with a statement of the grounds thereof; and thereupon it shall be lawful for the said commissioners to show cause in the first instance against such application, and the court may, if it shall so think fit, forthwith proceed to hear and determine the same upon the grounds set forth in such notice.

Commissioners may show cause, in the first instance.

107. And be it further enacted, that previous to any writ of certiorari being issued, the party or parties applying for the same shall enter into a recognizance, with sufficient sureties, before one of his Majesty's justices of the Court of King's Bench, or before a justice of the peace of the county or place in which such person shall reside, in the sum of fifty pounds, with condition to prosecute the same, at his or their costs and charges, with effect, without any wilful or affected delay, and in default thereof, or in the event of such rule, order, or regulation being deemed legal, to pay the said commissioners their full costs, charges, and expenses, to be taxed according to the course of the said Court of King's Bench; and if the said rule, order, or regulation, so removed by the said writ of certiorari into the said Court of King's Bench, shall be declared legal by the said court, the commissioners entitled to such costs, within ten days after demand made of the person or persons who ought to pay the said costs, upon oath made of the making such demand and refusal of payment thereof, may recover the same in the same manner as any penalties and forfeitures are recoverable under this act.

Recognizances to be entered into.

If rule be declared legal, commissioners to be entitled to costs.

108. And be it further enacted, that if upon the hearing of the application the court shall order a writ of certiorari to issue for bringing up any such rule, order, or regulation, and the same, being brought into court, shall be quashed as illegal, the said commissioners shall forthwith notify the judgment of the court to all unions, parishes, or places to which such rule, order, or regulation shall have been directed, and the same shall from the time of receiving such notice respectively be deemed and taken to be null and void to all intents and purposes whatsoever: provided, that such judgment shall not have the effect of annulling any contracts made in pursuance or upon the authority of any such rule, order, or regulation, which at the receipt of such notice respectively shall have been executed by either of the contracting parties: provided also, that no person shall be liable to be prosecuted, either by indictment or by civil action, for or in respect of any act done by him before the receipt of such notice, under the authority and in pursuance of such rule, order, or regulation.

If rules are quashed, the same to be notified to parishes to which such rules have been directed.

Proviso for existing contracts.

No person to be answerable until receipt of notice.

109. And be it further enacted, that in the construction of this act the word "auditor" shall be construed to mean and include every person, other than justices of the peace acting in virtue of their office, appointed or empowered to audit, control, examine, allow, or disallow the accounts of any guardian, overseer, or vestrymen, relating to the receipt or expenditure of the poor-rate; the words "general rule" shall be construed to mean any rule relating to the management of the poor or to the execution of this act which shall at the time of issuing the same be addressed by the said commissioners to more than one union, or to more parishes or places than one not forming a union, or not to be formed into or added to a union under or by virtue of such rule; the word "guardian" shall be construed to mean and include any visitor, governor, director, manager, acting guardian, vestryman, or other officer in a parish or union, appointed or entitled to act as a manager of the poor, and in the distribution or ordering of the relief to the poor from the poor-rate, under any general or local act of parliament; the words "justice or justices of the peace" shall be construed to include justices of the peace of any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, county of a town, cinque port, or town corporate, unless where otherwise provided by this act; the word "oath" shall be construed to include the affirmation of a Quaker, Separatist, or Moravian; the words "orders and regulations" shall be construed to mean and include any rule, order, regulation, or bye-law relating to the management or relief of the poor, or the execution of this act, which at the time of issuing the same shall be addressed, directed, or applied to any one parish or union, or to any number of parishes which have been or by

Interpretation clause.

Auditor.

General rule.

Guardian.

Justice. (*a*)

Oath.

Orders.

(*a*) "*Clerk of the Peace*," to include clerks of the county, riding, borough, city, town corporate, &c. &c., 7 & 8 Vic. c. 101, s. 70.

4 & 5 *Will. IV.* c. 76.

virtue of any order shall be constituted a union or added to a union; the word "officer" shall be construed to extend to any clergyman, schoolmaster, person duly licensed to practise as a medical man, vestry clerk, treasurer, collector, assistant overseer, governor, master or mistress of a workhouse, or any other person who shall be employed in any parish or union in carrying this act or the laws for the relief of the poor into execution, and whether performing one or more of the above-mentioned functions; the word "overseer" shall be construed to mean and include overseers of the poor, churchwardens, so far as they are authorised or required by law to act in the management or relief of the poor, or in the collection or distribution of the poor-rate, assistant overseer, or any other subordinate officer, whether paid or unpaid, in any parish or union, who shall be employed therein in carrying this act or the laws for the relief of the poor into execution; the word "owner" shall be construed to include any person for the time being in the actual occupation of any property rateable to the relief of the poor, and not let to him at rack rent, or any person receiving the rack rent of any such property, either on his own account or as mortgagee or other incumbrancer in possession; and the words "rack rent" shall be construed to mean any rent which shall not be less than two-thirds of the full improved net annual value of any property; the word "parish" shall be construed to include any parish, city, borough, town, township, liberty, precinct, vill, village, hamlet, tithing, chapelry, or any other place, or division or district of a place, maintaining its own poor, whether parochial or extra-parochial; the word "person" shall be construed to include any body politic, corporate, or collegiate, aggregate or sole, as well as any individual; the word "poor" shall be construed to include any pauper or poor or indigent person applying for or receiving relief from the poor-rate in England or Wales, or chargeable thereto; the words "poor law," or "laws for the relief of the poor," shall be construed to include every act of parliament for the time being in force for the relief or management of the poor, or relating to the execution of the same, or the administration of such relief; the words "poor rate" shall be construed to include any rate, rate in aid, mulct, cess, assessment, collection, levy, subscription, or contribution raised, assessed, imposed, levied, collected, or disbursed for the relief of the poor in any parish or union; that the words "general quarter sessions" shall extend to and be construed to include general or quarter sessions, or adjournment thereof, for any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, city, county of a town, cinque port, or town corporate, unless where otherwise provided by this act; the word "union" shall be construed to include any number of parishes united for any purpose whatever under the provisions of this act, or incorporated under the said act made and passed in the twenty-second year of his late Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," or incorporated for the relief or maintenance of the poor under any local act; the words "united workhouse" shall be construed to mean and include any workhouse of a union; the word "vestry" shall be construed to mean any open, customary, or select vestry, or any meeting of inhabitants convened by any notice such as would have been required for the assembling of a meeting in vestry, at which meeting any business relating to the poor or the poor-rate shall be transacted or taken into consideration, so far as such business is concerned; the word "workhouse" shall be construed to include any house in which the poor of any parish or union shall be lodged and maintained, or any house or building purchased, erected, hired, or used at the expense of the poor-rate, by any parish, vestry, guardian, or overseer, for the reception, employment, classification, or relief of any poor person therein at the expense of such parish; and wherever in this act, in describing any person or party, matter or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there be something in the subject or context repugnant to such construction.

Officer.

Overseer.

Owner.

Rack rent.

Parish.

Person.

Poor.

Poor laws.

Poor rate.

Sessions.

nion.

22 Geo. III. c. 83.

United workhouse.

Vestry.

Workhouse. (*a*)

Singular number.

Masculine.

Act may be amended this session.

110. And be it further enacted, that this act may be altered, amended, or repealed in this present session of parliament.

(*a*) A house built from money supplied by the poor-rate, and let to labourers at a rent, is not within the definition. *Cantrell* v. *Windsor*, 4 *N. C.* 348.

5 & 6 Will. IV. Cap. 69.

An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales. (a) [*9th September*, 1835.]

Whereas there are certain legal difficulties attending the title, purchase, sale, and disposal of property, which, with respect to workhouses and other property belonging to parishes, incorporations, or unions, it is expedient to remove; and it is also expedient to simplify the assurances for the conveyance, exchange, or transfer of such property: be it therefore enacted by the king's most excellent Majesty by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that it shall be lawful for the commissioners of the King's Majesty's woods, forests, and land revenues, by and with the consent in writing of the lord high treasurer, or the commissioners of his Majesty's treasury, or any three or more of them, and for his Majesty, by any grant signed by the chancellor of the duchy of Lancaster, and for the Duke of Cornwall, by any grant signed by the chancellor of that duchy, to grant, and for the guardians and overseers of the poor of any parish or union of parishes, under the direction and with the approbation of the Poor Law Commissioners for England and Wales (to be testified by order under their hands and seal), and for any lay or ecclesiastical corporation aggregate or sole, and for any feoffees or trustees to charitable or other uses, and for any person beneficially seised or entitled in possession as tenant in fee-simple, or in fee-tail, general or special, or for his own life, or for years determinable on his own life, (such estate for life or years not being subject to any rent,) or for any term of years in gross whereof not less than four hundred shall be unexpired, and subject to no equity of redemption or rent, except a nominal rent, and for any married woman entitled or interested as aforesaid to her separate use, and for the guardian, trustee, husband, or committee of any person so seised or entitled who shall be an infant, married woman (not separately entitled), idiot, lunatic, or under any other disability, to dispose of, by way of absolute sale, or in exchange for any messuages, lands, or other hereditaments, any lands or buildings for the purpose of the same being used as or converted into a workhouse, or of being used as the site of a workhouse, or of being occupied with a workhouse, or for any other purpose relating to the relief of the poor which the said poor law commissioners may approve of, with the rights and appurtenances, and to convey the same and the fee-simple and inheritance thereof unto the guardians or overseers of any union or parish and their successors, or in such other manner as the said poor law commissioners may direct, and to accept from and give to such guardians or overseers any moneys by way of equality of exchange.

Powers for corporations and persons under disability to convey lands, &c. for the purposes of this act.

2. And with regard to the application of money paid for the purchase or on the exchange of hereditaments of persons under disability: be it enacted, that all sums of money which shall be agreed to be paid to any corporation, or to any trustee, guardian, or committee for or on behalf of any infant, ward, lunatic, idiot, married woman, or other person under disability, or to any person whose lands shall be limited in settlement, for the purchase or exchange of hereditaments as aforesaid, shall, in case the same shall exceed the sum of fifty pounds, and there shall be no person capable of giving a sufficient discharge for the same, be paid by the said guardians and overseers into the Bank of England in the name and with the privity of the accountant general of the Court of Exchequer, to be placed in his account to the credit of the party who shall be so interested in the said hereditaments, describing them, subject to the order of the said Court of Exchequer; which said court, on the petition of or motion on behalf of any corporation or person making claim to any such money, is hereby empowered to order summarily the investment of such money in the purchase of real estates, to be settled to the same uses and upon the same trusts as the lands so sold were previously subject to, or in the public funds, and the distribution of the rents and dividends thereof respectively, according to the respective interests of the claimants thereof, and to make such other order in the premises as to the court shall deem reasonable; and the cashier of the Bank of England who shall receive such money shall give a receipt to the party

Investment of purchase money to the same uses as the estates sold were subject to.

(a) This act is explained by 5 & 6 Vic. c. 18, p. 1281. It is not necessary to enrol the deeds, 7 & 8 Vic. c. 101, s. 73.

5 & 6 *Will. IV. c.* 69.

paying the same, specifying for what the same is received, which receipt shall be to all intents and purposes a sufficient discharge; and upon such receipt being given it shall be lawful for the said poor law commissioners, by order under their hands and seals, to direct that the said hereditaments so purchased by such guardians or overseers shall be appropriated for the purposes of this act; and in case of doubts or questions of title to any money paid into the Bank of England by virtue of this act, or the securities on which the same may be invested, or the dividends or interest thereof, the corporation or person who shall have been in the possession of such hereditaments, interests, or incumbrances at the time of such purchase, and persons claiming under them, shall be deemed and taken to be lawfully entitled to such hereditaments, interests, or incumbrances until the contrary shall be shown to the satisfaction of the said Court of Exchequer; and the securities and principal and interest moneys shall be applied and disposed of accordingly; and in case of such purchase, payment into the Bank of England, and application to the Court of Exchequer as aforesaid, it shall be lawful for the said court to order the expenses attending such purchase, payment, or application, or any part thereof, to be paid by such guardians or overseers, who shall accordingly pay the same as and when the said court shall direct, and the money so paid shall be a charge on the poor-rates of such parish or such union, as the case may be.

Parties in possession to be deemed entitled.

Court of Exchequer may order payment of expenses.

Sect. 3 gives power to overseers and guardians of the poor to sell, purchase, and dispose of workhouses, see p. 390. See s. 21 of 4 Will. IV. c. 76; and *Cantwell* v. *Windsor*, 4 *N. & E.* 348; and 5 & 6 Vic. c. 18, p. 1281.

Power to overseers to take waste or forest lands extended to guardians, &c.

4. And be it further enacted, that all the powers and authorities in and by an act passed in the twenty-second year of the reign of King George the Third, intituled "An Act for the better Relief and Employment of the Poor," given to guardians of the poor for or relating to the inclosing of any part or portion of waste or common land as therein mentioned; and all powers and authorities in and by an act passed in the fifty-ninth year of the same reign, intituled "An Act to amend the Laws for the Relief of the Poor," given to churchwardens and overseers of the poor for taking land or ground into their hands, and for purchasing, hiring, and taking on lease any land; and all the powers and authorities contained in an act passed in the first and second years of the reign of his present Majesty, intituled "An Act to amend an Act of the fifty-ninth year of His Majesty King George the Third, for the Relief and Employment of the Poor;" and in a certain other act passed in the first and second years of the reign of his present Majesty, intituled "An Act to enable Churchwardens and Overseers to inclose Land belonging to the Crown for the benefit of poor Persons residing in the Parish in which such Crown Land shall be situate;" and in a certain other act passed in the second year of the reign of his present Majesty, intituled "An Act to authorise (in parishes inclosed under any Act of Parliament) the letting of the Poor Allotments in small portions to industrious Cottagers;" shall in future be exercised (under the control, and subject to the rules, orders, and regulations of the poor law commissioners,) by the overseers of the poor in any parish not under the management of a board of guardians, and by the guardians of the poor of any union or parish formed or established by virtue of any statute or local act; and all the aforesaid powers and authorities relating to the inclosing, purchasing, hiring, or taking any waste, common, or other land, for the purpose or purposes in the said acts mentioned, shall extend and apply to and may be so exercised as aforesaid by the said overseers and guardians for the purpose of being used in the site of a workhouse, or of being occupied with a workhouse, or for any other of the purposes of the said recited act passed in the fourth and fifth years of the reign of his present Majesty.

22 Geo. III. c. 83.

59 Geo. III. c. 12.

1 & 2 Will. IV. c. 42.

1 & 2 Will. IV. c. 59.

2 Will. IV. c. 42.

Powers given to justices to deliver possession of parish houses, &c. to churchwardens and overseers, extended to property of unions, &c.

5. And be it further enacted, that the powers and authorities given by the said act of the fifty-ninth year of King George the Third, and by the said act of the second year of the present reign, to justices of the peace to cause possession of parish houses and lands and portions of land to be delivered to the churchwardens and overseers of the poor, and any other auxiliary powers or provisions in the said acts or other acts contained in relation thereto, shall extend to and shall be exercised by such justices in respect of any houses and lands and portions of land which are or may be vested in or under the management or control of the guardians of the poor of any union or parish, in the same manner as if the name of those officers had been inserted in the said acts instead of the names of the churchwardens and overseers of the poor.

Mode of conveyance.

6. And, for simplifying the instruments of assurance of property under this

act, be it enacted, that every conveyance, exchange, security, or assignment of security, under the authority of this act, may be made according to the forms set forth in the schedule annexed, or in such other forms as the said poor law commissioners shall direct, or as near thereto as the number of parties, the nature of the interests, and the circumstances of the case will admit, and shall, when executed by the conveying parties, be valid and effectual in the law, without livery of seisin being made, or any bargain and sale to vest possession being executed; and that every conveyance, exchange, security, transfer of security, or instrument made under the authority of this act, shall, when signed by the conveying parties thereto, be transmitted to the said poor law commissioners, who shall, if they shall approve thereof, signify such approval by sealing or stamping the same with their seal; and for preserving evidence of such instruments the said commissioners shall keep a register, properly indexed, in which they shall insert copies or memorials of such deeds or instruments of which they shall so approve, and of such orders of appropriation of property as are hereinbefore mentioned; and all such copies or memorials, or copies thereof, purporting to be sealed or stamped with the seal of the said commissioners, shall be received as evidence of the instruments respectively of which they purport to be copies or memorials.

Approval of the poor law commissioners.

7. And, for the more easy execution of the purposes of this act, and of the laws relating to the poor, be it enacted, that the guardians of the poor of every union already formed or which hereafter shall be formed by virtue of the aforesaid act passed in the fourth and fifth years of the reign of his present Majesty, and of every parish placed under the control of a board of guardians by virtue of the said act, shall respectively from the day of their first meeting as a board become or be deemed to have become, and they and their successors in office shall for ever continue to be, for all the purposes of this act, a corporation, by the name of the Guardians of the Poor of the Union (or of the Parish of) in the County of ; and as such corporation the said guardians are hereby empowered to accept, take, and hold, for the benefit of such union or parish, any buildings, lands, or hereditaments, goods, effects, or other property, and may use a common seal; and they are further empowered by that name to bring actions, to prefer indictments, and to sue and be sued, and to take or resist all other proceedings for or in relation to any such property, or any bonds, contracts, securities, or instruments given or to be given to them in virtue of their office; and in every such action and indictment relating to any such property it shall be sufficient to lay or state the property to be that of the guardians of the union, or of the parish of ; and in case of any addition to or separation of any parishes from any such union, under the authority of the said act passed in the fourth and fifth years of the reign of his present Majesty, the board of guardians for the time being shall (notwithstanding such alteration) have and enjoy the same corporate existence, property, and privileges as the board of guardians of the original union would have had and enjoyed had it remained unaltered.

Guardians incorporated.

See 5 & 6 Vict. c. 57, s. 16.

8. And be it enacted, that all buildings, lands, or hereditaments, goods, effects, or other property, which, before the passing of this act, may have been conveyed, with the consent or under the directions of the said poor law commissioners, to any persons in trust for and for the use of any union or parishes, shall, without any further act, vest in the guardians thereof as such corporation in the same manner as if the same respectively had been conveyed to or vested in them under the provisions of this act.

Previous sales made with the consent of the commissioners to be valid.

9. And in the interpretation of this act, be it enacted, that wherever in this act, in describing any person or party, matter or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as well as one matter or thing respectively, unless there be something in the subject or context repugnant to such construction; and the words and expressions "general rule," "guardian," "justice or justices of the peace," "orders and regulations," "overseers," "owners of property," "parish," "person," "poor," "poor rate," "union," "vestry," and "workhouse," shall bear and be construed to have the same signification as the same words and expressions are declared to have in the said act of the fourth and fifth years of the present reign, for the amendment and better administration of the laws relating to the poor in England and Wales.

Interpretation clause.

5 & 6 *Will. IV. c.* 69.

SCHEDULE TO WHICH THIS ACT REFERS.

Form of Conveyance.

This deed, made the day of in the year , by virtue of an act passed in the fifth and sixth years of the reign of King William the Fourth, intituled [*the title of this act*], and under the direction [*or* "with the approbation"] of the Poor Law Commissioners for England and Wales, testified by their seal being hereunto affixed, witnesseth, That A. B. of in consideration of the sum of paid to him [*or* "into the Bank of England"] by C. D. of doth grant and convey [*or* "demise or assign," *proper words of conveyance to be used,*] all, &c. [*the property to be aptly described*], and all the right, title, and interest of the said A. B. in and to the same and every part thereof, unto and to be holden by the said C. D., his heirs and assigns. In witness whereof the said A. B. and C. D. have hereunto set their hands and seals.

Witness E. F.

A. B. (L. S.)
C. D. (L. S.)

The seal of the Poor Law Commissioners.

Approved and registered the day of

Form of Exchange.

This deed, made the day of by virtue of an act passed in the fifth and sixth years of the reign of King William the Fourth, intituled [*the title of the act*], and under the direction [*or* "with the approbation"] of the Poor Law Commissioners for England and Wales, testified by their seal being hereunto affixed, witnesseth, That A. B. of doth grant and convey unto C. D. of all [*the property to be aptly described*], in exchange for the hereditaments hereinafter conveyed, to the intent that the said hereditaments above conveyed may be held and enjoyed by the said C. D., and the person or persons who for the time being would have been entitled to the hereditaments hereinafter conveyed, if this present exchange had not been made, and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations, restrictions, charges, and incumbrances as the same hereditaments hereinafter conveyed now are or may, or but for this present exchange would have been subject or liable to; And this deed further witnesseth, That in pursuance of the said act, and under the said direction [*or* "approbation"], the said C. D. doth grant and convey unto the said A. B. all [*the property to be aptly described*], in lieu of and in exchange for the hereditaments firstly hereinbefore conveyed, to the intent that the hereditaments lastly hereinbefore conveyed may be held and enjoyed by the said A. B., and the person or persons who for the time being would have been entitled to the hereditaments firstly hereinbefore conveyed if this present exchange had not been made, and shall be and become subject to such and the same uses, trusts, powers, conditions, limitations, restrictions, charges, and incumbrances as the same hereditaments now or may be, or but for this present exchange would have been subject or liable to. In witness whereof the said A. B. and C. D. have hereunto set their hands and seals.

Witness E. F.

A. B. (L. S.)
C. D. (L. S.)

The seal of the Poor Law Commissioners.

Approved and registered the day of

5 & 6 *Will. IV.* c. 69.

Form of Security.

THIS deed, made the day of by virtue of an act passed in the fifth and sixth years of the reign of King William the Fourth, intituled [*the title of this act*], and under the direction [*or* " with the approbation"] of the Poor Law Commissioners for England and Wales, (testified by their seal being hereunto affixed,) witnesseth, That A. B., C. D., E. F., and G. H., being the majority of the guardians of the poor for the union [*or* " the parish of "], in consideration of the sum of to them in hand paid by Y. Z. of for the purpose of purchasing, building, erecting, repairing, fitting up, or furnishing a workhouse for the union [*or* " parish"], and for providing suitable stock and utensils for that purpose [*or* " in consideration of the conveyance or assurance of," *&c., as the case may be,*] do hereby charge the poor rates of the parishes of the said union [*or* " parish"] with the payment of the principal sum of pounds, by the instalments following [*naming them*], together with interest on the principal which shall from time to time remain due, after the rate of per centum, to be payable half yearly to the said Y. Z., his executors, administrators, and assigns.

Witness L. M.

A. B.
C. D.
E. F.
G. H.

The seal of the Poor Law Commissioners.

Approved and registered the day of

Form of Transfer of Security.

THIS deed, made the day of by virtue of the act passed in the fifth and sixth years of the reign of King William the Fourth, intituled [*the title of this act,*] and [*if the guardians or overseers of any parish or union are the parties transferring or accepting the security, then add*] under the direction [*or* " with the approbation"] of the Poor Law Commissioners for England and Wales (testified by their seal being hereunto affixed), witnesseth, That Y. Z. of doth transfer the security [*describing it*], with all right and title to the principal money thereby secured, and to all the interest now due or hereafter to be due thereon, unto V. W. of his executors, administrators, and assigns.

Witness E. F.

Y. Z.
V. W.

The seal of the Poor Law Commissioners.

Approved and registered the day of

6 & 7 WILL. IV. CAP. 96. (*a*)

An Act to regulate Parochial Assessments.

[19*th August*, 1836.]

WHEREAS it is desirable to establish one uniform mode of rating for the relief of the poor throughout England and Wales, and to lessen the cost of appeal against an unfair rate: Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after such period, not being earlier than the twenty-first day of March next after the passing of this Act, as the Poor Law Commissioners shall

All rates to be made on the net annual value of the property.

(*a*) This act has been continued from time to time.

6 & 7 *Will. IV. c.* 96.

by any order under their seal of office direct, no rate for the relief of the poor in England and Wales shall be allowed by any justices, or be of any force, which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent: Provided always, that nothing herein contained shall be construed to alter or affect the principles or different relative liabilities (if any) according to which different kinds of hereditaments are now by law rateable. See p. 141.

Proviso.

Rates to be made in a given form.

2. And be it further enacted, that every such rate made after the said period shall, in addition to any other particular which the form of making out such rate shall require to be set forth, contain an account of every particular set forth at the head of the respective columns in the forms given in the schedule to this Act annexed, so far as the same can be ascertained; and the churchwardens and overseers, or other officers whose duty it may be to make and levy the said rate, or such a number of the said churchwardens and overseers or other officers as are competent to the making and levying of the same, shall, before the rate is allowed by the justices, sign the declaration given at the foot of the said form; and otherwise the said rate shall be of no force or validity: provided always, that nothing herein contained shall be construed to prevent the owners of tenements from compounding for the rates to be assessed on the same, in such manner as they were by any statute or statutes enabled to do before the passing of this act, so that the gross estimated rental of the hereditaments compounded for be entered on the rate in the proper column.

Nothing herein to prevent owners from compounding for rates.

Power to order new survey and valuation.

3. And be it enacted, that when it shall be made to appear to the Poor Law Commissioners by representation in writing from the board of guardians of any union or parish under their common seal, or from the majority of the churchwardens and overseers or other officers competent as aforesaid to the making and levying the rate, that a fair and correct estimate for the aforesaid purposes cannot be made without a new valuation, it shall be lawful for the Poor Law Commissioners, where they shall see fit, to order a survey, with or without a map or plan, on such scale as they shall think fit, to be made and taken of the messuages, lands, and other hereditaments liable to poor rates in such parish, or in all or any one or more parishes of such a union, and a valuation to be made of the said messuages, lands, and other hereditaments according to their annual value, and to direct such guardians to appoint a fit person or persons to make and take every such survey, map or plan, and valuation, and to make provision for paying the costs of every such survey, map or plan, and valuation, either by a separate rate or by a charge on the poor rates, as they may see fit; but in case of such charge being made, then provisions shall be made for paying off not less than one-fifth of the sum charged on the rates, and such interest as may from time to time be payable in respect of such charge or any part thereof, in each succeeding year, till the whole is repaid.

Power for surveyors to enter and examine lands, &c. for purposes of survey and plans.

4. And be it further enacted, that for the purpose of making every such survey, map or plan, and valuation, it shall be lawful for the person or persons so to be appointed for making the same respectively, together with their and every of their assistants and servants, at all reasonable times, until the same respectively shall be completed, to enter, view, and examine, survey and admeasure, all and every part of the messuages, lands, and other hereditaments aforesaid, and to do or cause to be done any act or thing necessary for making such survey, map or plan, and valuation: provided always, that any map, survey, plan, or valuation made previously to the appointment of such person or persons which shall be tendered to him or them, and which shall be in his or their judgment and to his or their satisfaction a just and true map or survey, proper for the purposes aforesaid, may be used for such purposes.

Power to take copies or extracts of rates gratis.

Penalty for refusal to permit.

5. And be it further enacted, that it shall be lawful for any person or persons rated to the relief of the poor of the parish in respect of which any rate shall be made, at all seasonable times, to take copies thereof or extracts therefrom without paying any thing for the same, any thing in any act of parliament to the contrary notwithstanding; and in case the person or persons having the custody of such rate shall refuse to permit, or shall not permit such person or persons so rated as aforesaid to take copies thereof or extracts therefrom, the person or persons so refusing or not permitting such copy or extract to be made shall forfeit and pay any sum not exceeding five pounds, to be recovered

in a summary way before any justice of the peace having jurisdiction in the parish or place.

Justices acting in petty sessions to hold four special sessions in the year to hear appeals. (a)

6. And be it enacted, that the justices acting in and for every petty sessions division shall four times at least in every year hold a special sessions for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place when and where such special sessions will be holden to be affixed to or near to the door of the parish church of the said parishes, twenty-eight days at the least before the holding of the same; and such special sessions shall and may be adjourned from time to time by the justices there present, as they may think fit; and at such special or adjourned sessions the justices there present shall hear and determine all objections to any such rate on the ground of inequality, unfairness, or incorrectness in the valuation of any hereditaments included therein, which decision shall be binding and conclusive on the parties, unless the person or persons impugning such decision shall within fourteen days, after the same shall have been made, cause notice to be given in writing of his, her, or their intention of appealing against such decision, *and of the matter or cause of such appeal* (a), to the person or persons in whose favour such decision shall have been made, and within five days after giving such notice shall enter into a recognizance before some justice of the peace, with sufficient securities, conditioned to try such appeal at the then next general sessions or quarter sessions of the peace which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions, or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party or parties appealing or appealed against as they shall think proper, and their determination in or concerning the premises shall be conclusive and binding on all parties, to all intents and purposes whatsoever: provided always, that no such objection shall be inquired into by the said justices in special sessions unless notice of such objection in writing under the hand of the complainant shall have been given, seven days at least before the day appointed for such special session, to the collector, overseers, or other persons by whom such rate was made; provided also, that the said justices in special session shall not be authorised to inquire into the liability of any hereditaments to be rated, but only into the true value thereof and into the fairness of the amount at which the same shall have been rated.

Seven days' notice to be given of objections.

Proviso.

Justices may act with all the powers of justices in quarter sessions.

7. And be it enacted, that the justices present at any such special or adjourned session shall for the aforesaid purpose have all the powers of amending or quashing any such rate so objected to of any parish or other district within their division, and likewise of awarding costs to be paid by or to any of the parties, and of recovering such costs, which any court of quarter sessions of the peace has upon appeals from any such rate, except as herein excepted: provided always, that no order of the said justices shall be removed by certiorari or otherwise into any of his Majesty's courts of record at Westminster: provided also, that nothing in this Act contained shall be construed to deprive any person or persons of the right to appeal against any rate to any court of general or quarter sessions: provided also, that no order of the said justices in special session shall be of any force pending any appeal touching the same subject matter to the court of general or quarter sessions of the peace having jurisdiction to try such appeal, or in opposition to the order of any such court upon such appeal.

Act confined to England and Wales.

8. And be it enacted, that this act shall extend only to England and Wales.

Act may be repealedt hi session.

9. And be it further enacted, that this act may be repealed or amended by any act which shall be passed in this session.

(a) See context, p. 214, note (a). And see notice of appeal, *post*, Appendix of Forms.

SCHEDULE TO WHICH THIS ACT REFERS.

Form of Rate.

An Assessment for the relief of the Poor of the parish of Merton in the county of Surrey, and for other purposes chargeable thereon according to law, made this thirtieth day of March in the year of our Lord one thousand eight hundred and thirty-seven, after the rate of sixpence in the pound.

No.	Arrears due, or if excused.	Name of Occupier.	Name of Owner.	Description of Property rated.	Name or situation of Property.	Estimated Extent.	Gross estimated Rental.	Rateable Value.	Rate at 6*d.* in the Pound.
	£ s. d.					A. R. P.	£ s. d.	£ s. d.	£ s. d.
1	. . .	James Smith	John Green	Land and Buildings	Whiteacre Farm . .	40 0 0	60 0 0	55 0 0	1 7 6
2	. . .	Ditto	Ditto	House and Garden .	In West Street	0 1 0	30 0 0	25 0 0	0 12 6
3	. . 7½ Excused	John Poor .	Ditto	House . .	In Brick Lane	. . .	1 10 0	1 5 0	0 0 7½
&c.	&c.	&c.	&c.	&c.	&c.	&c.	&c.	&c.	&c.

5 & 6 VICT. CAP. 18.

An Act to explain and amend the Acts regulating the Sale of Parish Property; and to make further Provision for the Discharge of Debts, Liabilities and Engagements incurred by or on behalf of Parishes. [13*th May*, 1842.]

WHEREAS by an act passed in the sixth year of the reign of his late Majesty, intituled "An Act to facilitate the Conveyance of Workhouses, and other Property of Parishes, and of Incorporations or Unions of Parishes, in England and Wales," it was among other things enacted, that it should be lawful for the guardians and overseers of the poor of any parish or union of parishes, under the direction and with the approbation of the poor law commissioners for England and Wales, to dispose of, by way of absolute sale, or in exchange for any messuages, lands, or other hereditaments, any lands or buildings, for the purpose of the same being used as the site of a workhouse, or of being occupied with a workhouse, or for any other purpose relating to the relief of the poor which the said poor law commissioners might approve of; and doubts have been raised as to the meaning in certain cases of this provision: be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that all sales, lettings, exchanges, or dispositions of lands, buildings, or other property belonging to any parish or union not formed by the poor law commissioners, which shall have been or shall be made for any of the said recited purposes by virtue of the said act, and of the statute amending the same passed in the first year of the reign of her Majesty, under the order of the said commissioners, by a majority of the overseers of such parish or of the last acting guardians of such union respectively, to the guardians of any union formed by the said commissioners, shall be and be taken to have been valid.

5 & 6 Will. IV. c. 69, s. 1.

All sales and dispositions of lands, buildings, &c. by overseers and acting guardians of dissolved incorporations to unions formed under 4 & 5 Will. IV. c. 76, and 7 Will. IV. and 1 Vict. c. 50, deemed valid.

2. And whereas by the said act it was further enacted, that it should be lawful for the guardians of any parish or union, and for the overseers of any parish not under the management of a board of guardians, and for the guardians or trustees, guardian or trustee of any dissolved union, or the person or persons who were the guardians or trustees, guardian or trustee of any dissolved union at the time of its dissolution, or a majority of such guardians, trustees, or persons, if more than one, with the approbation and subject to the rules, orders, and regulations of the poor law commissioners, to sell, exchange, let, or otherwise dispose of any workhouse, tenements, buildings, land, effects, or other property belonging to any such parish or union, or vested in trustees or feoffees in trust for such parish or union, or for the parishioners, rate-payers, or inhabitants thereof, or which belong or did belong to any dissolved union, and every or any part of such property, and to convey, assign, or transfer the same accordingly to the purchasers or parties exchanging, as they should direct; which said provisions have been extended by the said act passed in the first year of the reign of her present Majesty, and doubts have arisen as to the meaning and extent of such provisions; be it therefore declared and enacted, that the said provisions shall be deemed to have authorised and to authorise the sale, exchange, letting, and disposal, by the guardians of a union formed or to be formed by the said commissioners, of any workhouse, tenements, buildings, land, effects, or other property belonging to any parish which shall be comprised in the said union, and in cases of the sale, exchange, letting, and disposal of workhouses, tenements, buildings, land, effects, and other property belonging to a dissolved union to have applied and to apply to a majority of the persons who were the last acting guardians previous to the dissolution of such union: provided always, that nothing in this act shall be deemed to render valid or to authorise the sale, exchange, letting, or other disposition of any property whatsoever which shall have been given or bequeathed by way of charitable donation, or shall have been allotted in right of some charitable donation or otherwise, for the poor persons of any parish, and not for the general benefit of the rate-payers, parishioners, or inhabitants of such parish, nor to dispense with the consent of the rate-payers and owners of property required by the said last recited act to all sales, exchanges, lettings, or other dispositions of property belonging to any parish, except in the case next herein-after provided.

Explanation of the meaning of 5 & 6 Will. IV. c. 69, s. 3.

Proviso for charitable donations; and for consent of rate-payers, &c. to certain sales, &c.

3. And be it enacted, that where several parishes shall have been or shall be jointly interested in any workhouse, tenements, buildings, lands, whether of

For sale of property belonging to several parishes.

5 & 6 *Vict.* c. 18.

freehold, copyhold, or customary tenure, effects or other property, it shall be deemed to have been and shall be lawful for the said commissioners, upon the application of the overseers of the major part of such parishes, and with the consent of the rate-payers and owners of property in the major part of such parishes, to be ascertained in the manner directed by the said act, to order the same to be sold, let, exchanged, or disposed of by the guardians of the union in which such parishes or the greater part thereof shall be situate, in such manner, and subject to such rules, orders, and regulations, as the said commissioners shall deem fit; and it shall be deemed to have been and to be lawful for the said commissioners to direct the application of the produce arising from such sale, letting, or disposition in the same manner and to and for the same purposes as the produce arising from the sales of property belonging to other parishes may be applied to: provided always, that where any conveyance, by way of sale, lease, exchange, disposition, or otherwise, of any property, belonging to a parish or union, whether dissolved or not, shall have been or shall hereafter be made by the guardians of any existing union, or a majority of the last acting guardians of any dissolved union, under the order of the said commissioners, the same shall be deemed to have been and to be valid for all the purposes of such conveyance, although the legal estate in such property shall be or shall be presumed to be outstanding in some trustee or trustees who shall not have joined in such conveyance; and in cases of copyhold or customary lands the surrender of the tenant on the roll, being a trustee for any parish or union, shall not be required, but the admission of the party to whom the guardians or overseers shall, under the authority of the said recited acts or this act, have conveyed the same, shall take place, upon the production to the steward of the manor of which such lands shall be held of the conveyance from such guardians or overseers duly executed, and upon payment of such fines, dues, or services to the lord of the manor of which the said lands shall be holden, and his steward, as they respectively would be entitled to upon the admission of such party after a surrender by a tenant on the roll.

Proviso that no trustee shall be required to join in any conveyance of parochial property.

Provisions of 1 & 2 Vict. c. 25, for the payment of debts out of the produce of the sale of parochial property extended to any recognised *bonâ fide* debts.

4. And whereas by an act passed in the first year of the reign of her present Majesty, to explain and amend an act of the seventh year of his late Majesty, for extending the period for the payment of loans made under an act passed in the fifth year of his said late Majesty, for the amendment and better administration of the laws relating to the poor in England and Wales, provision was made for payments in certain cases, out of the produce arising from sales of parish property, in liquidation of the debts, liabilities, or engagements of such parish, and it is expedient to extend the operation of the said act: be it enacted, that the powers and provisions of the said recited act shall extend and apply to the payment of any debts, liabilities, or engagements which heretofore have been *bonâ fide* entered into by the parish officers or other person or persons on behalf of any parish, and which shall be proved to the poor law commissioners to have been recognised, within one year before the passing of the said act of the fifth year of his late Majesty, as existing parish debts, liabilities, or engagements, by the inhabitants of such parish in vestry assembled, or by payment and allowance of interest thereon out of the funds applicable to the relief of the poor of such parish.

Poor law commissioners may, upon receipt of a parochial request, order payment of the aforesaid debts out of the poor rates.

5. And be it enacted, that it shall be lawful for the poor law commissioners, by an order under their hands and seal, upon the receipt of a copy under the hands of the overseers of the poor of any parish of a resolution passed at a meeting of rate-payers and owners of property entitled to vote according to the provisions of the said act of the fifth year of the reign of his late Majesty, duly convened and held for the purpose, after public notice of the time and place and purpose of holding such meeting shall have been given in like manner as notices of vestry meetings are published and given, consenting to the issue of such order, to direct the said overseers, by equal annual instalments, not exceeding ten, to pay or discharge, out of the poor rates, or other monies in their hands applicable in aid of the poor rates of the said parish, any such debt, liability, or engagement as aforesaid, together with all interest due or hereafter to accrue in respect of such debt, liability or engagement; provided that the said commissioners shall be satisfied, before they issue any such order, that such debt, liability, or engagement constitutes a fair and just claim against the said parish, and shall approve of and sanction the discharge thereof.

Overseers may borrow money, and charge the same on the poor

6. And be it enacted, that it shall be lawful for the said overseers, and they are hereby required, if so directed by such order and resolution as aforesaid, to borrow any sum that may be requisite to enable them to pay and discharge

any such debt, liability, or engagement as aforesaid, or any part thereof, and to charge the poor rates of the said parish with the repayment of the sum borrowed for such purpose, and the interest thereof, so nevertheless that the sum so borrowed shall be repaid by equal annual instalments, not exceeding ten; and every instrument by which the rates shall be charged under the provisions of this act shall be approved of by the poor law commissioners, and registered in their office.

rates, for the payment of such debts.

7. And whereas various sums of money have been borrowed under the authority of an act passed in the twenty-second year of the reign of his Majesty King George the Third, intituled "An Act for the better Relief and Employment of the Poor," and securities authorised by that statute have been given in respect of such sums of money, and are now outstanding against the parishes on whose behalf the said sums were advanced, and the provisions of the several statutes in this behalf do not afford a satisfactory mode of liquidating such debts; be it therefore enacted, that where any parish is now or at any time hereafter shall be comprised in any union formed or to be formed under the said act of the fifth year of the reign of his late Majesty, or shall be under the management of a board of guardians, and the poor rates thereof shall be liable to the payment of any debt duly borrowed and secured under the authority of the said act of the twenty-second year of the reign of King George the Third, the guardians of such union or parish respectively shall be required to make such provision for the liquidation of the said debt in full, or by equal annual instalments, not exceeding ten, as the said commissioners shall by order under their hands and seal direct; and for such purpose such guardians are hereby empowered to make any order or orders upon the oversers of such parish as the said guardians may find necessary, and shall have all the same powers for enforcing such order or orders as they now have by law in regard to the contributions required by such guardians.

Provision for the discharge of bonds under 22 Geo. III c. 83.

8. Provided nevertheless, and be it enacted, that nothing in this act contained shall be deemed or taken to render any debt, liability, or engagement a valid charge upon the poor rates of any parish which is not at the time of the passing hereof a subsisting legal charge thereon, except where such resolution shall have been passed and such order shall have been made as aforesaid: and provided always, that every payment out of the poor rates, either of principal or interest, in respect of any such debt, liability, or engagement, without such order of the said commissioners, shall be unlawful, and as such disallowed in the accounts of the officer or officers or other person paying the same.

Payments in respect of debts not legally charged on the rates or provided for under this act, illegal, and to be disallowed.

9. And be it enacted, that every word used in this act shall, where the context shall not be at variance with such interpretation, be deemed to express the meaning assigned thereto in the said recited act of the fifth year of the reign of his late Majesty; and every order, regulation, mortgage, security, charge, or other instrument made and executed under the provisions of this act shall be subject to the same incidents, exemptions, provisions, or regulations as it would have been subject to if made under the powers contained in the said last-recited act.

Interpretation of act.

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5 & 6 Vict. Cap. 57.

An Act to continue until the thirty-first day of July one thousand eight hundred and forty-seven, and to the end of the then next Session of Parliament, the Poor Law Commission; and for the further Amendment of the Laws relating to the Poor in England. [30*th July* 1842.]

Whereas by an act passed in the fifth year of the reign of his late Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," provision was made for the appointment of poor law commissioners, assistant commissioners, secretaries, and other officers, and for their continuance in office until the end of the session of parliament held next after the 14th day of August in the year one thousand eight hundred and thirty-nine, and by other acts passed respectively in the third and the fourth and the fifth years of the reign of her present Majesty provision was made for their further continuance in office until the thirty-first day of July in the year one thousand eight hundred and forty-two, and it is expedient to extend such provisions: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament

4 & 5 Will. IV. c. 76.
2 & 3 Vict. c. 83.
3 & 4 Vict. c. 42.
5 Vict. c. 10.

5 & 6 *Vict.* c. 57.

Poor Law Commissioners, &c. continued

assembled, and by the authority of the same, that every poor law commissioner appointed by his late Majesty, or appointed or to be appointed by her Majesty the Queen, her heirs and successors, and every assistant commissioner, secretary, and other officer and person duly appointed by the poor law commissioners, shall be empowered (unless he shall previously resign or be removed) to hold his office, and exercise the powers thereof, until the thirty-first day of July in the year one thousand eight hundred and forty-seven, and thenceforth until the end of the then next session of parliament; and until the expiration of the said period it shall be lawful for her Majesty, her heirs and successors, from time to time, at pleasure, to remove any of the said commissioners for the time being, and upon every or any vacancy in the number of commissioners, either by removal or by death or otherwise, to appoint by warrant under the royal sign-manual some other fit person to the said office, and until such appointment it shall be lawful for the surviving or continuing commissioner or commissioners to act as if no such vacancy had occurred.

Not more than nine assistant commissioners to act in England.

2. And whereas by the said first-recited act it is provided, that it shall not be lawful for the poor law commissioners to appoint more than nine assistant commissioners to act at any one time, unless the lord high treasurer, or the commissioners of her Majesty's Treasury, for the time being, or any three or more of them, shall consent to the appointment of a greater number; be it enacted and provided, that after the thirty-first day of December in the year one thousand eight hundred and forty-two it shall not be lawful in any case for the poor law commissioners to appoint or continue in office more than nine assistant commissioners to act in England and Wales: provided always, that after the passing of this act, whenever it may seem fitting to the said commissioners, or whenever they may be thereunto required by her Majesty's principal secretary of state for the home department, the said commissioners, with the consent of the lord high treasurer or the commissioners of her Majesty's Treasury for the time being, or any three of them, shall appoint some person, being a doctor in medicine, a barrister at law, a member of the royal college of surgeons of London or Dublin, an architect or surveyor, and not being one of the assistant commissioners as aforesaid, or some two or more of such persons, to act either in England or Ireland as an assistant commissioner or assistant commissioners, for the purpose of conducting any special inquiry, for a period not exceeding thirty days; and the said commissioners shall delegate to every person so appointed for the purpose of conducting such inquiry all such of the powers of the said commissioners as they may deem necessary or expedient, for summoning witnesses and conducting such inquiry; and every such appointment shall be subject to the approval of one of her Majesty's principal secretaries of state; and every person so appointed as aforesaid to conduct any special inquiry shall, before he enter on the execution of his duties, take the following oath before one of the judges of her Majesty's court of Queen's Bench or Common Pleas, or one of the barons of the Exchequer in England or Ireland, as the case may be:

Professional persons, not being assistant commissioners, may be appointed to make special inquiries.

Such persons, previously to acting, to take the following oath.

"*I, A. B., do swear, that I will faithfully and honestly, according to the best of my skill and judgment, inquire into all matters and things which I may be lawfully directed to examine into, and will truly and impartially report thereon.*"

And it shall not be necessary to notify the appointment of any such person, or the taking of the oath aforesaid, otherwise than by publishing a notification of the same in the London Gazette, and by signifying the same, under the seal of the said commissioners, to the clerk of the peace of the county or counties within which the inquiry in question is to be made: provided always, that if any person be charged with any misconduct in any matter relating to the administration of the laws for the relief of the poor, and if any such special inquiry as aforesaid be directed to be made into such charge, the person bringing such charge shall be entitled to make the same at such inquiry by his counsel or attorney, and the person charged with such misconduct shall be entitled to make his defence at such inquiry by counsel or attorney; but nothing herein contained shall release any person charged with any misconduct, or bringing any charge of misconduct, from the liability to be himself examined at any such inquiry in respect of the matter of such charge, in the same manner and subject to the same penalties as under the said firstly-recited act.

In special inquiries on charges of misconduct, the persons may be heard by counsel.

General rules not to be altered by particular rules, without the consent of secretary of state.

3. And be it enacted, that whenever any general rule of the said commissioners shall be in force, it shall not be lawful for the said commissioners to issue any particular rule, order, or regulation, addressed to any single parish or union, by which such general rule or any part thereof would be rescinded or

suspended, unless one of her Majesty's principal secretaries of state have first signified to the said commissioners his approval of such particular rule in writing.

5 & 6 *Vict.* c. 57.

Time of operation of certain rules and orders in cases of urgency.

4. And be it enacted, that every order of the said commissioners suspending or dismissing any paid officer from the exercise of his office, in which the said commissioners shall declare that the urgency of the case requires that such order should take effect within the period of fourteen days, shall come into force at such time as the said commissioners shall in such order direct, notwithstanding that fourteen days shall not have expired since a written or printed copy of the same shall have been sent by the said commissioners, as required by the first-recited act.

Guardians, &c. may set occasional poor to work.

5. And be it enacted, that it shall be lawful for the guardians of any parish or union, subject always to the powers of the poor law commissioners, to prescribe a task of work to be done by any person relieved in any workhouse, in return for the food and lodging afforded to such person; but it shall not be lawful to detain any person against his will for the performance of such task of work for any time exceeding four hours from the hour of breakfast in the morning succeeding the admission of such person into the workhouse; and if any such person, while in such workhouse, refuse or neglect to perform such task of work suited to his age, strength, and capacity, or wilfully destroy or injure his own clothes, or damage any of the property of the board of guardians, he shall be deemed an idle and disorderly person within the meaning of an act passed in the fifth year of the reign of King George the Fourth, intituled "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of Great Britain called England."

Penalty for not doing work.

5 Geo. IV. c. 38, s. 3.

Guardians to have the like powers as overseers with regard to Lunatics. See also 7 & 8 Vict. c. 101, s. 28.

6. And be it enacted, that every board of guardians appointed under the provisions of the said first-recited act, or acting under the regulations of the said commissioners for the relief of the poor, and the relieving officers of such guardians, shall have the like powers as overseers have with respect to insane persons under the provisions of an act passed in the ninth year of the reign of King George the Fourth, intituled "An Act to amend the Laws for the erection and regulation of County Lunatic Asylums, and more effectually to provide for the care and maintenance of Pauper and Criminal Lunatics in England," or of any act or acts passed to amend the same; and every such board of guardians shall from time to time pay or cause to be duly paid to the treasurer, managers, or keepers of any county lunatic asylum, public hospital, or licensed house respectively, all costs lawfully due in respect of any poor person maintained in such county lunatic asylum, public hospital, or licensed house, and if such costs shall not be duly paid by such board of guardians or overseers of the parish to which such poor person may have been chargeable according to the provisions of the said recited acts, then and in such case it shall be lawful for any two justices to proceed to the recovery of the said costs, by making and enforcing an order for the same on the overseers of the aforesaid parish, according to the provisions of the said recited acts; and it shall be lawful for any such board of guardians to contract with any person duly licensed to practise as a medical man to certify as to the state and condition of insane persons under the provisions of the last-recited act; and whenever any insane person is relieved by any such board of guardians or any of their officers, the relieving officer within whose district the parish is situate to which such person may be chargeable, or in which such person may be found destitute, shall give the like information to some justice of the peace acting for the division of the county within which such parish is situated as is required by the said act of the reign of King George the Fourth of overseers, and subject to the like penalties for neglect; and the clerk to every such board of guardians shall on the fifteenth day of August in every year, or as soon after as may be, make out and sign two true and faithful lists of all insane persons chargeable to the parish or union in the form in the schedule hereunto annexed, and shall on or before the first day of September next succeeding transmit one copy of such list to the clerk of the peace acting in and for the county within which the parish to which each such insane person is chargeable is situated, or to his deputy, to be by him laid before the justices acting for such county at their next general quarter sessions, and the other copy of such list to the said commissioners; and from and after the passing of this act the overseers of any such parish, or of any parish within any such union, shall not be required to make the annual return required of them by the said act of the reign of King George the Fourth.

9 Geo. IV. c. 40.

5 & 6 Vict. c. 57.

Where parish more than four miles from place of meeting of guardians it may be formed into a district for purposes of relief.

7. And be it enacted, that whenever the whole of any parish or parishes is situated at a greater distance than four miles from the place of meeting of the board of guardians of the union of which such parish or parishes may form part, it shall be lawful for the commissioners, on the application of the board of guardians, to form such parish or parishes into a district, and to direct the said guardians from time to time to appoint a committee of their members to receive applications of poor persons requiring relief in such district, to examine into the cases of such poor persons, and to report to the said guardians thereon.

Determination of disputes as to the election, &c. of guardians.

8. And be it enacted, that in case any question shall arise as to the right of any person to act as an elective guardian it shall be lawful for the commissioners, if they shall see fit, to inquire into the circumstances of the case, and to issue such order or orders therein, under their hands and seal, as they may deem requisite for determining the question; and no such order shall be liable to be removed by writ of certiorari into the court of Queen's Bench unless the application for such writ shall be made during the term next after the issuing of such order.

Resignation of candidates.

9. And be it enacted, that if any person put in nomination for the office of guardian tender to the officer conducting the election of guardians his refusal in writing to serve such office, the election of guardians, so far as regards such person, shall be no further proceeded with.

Continuance of guardians in office.

10. And be it enacted, that in every case in which no person shall be elected for the office of guardian in any parish at any annual election of guardians, the persons elected for the previous year may continue to act as guardians until the next annual election.

Commissioners may accept resignation of any guardian, and may order new election.

11. And be it declared and enacted, that the said commissioners may accept the resignation of any person elected as a guardian tendered for any cause which the commissioners may deem reasonable; and in every case of omission to elect, or of vacancy in any board of guardians, by death, resignation, or disqualification, the said commissioners shall be and shall be deemed to have been empowered to order a new election for the completion of such board.

In case of vacancy, remaining guardians to act.

12. And be it declared and enacted, that in case the full number of guardians shall not be or shall not have been elected at any election of guardians, or in case of any vacancy in any board of guardians by the death, removal, resignation, refusal, or disqualification to act of any elected guardian, the other or remaining members of the said board, being not less than three, shall be and be deemed to have been competent to act until the next election, or until the completion of the said board, as if the number of such board were complete, and that no acts or proceedings shall be liable to be questioned on account of any failure to elect any guardian or guardians, or on account of any vacancy as aforesaid.

De facto guardians.

13. And be it declared and enacted, that no defect in the qualification or election of any person acting as a guardian at a board of guardians, the majority of persons assembled at which shall be entitled to act as guardians, shall be deemed to vitiate or make void any proceedings of such board in which he may have taken part.

Paid officers and others incapable of serving as guardians.

14. And be it enacted, that no person, during the time for which he may serve or hold the office of assistant overseer of any parish, nor any paid officer engaged in the administration of the laws for relief of the poor, nor any person who, having been a paid officer, shall have been dismissed within five years previously, from such office, under the provisions of the said first-recited act, shall be capable of serving as a guardian; and no person receiving any fixed salary or emolument from the poor rates in any parish or union shall be capable of serving as a guardian in such parish or union.

Ex officio guardians not incompetent to act as justices.

15. And whereas doubts have been entertained whether justices of the peace who are *ex officio* members of boards of guardians of parishes or unions under the provisions of the first-recited act can lawfully act as justices of the peace in cases in which the guardians of such parishes or unions are complainants, or are otherwise interested or concerned, and it is expedient that such doubts should be removed; be it therefore enacted, that no justice of the peace shall be disabled from acting as such justice at any petty or special or general or quarter sessions in any matter merely on the ground that such justice of the peace is an *ex officio* member of any board of guardians complaining, interested, or concerned in such matter, or has acted as such at any meeting of such board of guardians.

Corporate powers of board of guardians.

16. And be it enacted, that it shall be lawful for every board of guardians constituted under the said first-recited act to accept, take, and hold, on behalf

of the union or parish respectively for which they may act, any lands, buildings, goods, effects, or other property as a corporation, and in all cases to sue and be sued in their corporate name.

Mode of application to justices, &c. by boards of guardians.

17. And be it enacted, that wherever a board of guardians is empowered to make any order, or to prefer any complaint, claim, or application, before justices or otherwise, if any such board resolve to make such order, or to prefer such complaint, claim, or application, a copy of the minute of such resolution, signed by the presiding chairman of such board, and sealed with their seal, and countersigned by their clerk or person acting as their clerk, shall be doemed and taken to be sufficient proof of the making of such order, or of the preferring of such complaint, claim, application, or otherwise, as the case may be; and that whenever, either for the purpose of making an order for the removal of a pauper, or on the trial of an appeal against such order, or for any other purpose, it shall be necessary to prove to what parish a pauper has become chargeable, (if in such parish the laws for the relief of the poor shall be administered by a board of guardians or a district board,) a certificate of such pauper having so become chargeable, signed, sealed, and countersigned as aforesaid, shall be sufficient proof to what parish and at what time such pauper became and was chargeable, unless the contrary shall be proved by other legal evidence; and that in all cases in which the guardians of any parish or union are or may hereafter be empowered to make any application or complaint, or to take any proceedings before any justices at petty or special or general or quarter sessions, it shall be lawful for any officer of such guardians empowered by any board of such guardians, by an order in writing, under the hand of the presiding chairman of such board, and sealed with the common seal of such guardians, to make such application or complaint, or to take such proceedings on behalf of such guardians, as effectually to all intents and purposes as if the same were made or taken by such guardians, or any of them, in person.

Certificate of chargeability. (*a*)

Guardians may authorise their officers to take legal proceedings.

Construction.

18. And be it enacted, that the said act of the fifth year of the reign of his late Majesty, and the act passed in the sixth year of the reign of his said Majesty, intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations of Parishes in England and Wales," and the act passed in the seventh year of the reign of his said Majesty, intituled "An Act to regulate Parochial Assessments," and so much of an act passed in the second year of the reign of her present Majesty, intituled "An Act for the more effectual Relief of the destitute Poor in Ireland," as relates to the style of the Poor Law Commissioners, their appointment, the delegation of powers to one of their number, the sittings of their board, their common seal, and the residence of one of their number in Ireland, and all acts to amend or extend any of the said acts, or the said provisions of the act last recited, and the present act, shall (except so far as the provisions of any former act shall be expressly altered or amended by the provisions of any subsequent act,) be construed as one act; and that in each and every such act (except the said act for the more effectual relief for the destitute poor in Ireland) the words "auditor," "guardian," "justice or justices of the peace," "oath," "officer," "overseer," "owner," "rack rent," "parish," "person," "poor," "poor laws," "laws for relief of the poor," "poor rate," "general quarter sessions," "union," "united workhouse," "vestry," "workhouse," and words importing the singular number or the masculine gender only, shall be interpreted as is provided in the first-recited act; and that the provisions of the said first-recited act shall extend to every rule, order or regulation directed or authorised to be made by the said commissioners under the provisions of an act passed in the seventh year of his said late Majesty, intituled "An Act for registering Births, Deaths, and Marriages in England," or by an act passed in the fourth year of the reign of her present Majesty, intituled "An Act to extend the Practice of Vaccination."

4 & 5 Will. IV. c. 76.
5 & 6 Will. IV. c. 69.
6 & 7 Will. IV. c. 96.
1 & 2 Vict. c. 56, ss. 118 to 122.
1 & 2 Vict. c. 25, s. 2.
7 Will. IV. and 1 Vict. c. 50.
2 & 3 Vict. c. 84.
6 & 7 Will. IV. c. 86, s. 10.
3 & 4 Vict. c. 29.

Act limited to England and Wales.

19. And be enacted, that, except so far as is hereinbefore expressly excepted, and so far as the continuance in office or appointment of the said commissioners, their assistant commissioners, secretary, assistant secretaries, and other officers and persons appointed by them, and their removal, no part of this act shall extend to Ireland.

Act may be amended this session.

20. And be enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

(*a*) As to the proof, see 7 & 8 Vict. c. 101, s. 69, p. 1310.

SCHEDULE.

Form :—*Annual Return.*

A true List of all Insane Persons, Lunatics, and Idiots, chargeable to the Parishes comprised within [such Part of] the Union [as is situate] in the County of ; specifying the Names, Sex, and Age of each, and whether dangerous or otherwise, and for what Length of Time they have been supposed to be of unsound Mind, and where confined, or how otherwise disposed of.

Name.	Age.	Sex.	Parish to which chargeable.	Where Maintained.					Weekly Cost of Maintenance and Clothing.	Whether Lunatic or Idiot.	Dangerous to himself or others.	Of Dirty Habits.	For what Length of Time supposed to be of unsound Mind.	Observations.
				In a County Asylum, and what Asylum, and when sent thither.	In a licensed House, and where and when sent thither.	In the Union Workhouse.	In Lodgings, or boarded out, and where.	Residing with Friends, and where.						

Signed by me, this 15th day of August, 18 ,

A. B.,

Clerk to the Board of Guardians of the said Union.

7 & 8 Vict. Cap. 101.

An Act for the further Amendment of the Laws relating to the Poor in England. [*9th August*, 1844.]

WHEREAS it is expedient to amend an act passed in the session held in the fourth and fifth years of the reign of his late Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," and certain other acts relating to the relief of the poor in England: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, all powers for obtaining or making an order upon any putative father for the maintenance of a bastard child shall cease and determine, except as herein-after provided.

4 & 5 Will. IV. c. 76.

Powers of making order on putative father to cease.

2. And be it enacted, that any single woman who may be with child, or who may be delivered of a bastard child, after the passing of this act, or who has been delivered of a bastard child within the period of six calendar months before the passing of this act, may either before the birth, or at any time within twelve months from the birth of such child, or at any time thereafter, upon proof that the man alleged to be the father of such child has within the twelve months next after the birth of such child paid money for its maintenance, make application to an one justice of the peace acting for the petty sessional division of the county, or for the city, borough, or place in which she may reside, for a summons to be served on the man alleged by her to be the father of such child; and if such application be made before the birth of the child, the woman shall make a deposition upon oath stating who is the father of such child, and such justice of the peace shall thereupon issue his summons to the person alleged to be father of such child to appear at a petty session, to be holden after the expiration of six days at least for the petty sessional division, city, borough, or other place in which such justice usually acts.

The putative father to be summoned to petty sessions, on application of mother of bastard.

3. And be it enacted, that after the birth of such bastard child, on the appearance of the person so summoned, or on proof that the summons was duly served on such person, or left at his last place of abode six days at least before the petty session, the justices in such petty session shall hear the evidence of such woman, and such other evidence as she may produce, and shall also hear any evidence tendered by or on behalf of the person alleged to be the father; and if the evidence of the mother be corroborated in some material particular by other testimony, to the satisfaction of the said justices, they may adjudge the man to be the putative father of such bastard child; and they may also, if they see fit, having regard to all the circumstances of the case, proceed to make an order on the putative father for the payment to the mother of the bastard child, or to any person who may be appointed to have the custody of such child under the provisions of this act, of a sum of money weekly, and of such costs as may have been incurred in the obtaining of such order, including, if they think proper, ten shillings for the midwife, and ten shillings towards the funeral expenses of the child, provided it have died before the making of such order; and if the application be made before the birth of the child, or within two calendar months after the birth of the child, such weekly sum may, if the said justices think fit, be calculated from the birth of the child, at a rate not exceeding five shillings per week for the first six weeks after the birth of such child; and in other cases such sum shall not exceed two shillings and sixpence per week from the time of the making of the application; and if at any time after the expiration of one calendar month from the making of such order as aforesaid it be made to appear to any one justice, upon oath or affirmation, that any sum to be paid in pursuance of such order has not been paid, such justice may, by warrant under his hand and seal, cause such putative father to be brought before any two justices; and in case such putative father neglect or refuse to make payment of the sums due from him under such order, or since any commitment for disobedience to such order as herein-after provided, together with the costs attending such warrant, apprehension, and bringing up of such putative father, such two justices may, by warrant under their hands and seals, direct the sum so appearing to be due, together with such costs, to be recovered by distress and sale of the goods and chattels of such putative father, and may order such putative father to be detained and kept in safe custody until return can be conveniently made to such warrant of distress, unless he

Justices in petty sessions may make an order on the putative father for maintenance and costs, and enforce the same by distress and commitment

7 & 8 *Vict.* *c.* 101.

give sufficient security, by way of recognizance or otherwise, to the satisfaction of such justices, for his appearance before two justices on the day which may be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security; but if upon the return of such warrant, or if by the admission of such putative father, it appear that no sufficient distress can be had, then any such two justices may, if they see fit, by warrant under their hands and seals, cause such putative father to be committed to the common gaol or house of correction of the county, city, borough, or place where they have jurisdiction, there to remain without bail or mainprize for any term not exceeding three calendar months, unless such sum and costs, and all reasonable charges attending the said distress, together with the costs and charges attending the commitment and conveying to gaol or to the house of correction, and of the persons employed to convey him thither, be sooner paid and satisfied: provided always, that if the woman have allowed the weekly payment to be in arrear for more than thirteen successive weeks, without application to a justice, the man shall not be called upon to pay more than the amount due for thirteen weeks in discharge of the whole debt, and no warrant of distress shall be issued for more than the amount of arrears for thirteen weeks' payment in discharge of the whole arrears or debt.

Proviso, when payment for thirteen weeks is in arrear.

Applications to be made within forty days.

4. And be it enacted, that the justices in petty session as aforesaid may adjourn the hearing of the case as often as to them may seem fit; but no such order shall be made unless applied for at such petty sessions within the space of forty days from the service of the summons after the birth of the bastard child on the person alleged to be the father of such bastard child; and if within twenty-four hours after the adjudication and making of any order on the putative father as aforesaid, such putative father give notice of appeal to the mother of the bastard child, and also within seven days give sufficient security, by recognizance or otherwise, for the payment of costs, to the satisfaction of some one justice of the peace, it shall be lawful for such putative father to appeal to the general quarter sessions of the peace, to be holden after the period of fourteen days next after the making of the said order for the county, city, borough, or place for which such petty sessions may have been held; and the justices in such quarter sessions assembled, or the recorder, as the case may be, shall thereupon hear and determine such appeal, and shall order such costs to be paid by either party as to them or him may seem fit.

Appeal to quarter sessions for the putative father.

Money under the order to be paid to the mother or to a person appointed by the justices.

5. And be it enacted, that all money payable under any order as aforesaid shall be due and payable to the mother of the bastard child in respect of such time and so long as she lives and is of sound mind, and is not in any gaol or prison, or under sentence of transportation; and after the death of the mother of such bastard child, or whilst such mother is of unsound mind, or confined in any gaol or prison, or under sentence of transportation, any two justices may, if they see fit, by order under their hands and seals, from time to time appoint some person who, with his own consent, shall have the custody of such bastard child, so long as such bastard child is not chargeable to any parish or union, and any two such justices may revoke the appointment of such person, and may appoint another person in his stead; and every person so appointed to have the custody of a bastard child shall, so long as such child is not chargeable to any parish or union, be empowered to make application for the recovering of all payments becoming due under the order of the court of petty session as aforesaid, in the same manner as the mother of such bastard child might have done; and the clerk to the justices making any order on the putative father of a bastard child, or appointing any person to have the custody of such child, as herein-before provided, shall as soon as may be send by post or otherwise a duplicate of such order or appointment, signed by such clerk, to the clerk to the guardians of the union or parish in which the mother of such bastard child resided at the time of making such order or appointment: provided always, that no order for the maintenance or support of any such bastard child made in pursuance of this act shall, except for the purpose of recovering money previously due under such order, be of any force or validity after the child in respect of whom it was made has attained the age of thirteen years, or after the marriage of the mother of such child, or after the death of such child.

Time of cessation of order.

Mother punishable for neglect or desertion of her bastard child.

6. And be it declared and enacted, that every woman neglecting to maintain her bastard child, being able wholly or in part so to do, whereby such child becomes chargeable to any parish or union, shall be punishable as an idle and disorderly person, under the provisions of an act made and passed in the fifth

year of the reign of his late Majesty King George the Fourth, intituled "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of the United Kingdom called England;" and every woman so neglecting to maintain her bastard child, after having been once before convicted of such offence, and every woman deserting her bastard child, whereby such bastard child becomes chargeable to any parish or union, shall be punishable as a rogue and vagabond, under the provisions of the said last-recited act.

7 & 8 *Vict.* c. 101.

5 Geo. IV. c. 83.

Officers of parishes or unions not to receive money under the order, or to interfere in any respect.

7. And be it enacted, that it shall not be lawful for any justice of the peace to appoint any officer of any parish or union to have the custody of any bastard child as herein-before provided, or for any officer of any parish or union, clerk of justices, or constable, to receive any money in respect of any bastard child under an order of petty session as aforesaid, or as such officer to conduct any application to make or enforce such order, or in any way to interfere as such officer in causing such application to be made, or in procuring evidence in support of such application, under a penalty of forty shillings, to be levied on conviction before any two justices, as penalties and forfeitures under the said first-recited act: provided always, that after the death of such mother, or if such mother be incapacitated as aforesaid, so often as any bastard child for whose maintenance such order of petty sessions has been made, becomes chargeable to any parish or union by the neglect of the putative father to make the payments due under the orders of justices, then and in such case it shall be lawful for any board of guardians of a union or parish, or if there be no such board of guardians for the overseers of any parish or place, to make such application for the enforcement of the order as might have been made by the mother of such bastard child if alive; but all payments for the maintenance of such child made in pursuance of such application shall be made to some person to be from time to time appointed by the justices as herein-before provided, and on condition that such bastard child shall cease to be chargeable to such parish or union.

Proceedings against putative father in case of death or incapacity of mother.

Penalties for promoting marriage of a mother of a bastard improperly, misapplying monies, or maltreating a bastard child.

8. And be it enacted, that if any officer of a union, parish, or place, endeavour to induce any person to contract a marriage by threat or promise respecting any application to be made or any order to be enforced with respect to the maintenance of any bastard child, such officer shall be guilty of a misdemeanor; and every person having the custody of any bastard child under any order of justices, as herein-before provided, who may misapply monies paid by the putative father for the support of such child, or may withhold proper nourishment from such child, or otherwise abuse and maltreat such child, shall, on conviction before any two justices, forfeit and pay a sum not exceeding ten pounds.

Existing orders, &c. not to be affected.

Orders made before 14th of August, 1834, to cease on 1st January, 1849.

9. And be it enacted, that nothing in this act contained shall affect the validity of any orders for the maintenance of a bastard child made by justices in quarter or petty sessions before the passing of this act; but no such order made before the fourteenth day of August, one thousand eight hundred and thirty four, shall be in force after the first day of January, one thousand eight hundred and forty nine, and that all proceedings actually pending before justices in quarter sessions or petty sessions at the time of the passing of this act may be continued, and orders made therein in the same manner as if this act had not been passed.

Orders made by justices acting in two adjoining counties to be valid, although not made in the county in which the parish is situate.

10. And whereas various unions established under the authority of the said recited act are situate partly in one county, riding, or division, and partly in an adjoining county, riding, or division; and whereas doubts have been entertained whether any justice of the peace acting under two commissions for different counties, ridings, or divisions, can legally make orders in bastardy when acting in petty sessions within the limits of one of such commissions, for such parts of such unions as are situate within the limits of the other of such commissions; and whereas it is expedient to remove all such doubts with regard to orders which have before the passing of this act been made under such circumstances; be it therefore enacted, that all orders in bastardy which have been made by any justices of the peace acting as such under two commissions for any two adjoining counties, ridings, or divisions, shall, although not made within the county, riding, or division in which the parish interested in the order, or any part thereof, is situate, be as valid, good, and effectual in the law, to all intents and purposes as if they had been made within such county, riding, or division.

7 & 8 Vict. c. 101.

Clerks to justices annually to make a return of summonses, orders, &c. to the clerks of the peace; who shall transmit copies thereof to the Secretary of State, with lists of appeals.

11. And be it enacted, that every clerk to the justices shall once in each year, (that is to say,) as soon as may be after the first day of January, make up, in the form in the Schedule (A.) annexed to this act, and forward to the clerk of the peace, a complete list of summonses issued, applications heard, and orders made as aforesaid since the first day of January of the year preceding, by the justices to whom he acts as clerk; and every clerk of the peace shall receive such lists, and shall, on demand of the clerk to the justices, acknowledge under his hand the receipt of any such list, and shall preserve the said lists, and shall, as soon as may be after the receipt of such lists, transmit copies thereof, duly certified, to her Majesty's principal Secretary of State for the Home Department, and shall also transmit a list of all the cases in which appeals have been made to the court of quarter sessions during the same period, with the result of every such appeal; and it shall be lawful for the justices of the peace, at their respective general quarter sessions of the peace, to make and settle a fee or fees to be paid to every such clerk to the justices for every such list; and on production by any such clerk to the justices of the acknowledgment by the clerk of the peace of the receipt of such list the treasurer of the county shall pay the fee so made and settled, and due in respect of any such list, out of the county stock in the hands of such treasurer.

Poor law commissioners to prescribe the duties of poor apprentices, and masters neglecting to fulfil them liable to penalty.

Guardians to bind poor children apprentices instead of overseers.

Assent of justices not required.

12. And be it enacted, that the poor law commissioners may, by order under their hands and seal, prescribe the duties of the masters to whom poor children may be apprenticed, and the terms and conditions to be inserted in the indentures by which such children may be so bound as apprentices; and every master of such apprentice who wilfully refuses or neglects to perform any of such terms or conditions so inserted in any such indenture shall be liable, upon conviction thereof before any two justices, to forfeit any sum not exceeding twenty pounds; and that after the first day of October next, no poor child shall be bound apprentice by the overseers of any parish included in any such union or subject to a board of guardians under the provisions of the first-recited act, but it shall be lawful for the guardians of such union or parish respectively to bind any such poor child to be an apprentice, and in such case the indentures of apprenticeship shall be executed by the said guardians and shall not need to be allowed, assented to, or executed by any justice or justices of the peace, and the guardians shall have all the powers for binding or assigning any such apprentice which are now possessed by overseers, and shall cause all apprentices so bound or assigned by them to be registered by their clerk according to the form prescribed by the statute of the forty-second year of the reign of King George the Third relating to the registration of parish apprentices, so far as the same may be applicable to such binding or assignment: provided always, that nothing herein contained shall directly or indirectly interfere with the provisions of any act of parliament relating to apprentices to be bound to the sea service.

Compulsory apprenticeship abolished.

Repeal of 43 Eliz. c. 2.

8 & 9 Will. III. c. 111.

13. And be it enacted, that after the passing of this act so much of an act passed in the forty-third year of the reign of Queen Elizabeth, intituled "An Act for the Relief of the Poor," and so much of an act passed in the session held in the eighth and ninth years of the reign of King William the Third, intituled "An Act for supplying some Defects in the Laws for the Relief of the Poor of this Kingdom," or of any other act of parliament, whether general or local, as compels any person to receive any poor child as an apprentice, shall be and is hereby repealed.

Repeal of so much of 4 & 5 Will. IV. c. 76, as relates to number of votes of owners and rate-payers.

58 Geo. III. c. 69.

Votes of owners and rate-payers assimilated.

14. And whereas by the said first-recited act it is provided, that in every case of an election of guardians under the said act, or whenever the consent of owners of property or rate-payers in any parish or union may be required for any of the purposes of the said act, the owner, as well as the rate-payer in respect of any property in such parish or union, shall be entitled to vote, and the owner shall have the same number and proportion of votes respectively as is provided for inhabitants and other persons in and by an act made and passed in the fifty-eighth year of the reign of his late Majesty King George the Third, intituled "An Act for the Regulation of Parish Vestries," and in and by an act to amend the same, made and passed in the fifty-ninth year of his said late Majesty; and the rate-payers under two hundred pounds shall each have a single vote; and the rate-payers rated at two hundred pounds or more, but under four hundred pounds, shall each have two votes; and the rate-payers rated at four hundred pounds or more shall each have three votes: And whereas it is expedient that the number and proportion of votes of owners of property and of rate-payers

respectively should be assimilated, be it enacted, that so much of the said act as is above recited relating to the number and proportion of votes of owners of property and of rate-payers respectively shall be and the same is hereby repealed; and that in all cases in which by the said act, or by any act amending or extending the same, owners of property and rate-payers are entitled to vote, every owner of property and rate-payer shall have respectively the same number and proportion of votes, according to the scale following (that is to say,) if the property in respect of which he is entitled to vote be rated upon a rateable value of less than fifty pounds, he shall have one vote, if such rateable value amount to fifty pounds and be less than one hundred pounds, he shall have two votes if it amount to one hundred pounds and be less than one hundred and fifty pounds he shall have three votes; if it amount to one hundred and fifty pounds and be less than two hundred pounds, he shall have four votes; if it amount to two hundred pounds and be less than two hundred and fifty pounds, he shall have five votes; and if it amount to or exceed two hundred and fifty pounds, he shall have six votes

Owners of property and rate payers to vote according to the scale herein set forth

15. And be it enacted, that no owner of property shall be entitled to vote as such, under the provisions of the said recited act, either in person or proxy, during the year following the twenty fifth day of March in any year, unless before the first day of February next preceding such twenty-fifth day of March he had given to the overseers the statement required by the said act, signed by him, nor unless such statement contain a description of the nature of the interest or estate he may have in such property, and a statement of the amount of all rent service (if any) which he may receive or pay in respect thereof, and of the persons from whom he may receive or to whom he may pay such rent service; and no person shall be entitled to vote as proxy until fourteen days after he have made his claim so to vote in the manner required by the said act, and no person shall be entitled to vote as proxy for more than four owners of property in any one parish (except he be a steward, bailiff, or land agent, or collector of rents for the owners of property for whom he may be appointed to vote), and no appointment of proxy shall remain in force for a longer period than two years from the making thereof, excepting only in the case in which an owner appoints his tenant, bailiff, steward, land agent, or collector of rents to be his proxy, in which case such appointment shall remain in force so long as the proxy may continue to be such tenant, bailiff, steward, land agent, or collector, and such appointment remains unrevoked, and the overseers of every parish containing a population exceeding two thousand persons, according to the last enumeration of the population published by the authority of Parliament, shall, on or before the fifth day of the month of February in every year, enter in the book to be from time to time provided for the purpose the names and addresses of all persons who before the first day of the said month of February have given such statement or made such claims as owners or proxies as aforesaid; and such overseers shall allow any person to peruse such book, without payment of any fee, at all reasonable hours between the said fifth day and the tenth day of February; and any person who has given such statement, or made such claim, or any rate-payer of such parish, may, on or before the fifteenth day of the said month of February, object to any other person as not being entitled to vote as such owner, by delivering to the clerk of the board of guardians of the said parish, or of the union in which it may be comprised, and at the address of the person objected to, notice in writing of the grounds of such objection, and on or before the twentieth day of such month of February such clerk shall send to the overseers of such parish notice of some day, between the twenty-fourth of the said month and the first of March then next, on which he or some person duly appointed for the purpose will hear evidence in relation to such objections, and of the place within the parish or union at which he or such other person will attend to hear such evidence; and such overseers shall forthwith cause a copy of such notice to be fixed on or near the doors of all churches or chapels within such parish, and at all the usual places of affixing notices of parochial business; and such clerk shall attend on the day and at the place so appointed, and shall, in the presence of all persons who may think fit to be present, hear any matter adduced in support of such grounds of objection, or in opposition thereto, but none other; and the overseers of the said parish shall then and there attend, and produce to such clerk the rate-books of the parish for the whole year preceding, and shall answer all such questions as such clerk may put to them or any of them touching the matter of any such objection; and such clerk shall retain in the said book the name of all persons to whom

Regulations as to votes of owners and of proxies.

Objection.

7 & 8 *Vict.* c. 101.

no objection has been duly made, and of all persons objected to, unless the party objecting have appeared in support of his objection, and established such objection, and when the name of any person has been duly objected to, such clerk shall require proof of the right of such person to vote as owner; and in case any matter be adduced in support of the objection, and the right of the person objected to be not proved to the satisfaction of such clerk, he shall expunge the name of such person from such book; and such clerk shall have power to adjourn from time to time, and administer an oath to the overseers of any parish, and to all persons attending before him claiming a right to vote as owners or objecting to such right, and to all witnesses who may be tendered or examined on either side; and such clerk shall write his initials against every name struck out, and sign his name to every page of the said book; and the persons whose names as owners are retained by such clerk in such book shall be the only persons entitled to vote in such parish as owners of property for the year following the twenty-fifth of March next ensuing: provided always, that the said commissioners may, if they see fit, by order under their hands and seal, direct the guardians of such parish or union to appoint some person, other than the clerk to such guardians, as a paid officer, to hear and decide the matter of such objections as aforesaid, who shall have all such powers as are hereinbefore given to the clerk, and perform all such duties as are hereinbefore imposed on the clerk in that behalf: provided also, that nothing herein contained shall affect any election in which proceedings have been commenced before the passing of this act.

So much of 4 & 5 Will. IV. as relates to not voting only to extend to poor's rates.

16. And whereas by the said first-recited act it is provided that no person shall be deemed a rate-payer, or be entitled to vote, or do any other act, matter, or thing as such, under the provisions of that act, unless he shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such rate-payer, and shall have paid the parochial rates and assessments made and assessed upon him for the period of one whole year, as well as those due from him at the time of so voting or acting, except such as shall have been made or become due within six months immediately preceding such voting or acting; be it enacted, that such parochial rates and assessments shall be deemed to extend only to rates made for the relief of the poor.

Annual election of guardians to take place within forty days after the 25th of March.

17. And whereas in the said first-recited act it is provided, that guardians of the poor elected under the provisions of that act shall go out of office, and guardians for the ensuing year shall be chosen within fourteen days next after the twenty-fifth day of March in every year: and whereas such period hath been found to be too short, and it is expedient to extend the same; be it therefore enacted, that the period within which the annual election of guardians shall take place shall be extended to the period of forty days next after the said twenty-fifth day of March, and that the guardians of the preceding year shall continue in office for the said period of forty days, or until the election of guardians for the succeeding year have taken place.

Number of guardians may be altered with reference to population, &c.

18. And be it enacted, that it shall be lawful for the said commissioners, having due regard to the relative population or circumstances of any parish included in a union, to alter the number of guardians to be elected for such parish, without such consent as is required by the said first-recited act.

Parishes may be divided into wards.

19. And be it enacted, that in every case in which a parish in which guardians are to be elected under the provisions of the said first-recited act, contains more than twenty thousand persons, according to the enumeration of the population then last published by authority of Parliament, it shall be lawful for the said commissioners, by order under their hands and seal, for the purpose of conducting the election of guardians, to divide such parish into such and so many wards as they may deem expedient, so that no such ward shall contain a number of rated houses less than four hundred, and to determine the number of guardians to be elected for every such ward, having due regard to the value of the rateable property therein; and each such ward shall, for the purpose of every election of guardians, so far as the said commissioners may direct, be considered as a separate parish.

Qualifications of guardians in wards.

20. And be it enacted, that in every case in which a parish is divided into wards for the purpose of electing guardians, every person qualified to be elected as a guardian in the parish shall be qualified to be elected in any ward within the same parish; but no person shall at any election of guardians be elected for more than one ward within the same parish; and if at any such election a person be nominated in two or more wards, the returning officer at such election

shall, if such person reside within the parish, give such person notice thereof in writing, to be left at his place of residence on the day following the last day fixed for the nomination of candidates, and such person, whether he reside in the parish or not, may at any time, until two days proceding the issuing of the voting papers, elect by notice in writing delivered to the returning officer any one ward for which he will stand an election; and if he do not so elect some one ward the returning officer shall place his name on the list of candidates for that ward only for which he was first duly nominated.

Voting in wards.

21. And be it enacted, that no person entitled to vote shall give in the whole of the wards into which a parish may be divided a greater number of votes than he would be entitled to have given if the parish had not been divided into wards, nor in any one ward a greater number of votes than he is entitled to in respect of property in that ward; but, subject to the foregoing limitations, any ratepayer, owner of property, or proxy entitled to vote may, by notice in writing delivered to the overseers of the parish before the day appointed for the annual nomination of candidates, elect in what ward or wards he will vote for the ensuing year, and determine the proportion of votes which he will give in any one or more of such wards; and if he do not give such notice he shall not be entitled to vote for any ward in which he does not reside.

Restriction as to separate overseers for townships.

22. And be it enacted, that after the passing of this act it shall not be lawful to appoint separate overseers for any township or village or other place for which before the passing of this act separate overseers had not been lawfully appointed.

Orders of poor law commissioners valid, notwithstanding separate appointment of overseers.

23. And it is hereby declared and enacted, that in all cases in which overseers have for the first time been separately appointed for any township or village since the fourteenth day of August in the year of our Lord one thousand eight hundred and thirty-four all orders of the poor law commissioners, determining the number of guardians, or ascertaining the averages of any such township or village, or of any portion of the parish from which such township or village had been separated, shall be and be deemed to be good and valid in law, notwithstanding such separate appointment of overseers.

Justices who reside in extra-parochial places or parishes within unions to be ex-officio guardians.

24. And be it enacted, that when any union has been formed under the provisions of the said first-recited act, or where the said commissioners have under the provisions of the said act directed that the laws for the relief of the poor of any single parish shall be administered by a board of guardians, every justice of the peace acting for the county, riding, or division in which such union or parish, or any part thereof, is situated, and residing in any extra-parochial place the boundary line of which, or the greater part of the boundary line of which, is included within or coincident with the boundary line of such union or parish, shall be ex officio a guardian of such union or parish; and every justice of the peace residing in any parish within such a union, and acting for any county, riding, or division in which any part of such union is situated, shall be ex officio a guardian of such union.

Relief of married women in certain cases to be subject to the same conditions as if they were widows.

25. And be it enacted, that so long as it may appear that the husband of any woman is beyond the seas, or in custody of the law, or in confinement in a licensed house or asylum as a lunatic or idiot, all relief given to such woman, or to her child or children, shall, notwithstanding her coverture, be given to such woman in the same manner and subject to the same conditions as if she was a widow; but nothing herein contained shall diminish or affect the obligations or liabilities of such husband in respect of such relief.

Relief to widows in certain cases.

26. And be it enacted, that in the case of any person being a widow having a legitimate child dependent on her for support, and no illegitimate child born after the commencement of her widowhood, and who at the time of her husband's death was resident with him in some place other than the parish of her legal settlement, and not situated in any union in which such parish is comprised, it shall be lawful for the guardians of such parish or union, if they see fit, to grant relief to such widow, although not residing in such parish or union: provided always, that, notwithstanding any thing herein contained, the guardians of any union or parish, and the overseers of any parish, in which such widow may be resident or may require relief, shall be and remain liable to relieve such widow in the same manner as any other person requiring relief in such union or parish.

Proviso.

Expenses incurred for insane paupers may be levied off their estates.

27. And be it enacted, that if it be made to appear to any two justices that any insane person, lunatic, or idiot chargeable to any parish hath an estate more than sufficient to maintain his family, they shall by order under their hands and seals direct the overseers of the parish to which such person is

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chargeable to seize so much of any money, to seize and sell so much of any goods and chattels, or to receive so much of the rent of the lands or tenements of such person who is proved to such justices to be insane, necessary to pay any charges incurred in providing for the removal, maintenance, clothing, medicine, and care of such person; and if any trustee or other person having the possession, custody, or charge of any property of an insane person, lunatic, or idiot, or if the governor and company of the Bank of England, or any other person or persons, having in his or their hands any stock, interest, dividend, or annuity due to any such insane person, lunatic, or idiot, pay any money to any overseer or to any guardians of the poor to defray the charges incurred by any parish in the removal, maintenance, clothing, medicine, or care of such insane person, lunatic, or idiot, the receipt of such overseer or of the clerk of such guardians shall be a good discharge to such trustee or other person aforesaid.

Guardians under local acts to have powers with respect to insane poor.

28. And be it enacted, that the guardians of every parish or union appointed under any local act, and their officers appointed to act in the relief of the poor, and their clerks shall, from and after the passing of this act, have the like powers and shall be liable to perform the same duties with respect to insane persons as are provided in the case of guardians appointed under the provisions of the said first-recited act, their relieving officers and their clerks respectively.

Guardians to apply money raised for emigration.

29. And be it enacted, that the guardians of any parish or union constituted by the said commissioners shall apply all money raised or borrowed for the purpose of defraying the expenses of emigration in such parish or in any parish within such union, subject to the conditions and restrictions imposed by the said first-recited act.

Cost of obtaining site of workhouses in the metropolitan police district, &c.

30. And be it enacted, that in addition to the principal sum or sums of money which guardians are empowered by the said first-recited act to raise or borrow for the purpose of purchasing, hiring, building, enlarging, or altering workhouses, or buildings to be converted into workhouses, the guardians of any parish or union any part of which is situated within the metropolitan police district, or the city of London, or the select vestry of the parish of Liverpool, may, with the consent of the poor law commissioners, also raise or borrow and charge the future poor rates of such parish or union with such further or other sum or sums of money as may be or may have been necessary for the purchase of any land, or interest in land, required as the site of such workhouse, or of any additions to any such workhouse.

Burials of paupers.

31. And be it declared and enacted, that it shall be lawful for guardians, or where there are no guardians for the overseers, to bury the body of any poor person which may be within their parish or union respectively, and to charge the expense thereof to any parish under their control to which such person may have been chargeable, or in which he may have died, or otherwise in which such body may be; and unless the guardians, in compliance with the desire expressed by such person in his lifetime, or by any of his relations, or for any other cause, direct the body of such poor person to be buried in the churchyard or burial ground of the parish to which such person has been chargeable (which they are hereby authorised to do), every dead body which the guardians or any of their officers duly authorised shall direct to be buried at the expense of the poor rates shall (unless the deceased person, or the husband or wife or next of kin of such deceased person, have otherwise desired,) be buried in the churchyard or other consecrated burial ground in or belonging to the parish, division of parish, chapelry, or place in which the death may have occurred; and in all cases of burial, under the direction of the guardians or overseers as aforesaid the fee or fees payable by the custom of the place in which the burial may take place, or under the provisions of an act of Parliament, shall be paid out of the poor rates, for the burial of each such body, to the person or persons who by such custom or under such act may be entitled to receive any fee; provided always, that it shall not be lawful for any officer connected with the relief of the poor to receive any money for the burial of the body of any poor person which may be within the parish, division of parish, chapelry, or place in which the death may have occurred, or to act as undertaker for personal gain or reward in the burial of any such body, or to receive any money from any dissecting school or school of anatomy, or hospital, or from any person or persons to whom any such body may be delivered, or to derive any personal emolument whatever for or in respect of the burial or disposal of any such body; and any such officer offending as aforesaid shall, on conviction thereof before any two justices, forfeit and pay a sum not exceeding five pounds.

Commissioners may combine parishes and unions into districts for audit of accounts.

Election of district auditors.

32. And be it enacted, that it shall be lawful for the said commissioners from time to time, by order under their hands and seal, to combine the parishes and unions in England and Wales into districts for the audit of accounts, and from time to time to add any parish or union to any such district, or separate any parish or union therefrom; and the chairman and vice chairman of each board of guardians constituted under the said first-recited act or any other act, or if there be no chairman or vice chairman of any guardians constituted under any other act, then some two of their number to be selected by such last-mentioned guardians, or if there be no such body then some two of the overseers to be selected by the overseers respectively acting within the district, shall elect, at the time and in the manner to be prescribed by the said commissioners, a person to be the auditor of the district; but in any case in which there are two vice chairmen appointed in any board of guardians such board of guardians shall select one of the vice chairmen, who shall vote in the election of such auditor; and the said commissioners shall have all the powers with regard to the salaries of the said auditors to be charged on the poor rates, and to all other matters relating to auditors for such districts, as they have under the said first-recited act with regard to paid officers; and every auditor appointed for such a district shall have full powers to examine, audit, allow, or disallow of accounts, and of items therein, relating to monies assessed for and applicable to the relief of the poor of all parishes and unions within his district, and to all other money applicable to such relief; and such auditor shall charge in every account audited by him the amount of any deficiency or loss incurred by the negligence or misconduct of any person accounting, or of any sum for which any such person is accountable, but not brought by him into account against such person, and shall certify on the face of every account audited by him any money, books, deeds, papers, goods or chattels, found by him to be due from any person; and when any such auditor has so certified any money, books, deeds, papers, goods or chattels, to be due from any person, he shall forthwith report the same to the said commissioners; and the person from whom any money is so certified to be due shall within seven days pay or cause to be paid such money to the treasurer of the guardians of the union or parish, if there be any such treasurer; and in the case of a union such money shall be applied by the guardians to the use of all or any of the parishes included in such union, according as all or any of such parishes may be interested in the sum so paid; and all books, deeds, papers, goods and chattels, and in the case where there is no treasurer as aforesaid all monies so certified to be due, shall be delivered over or paid, within seven days of the same being certified, to the person or persons authorised to receive the same; and if any such money, books, deeds, papers, goods or chattels, be not duly paid or delivered over as herein-before directed, the said auditor, or any auditor subsequently appointed, shall proceed, as soon as may be, to enforce the payment or delivering over of the same; and all monies so certified to be due by such auditor shall be recoverable as so certified from all or any of the persons making or authorising the illegal payment, or otherwise answerable for such monies, and shall be recovered on the application of such auditor, or of any such auditor subsequently appointed, or by any person for the time being entitled or authorised to receive the same, in the same manner as penalties and forfeitures may be recovered under the provisions of the said first-recited act; and the expences attending such proceeding or recovery shall (except so far as the same may be paid by the person against whom the proceedings have been taken) be repaid to such auditor by the guardians of the parish or union, or by the district board of the district to which the proceedings may respectively relate, and shall be charged in their accounts in such manner and in such proportions as the said commissioners may direct; and if any person from whom any such books, deeds, papers, goods or chattels, may be due, neglect or refuse to deliver over the same to the person for the time being entitled or authorised to receive the same, the person so neglecting or refusing shall be liable, on the complaint of any such auditor for the time being, or of the person entitled or authorised to receive the same, to the penalties and proceedings provided in the case of overseers refusing or neglecting to pay and deliver over to their successors any sum or sums of money, goods, chattels, and other things, in their hands; and any churchwarden, surveyor of the highways, overseer or other officer of a parish or union, who shall wilfully authorise or make an illegal or fraudulent payment from the church rate, highway rate, or other public fund of a parish or union, or shall unlawfully make any entry in his accounts for the purpose of defraying or making up to himself or any other

Their powers and duties.

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person the whole or any part of any sum of money unlawfully expended from the poor rate, or disallowed or surcharged in the accounts of any parish or union by such auditor, shall, upon conviction thereof before any two justices, forfeit and pay for every such offence any sum not exceeding twenty pounds, and also treble the amount of such payment or of the sum so entered in his accounts.

Rate books, &c. to be made up seven days before the audit day.

33. And be it enacted, that seven clear days at least before the day fixed for the audit of accounts the overseers or other officers employed in any parish in carrying the laws for the relief of the poor into execution, and every collector or assistant overseer acting for such parish, shall cause their rate-books and other accounts to be made up and balanced; and the books so made up shall forthwith be deposited at the house within the parish of some one of such overseers or other officers, or of such collector or assistant overseer, or at some other house within the parish; and notice shall forthwith be affixed at the usual place or places of giving parish notices, stating the time and place of audit, as notified by the auditor, and the place where the books are deposited; and such books shall on each of such days be open between the hours of eleven and three, for the inspection of every person liable to be rated to the relief of the poor; and such auditor shall give or send by post or otherwise to the said overseers or other officers fourteen days' notice of the said audit; but it shall not be necessary for the auditor to give or send separate notices to each of such overseers or other officers, and it shall be sufficient if it be proved that any one of them had notice; and if any such overseer or other officer, collector, or assistant overseer neglect to make up such account, or alter such account, or allow it to be altered when so made up, or refuse to allow such inspection thereof, he shall be liable, on conviction thereof, to forfeit forty shillings; and if any such overseer or other officer, collector, or assistant overseer, refuse or wilfully neglect to affix such notice of audit, and of the time and place for the inspection of such accounts, as above provided, he shall be liable, on conviction thereof, to forfeit forty shillings; and it shall be lawful for every rate-payer in any parish or union to be present at the audit of the accounts relating to such parish or union, and to make any objection to any such accounts before such auditor; and it shall be lawful for any such auditor to require any person holding or accountable for any money, books, deeds, papers, goods or chattels, relating to the poor's rate or the relief of the poor, to produce to such auditor his accounts and vouchers, and to make or sign a declaration with respect to such accounts; and so often as such person neglects or refuses to attend, either at the audit or any adjournment thereof, when so required by such auditor, or to produce to him such accounts or vouchers, or any of them, or to make or sign a declaration with respect to his accounts, if thereunto required by such auditor, he shall be liable for every such refusal or neglect to forfeit forty shillings, to be recovered as penalties and forfeitures under the said first-recited act, or if he wilfully make or sign a false declaration in respect of such accounts he shall be liable to the penalties of perjury.

Notice of time and place of audit.

Inspection of books.

Balances found before the passing of this act may be discharged.

34. And be it enacted, that in every case in which before the passing of this act any balance has been struck by any auditor in the account of any officer of any parish or union, and such balance has not been paid nor any proceedings commenced before the passing of this act for the recovery thereof, it shall be lawful, on the application of the officers of any parish or of any board of guardians of any union, and in all other cases of disputed accounts relating to the expenditure and management of the fund for the relief of the poor previous to the passing of this act upon the application of the board of guardians to the said commissioners, and with the consent of the said commissioners, for the auditor to discharge the officers for the time being from the payment of such balance; and all balances struck against any person, and not so discharged, shall be recoverable, after the passing of this act, as if the same had been struck and the amount thereof certified by an auditor appointed in pursuance of the provisions of this act.

Certiorari for auditors' allowances or disallowances.

35. And be it enacted, that if any person aggrieved by any allowance, disallowance, or surcharge by any such auditor require such auditor to state the reasons for the said allowance, disallowance, or surcharge, the auditor shall state such reasons in writing in the book of account in which the allowance, disallowance, or surcharge may be made; and it shall be lawful for every person aggrieved by such allowance, and for every person aggrieved by such disallowance or surcharge, if such last-mentioned person have first paid or delivered over to any person authorised to receive the same all such money,

goods, and chattels as are admitted by his account to be due from him or remaining in his hands, to apply to the court of Queen's Bench for a writ of certiorari to remove into the said court the said allowance, disallowance, or surcharge, in the like manner and subject to the like conditions as are provided in respect of persons suing forth writs of certiorari for the removal of orders of justices of the peace, except that the condition of such recognizance shall be, to prosecute such certiorari, at the costs and charges of such person, without any wilful or affected delay, and if such allowance, disallowance, or surcharge be confirmed, to pay to such auditor or his successor, within one month after the same may be confirmed, his full costs and charges, to be taxed according to the course of the said court, and except that the notice of the intended application, which shall contain a statement of the matter complained of, shall be given to such auditor or his successor, who shall in return to such writ return a copy under his hand of the entry or entries in such book of account to which such notice shall refer, and shall appear before the said court, and defend the allowance, disallowance, or surcharge so impeached in the said court, and shall be reimbursed all such costs and charges as he may incur in such defence out of the poor rates of the union or parish respectively interested in the decision of the question, unless the said court make any order to the contrary; and that on the removal of such allowance, disallowance, or surcharge the said court shall decide the particular matter of complaint set forth in such statement, and no other; and if it appear to such court that the decision of the said auditor was erroneous, they shall, by rule of the court, order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same; and they may also, if they see fit, by rule of the court, order the costs of the person prosecuting such certiorari to be paid by the parish or union to which such accounts relate, as to such court may seem fit; which rules of court respectively shall be enforced in like manner as other rules of the said court are enforceable.

Persons aggrieved may apply to commissioners, who may issue orders thereupon.

36. Provided always, and be it enacted, that it shall be lawful for any person aggrieved as aforesaid by any allowance, disallowance, or surcharge, in lieu of making application to the court of Queen's Bench for a writ of certiorari, to apply to the said commissioners to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge, and it shall thereupon be lawful for the said commissioners to issue such order therein, under their hands and seal, as they may deem requisite for determining the question.

Cessation of powers of justices to audit.

37. And be it enacted, that in every district for which an auditor may be appointed under the provisions of this act the powers of justices of the peace and of all other persons to examine, audit, allow, or disallow accounts shall, so far as relates to any accounts which such auditor is authorised to examine and audit, cease, and the same are hereby repealed: provided always, that where any union or unions and parishes have been already combined by the said commissioners under the provisions of the said first-recited act for the appointment of an auditor, and such an auditor has been appointed, or where any person has been appointed auditor for more than one union, it shall be lawful for the said commissioners to continue such auditor in office, and such district shall be deemed to have been formed, and such unions to have been formed into a district, and such auditor to have been appointed respectively under this act: provided also, that if the said commissioners subsequently add any parish or union to any district now formed or to be formed after the passing of this act, or which is to be deemed to be formed under this act, or separate any parish or union therefrom, such addition or separation shall not vacate the appointment of any auditor appointed previously to such addition or separation, but it shall be lawful for the commissioners to continue such auditor in office for such increased or diminished district without any re-election of such auditor.

Existing district auditors may be retained.

Proviso.

Accounts may be rendered half-yearly.

38. And be it enacted, that so much of the said first-recited act as provides that accounts shall be made and rendered not less frequently than once in every quarter shall be and is hereby repealed; and such accounts shall be made and rendered at such times and as often as the said commissioners may direct, but not less often than once in every half year.

Taxation and allowance of law bills.

39. And be it enacted, that on application of any overseer, or of any board of guardians, or of any attorney at law, it shall be the duty of the clerk of the peace of the county or place, or his deputy, if thereunto required, to tax any

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bill due to any solicitor or attorney in respect of business performed on behalf of any parish or union situate wholly or in part within such county or place; and the allowance of any sum on such taxation shall be primâ facie evidence of the reasonableness of the amount, but not of the legality of the charge; and the clerk of the peace shall be allowed for such taxation after the rate to be fixed from time to time by the Master of the Crown Office, and declared by an order of the said commissioners; and if any such bill be not taxed before it is presented to the auditor, the auditor's decision on the reasonableness as well as the legality of the charges shall be final.

Parishes and unions may, within certain limits, be combined into school districts.

40. And be it enacted, that it shall be lawful for the said commissioners, as and when they may see fit, by order under their hands and seal, to combine unions, or parishes not in union, or such parishes and unions, into school districts, for the management of any class or classes of infant poor not above the age of sixteen years, being chargeable to any such parish or union, who are orphans, or are deserted by their parents, or whose parents or surviving parent or guardians are consenting to the placing of such children in the school of such district; but the said commissioners shall not include in any such district any parish any part of which would be more than fifteen miles from any other part of such district: provided always, that when the relief of the poor has been hitherto administered in any parish or united parishes by guardians appointed under a local act, and not by overseers of the poor, if such parish or united parishes, according to the last enumeration of the population published by authority of Parliament, contain more than twenty thousand persons, it shall not be lawful for the said commissioners, without the consent in writing of the majority of such guardians, to include such parish or united parishes in a school district.

Districts for providing asylums for houseless poor may be formed in the towns specified in schedule (B.)

41. And whereas it is expedient that more effectual means should be provided for the temporary relief of poor persons found destitute and without lodging within the district of the metropolitan police, or the city of London, and the city, towns, and boroughs named in the schedule annexed to this act, and for avoiding the introduction of infectious disease, by the reception of such poor persons into the workhouses established for the ordinary relief of the poor within such districts and places; be it enacted, that it shall be lawful for the said commissioners, as and when they may see fit, by order under their hands and seal, to declare so many parishes or unions, or parishes and unions, any part of which may be within the district of the metropolitan police, or the city of London, or within the limits respectively of the city, towns, or boroughs named in the schedule marked (B.) annexed to this act, as such limits are described in an act passed in the third year of the reign of King William the Fourth, "to settle and describe the Division of Counties, and the Limits of Cities and Boroughs, in England and Wales, so far as respects the Election of Members to serve in Parliament," to be combined into districts for the purpose of providing and managing asylums for the temporary relief and setting to work therein of destitute houseless poor who are not charged with any offence, and who may apply for relief, or become chargeable to the poor's rates within any such parish or union.

Constitution of the district boards for schools and asylums.

42. And be it enacted, that a board shall be constituted for every district formed under this act for the maintenance of a school or of an asylum; and every district board so constituted shall respectively consist of members to be elected from amongst the persons rated within the district to the relief of the poor; and the said commissioners shall fix the qualification of such members, such qualification to consist in being rated within the district to the relief of the poor, but not so as to require a qualification exceeding the net annual value of forty pounds; and such members shall be elected at such periods, not exceeding three years, and in such proportions and in such manner, as the said commissioners may from time to time direct, by the guardians of every parish or union governed by a board of guardians under the provisions of the said first-recited act or of any local act, and if there be no such guardians then by the overseers of a parish not governed by such guardians; and the chairman of every board of guardians constituted under the provisions of the said first-recited act shall, if he consent thereto, be ex officio a member of any district board constituted under the provisions of this act.

Powers and duties of district boards.

43. And be it enacted, that every such district board shall have such of the powers of guardians for the relief and management of the poor within any school or asylum, and for the appointment, payment, and control of paid officers, as the

said commissioners may direct; and the legal and reasonable orders of such district board shall be obeyed and obedience thereto enforced in the same manner and by the same remedies and penalties as the legal and reasonable orders of guardians; and it shall be lawful for the said commissioners, with the consent in writing of a majority of any district board, to direct such district board to purchase or hire or build, and to fit up and furnish, a building or buildings, of such size and description, and according to such plan, and in such manner as the said commissioners may deem most proper, for the purpose of being used or rendered suitable for the relief and management of the poor to be received into such school or asylum; and the said commissioners may, with the like consent, alter the district for which such district board was originally constituted, by adding thereto or taking therefrom any parish or parishes, union or unions, as aforesaid; and the said commissioners shall have the same powers for regulating the proceedings of any district board or of any committee thereof, and for directing and regulating the appointment, duties, remuneration, and removal of paid officers to be appointed by any district board, as they have with respect to the proceedings of boards of guardians, or with respect to paid officers to be appointed by any board of guardians; and every such board for a school district shall appoint, with the consent of the bishop of the diocese, at least one chaplain of the Established Church as one of the paid officers aforesaid, who shall be empowered to superintend the religious instruction of all the infant poor being under the control of such district board; and it shall be lawful for the said commissioners to issue rules and regulations for the government of any such school or asylum, and the inmates thereof, as if such school or asylum were a workhouse; and any orders or regulations of the said commissioners made in pursuance of this act shall be enforced in the same manner and by the same penalties as if the same were an order or regulation made in pursuance of the said first-recited act: provided always, that no rules, orders, or regulations of the said commissioners, nor any regulations made by such district board, shall oblige any inmate of any such school or asylum to attend any religious service which may be celebrated in a mode contrary to the religious principles of such inmate, nor shall authorise the education of any child in any religious creed other than that professed by the parents or surviving parent of such child, and to which such parents or surviving parent may object, or, in the case of an orphan or deserted child, to which his next of kin may object: provided also, that it shall be lawful at all reasonable times of the day, according to rules and regulations to be made for this purpose by the said board, for any minister of the religious persuasion professed by an adult inmate, or of the religious persuasion in which any child has been brought up, or in which the parents, or surviving parent, or next of kin, as the case may be, may desire such child to be instructed, to visit the school or asylum, at the request of such adult inmate, for the purpose of affording to him religious assistance, or to visit such child for the purpose of instructing such child in the principles of his religion: provided also, that it shall be lawful at all times for any inspector of schools appointed by her Majesty in Council to visit such schools, and to examine into the proficiency of the scholars therein.

Chaplain to be appointed.

Religious education of inmates.

School inspectors.

44. And be it enacted, that for the purpose of providing a building for such school or asylum it shall be lawful for such district board, subject to the order of the said commissioners, to exercise the powers given to boards of guardians by the said first-recited act or any other act or acts for the purchase and hire of lands and buildings, and to borrow, in like manner as is provided in the said first-recited act or in any other act or acts, such sum or sums of money as may be necessary for the purpose of purchasing any site, or purchasing, hiring, or building, and of fitting up and furnishing such building or buildings as aforesaid, and to charge the future poor rates of the parishes or unions, or parishes and unions, so combined as aforesaid, with the payment of such sum or sums of money, and interest thereon: provided always, that the consent of any ratepayers or owners of property of any parish shall not be necessary to any sale, exchange, lease, or other disposal by guardians or overseers to or with any such district board of any workhouse, tenement, building, or land: provided also, that the principal sum or sums to be raised for the purpose of providing any such building or buildings as aforesaid, and charged on any union, or on any parish not included in a union, shall in no case exceed one-fifth of the average annual amount of the aggregate expenditure, relating to the relief of the poor within any such union, or of the like expenditure within any such parish, for

Powers of district board for purchasing and hire of land, &c.

Sums to be raised for providing schools or asylums not to exceed one-fifth part of the average annual rates.

7 & 8 *Vict.* c. 101.

three years ending the twenty-fifth day of March next preceding the raising of such money; provided also, that the principal sum or sums required for the purpose of providing any such building or buildings shall, if the same be borrowed, be repaid, with all interest thereon, within a period not exceeding twenty years.

District board to hold property of the district as a corporation.

45. And be it enacted, that every such district board shall be enabled to accept, take, and hold, on behalf of the district for which they act, any lands, buildings, goods, effects, or other property, as a corporation, and in all cases to sue and be sued as a corporation, by the name of the board of management of the district school or asylum, as the case may be.

Payment of contributions to district boards.

46. And be it enacted, that every district board for the management of any school or asylum shall from time to time call on the parishes and unions included in such district for such contributions as they may deem requisite for the purposes of this act; and notice in writing of the amount of such contributions, purporting to be signed by the clerk or other officer of such district board, in any form prescribed by the said commissioners, shall fourteen days at least before such contribution becomes due, be forwarded, by post or otherwise, to the clerk to the board of guardians of any union, and to two at least of the overseers or other officers authorised to make and levy rates for the relief of the poor in every parish from whom such contributions or any part thereof will become due; and if such contributions are not duly paid to the treasurer of such district board, such district board shall, in addition to any other remedy which now is or hereafter may be given to any persons against any board of guardians, have the like remedy for recovery of the same from the overseers or other officers authorised to make and levy the rates for relief of the poor of the several parishes, whether comprised in an union or otherwise, and which may form part of the district for which such district board may act, as are given to guardians for the recovery from overseers of the contributions of parishes; and in case of any addition or separation of parishes or unions, the said commissioners shall ascertain the proportionate value of property and amount of obligations of every parish or union affected by the change, and shall fix the amount to be received or paid, or secured to be paid, by every such parish or union.

Distribution of charges for schools.

47. And be it enacted, that the expences incurred by any district board in the purchase or hire of any building or buildings to be used as a school, or in erecting, repairing, adding to, or fitting up any building, and in the purchase of utensils and materials for the employment of the inmates of such school, or of books and other objects and things necessary for the instruction of such inmates, and the salaries of the officers and servants of the establishment, and all other expences incurred on the common account of the parishes or unions, or parishes and unions, so united for the management of any class of infant poor, or incidental to the discharge of the duties of such district board, shall be paid by such unions in the proportion of the averages last declared for every such union, and by such parishes in the proportion of the average expenditure of every such parish for the like period and purposes as those to which the declared averages of such unions shall relate; and the said commisioners shall from time to time, by order under their hands and seal, ascertain and declare the proportion and rates of contribution in the above respects of every such parish and union; and that all other expences incurred in the relief of the children under the management of such district board shall be separately charged by such district board to the parish or union from which each such child may be sent.

Distribution of charges for asylums.

48. And be it enacted, that the expences incurred by every such district board in the purchase or hire of any building or buildings, or in erecting, repairing, adding to, or fitting up any building as an asylum, and in the purchase of utensils and materials for the employment of the inmates of such asylum, and other objects and things necessary for the relief of such inmates, and the salaries of the officers and servants of the establishment, and all other expences incurred by such district board in the relief of the poor, or in the management of such asylum, or incidental to the discharge of the duties of such district board, shall be charged by such district board upon the parishes or unions, or parishes and unions, comprised in such district, in proportion to the annual value of messuages, lands, tenements, and hereditaments upon which such parishes and the parishes combined in such unions are respectively assessed to the county or borough rate, or other rate in the nature of a county or borough rate; and where any parish or place comprised in such district does not contribute in respect of the whole thereof to any county or borough rate, the said expences shall be paid by such parish or place in proportion to the net annual

value of all the property therein assessed to the rates for the relief of the poor; and any information necessary for the distribution of such charge shall be furnished, on demand of such district board or of the said commisioners, by every parish officer, and by every clerk of the peace, town clerk, or other like officer of any county, city, town, or borough or other place raising rates in the nature of county or borough rates.

Appointment of auditors for district boards.

49. And be it enacted, that the poor law commissioners shall appoint some person, being at the time the auditor of some parish or union situated within the district for which any district board for any school or asylum may be appointed, who shall be the auditor of such district, and shall be empowered and required to audit the accounts of each district board, and of the officers of such district board; and the salary of every such auditor of a district shall be paid by the district board thereof; and the said commissioners shall have the same powers for regulating the duties and remuneration of such auditors as they have with respect to paid officers appointed by any board of guardians; and it shall be lawful for the said commissioners, as they may see fit, to remove any auditor of such district, and in case of vacancy to appoint another person as aforesaid to the office; and every district board constituted under this act, and every officer of such district board, shall, twice in the year at least, at such a time and in such manner and form as may be prescribed by the poor law commissioners, account to the auditor appointed as aforesaid; and such auditor shall have all the powers of allowing and disallowing any charges in such accounts as are or may hereafter be given to auditors under the provisions of the said first-recited act or any other act for the audit of accounts relating to rates for the relief of the poor; and all sums disallowed or reduced or charged as balances against any person by such auditor, shall be recovered on the application of such auditor (which application he is hereby empowered to make), in the same way as penalties and forfeitures under the said first-recited act, from the person making or authorising such illegal payment; and within thirty days of such audit each district board shall cause to be printed, and shall forward by post or otherwise to each board of guardians, and to the officers of every parish within their district, an abstract of the accounts of their district so audited, in such form as the poor law commissioners may direct.

Guardians may visit and inspect asylums.

50. And be it enacted, that every guardian of every union or parish included in any such district formed for the maintenance of an asylum shall at all reasonable times be entitled to enter the asylum of such district, and inspect any part thereof, and enter his remarks thereon in a book to be kept for that purpose.

Children may be sent to district schools from parishes and unions not combined, but not distant more than twenty miles.

51. And be it enacted, that in any case where a parish or union is not combined in a school district, and where any part of such parish or union is not more than twenty miles from a district school, the board of guardians of such parish or union may, with the consent of the board of such district, send to such district school any infant poor not above the age of sixteen years, being chargeable to any such parish or union, who are orphans, or are deserted by their parents, or whose parents or surviving parent or guardians are consenting thereto; and the costs of the maintenance, employment, and instruction of such infant poor in such district schools shall be paid by such board of guardians to such district board, according to such rates and at such times and in such manner as may be agreed upon by the said boards, with the approbation of the said commissioners; and such infant poor while at such district school shall be subject to the control and management of such district board and their officers, in like manner as if the said parish or union were combined in such school district by virtue of this act.

Repeal of the acts 7 Geo. III. c. 39, and 2 Geo. III. c. 22.

52. And be it enacted, that the provisions of the act passed in the seventh year of the reign of his late Majesty King George the Third, intituled *An Act for the better Regulation of the Parish poor Children of the several Parishes therein mentioned within the Bills of Mortality*, and of an act passed in the second year of the reign of his said late Majesty, intituled *An Act for the keeping regular, uniform, and annual Registers of all Parish poor Infants under a certain Age within the Bills of Mortality*, shall be and are hereby repealed.

Class of destitute poor to be relieved in such asylum.

53. And be it enacted, that every district board for the management of any asylum under this act shall make provision for the temporary relief and setting to work therein of any poor person found destitute within any such district, not professing to be settled in any parish included therein, and not known to have any place of abode there, and not being charged with any offence under the provisions of an act passed in the fifth year of his late Majesty King George the Fourth, intituled *An Act for the Punishment of idle and disorderly Persons*, 5 Geo. IV. c. 83.

7 & 8 *Vict.* c. 101.

and Rogues and Vagabonds, in that Part of Great Britain *called* England, or of any other act; and, subject to any regulations of the said commissioners, every such district board or any committee thereof may direct the mode of admission of such poor persons to the asylum of such district; and it shall be lawful for any constable of the metropolitan police, or of the police of the city of London, or any constable of the police acting under the chief constable of any county, district, or division, or any constable of the city, towns, or boroughs respectively named in the Schedule marked (B.) annexed to this act, personally to conduct any such poor person found wandering abroad within any district to any asylum established in such district in pursuance of this act, and such poor person shall, if there be room in such asylum, be temporarily relieved therein; and the serjeant of police or constable conducting such poor person shall sign his name in a column, headed to the following effect, in a book to be kept, in such form and manner as the said commissioners may from time to time direct, by some officer of every such asylum, in which shall be entered the alleged names of all poor persons admitted:

Mode of admission into asylums.

"*WE, the undersigned constables of the metropolitan police* [or *of the police of the city of London, or constable, &c.*, as the case may be], *do severally declare, so far as each of us is concerned therein, that we have conducted the poor persons (whose alleged names are set opposite our respective signatures) to the asylum of* . *district, the said poor persons having been by us found wandering abroad, and apparently destitute, and not having committed or being charged with any offence punishable by law, within our knowledge.*"

And every such book, purporting to be signed and to be certified at the foot of the page by the officer keeping the same, shall be received in all courts of justice as sufficient evidence of the fact that the poor persons described therein were chargeable to the said district at the time of their admission, and, if not contradicted by other evidence, of such other particulars as are therein duly recorded; and all poor persons admitted into any such asylum shall, if they desire it, be relieved with food and lodging for the night succeeding such admission; but no such poor person shall be detained against his will for any longer space of time than until the ordinary hour of breakfast of the day next succeeding his admission, and four hours afterwards, unless such poor person, since his admission, have become lawfully punishable for misbehaviour within such asylum, in which case it shall be lawful to detain such poor person for a space of time sufficient for such punishment; but no poor person shall be punished for any offence or misbehaviour in any asylum by confinement for any longer space of time than twenty-four hours, and such longer space of time as may be necessary in order to have such person before a justice of the peace; and if any poor person so admitted as aforesaid shall be disabled by sickness, or shall be unwilling to depart from such asylum, he may receive relief therein, if he consent to remain, and conform to the rules of the house, until the next meeting of the district board or of some committee (which such district board, subject to the rules of the said commissioners, is hereby authorised to appoint), who shall give such directions respecting such poor person as they may deem right, by discharging him from such asylum, with a direction to apply for relief in the district where he has dwelt, or otherwise as to them may seem fit: provided always, that, except under a medical certificate of sickness, it shall not be lawful for the officers of any such asylum to relieve any poor person for a longer period continuously in such asylum than is sufficient to enable his case to be decided by the district board or committee as aforesaid: provided also, that if any person received into such asylum shall wilfully give a false name, or make a false statement, or shall be proved to have given two or more different names on two or more different occasions, when so received into any such asylum, such person not having lawfully changed her name in consequence of marriage, such person shall be deemed a rogue and vagabond within the meaning of the said act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled *An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that Part of the United Kingdom called* England.

Regulations with respect to poor persons admitted into such asylums.

5 Geo. IV. c. 83.

Liabilities of persons relieved in such asylums.

54. And be it enacted, that every poor person relieved in any asylum under the management of any district board shall be liable to the same obligations in respect of the relief afforded to him as if the same were afforded in any workhouse, and shall be subject to the same punishment and penalties as are provided by an act passed in the fifty-fifth year of the reign of King George the Third,

intituled *An Act to prevent poor Persons in Workhouses from embezzling certain Property provided for their Use; to alter and amend so much of an Act of the Thirty-sixth Year of His present Majesty as restrains Justices of the Peace from ordering Relief to poor Persons, in certain Cases, for a longer Period than One Month at a Time; and for other Purposes therein mentioned relating to the Poor*, or under any other act or acts, for refusal or neglect to work, in pursuance of any regulations or directions prescribing a task of work, or for wilfully destroying or injuring his own clothes or any property, or for absconding with any clothes or other articles provided by such district board, or for damaging any of the property of such district board, or for any misbehaviour in such asylum, by disobedience of the rules and regulations in force therein, or otherwise, as if he were relieved or set to work in any workhouse under the control of a board of guardians acting under the orders and regulations of the said commissioners in pursuance of the said first-recited act: provided always, that nothing in this act contained shall relieve any guardian, overseer, relieving officer, or master of a workhouse from any obligation now imposed upon him by law with regard to the relief of cases of sudden and urgent necessity, or shall prevent the reception into a workhouse of any person labouring under dangerous illness, or shall authorise the transfer to an asylum of any person received into such workhouse in a case of dangerous illness, unless with the certificate in writing of a medical man duly licensed to practise, to the effect that such person is then in a fit state to be removed, and stating the manner in which such person, in the opinion of such medical man, may be safely removed.

7 & 8 Vict. c. 101.

55 Geo. III. c. 137.

Penalty for returning after removal.

55. And be it enacted, that if any poor person return and become chargeable in the asylum of any district after removal from any parish in such district, he shall be deemed to have returned and become chargeable, without any certificate, to the parish whence he has been legally removed by order of two justices of the peace, within the meaning of the said act made and passed in the fifth year of King George the Fourth, intituled *An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of* Great Britain *called* England.

5 Geo. IV. c. 83.

Workhouse to be deemed to be situate in every parish of an union, &c.

56. And be it enacted, that, for the purposes of relief, settlement, and removal of poor persons, and the burial of the poor, the workhouse of any union or parish, and every such district school, shall be considered as situated in the parish to which each poor person respectively to be relieved, removed, or buried, or otherwise concerned in any such purpose, is or has been chargeable: provided always, that every birth and death within any such workhouse or building shall be registered in the parish or place in which such workhouse or building is locally situated; and all fees for registering births and deaths in any such workhouse or building shall be charged by the guardians to the parish or union to which the person dying or the mother of the child respectively is chargeable.

Committal of offenders in workhouses to the gaol of the place to which the offenders belong.

57. And be it enacted, that if any person be convicted before any justice or justices of any offence committed in any workhouse, while maintained therein, or of absconding from any workhouse, and carrying away clothes or other property therefrom, and be liable to be committed for such offence to any gaol or house of correction, it shall be lawful for the justice or justices before whom such person is convicted to commit such person to the common gaol or house of correction of the county or place in which the parish is situated, to which such person at the time of the commission of the offence was chargeable, notwithstanding that such workhouse may not be situated in such county or place, and notwithstanding that such justices may not be justices of such county or place; and if such person have not goods or money within such county or place sufficient to bear the charges of himself and those who convey him, then such charges shall be defrayed at the expence of the county, place, or parish, according to the provisions of an act passed in the twenty-seventh year of the reign of King George the Second, intituled *An Act for the better securing to Constables and others the Expences of conveying Offenders to Gaol; and for allowing the Charges of poor Persons bound to give Evidence against Felons*; provided that in cases of such conviction and committal as aforesaid all further proceedings in respect thereof may be taken; and the costs and charges of such proceedings, and for the maintenance of such offender in such gaol or house of correction, shall be payable in like manner and under the like authority as such proceedings would have been taken, or as such costs and charges would have been payable, in case the

27 Geo. II. c. 3.

7 & 8 *Vict.* *c.* 101.

offence had been committed within the parish or place to which such offender was chargeable at the time when he committed such offence.

Punishment of persons in workhouses for misconduct.

58. And whereas by the said Act passed in the fifty-fifth year of the reign of King George the Third, it is enacted, that if any person or persons shall desert or run away from any workhouse or workhouses, and carry away with him, her, or them any clothes, linen, or other goods as aforesaid, such person or persons, being thereof lawfully convicted, either by the confession of such party or parties, or by the oath or oaths of one or more credible witness or witnesses, before any justice or justices of the peace, shall by such justice or justices of the peace be forthwith committed to the common gaol or house of correction, there to remain without bail or mainprize for the space of three calendar months; and it is further enacted, that in case any person or persons maintained in any public workhouse or workhouses established for the relief, maintenance, and employment of the poor shall refuse to work at any work, occupation, or employment suited to his, her, or their age, strength, and capacity, or shall be guilty of drunkenness or other misbehaviour, every such person or persons, being thereof lawfully convicted before any justice or justices of the peace, shall thereupon by such justice or justices of the peace be committed to the common gaol or house of correction, there to remain without bail or mainprize for any period of time not exceeding twenty-one days, and during such time to be kept to hard labour; and whereas it is desirable that justices of the peace should have a power to commit such persons as are first mentioned for a period less than three months, and such persons as are last mentioned for a period greater than twenty-one days, in cases of repeated offences; be it therefore enacted, that it shall be lawful for any justice or justices to commit any such person as is first mentioned to the common gaol or house of correction, to be kept there in the manner provided by the said recited act for any period not less than seven days nor greater than three months, and to commit any such persons as are last mentioned, in case such persons have been before convicted of a like offence, to the common gaol or house of correction, in manner provided by the said act, for any period not exceeding forty-two days.

Costs of certain civil and criminal proceedings to be paid out of poor rates.

59. And be it enacted, that it shall be lawful for any board of guardians or district board to pay out of the funds in their hands the reasonable costs of the apprehension and of the prosecution of any person who, according to the laws in force at the time being, is charged with refusing or neglecting to maintain himself or his family, or with running away and leaving his family chargeable, or whereby such family has become chargeable, or with wilfully neglecting or disobeying the rules, orders, and regulations of the poor law commissioners, or with any offence or misbehaviour in any workhouse, or with deserting or running away from any workhouse, and carrying away clothes, linen, or other goods or things belonging to any workhouse, or given or procured or provided as or for relief, or with neglect or disobedience of the reasonable and lawful orders of justices or guardians, or of any district board, in the administration of the laws relating to the relief of the poor, or with obstructing or assaulting any officer engaged in the administration of the laws for relief of the poor, or with fraudulently obtaining, stealing, purloining, embezzling, wasting, or injuring, or wilfully misapplying, any property applicable to or connected with the relief of the poor, or with any offence directly affecting the administration of the laws for the relief of the poor, and the reasonable costs of apprehending and prosecuting any officer who may have been employed in the administration of the laws for the relief of the poor, for any neglect or breach of any duty of his office, or for any maltreatment or abuse of any poor person; and, subject to the approval of the said commissioners, every board of guardians or district board shall pay the costs of all legal proceedings taken by any auditor, or under his direction, for the protection of the poor rates or property of any parish, union, or district, or taken by any other person whom the board of guardians or district board have authorized or directed to institute such prosecution or legal proceedings; and to the extent to which any such costs may not be repaid by the offending or other party, or from the county, liberty, or borough rates, the guardians of any union then may, in any of the cases aforesaid, having due regard to the circumstances of the case, and subject to the approval of the poor law commissioners, charge such expenses, either to the common funds of the union, or to any parish or parishes comprised therein; and the district board of any district may, having like regard to the circumstances of the case, and subject to the like approval of the poor law commissioners, charge such

expences, either to the funds of the whole of such district, or on any one or more of the unions and parishes comprised therein. 7 & 8 *Vict.* c. 101.

60. And be it enacted, that the costs, charges and expences properly incurred by the officers of the parish in making out, preparing, printing, and collecting the lists of persons qualified to serve on juries, according to the provisions of the act in the sixth year of the reign of his Majesty King George the Fourth, intituled *An Act for consolidating and amending the Laws relative to Jurors and Juries*, and relating thereto, shall be paid and allowed to them out of the poor rates of the parish, together also with all expences properly incurred by the same officers on the perambulation of the parish, and in setting up and keeping in proper repair the boundary stones of the parish, provided that such perambulations do not arise more than once in every three years.

Expences of jury lists and boundaries of parishes may be paid out of poor rates. 6 Geo. IV. c. 50.

61. And whereas by an act passed in the third year of the reign of her Majesty Queen Victoria, intituled *An Act to amend the Laws relating to the Assessment and Collection of Rates for the Relief of the Poor*, it was amongst other things enacted, "that all orders heretofore made and issued under the hands and seals of the poor law commissioners, and not rescinded by them or quashed before the sixth day of May in the present year, by which the said commissioners may have directed the overseers or guardians of any parish or union to appoint any person to collect the rates for the relief of the poor in any parish or parishes, or shall have defined or specified or directed the execution of the duties of such person, or the places or limits within which the same shall be performed, or shall have directed the mode of appointment, or determined the continuance in office or dismissal of any such person from his office, or the amount or nature of the security to be given by any such person, or shall have regulated the amount of salary payable to any such person, or the time or mode or the proportions of payment thereof, shall be deemed and the same are hereby declared to have the same force and validity as if the same had been warranted by an act passed in the fourth and fifth years of the reign of his late Majesty King William the Fourth, intituled *An Act for the Amendment and better Administration of the Laws for the Relief of the Poor;* and the commissioners shall have the same powers and authorities with respect to all such orders, and to the persons appointed in pursuance thereof, as they have with respect to orders made and issued, and the paid officers appointed, under the provisions of the said act; and that every person appointed by guardians of the poor under any such order of the said commissioners shall have the like powers, authorities, privileges, immunities, protections, and remedies, in and for the performance of his duty under such order, as are by law given to overseers of the poor in the performance of the like duty;" and it is expedient that such collectors should in certain cases be invested with other of the duties of overseers of the poor; be it enacted, that the inhabitants in vestry assembled of any parish situated within the district for which any collector or assistant overseer appointed under any order of the said commissioners now acts may appoint such collector or assistant overseer to discharge all the duties of an overseer of the poor, in addition to those of collector of poor rates for such parish, and in the same manner as if he were appointed thereto as an assistant overseer under the provisions of an act passed in the fifty-ninth year of the reign of his late Majesty King George the Third, intituled *An Act to amend the Laws for the Relief of the Poor;* and wherever any such collector or assistant overseer has been or may be appointed under any order of the said commissioners, and whilst the said order remains in force, the powers of any vestry or parish officers, or of any other persons, other than the board of guardians of such parish or union (if a board of guardians have been constituted), to appoint any collector or assistant overseer, and (if so directed by the said commissioners) every appointment under such powers shall cease; provided always, that where the appointment of such assistant overseer shall have been made under the powers of any local act of parliament of a parish containing more than twenty thousand persons such appointment shall continue, and the powers of such local act, as to any future appointment of an assistant overseer, shall be exercised, but subject always to the powers of the poor law commissioners, notwithstanding the provisions of this act: provided always, that no overseer shall be discharged by the appointment of any such collector or assistant overseer from his responsibility for the provision and supply of monies necessary for the relief of the poor, or for any of the purposes to which the rates made for the relief of the poor may be by law applicable; and every collector appointed or to be hereafter appointed as aforesaid, and every assistant overseer appointed or hereafter

Collectors appointed by guardians may be appointed to perform the duties of assistant overseer. 2 & 3 Vict. c. 84.

4 & 5 Will. IV. c. 76.

59 Geo. III. c. 12.

7 & 8 Vict. c. 101.

to be appointed, in pursuance of the said act of the fifty-ninth year of the reign of King George the Third, or of the orders of the said commissioners, shall, subject to the rules of the poor law commissioners, obey, in all matters relating to the duties of overseer, all directions of the majority of the overseers of the parish for which he acts; and the said commissioners shall have the same powers with respect to all collectors or assistant overseers as are given to them by the said first recited act with respect to paid officers; and every collector or assistant overseer appointed as aforesaid shall be bound to give to the board of guardians of the parish or union, or if there be no such board of guardians then to the overseers of the parish for which such collector or assistant overseer may act, sufficient security for the due performance of his duties; and no bond or any other security entered into in pursuance of this act, or of the said act of the fifty-ninth year of the reign of King George the Third, shall be charged or chargeable with, or be deemed to be or to have been subject or liable to, any stamp duty whatsoever; and wherever any parish for which such collector or assistant overseer may be appointed is situated in an union, or is governed by a board of guardians, every bond or security given by any officer, in pursuance of this act, or of the said act of the fifty-ninth year of the reign of King George the Third, or of the said first-recited act, and not contrary to the rules of the said commissioners, shall, if the guardians shall see fit, be put in suit by the board of guardians of the union in which the parish or district for which the officer acts or has acted may be situated, notwithstanding that such bond or security may have been originally given to the overseers of a parish, or to any other persons; and every bond or security given by or on account of any officer appointed by any board of guardians, for the due performance of the office to which he is so appointed, shall remain in full force and effect, notwithstanding any change in district for which such officer may have been appointed or required to act at the time when such bond or security was given, or the addition of any parish to or the separation of any parish from such union since the giving of such security.

Security to be given.

No stamp.

Poor law commissioners, on application of board of guardians, may direct appointment of paid collector of poor rates.

62. And be it enacted, that if the board of guardians of any parish or union make application to the said commissioners to direct the appointment of a paid collector of the poor rates in such parish or union, or in any parish or parishes of such union, it shall be lawful for the said commissioners, by order under their hands and seal, to direct the said board of guardians to appoint such a collector; and the said commissioners shall have the same powers with respect to such collectors as are given to them by the said first-recited act with respect to paid officers; and all powers of the inhabitants of any parish in vestry assembled, or of justices of the peace, or of any persons, other than the board of guardians of such parish or union, to appoint any collector for any such parish as aforesaid, and (except when otherwise directed by the said commissioners) all appointments under such powers shall cease.

Penalty on overseers neglecting to obtain a supply of funds for the relief of the poor.

63. And be it enacted, that if the overseers of any parish wilfully neglect to make or collect sufficient rates for the relief of the poor, or to pay such monies to the guardians of any parish or union as such guardians may require, and if by reason of such neglect any relief directed by the board of guardians to be given to any poor person be delayed or withheld during a period of seven days, every such overseer shall upon conviction thereof forfeit and pay for every such offence any sum not exceeding twenty pounds.

In what manner guardians under local acts shall conduct their proceedings.

64. And be it enacted, that the guardians of every parish or union acting under any local act for the relief of the poor shall hold their meetings once in every fortnight, or oftener, and in all matters concerning the relief of the poor shall act as a board at a meeting, and not individually; and whenever under any such local act there is no person particularly designated or authorised to act as chairman, such guardians shall elect and appoint annually, and from time to time as vacancies may occur, a chairman and vice chairman of such board, and shall at any meeting at which no chairman or vice chairman is present elect a temporary chairman to preside at that meeting: provided always, that when the relief of the poor has been hitherto administered in any parish by guardians appointed under a local act, and not by overseers of the poor, if such parish, according to the last enumeration of the population published by authority of parliament, contain more than twenty thousand persons, it shall not be lawful for the said commissioners, after the passing of this act, without the consent in writing of two-thirds at least of such guardians, to declare such parish to be united with any other parish for the administration of the laws for the relief of the poor, any thing in the said first-recited act to the contrary notwithstanding; provided, however, that nothing herein contained

Parishes under local acts, with a population exceeding 20,000, not to be united without consent of guardians.

Exception as to

shall prevent the said commissioners from including any such last-mentioned parish in a district for providing and managing an asylum for the temporary relief of and setting to work of destitute houseless poor, or from including such parish in a district for the audit of accounts, under the provisions of this act, except as hereinafter enacted.

vagrant and audit districts.

65. Provided always, and be it enacted, that where any parish which is not governed by a board of guardians constituted under the said first-recited act, or comprised in any union, but is governed by guardians or directors under a local act, and contains a population exceeding twenty thousand persons, according to the last enumeration of the population published by the authority of parliament, have before the first day of January in this present year adopted and acted upon the provisions of an act passed in the second year of the reign of King William the Fourth, intituled *An Act for the better Regulation of Vestries, and for the Appointment of Auditors of Accounts, in certain Parishes of* England *and* Wales, and that where any two or more parishes situated within the district of the metropolitan police, containing together a population exceeding twenty thousand, according to the last enumeration of the population published by the authority of parliament, have been united for the purposes of rating or settlement under the provisions of any local act, and are governed by guardians or directors under such local act, and have not been comprised in any union formed under the provisions of the said first-recited act, and have an auditor or auditors appointed and acting under any provisions of such local act relating to the audit of accounts in such parishes, it shall not be lawful to include such parish or such two or more parishes respectively in any such district for the audit of accounts: provided always, that it shall be lawful for any assistant poor law commissioner to be present at any audit as if the same were a meeting of a board of guardians or vestry, and to inspect, examine, and take copies or extracts from any books, accounts, or vouchers produced at such audit.

Parishes, with a population exceeding 20,000, under local acts, having adopted the provisions of 1 & 2 Will. IV. c. 60, and parishes in the metropolitan district having auditors, not to be included in any district for audit of accounts.

Proviso.

66. And whereas it is provided by the said first-recited act that the said commissioners may, from time to time as they may see fit, by order under their hands and seal, declare any union not united for the purposes of settlement or rating to be dissolved, or any parish or parishes to be separated from or added to any such union, and that such union shall thereupon be dissolved, or such parish or parishes shall thereupon be separated from or added to such union accordingly; and it is thereby further provided that no such dissolution, alteration, or addition shall take place or be made unless a majority of not less than two thirds of the guardians of such union concur therein; and it is expedient to enable the said commissioners to separate any parish or parishes from any union, or to add any parish or parishes to any union, without the concurrence of the guardians of such union respectively; be it enacted, that it shall be lawful for the said commissioners to exercise the powers given to them by the said act for the separating of any parish or parishes from any union formed under the provisions of the said act, or for the addition of any parish or parishes to any such union, without the concurrence of the guardians of such union respectively in such separation or addition; and the said commissioners may, if they see fit, cause a board of guardians to be elected under the provisions of the said act for any single parish separated from any union in pursuance hereof, notwithstanding the provisions of any local act in force in such parish.

Commissioners may separate parishes from unions, or add parishes to unions, without the consent of the guardians of the union.

67. And be it enacted, that so much of an act passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled *An Act to prevent poor Persons in Workhouses from embezzling certain Property provided for their Use; to alter and amend so much of an Act of the Thirty-sixth Year of His present Majesty as restrains Justices of the Peace from ordering Relief to poor Persons in certain cases for a longer Period than one Month at a time; and for other Purposes therein mentioned relating to the Poor*, as relates to the giving of notice of the intention to enter into contracts relating to the relief of the poor, shall be and the same is hereby repealed.

Repeal of 55 Geo. III. c. 137, s. 7, as to notices of contracts for supplying workhouses.

68. And be it enacted, that, notwithstanding any thing contained in an act passed in the seventh year of the reign of her Majesty, intituled *An Act for consolidating and amending several of the Laws relating to Attornies and Solicitors practising in* England *and* Wales, it shall be lawful for any clerk or other officer to any board of guardians constituted under the said first-recited act or under any local act, or to any district board, if duly empowered by such board, to make or resist any application, claim, or complaint, or to take and conduct any proceedings on behalf of such board before any justice or justices of the peace at petty or special sessions or out of sessions, although such clerk

Clerks and officers may conduct proceedings before justices at petty sessions on behalf of boards of guardians, although not certified attornies.

7 & 8 *Vict.* *c.* 101.

or officer be not an attorney or solicitor, or have not obtained a stamped certificate in pursuance of the provisions of the said act.

Guardians, &c. may make a certain certificate, which may be received in evidence, &c.

69. And be it enacted, that it shall be lawful for any board of guardians or district board, at any meeting thereof, to make a certificate in the form or to the effect contained in the schedule of this act marked (C.), and that every such certificate, and every copy of a minute of any order, complaint, claim, application, or authority of any such board of guardians or district board, purporting respectively to be signed by the presiding chairman of such guardians or district board, and to be sealed with their seal, and to be countersigned by their clerk, shall, unless the contrary be shown, be taken to be sufficient proof of the truth of all the statements contained in such certificate, and of the directions respecting such order, complaint, claim, or application having been given as alleged in the copy of such minute, and shall be received in evidence accordingly by and before all courts of justice and all justices, without any proof of the signatures or of the official characters of the persons signing the same, or of such seal, or of such meeting; and that for the purpose of making any order of removal or other order no further or other evidence of chargeability than such certificate shall be required, provided that every such order bear date within twenty-one days next after the day of the date of such certificate.

Justices at petty sessions, or out of sessions, may summon witnesses, and compel them to attend and give evidence.

70. And be it enacted, that in any proceedings to be had before justices in petty or special sessions, or out of sessions, under the provisions of this act or of any of the acts required to be construed as one act herewith, if any party to such proceedings request that any person be summoned to appear as a witness in such proceedings, it shall be lawful for any justice to summon such person to appear and give evidence upon the matter of such proceedings; and if any person so summoned neglect or refuse to appear to give evidence at the time and place appointed in such summons, and if proof upon oath be given of personal service of the summons upon such person, and that the reasonable expences of attendance were paid or tendered to such person, it shall be lawful for such justice, by warrant under his hand and seal, to require such person to be brought before him, or any justices before whom such proceedings are to be had; and if any person coming or brought before any such justices in any such proceedings refuse to give evidence thereon, it shall be lawful for such justices to commit such person to any house of correction within their jurisdiction, there to remain without bail or mainprize for any time not exceeding fourteen days, or until such person shall sooner submit himself to be examined, and in case of such submission the order of any such justice shall be a sufficient warrant for the discharge of such person.

Rules, &c. printed by the printer authorised by her Majesty to be received in evidence.

71. And whereas it is provided by the said first-recited act that all rules, orders, and regulations made by the said commissioners under the authority of the said act shall be as valid and binding, and shall be obeyed and observed, as if the same were specifically made by and embodied in the said act; but no sufficient provision is made for bringing such orders to the knowledge of courts of justice; be it therefore enacted, that any copy of any such rule, order, or regulation, printed by the printer duly authorised by her Majesty or any of her royal predecessors or successors, shall, after the lapse of fourteen days from the date thereof, be received in evidence, and judicially taken notice of, and shall, until the contrary be shown, be deemed sufficient proof that such order was duly made, and is in force.

Evidence in legal proceedings of the transmission of the commissioners' rules, &c.

72. And whereas it is provided by the said first-recited act that a written or printed copy of every rule, order, or regulation of the said commissioners shall, before the same shall come into operation in any parish or union, be sent by the said commissioners by the post, or in such manner as the commissioners shall think fit, sealed or stamped with their seal, addressed to the overseers of such parish, the guardians of such union, or their clerk, and to the clerk to the justices of the petty sessions held for the division in which such parish or union shall be situate: and whereas the proof of such sending is often attended with great expence and difficulty; be it enacted, that it shall not in any civil or criminal proceeding be necessary to prove such sending, except to the clerk to the guardians of the union or of the parish, or, where there shall be no guardians, to the overseers of the parish within which such rule, order, or regulation is intended to have effect; and that it shall in no case be necessary to prove such sending, unless reasonable notice in writing be given, by the party requiring such proof, to the party upon whom such proof would lie, that such proof will be required; and whenever it is proved to the satisfaction of the court that the said rule, order, or regulation was sent, and that the party was cognizant thereof, such court shall order the

reasonable expences of the witness or witnesses proving the same to be paid by the party who has given such notice, and such expences shall be recoverable as penalties and forfeitures under the first-recited act. 7 & 8 *Vict.* c. 101.

Conveyances, &c. for workhouses to be good, although not enrolled.

73. And be it enacted, that in all cases where any messuages, lands, or hereditaments, or any estates or interest therein, have or hath been conveyed or assured, or purported to be conveyed or assured, either gratuitously or for valuable consideration, to or in trust for the churchwardens and overseers of the poor, or the overseers only, or the guardians of any parish [or parishes respectively, or otherwise for the benefit of any parish or parishes respectively, or to or in trust for the guardians of any union, for the purpose of providing a workhouse or asylum, or workhouses or asylums, for the accommodation of the poor of such parish or parishes or union respectively, every such conveyance or assurance shall be deemed good and valid for all purposes whatsoever, notwithstanding that such conveyance or conveyances have not been enrolled pursuant to the statute passed in the ninth year of the reign of his late Majesty King George the Second, intituled *An Act to restrain the Disposition of Lands whereby the same became inalienable.* 9 Geo. II. c. 36.

Construction of act.

74. And be it enacted, that this act shall be construed in the same manner as the act passed in the sixth year of the reign of her present Majesty, intituled *An Act to continue until the Thirty-first Day of* July *One thousand eight hundred and forty-seven, and to the End of the then next Session of Parliament, the Poor Law Commission; and for the further Amendment of the Laws relating to the Poor in* England, and as one act with the same, and with the acts and provisions thereby required to be construed as one act; and the word "month" shall be taken to mean calendar month; and the words "clerk of the peace" shall be taken to mean the clerk of the peace or other officer discharging any of the duties of clerk of the peace for any county, division of a county, riding, borough, liberty, division of a liberty, precinct, county of a city, city, county of a town, town, cinque port, or town corporate; and the words "licensed minister" in the said first-recited act, and "minister" in this act, shall be construed to mean and include every person in holy orders, and also every person teaching or preaching in any congregation for religious worship whose place of meeting is certified and recorded according to law; and, except where it is otherwise expressly provided, all provisions in any act now passed or hereafter to be passed, relating to the officers of boards of guardians constituted under the provisions of the said first-recited act, or to the workhouses under the management of such guardians, shall apply to all officers appointed by any district board, and to all workhouses under the management of any district board. 5 & 6 Vict. c. 57.

Act limited to England and Wales.

75. And be it enacted, that this act shall extend only to England and Wales.

When act to operate.

76. And be it enacted, that this act shall come into operation on the day next after that on which her Majesty gives her assent thereto.

Act may be amended this session.

77. And be it enacted, that this act may be amended or repealed by any act to be passed in this present session of parliament.

SCHEDULES REFERRED TO IN THE FOREGOING ACT.

SCHEDULE (A.)

County
Division

Name of Mother of Bastard applying.	Date of Issue of Summons.	Date of Petty Sessions.	Result of the Application.	Name of the putative Father in all Cases in which Orders are made.
			[Here state if the Summons was never served, or if the alleged Father absconded, or the Complaint was abandoned or heard, and the Order refused, or, if made, the Amount of the Order.]	

I certify the above List to be correct in all Particulars.

(Signed) A. B., Clerk to the Justices.

7 & 8 Vict. c. 101.

SCHEDULE (B.)

City, Towns, and Boroughs.

Liverpool.	Leeds.
Manchester.	Birmingham.
Bristol.	

SCHEDULE (C.)

The board of guardians of the poor of the union [*or* parish of] do hereby certify, that on the day of *A. B.* and his wife *C. B.*, and his child *E. B.*, became chargeable to the parish of in the said union [*or* to the said union].

In testimony whereof the common seal of the said guardians is hereunto affixed at a meeting of their board this day of 18 .

(L. S.) (Signed) *W. J.*, Presiding Chairman of the said Board.
(Countersigned) *C. D.*, Clerk [*or* acting as Clerk] to the Board of Guardians of

II. OF FORMS.

Circular stating Duties of Parochial Officers.

Poor Law Commission Office, Somerset House,
1*st March*, 1836.

To the Churchwardens, Overseers, and other Officers required to account for the Expenditure of the Poor Rates.

1. By the order for keeping, examining, and auditing accounts, issued by the commissioners under the authority of the Poor Law Amendment Act, it is required that the accounts of each separate parish, and also the accounts of every union, shall be made up quarterly and duly audited.

2. Under the late mode of administration, much money was unequally collected, or was altogether omitted to be collected, and much was improperly expended. Either from ignorance or neglect, many illegal practices have crept into the administration of relief, which, from their notoriety and general prevalence, have been supposed to be legal, and have frequently been continued in perfect confidence of their correctness. The commissioners are aware that many of the charges thus illegally defrayed out of the poor rates were incurred for useful public purposes, but all such illegal charges they are bound to disallow; and they have accordingly issued directions to the auditors to disallow them in the quarterly audit of the accounts. *The commissioners have directed the following instructions to be issued to prevent you from incurring such charges unwittingly, and to save you from the consequences of their disallowance.* Some of these instructions may not be strictly applicable to individual parishes governed under the provisions of local acts. The nature of such modifications as may be necessary in each case cannot be here specified, but will readily suggest themselves to persons acquainted with the provisions of the acts in question.

3. Under the law as it stood previously to the passing of the Poor Law Amendment Act, the churchwardens and overseers were alone answerable for the whole of the expenditure for the relief of the paupers; and the accounts of masters of workhouses, and other subordinate officers, were necessarily included in the accounts of the churchwardens and overseers. Under the Poor Law Amendment Act, the obligation to account is extended to every officer or other person to whom money, or any goods, stock, or other property is intrusted; and the account must be regularly rendered for goods or stock as well as for money.

4. Formerly it was generally understood that the order of a magistrate or other superior authority, to any parish officer, was to be implicitly obeyed without any examination of its validity, and that the order of itself exonerated the officer to whom it was directed from all legal responsibility: but, by the 96th

Duties of Parochial Officers.

section of the Poor Law Amendment Act, it is enacted that thenceforth, from the passing of the statute, "no overseer shall be liable to any prosecution or penalty for not carrying into execution any illegal order of such justices or guardians; any law or statute to the contrary notwithstanding." As the accounts of every officer may be disallowed, so every officer, whilst he is bound to obey all orders which are legal, is equally bound to disobey all orders which are illegal, and will be personally answerable in either case.

5. On entering upon your office, you must obtain from your predecessors the balances of rates and other monies in their hands, and also ascertain whether there are any charges relating to the past year unliquidated. You must bear in mind that the law protects the present rate-payers from being charged with expenses incurred by former officers; and that, as a general rule, no items which relate to a past year can properly be brought into the account for the current year. The exceptions to this rule are, where the preceding officers have, from unavoidable circumstances and not from neglect, been unable to collect the rates, in which case they may be reimbursed for any advances made by them to the extent of the arrears of rates to be collected. Another admissible exception is, where the preceding overseers may have advanced sums of money during a time when no rate could have been enforced; as where an appeal has been depending, by which the whole of the rate was affected, in which case the succeeding overseers may reimburse their predecessors in office. So, again, where a legal charge has accrued so late as to render it impossible to make and collect a rate of which the former overseers might have been reimbursed, in which case it is lawful for the succeeding overseers to pay the charge.

6. It should be observed that, by the 47th section of the Poor Law Amendment Act, "all balances due from any guardian, treasurer, overseer, or assistant overseer, or other person having the control and distribution of the poor-rate, or accountable for such balances, may be recovered in the same manner as any penalties and forfeitures are recoverable under this act; provided, nevertheless, that no such proceeding shall discharge the liability of the surety of any such treasurer, overseer, or other person as aforesaid."

7. All penalties and forfeitures under this act may be levied by distress and sale of goods and chattels, by warrant under the hand of two justices; and in case such forfeitures be not forthwith paid, the justices may order the offender to be kept in custody until return can conveniently be made to the distress warrant, unless the offender shall give sufficient security for his appearance on the return-day of the warrant; but if, upon the return of the warrant, there appears that no sufficient distress can be had, the offender may be committed to the common gaol or house of correction, to remain without bail or mainprise, unless such penalties and all reasonable charges be sooner paid.

8. By the act 43 of Eliz. c. 2, s. 1, the churchwardens and overseers are directed to raise, weekly or otherwise, competent sums of money for the relief of the poor. By the 4th section, the same officers are armed with powers to enforce the payment of such money and "of all arrearages." But the parish officers having been allowed a discretion, in point of time, for the collection of rates, abusive practices have crept in, under which the collections have been made at much longer intervals than those intended by the legislature. By neglecting to make frequent collections, large amounts have been required at each contribution from the rate-payer, and many persons who would have had no difficulty in paying smaller sums at more frequent intervals, have become defaulters. Through the length of these intervals, payment has also been frequently avoided by the removal of the rate-payers out of the parish. It has also been a mal-practice of churchwardens and overseers to favour some rate-payers by allowing them to continue in arrear for former rates, while more recent rates were in course of collection. By these neglects and mal-practices, the persons who pay the rates regularly have been unduly burthened, and much money has often been lost to the parish. It has, moreover, been a practice to harass particular individuals with collections, before the regular collection is made from the rate-payers generally.

9. To abate the evils which have thus grown up, and to limit the discretionary power under which they have been generated, it is now provided that the accounts shall be audited quarterly, and it will hereafter be requisite that you should regularly and impartially collect the rates, and pay all expenses incurred, and as far as practicable confine the quarterly accounts to the charges of the quarter.

10. It is proper to caution you that the quarterly audit now directed does not

Duties of Parochial Officers.

dispense with the usual yearly audit, and that any illegal charges which may escape the notice of, or be allowed by the auditors, at the quarterly audit, may nevertheless be disallowed or reduced by the justices at the yearly audit. The jurisdiction of the court of quarter sessions, on appeals from the allowances or disallowances of the yearly accounts of overseers by the justices remains in force, and the penalties to which overseers neglecting to account, or to deliver over balances or parish property, were made liable by former acts, may still be imposed by justices of the peace.

11. By the statute 43 of Elizabeth, the overseers or collectors of rates are bound to collect equally the rates from all persons. It is only upon the authority of justices that any individual occupier can be excused from the payment of rates. If, therefore, you find any person occupying a tenement, who from poverty is incapable of paying his rates, the only course which you can legally take is *to submit the case to the magistrates*, with evidence of the fact of inability —such as his being only in partial employment—his having suffered from calamities—and his living in a state of privation of the ordinary comforts or conveniences. Proof must be given of a state approaching to pauperism on the part of any occupier, to exempt him from the payment of the rates. Having upon such evidence, and not upon the mere assertion of the party, *received the magistrates' order to excuse the party from the payment of the rate assessed upon him, you must preserve such order;* for unless you are enabled to produce it as a voucher, you may be compelled to pay the amount which you would otherwise have been called upon to collect.

12 The only other deductions allowed to be made in the collection of the rates are, where property, not subject to the rate, has been assessed by mistake, as where property is exempted, or where it is unoccupied; also where persons have removed within the interval reasonably allowed for the collection of the rate, and have thus escaped payment in the regular course; but in every such case you are bound to collect the arrear thus accruing, and if necessary to resort to legal means for recovering the amount. You must be prepared with evidence to establish the grounds for these deductions from the full amount of the rate allowed; and, until the rate already allowed has been thus fully collected, no new rate must be applied for; and if applied for in any case, the justices are bound to withhold their sanction, and to require that the whole of the old rate should be first collected and accounted for.

13. Besides the poor-rates, you are bound to collect and bring to account the monies derivable to the parish from other sources, namely—

All rents, dividends, or other funds arising from bequests vested in the parish officers for the relief of the poor.

All payments by the natural relations of paupers, or by the parents of bastard children.

All repayments of relief given by way of loan, under the 59th Geo. III. c. 12, or under the Poor Law Amendment Act, &c.

All repayments, by other parishes, of the cost of relief to paupers under order of removal, or otherwise.

All earnings by paupers maintained by the parish in or out of the house.

All penalties, fines, and forfeitures, wholly, or in part, for the use of the poor;

As well as all other monies applicable to the same use.

14. Your attention will next be required to your duties in the expenditure of the rates and other monies so collected; and herein you must bear in mind, that usage is of no legal authority in the construction of the statute of Elizabeth, by which the poor-rates are established. The law has not given to the parish officers or even to the vestry any power of charging or of taxing their fellow-parishioners, even for useful purposes, at their own mere discretion; and no charge upon the poor-rates is legal, unless it is in plain words sanctioned or directed by some statute.

15. The following is a list of the statutes, under the authority of which the poor-rates are chiefly levied and expended:—

Authority.	*Charges on Rates.*
43 Eliz. c. 2	Setting to work the able. Relieving the impotent.
4 & 5 Will. IV. c. 76, (P. L. Amendment Act)	Maintenance of the poor in workhouses. Out-door relief to the aged and infirm. Out-door relief to the able-bodied. Out-door relief in cases of emergency. Casual relief to the poor. Medical relief. Relief to bastards.
9 Geo. IV. c. 40, s. 38 . . .	Charges of conveying and maintaining pauper lunatics.
5 Eliz. c. 4, and subsequent acts	Putting out apprentices.
2 & 3 Anne, c. 6, and 4 Anne, c. 19	Apprenticeship to sea service.
2 Geo. III. c. 22	Register and regulation of parish poor infants within the bills of mortality.
4 & 5 Will. IV. c. 76, s. 58 (P. L. Amendment Act) . . .	Loans to poor persons.
59 Geo. III. c. 12, s. 30 . .	Loans to Greenwich and Chelsea pensioners. (The advances are recoverable quarterly, and an arrear of one quarter is not therefore allowable.)
59 Geo. III. c. 12.	Providing lands, &c. for the poor. (The authority must have been exercised under the direction of the Poor Law Commissioners.)
4 & 5 Will. IV. c. 76, (P. L. Amendment Act) . . .	Emigration.
52 Geo. III. c. 16	Charges for relief to paupers during their confinement in gaols which are not county gaols.
5 Geo. IV. c. 85	Allowances to discharged prisoners. (These are recoverable from the treasurer of the county on application by the overseer.)
3 Geo. II. c. 29	Reimbursed charges to parish officers for maintaining and removing certificated persons.
4 & 5 Will. IV. c. 76, s. 84, (P. L. Amendment Act) . . .	Costs of relief to persons under orders of removal.
9 Geo. I. c. 7; 22 Geo. III. c. 83; 59 Geo. III. c. 12; 4 & 5 Will. IV. c. 76, s. 21—25, (P. L. Amendment Act) . . .	Building, altering, enlarging, purchasing, hiring, and fitting up of workhouses.
4 & 5 Will. IV. c. 76, s. 14, (P. L. Amendment Act.) . . .	Expenses of witnesses before Poor Law Commissioners, where allowed by them.
4 & 5 Will. IV. c. 76, s. 82 .	Costs of appeals.
59 Geo. III. c. 12, s. 7 . . .	Salary to assistant overseer.
12 Geo. II. c. 29, &c. . . .	County rate.
5 & 6 Will. IV. c. 76, s. 92, (Corporation Reform Act) . .	Borough rate in the nature of a county rate.
7 & 8 Geo. IV. c. 31, s. 15 . .	Compensation by the hundred in places not contributing to the county rate.
7 Geo. IV. c. 64	Costs and compensations in the prosecution of felony in such places.
25 Geo. II. c. 36, s. 5; 58 Geo. III. c. 70, s. 7 & 8 . . .	Costs of prosecuting persons keeping disorderly houses.
18 Geo. III. c. 19, &c. . . .	Sums expended by constables in doing actual business of the parish, in the relief or removal of vagrants, &c.
11 Geo. IV.; 1 Will. IV. c. 30, s. 10	Making population returns.
6 Geo. IV. c. 50, s. 9 . . .	Printing a sufficient number of jury lists.

16. This list is not to be deemed complete, as by clauses inserted in various general acts as well as by many local acts, charges are in certain cases made payable out of the poor-rates for objects not connected with the original intention of the poor-laws. In no case, however, except in relief of destitution, will it be safe

Duties of Parochial Officers.

to make any payments out of the poor-rates, unless sanctioned by the express direction of some statute. In doubtful cases therefore the proper inquiry will always be "*Under what statute, or by what regulation is the proposed charge warranted?*" and, unless the authority can be found in the words of the statute, or in some lawful order or regulation of the Poor Law Commissioners, it must be presumed that the charge would be illegal.

17. By the 50th Geo. III. c. 49, s. 1, the justices (and by the Poor Law Amendment Act, auditors) are authorised to strike out of the overseers' accounts "all such charges and payments as they shall deem to be *unfounded*, and to reduce such as they shall deem to be *exorbitant*, specifying on the foot of such account every such charge or payment, and its amount, so far as such justices shall disallow or reduce the same, and the cause for which the same was disallowed or reduced."

18. With relation to the *unfounded* charges, the primary general rule has already been stated: namely, that all charges on the poor-rates are unfounded which are not authorised by some statute. With relation to the *exorbitant* charges, the general rule is, that all charges are exorbitant, on which the overseers have paid any person for goods or services at a higher rate than such goods or services were offered by any other competent person, or than they might be obtained for by a private individual resident within the same district.

19. The charges which must be struck out as unfounded, are those for relief given to persons who are not legally entitled to it, as not being in a state of necessity from destitution, and with relation to whom the securities prescribed by statute, or by the regulations of the Poor Law Commissioners, under the Poor Law Amendment Act, have not been complied with. By the 9th Geo. I. c. 7, s. 2, it is provided that "no officers of any parish shall (except upon *sudden* and emergent occasions) bring to the account of the parish any monies he shall give to any poor person of the same parish, who is not registered in such book or books to be kept by the said parish, as a person entitled to receive collection; and as monies for the relief of such persons are directed not to be brought to the account, they must, if entered, be struck out. In unions, the "Pauper Description Book," the "Weekly Relief Book" for out-door paupers, and the "Admission Book," for in-door paupers, prescribed by the Poor Law Commissioners, will supersede the collection book required by the 9th Geo. I.

20. The cases of emergency which may legally be relieved, are generally cases of sudden and calamitous accident; and it is provided by the Poor Law Amendment Act, s. 54, that in parishes included in any union all such relief shall be given in kind, but not in money. The relief to be given will therefore be medicine, food, or clothing, as the nature of the case may be. No case can be considered a case of emergency, when there is time for the parish officers to put the pauper requiring relief upon the collection book as provided, and in general two or three days will be found to be the utmost limits of a case of emergency.

21. Those charges must be deemed unfounded and be disallowed in cases where, although it may have been lawful to give some relief, the relief actually given differs from that directed by the Poor Law Amendment Act, or by other statutes, or by the rules, orders, and regulations of the Poor Law Commissioners. By the 89th section of the Poor Law Amendment Act it is provided: "That all payments, charges, and allowances made by any overseer or guardian, and charged upon the rates for the relief of the poor, contrary to the provisions of this act, or at variance with any rule, order, or regulation of the said Commissioners, made under the authority of this act, shall be and the same are thereby declared to be illegal; any law, custom, or usage to the contrary notwithstanding. And every justice of the peace is thereby required to disallow, as illegal and unfounded, all payments, charges, or allowances, contrary to the provisions of this act, or to any such rule, order, or regulation of the said Commissioners, which shall be contained in any account of any overseer of the poor or guardian, which shall be presented for the purpose of being passed or allowed. Provided always, that no allowance by any justice shall exonerate or discharge such overseer or guardian from any penalty or legal proceeding to which he may have rendered himself liable by having acted contrary to the rules, orders, and regulations of the said Commissioners, or to the provisions of the act." It will therefore be necessary to bear carefully in mind the rules and orders of the Commissioners as to the mode in which relief is to be given.

22. Those charges must also be disallowed, as unfounded, which are incurred

independently of, or against the directions of the board of guardians, if your parish is included in a union, or of a select vestry, or other persons exclusively authorised to give direction in the matter to which the payment relates, or to order relief under the 54th section of the Poor Law Amendment Act; since the only foundation for the charge in such case is the order of an officer so authorised, the payment must be in obedience to that order, or the charge must be disallowed at the audit.

23. With respect to the charges more commonly found in overseers' accounts, but not authorised by any statute, they are such as follow, namely—

Charges for the performance of services for which the law has not sanctioned any payment:—The duties of overseers are compulsory, and are required to be performed gratuitously. Those upon whom the office is imposed are legally bound to perform the whole of the duties themselves, and are not entitled to charge for assistance. Any of the following charges are therefore entered illegally where treated as payments for the services of constables, vestry clerks, &c.

Charges for coroners' inquests, and charges properly payable out of the church-rates, must be disallowed, as unfounded charges upon the poor-rates; so also

Charges for salaries to overseers, under the title of "permanent overseers."

Charges for the trouble of the overseer or other person in paying county-rates.

Charges for filling up parliamentary returns (except such charges as are allowed by the 11 Geo. IV. & 1 Will. IV. c. 30, s. 10, for making the population returns.

Charges for loss of time in attending justices or revising barristers.

Charges for dinners, or other illegal charges usually concealed under the head of "expenses of attendance."

Charges for dinners and the entertainments of parish officers, often concealed under the item, "expenses of meetings, or otherwise."

Charges for the extirpation of vermin; for killing birds and badgers.

Charges for marrying paupers, also fees for churching women, and christening children, when not receiving relief within a workhouse; likewise excessive charges for tolling bells at paupers' funerals.

Charges for the prosecution of public offences: such prosecutions being in no way incidental to the office of overseer, unless made so by the express provision of some statute.

24. The parish officers who are bound to account for the expenditure of the parish monies are also bound to account in a proper form. The accounts of any officer which are not made out conformably to the rules of the Poor Law Commissioners, declaring the manner in which accounts are to be kept, cannot be received.

25. Where a general balance sheet is prepared, without the requisite detail of dates and expenditure, or where gross items are inserted which may conceal the nature of the individual charges and payments, and thus place impediments in the way of determining whether the receipts be completely accounted for, or whether any of the charges are unfounded or exorbitant, the accounts must be disallowed—and no items named "sundries," "miscellaneous," or "incidental expenses," can be admitted, without the whole of the details included under those heads being first fully explained on the face of the account.

26. You must also be prepared to prove that the regulations of the Commissioners for giving notice to the rate-payers have been observed, and that proper opportunities have been afforded to all who choose to examine the accounts; and you must also be prepared to verify upon oath the accuracy of all your charges, if required to do so.

You are requested to transfer this communication to your successors in office.

By order of the Board of Poor Law Commissioners for England and Wales,

EDWIN CHADWICK,
Secretary.

Forms issued by the Poor Law Commissioners.

FORMS OF POOR RATE ISSUED BY THE POOR LAW COMMISSIONERS.

FORM G.—*Rate Book.*

Name of Occupier.	No. of Votes.	Name of Owner.	No. of Votes.	Description of Property for which rated.	Name of the House, Lands, or Premises, or situation thereof.	Rental or Annual Value of Property. £. s. d.	Amount at which the Property is Assessed. £. s. d.	Amount of Poor Rate to be collected at ——— in the £. £. s. d.	Amount of Arrears of former Rate, if any. £. s. d.	Total Amount to be collected. £. s. d.	Amount actually collected £. s. d.	Date when so collected.

FORM H.—Certificate of Auditor.

I have examined all the items in this account, and compared them with the vouchers, and I do hereby certify and declare that every entry allowed by me is correct, and in strict conformity with the rules, orders, and regulations of the Poor Law Commissioners, and the provisions of 4 & 5 Will. IV. c. 76.

——— ——— *Auditor.*

FORM K.

——— ——— *Union.*

To A. B. and C. D. Churchwardens and Overseers [or "*Overseers,*" as the case may be,] *of the Parish* [or "*Township,*" as the case may be.]

You are hereby authorised and directed to pay to F. G. of on the day of at the sum of pound shillings and pence, from the poor rates of the said parish [or "*township,*" as the case may be], *towards the relief of the poor thereof, and towards defraying such proportion of the general expenses of the union as is lawfully chargeable on the said parish* [or

Forms issued by the Poor Law Commissioners.

"*township,*" as the case may be,] *and you shall take the receipt of the said F. G. for the said sum of £*

Given under our hands, at the meeting of the guardians of the said union, held on the day of 18 .

(*Signed*) *X. Y. Presiding Chairman.*
W. Z. } *Guardians.*
U. V. }

(*Countersigned*)
R. S. Clerk to the Board of Guardians of the said Union,

FORM A.—Requisition for an Extraordinary Meeting of Guardians.

To the Clerk of the Guardians of the Union.

Sir,

We the undersigned, being two of the guardians of the poor of the union, do hereby require and direct you to summon an Extraordinary Meeting of the Guardians of the said Union, to be holden at on the day of 184 , at o'clock in the forenoon, to take into consideration [set out the motion].

FORM B.—Notice of First Weekly Meeting.

To A. B.
Guardian of the Poor of the Union.

Sir,

You are hereby informed that the First Weekly Meeting of the Board of Guardians of the Union, will take place at on the day of 183 , at o'clock in the forenoon, for the transaction of business; and that meetings of the said board will henceforth be held at the same place, on in every week, at the same hour of in the forenoon.

Clerk to the Board of Guardians of the Union.

FORM C.—Notice of an Adjourned Meeting of Guardians.

Sir,

This is to give you notice that an Adjourned Meeting of the Guardians of the poor of the Union, will be held at on the day of 183 , to take into consideration [set out the motion]; *which meeting you are hereby requested to attend.*

Clerk to the Guardians of the Poor of the Union.

FORM D.—Notice of Extraordinary Meeting of Guardians.

To A. B.

Sir,

I am directed by C. D. and E. F. two of the guardians of the poor of the Union, to summon an Extraordinary Meeting of the Guardians of the said Union at on the day of 183 , at o'clock in the forenoon, to take into consideration [set out the motion]; *which meeting you are hereby requested to attend.*

Clerk to the Guardians of the Union.

THE FORMS ABOVE REFERRED TO.

N. B.—The following Forms, A. and B. 1 and 2, may be followed by owners of Property in making their claims to vote, or in appointing Proxies and by such Proxies making their claims, but any other Form to the same effect will be sufficient.

FORM A.—Owner's Claim to Vote.

To the Churchwardens and Overseers of the Parish of

This day of 183 .

I, of claim to be entitled to vote according to the provisions of the 4th and 5th Will. IV. c. 76, as owner of the property herein described, the whole of which is situate within the parish of viz.

["*One House,*" or "*Farm,*" *&c. situate at*].

Forms issued by the Poor Law Commissioners.

Form B. 1.—Appointment of Proxy.

To the Churchwardens and Overseers of the Parish of

This day of 183 .

I, of being owner of the property hereinafter described, the whole of which is situate in the parish of do hereby appoint of to vote, until the present appointment is revoked, as my proxy, in all cases wherein he may lawfully do so, under the provisions of the 4th and 5th Will. IV. c. 76. And the property of which I am owner, and in respect of which I appoint the said to vote as my proxy, is as follows, viz. :—

[" *One House*," or " *Farm*," *&c. situate at*].

Form B. 2.—Application of Proxy.

To the Churchwardens and Overseers of the parish of

This day of 183 .

I, of having been appointed by of to vote as his proxy under the provisions of the 4th and 5th Will. IV. c. 76, do hereby claim to vote as such proxy. I herewith transmit to you such my appointment, in the handwriting of, [or " *signed by*"] *the said* [or " *an attested copy of my appointment, the original of which is in the handwriting of,* [or " *signed by*"] *the said* "] *And the property situate in the parish of in respect of which the said is entitled to vote as owner, and in respect of which I do hereby claim to vote as his proxy, is as follows, viz. :—*

[" *One House*," or " *Farm*," *&c. situate at*].

And I do hereby require you to enter my name and address as above, and the assessment of the rate for the relief of the poor, on the property above described, in the book or books directed by the said act to be provided for the purpose.

Form C.—Book for Registry of Owners of Property and Proxies.

Parish of

No.	Name of Owner.	Address.	Property in respect whereof right to vote is claimed.	No. of reference to Rate Book.	Aggregate amount of Assessment.	Name of Proxy.	Address of Proxy.	No.	Date on which Claim received.

We do certify that the above is a full and correct register and entry of the claims to vote of owners of property and proxies in the said parish, and we do declare that all the entries of reference to the rate book, amount of assessment, number of votes, and dates on which claims were received, are true.

(*Signed*) } *Churchwardens.* } *Overseers.*

Form D.—Notice of the First Election.

Union.

Election of Guardians of the Poor for the of

We, the undersigned, being the churchwardens and overseers of the poor of the of do hereby give notice, that on the day of we shall, in pursuance of an order and declaration of the Poor Law Commissioners of England and Wales, proceed to the election of guardians of the poor for this to act as members of the board of guardians, to be elected for the union, which

has been declared by the said Commissioners to take place from the day of in this present year.

Forms issued by the Poor Law Commissioners.

Qualification of a Guardian.

[*Here insert a copy or correct abstract of Section III. of the Order.*]

Qualification of Voters.

[*Here insert a copy or correct abstract of Section IV. of the Order, Art.* 1, 3 & 5.]

Time for proposing Guardians.

Any person entitled to vote may propose a guardian; but he must send his proposal to one of the churchwardens or overseers, in writing, on or before the day of in the following form:—

[Here insert the form of Nomination Paper, F.]

No person can be elected guardian who has not been proposed in the manner above mentioned.

Mode of Voting.

In case more candidates shall be duly proposed than the number of guardians to be elected, a voting paper will be left on the day of at the house of every person residing in the who at that time shall be entitled to vote. The votes must be given in writing in such voting papers, which will be called for again on the day of election.

All other persons who on the day of election shall be entitled to vote, must on that day apply for voting papers to one of the churchwardens and overseers, and must return them filled up before noon of the same day.

Signed by us, this day of 183 .

} *Churchwardens.*

} *Overseers.*

FORM E.—Notice of the Annual Election of Guardians of the Poor.

Union.

The churchwardens and overseers of the several parishes comprised in the above union, and hereinafter named, will, in pursuance of the order of the Poor Law Commissioners for England and Wales, proceed on the day of to the election of the number of the guardians of the poor set opposite the names of such parishes for the year ending.

Parish A. . . . 10 *guardians.*
B. . . . 5 *guardians.*
C. . . . 3 *guardians, &c. as the case may be.*

Any person entitled to vote in any of the said parishes may propose as the guardian or guardians thereof any number (not exceeding the number to be there elected) of persons who are severally rated to the poor rate of any parish in the union in respect of property of the annual value or rental of £ . The proposal must be written, and must state the names, residences, and callings, of the persons proposed, and the name of the proposer, and must be delivered to one of the churchwardens and overseers of such parish on or before the day of .

Owners of rateable property in such parish, as well as rate-payers, are entitled to vote, provided their names are on the register of owners, or if they send in to the churchwardens and overseers before the day of election their claims to vote, with a statement of their names and address and a description of their property.

Owners may also vote by proxy; but proxies must make the statements above mentioned for their principals, and transmit to the churchwardens and overseers the originals or attested copies of their appointments.

In case of a contest for the office of guardian in any of the said parishes the votes will be given in papers to be left by the churchwardens and overseers two days at least before the day fixed for the election, at the houses of those residents of the parish who are then entitled to vote. All residents out of the parish, and all persons who become entitled after that day, must apply to one of the churchwardens and overseers for voting papers on the day of election.

The forms of nomination papers, statements of owners, and appointment of proxy, may be seen and copied by voters at the board room in the .

A. B. Clerk to the board of guardians.

Forms issued by the Poor Law Commissioners.

Form F.—Nomination Paper.

To the churchwardens and overseers of the parish of

Name of the Person or Persons proposed as Guardian or Guardians.	Residence and Quality or Calling of the Person or Persons proposed.

I nominate the above to be guardian [or "*guardians*"] *for the said parish, for the year ending*

Signature and address of proposer.

This paper must be delivered to one of the churchwardens or overseers at least six whole days before the day of election.

Form G.—Voting Paper.

Voting Paper for the Parish of

Names of the Persons proposed as Guardians.	Residences and Qualities or Callings of the Persons proposed.	Names of the Proposers.

[Hereunder the voter or proxy must insert in his own handwriting* the name or names of such of the above candidates as he votes for.]

I vote for

Signature of voter or proxy.†

* If the voter cannot write, his mark must be attested by a witness, and the name or names of the parties for whom he votes must be inserted in his presence by the attesting witness.

† If the proxy votes, he should sign his name, and add for whom he is proxy, thus :—M. N. proxy for P. Q.

Take notice, this paper must be carefully preserved by the voter, as no second paper will be given. When it is filled up, it must be kept ready for delivery to and the collecting officers, who will call for the same on the day of

No other person can be allowed to receive the voting paper; if it be not ready for the collectors when they call the votes will be lost. They will also be lost if more than names be returned as voted for.

Form H.—Letter to Guardians Elected.

Union.

day of 184 .

Sir,

We, the undersigned, being churchwardens and overseers of the poor of the parish of do hereby give you notice and declare that on the day of you

were duly proposed as a guardian of the poor of the parish of and that on the day of you were elected such guardian.

(*Signed*) } *Churchwardens.*
} *Overseers.*

Forms issued by the Poor Law Commissioners.

FORM I.—Notice of the Guardians Elected.

Union.

day of 184 .

We, the undersigned, being churchwardens and overseers of the poor of the parish of do hereby give notice that resident at were proposed as guardians of the poor of the said parish, and that on the day of were elected [" without opposition," or " by a majority of the number of votes for the several candidates being as follows," &c. as the case may be.]

(*Signed*) } *Churchwardens.*
} *Overseers.*

FORM J.—Return to the Board of Guardians of the Guardians Elected.

Union.

day of 184 .

We, the churchwardens and overseers of the poor of the parish of do hereby certify that on the day of we affixed a notice for the election of guardians on the principal door of the church in the said parish, and that on the day of , were proposed by , and that on the day of , were elected [" without opposition," or " by a majority of the number of votes for the several candidates being as follows," &c., as the case may be], *and that on the day of notice of such election was duly given to the guardians elected, and affixed on the church door.*

(*Signed*) } *Churchwardens.*
} *Overseers.*

G. FORM OF BOND OF A RELIEVING OFFICER.

G. Form of Bond of a Relieving Officer.

KNOW ALL MEN by these presents, that we, C. D. of, &c. E. F. of, &c. and G. H. of, &c. are jointly and severally held and firmly bound to the guardians of the poor of the union, in the county of , in the sum of pounds of good and lawful money of Great Britain, to be paid to the said guardians, or their certain attorney, successors, or assigns, for which payment to be well and faithfully made, we bind ourselves jointly, and each of us bindeth himself severally, our and each and every of our heirs, executors and administrators, and every of them, firmly by these presents, sealed with our seals. Dated this day of in the year one thousand eight hundred and thirty-seven, in the year of the reign of his Majesty King William the Fourth.

WHEREAS by an order, bearing date the day of one thousand eight hundred and thirty- , under the hands and seals of the Poor Law Commissioners for England and Wales, acting under the powers and authorities of an act passed in the 4th and 5th years of the reign of his present Majesty King William the Fourth, intituled " An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," it was declared that the several parishes of [enumerate the parishes carefully] *in the county of should be united for the administration of the laws for the relief of the poor, by the name of the union, and that a board of guardians should be elected for such union; and such board of guardians hath been duly elected accordingly; and in and by the rules, orders, and regulations, prescribed by the said Poor Law Commissioners for the direction of such board, it was, amongst other things, directed, that the said board should, in manner therein mentioned, appoint such and so many competent person or persons as the said board of guardians should think fit, to be a relieving officer or relieving officers of the said union, and should likewise determine the*

Forms issued by the Poor Law Commissioners.

parishes or places for which each such relieving officer should act, and that no person should be chosen as such relieving officer unless he would undertake to reside in one of the parishes for which he might be appointed to act, and devote his whole time to the employment, not following any other trade or profession whatsoever.

And whereas at a meeting of the said board of guardians, held on the day of last, was duly appointed a relieving officer for the parishes of [repeat their names] *within the said union, and he hath been required to enter into a bond with two sureties to the said guardians in the above-mentioned penalties to be conditioned as hereinafter is mentioned, and he hath requested the above-bounden C. D., E. F., and G. H. to join with him as such sureties in the above-written bond, subject to the condition hereunder written, to which they have assented, and the said guardians have agreed to accept of them as such sureties accordingly.*

NOW THE CONDITION of the above written obligation is such, that if the above bounden shall continue to reside in one of the said parishes for which he shall act as such relieving officer, during the whole period of his continuance in office, and shall during such period devote his whole time to the employment and duties of such office, and shall not follow any trade or profession whatsoever, and shall during the time that he shall hold such office well and truly, and in all respects and particulars observe, fulfil and keep all the lawful orders and directions of the said board of guardians, and likewise all and every the rules, orders and regulations of the said Poor Law Commissioners, which are now or shall from time to time be in force in any of the said several parishes during such his continuance in the said office, so far as the same shall apply or extend to such office, or to any of the duties thereof, and particularly shall at all times provide and keep such books and accounts as shall be required by the said orders and directions of the said guardians, or by the rules, orders and regulations of the said Poor Law Commissioners, or by the superior officer or officers of him the said during his continuance in office, or on his resigning, or being dismissed from the same, or if his executors or administrators after his decease, shall when so required produce and hand over to the said guardians, or such person or persons as they may authorise to receive the same, or to the successor in office of the said such books, accounts and vouchers, and hand over, pay or distribute to and amongst such parties as may be entitled to the same, all and every the balances, moneys, matters and things, being the property of any of the said parishes, or of the said guardians in such parishes, or of the said union in respect of the same, and which shall be entrusted from time to time to his care, or be in his custody or possession, in virtue of his said office, and also shall and will well and truly discharge such of the duties of an overseer of the poor as may be incidental to the said office, and pass his accounts before the auditor or auditors of the said union, or other the person or persons before whom such accounts are required to be passed under and by virtue of the said recited act, or of any other act or acts concerning overseers of the poor, or their accounts, and in all respects well and truly conform thereto, and shall also when required verify such books and accounts and every part thereof on oath, or subscribe a declaration to the truth thereof, in manner provided by the said act, then this obligation shall be void.

Sealed and delivered by the above bounden
in the presence of

---

7. Form of Bond of Collector of Rates, and his Sureties.

7. Form of Bond of Collector of Rates, and his Sureties.

KNOW ALL MEN by these presents, that we, C. D. of the parish of in the county of , E. F. of , and G. H. of , are jointly and severally held and firmly bound to the guardians of the poor of the union, in the county of in the sum of pounds of good and lawful money of Great Britain, to be paid to the said or their certain attorney, successors or assigns, for which payment to be well and faithfully made, we bind ourselves jointly, and each of us bindeth himself severally, our and each and every of our heirs, executors and administrators, and every of them, firmly by these presents, sealed with our several and respective seals. Dated this day of in the year one thousand eight hundred and thirty and in the year of the reign of his Majesty King William the Fourth.

WHEREAS, under and by virtue of an order, bearing date the day of one thousand eight hundred and thirty- under the seal of the Poor Law

Forms issued by the Poor Law Commissioners.

Commissioners for England and Wales, acting under the powers and authorities of an act passed in the 4th and 5th years of the reign of his present Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," it was declared that the several parishes of in the county of should be united for the administration of the laws for the relief of the poor, by the name of the union, and that a board of guardians should be elected for such union, and whereas such board of guardians hath been duly elected accordingly. And whereas, by an order under the seal of the said Poor Law Commissioners, bearing date the day of last, it was ordered and directed that the said guardians should appoint a fit and proper person to be the collector of the rates for the relief of the poor of the parishes and places comprised in the said union; and it was by the said order declared that the following should be the duties of such collector, that is to say:—

1. *To assist the churchwardens and overseers of the several parishes in making the assessments, and in keeping all books, and in making all returns which relate to the collection of rates or rents, or of any monies whatsoever payable on account of the poor rates.*
2. *To collect all moneys payable on account of the poor rates, or as rents, or arising from any of the sources of income set forth in the order of the said Poor Law Commissioners for keeping the books of receipts and payments.*
3. *To pay weekly into the hands of the treasurer of the union all moneys received on account of the several parishes, as often as he, the collector, should have more than fifty pounds in his hands, but to make no other payment or disbursement whatever on account of the union, or of any parish comprised therein.*
4. *To institute and to attend to all proceedings against all persons who make default in the payment of moneys due by them to any of the parishes in the union, either in respect of poor rates or otherwise.*
5. *To attend the weekly meetings of the board of guardians, and generally to observe and fulfil all lawful orders and directions of the said board of guardians, and likewise the rules, orders, and regulations relating to the said union already or to be hereafter issued by the Poor Law Commissioners for England and Wales.*

And it was thereby further ordered and directed, that the person so to be appointed as aforesaid should, before he entered on the performance of the duties of his office, give such security for the due and proper discharge of the same as should appear to the said guardians to be necessary and fitting. And whereas, at a meeting of the said guardians, held on the day of , was duly appointed a collector for the said union, and he was required by the said guardians to enter into a bond with two proper sureties for the proper discharge of the duties of his office, and he hath requested the above-bounden and to join with him as sureties in the above-written bond, subject to the condition hereunder written, to which they have assented, and the said guardians have agreed to accept of them as such sureties for the said accordingly.

NOW THE CONDITION of the above-written obligation is such, that if the above-bounden shall, during his continuance in the said office of collector, well and truly fulfil the several duties set forth and enjoined in the said order and hereinbefore recited, and also shall, when thereunto required by the said guardians, or by the said Poor Law Commissioners, or as the said guardians or Poor Law Commissioners may direct, render a full, just, and true account of the moneys from time to time received and paid by the said as such collector, so that the exact amount collected by him, and the balance, if any, remaining in his hands may clearly appear; and also shall from time to time, and at all times during his continuance in the said office of collector, in all respects and particulars, well and truly observe, fulfil and keep, all the lawful orders and directions of the said board of guardians, and likewise all and every the rules, orders, and regulations of the said Poor Law Commissioners, which are now, or shall from time to time be in force, in any of the said several parishes, so far as the same shall apply or extend to his said office, or to any of the duties thereof, and particularly shall provide and keep such books and accounts as are or shall be required by the said orders and directions of the said guardians, or by the rules, orders, and regulations of the said Poor Law Commissioners, or by the superior officer or officers of him the said and also, when required by the said guardians, or by the said Poor Law Commissioners, during his continuance in office, or on his resigning, or being dismissed from the same,

Forms issued by the Poor Law Commissioners.

produce and hand over to the said guardians, or to such person or persons as they may appoint, or to the successor in office of the said such books, accounts, and vouchers and hand over, pay, or distribute, to and amongst such parties as may be entitled to the same, all and every the balances, moneys, matters, and things being the property of any of the said parishes, or of the said guardians in respect of such parishes, or of the respective churchwardens or overseers, or other officers of such parishes, or of the said union, which shall be in his custody or possession, or power, in virtue of his said office, or otherwise howsoever, and also shall when required verify such books and accounts, and every part thereof on oath, or subscribe a declaration to the truth thereof in manner provided by the said act, and generally do and shall in all things well and faithfully execute and discharge the duties of his said office; then and in such case the above-written bond or obligation shall be void.

Signed, sealed, and delivered by the above-bounden

in the presence of

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8. Forms relating to Sale of Parish Property.

8. Forms relating to Sale of Parish Property.

Form No. 1.—Request to the Guardians to apply to the Poor Law Commissioners to Consent to Sale.

Parish of
Union,
County of

WE, the undersigned majority of the parish officers, and we the undersigned inhabitants of the parish of request you to apply to the Poor Law Commissioners for England and Wales for their consent to the sale of the undermentioned premises, belonging to the said parish, and for their directions as to such sale, and for the application of the produce thereof to the permanent advantage of the said parish.

[Here describe the premises, stating whether the tenure is freehold, customary freehold, copyhold, or leasehold, and whether subject to the payment of any quit rent, also when and how the parish became possessed of the property, and if any trusts exist which affect the same; if property built upon waste land, state whether so built with the consent of the lord of the manor, and the date of such consent.]

The said premises cannot conveniently be used for the purposes of the said union, and we are of opinion that the sale thereof will be of permanent advantage to the said parish, for the following reasons:—

[Here describe their condition, whether in a state of good repair, or dilapidated; also in whose occupation, whether in that of paupers or not, or empty; and any other circumstances that may enable the guardians to judge of the desirableness of selling the property.]

The said premises are estimated to be of the value of and yield an annual rent of

We are also of opinion that it will be advisable to apply the proceeds of the sale, after deducting the expenses thereof, in the following manner, to the permanent advantage of the parish.

[Say whether as contribution to the Union Workhouse, or to what other purpose; if to pay a debt state when it was contracted, by whom, for what purpose, and how such debt is secured; if to discharge a mortgage, state by whom and when created, the name of the mortgagee, and to what objects the money was applied.]

Dated this day of 183 .

Churchwardens.
Overseers.
Inhabitants.

Forms issued by the Poor Law Commissioners.

FORM No. 2.—Request to the Poor Law Commissioners for Consent to Sale.

Parish of } *Union,*
County of }

[Here describe the Premises.]

WE, the undersigned, majority of the guardians of the poor of the said union, having received the annexed application from the majority of the parish officers and from some of the inhabitants of the above parish, whereby we are requested to apply to the Poor Law Commissioners for their consent to the sale of the premises belonging to the said parish, described in the margin hereof, and for their directions as to the application of the produce thereof, and being fully satisfied that the sale thereof will be of permanent advantage to the said parish, do hereby request the Poor Law Commissioners for England and Wales to consent that we make sale of the said premises, under the provisions of an act passed in the fifth and sixth years of the reign of his present Majesty King William IV., intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales;" and that they will issue such rules, orders, or regulations, touching such sale, and the conveyance of the said premises, and the application of the produce thereof, for the permanent advantage of the said parish, as they may see fit in that behalf.

Dated this day of 183 .

Witness,
Clerk to the Board of Guardians.

Guardians' Signatures.	Parishes.

FORM No. 3.—Order for Convening Meeting.

Parish of } *Union,*
County of }

To the Churchwardens and Overseers of the Poor of the above Parish.

WE, the Poor Law Commissioners for England and Wales, in pursuance of a request from the guardians of the poor of the above union, made in pursuance of an application in that behalf from a majority of the parish officers and some of the inhabitants of the above parish, do hereby order you, within twenty-one days from the receipt hereof, duly to give notice of and convene a meeting of the rate-payers of the said parish, and owners of property therein entitled to vote, pursuant to the provisions

Forms issued by the Poor Law Commissioners.

of an act passed in the fourth and fifth years of the reign of his present Majesty King William IV. intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," for the purpose of obtaining the consent of such meeting to the guardians of the poor of the said union selling the premises described in the margin hereof, under the provisions of an act passed in the fifth and sixth years of the reign of his said Majesty, intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales."

Given under our hands and seal of office this day of in the year of our Lord one thousand eight hundred and thirty-

(L. S.)

Form No. 1.—Letters to the Parish Officers, accompanying the Order for convening Meeting, &c.

Poor Law Commission Office,
183 .

Parish of
Union,
County of

To the Churchwardens and Overseers of the Poor of the said Parish.

Gentlemen,

By the direction of the Poor Law Commissioners for England and Wales, I transmit to you the following papers relating to the sale of certain premises, the property of your parish, and to which your attention is particularly directed.

They consist of—

Copy of a request for such sale from the Guardians of the Poor of the above Union.

Order to you for convening a Meeting of the Rate-payers and Owners of Property in your Parish to consent to such sale.

A Form of Notice of Meeting, to be used by you, and to be given and affixed in like manner as Vestry Meetings are generally called in your Parish.

A Form of Resolution to be put to the Meeting giving such consent.

And, lastly, A Form of Certificate of the Meeting having been duly held, and the Resolution duly passed, to be signed by the Minister and yourselves, and returned to the Poor Law Commissioners accompanied by attested copies of the Notice of Meeting and Resolution.

With reference to the taking of votes at the Meeting, you will be careful that the names of the rate-payers and owners of property, present in person, or (as respects owners) by proxy at such meeting, are duly entered in the vestry book. After the entry of the resolution, in the form herewith sent, you will divide the page into two parts (or take two pages), one for the entry of votes for the resolution, the other of votes against it; and the votes will be entered thus:—

For the above Resolution.			Against the above Resolution.		
Name.	No. of Votes as Owner.	No. of Votes as Rate-payer.	Name.	No. of Votes as Owner.	No of Votes as Rate-payer.
A. B.	3	. .	G. H.	4	. .
C. D.	. .	1	I. J.	5	. .
E. F.	3	2	K. L.	. .	4
&c.			&c.		

Forms issued by the Poor Law Commissioners.

The amount of the two columns on each side being found, you will ascertain the majority by subtracting the one from the other in the usual way, the chairman having a casting vote in case of equality.

With reference to the owners of property who are entitled to vote, I have to call your attention to the Poor Law Amendment Act, section 40. And you are particularly enjoined to provide a book for the registry of the names of owners of the property, as required by that clause, or you will take care to add the names in the Rate Books, so as to enable the chairman of the meeting to ascertain, by a reference to the register, what owners are entitled to attend in person or by proxy and vote at the meeting.

I have the honour to be,

Gentlemen,

Your obedient Servant,

Secretary.

FORM No. 5.—A.—Notice of Meeting to Consent to Sale of Workhouses, &c.

Parish of } *Union,* } *County of* .

NOTICE IS HEREBY GIVEN, that a meeting of the rate-payers in this parish, and of the owners of property therein entitled to vote in person, or (as respects owners) by proxy, pursuant to the provisions of an act passed in the fourth and fifth years of the reign of his present Majesty King William IV., intituled, "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," will be held at in this parish, on (a) the day of at in the forenoon, for the purpose of giving the consent of such meeting to the guardians of the poor of the said Union selling the following premises, that is to say—

under the provision of an act passed in the fifth and sixth years of the reign of his said Majesty, intituled, "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," in such manner, and subject to such rules, orders, and regulations, touching such sale, and the conveyance of such property, and the application of the produce arising therefrom, for the permanent advantage of the said parish, as the Poor Law Commissioners for England and Wales shall in that behalf direct.

Dated this day of , 184 .

Minister.

} *Churchwardens.*

} *Overseers.*

FORM No. 6.—B.—Resolution entered in Vestry Book.

Parish of } *Union,* } *County of* .

Here describe the premises.] *AT a meeting of the rate-payers of the said parish, and owners of property therein entitled to vote pursuant to the provisions of an act passed in the 4th and 5th years of the reign of his present Majesty King William IV., intituled, "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," held at in the said parish, on the day of* , 184 , *pursuant to notice of such meeting duly given:*

Chairman.

(a) Three clear days' notice is requisite.

Forms issued by the Poor Law Commissioners.

It was resolved, by a majority of such rate-payers and owners, present in person or (as respects owners) by proxy at such meeting.—

That this meeting do consent to the Guardians of the Poor of the said Union selling the premises described in the margin hereof, under the provisions of an act passed in the 5th and 6th years of the reign of his present Majesty King William IV., intituled, "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," in such manner, and subject to such rules, orders, and regulations, touching such sale, the conveyance of such property, and the application of the produce arising therefrom, for the permanent advantage of this parish, as the Poor Law Commissioners for England and Wales shall in that behalf direct.

Minister.
Churchwardens.
Overseers.

FORM No. 7.—Certificate of Minister, Churchwardens, and Overseers, of the Forms of Act having been complied with.

Parish of
Union,
County of .

WE, the minister, churchwardens, and overseers of the said parish, do hereby certify, that at a meeting of the rate-payers of the said parish, and owners of property therein whose claims to be entitled to vote have been duly registered in the books of the said parish, held at in the said parish, on the day of , the resolution, of which a true copy is hereunto annexed, was duly passed. And we do further certify and declare, that such meeting was duly convened and held for the purpose expressed in such resolution after public notice of the time and place of holding such meeting, and the purpose for which the same was intended to be held had been given in like manner as notices of vestry meetings are given in the said parish. And we do further certify, that the paper marked (A.) (*a*) *hereto annexed, and signed by us, is a true copy of the notice of such meeting, and that such notice was given in the church of the said parish on the day of , and that a copy of such notice fairly written (or printed) was affixed on the day of on the principal door of the church (or chapel) of the said parish, and that the paper hereto annexed, marked* (B.) (*b*) *and signed by us, is a true extract from the vestry books of the said parish.*

Witness our hands, this day of , 184 .

Minister.
Churchwardens.
Overseers.

FORM No. 8.—Directions for Sale, &c.

Parish of
Union,
County of .

Poor Law Commission Office,
184 .

To the Guardians of the Poor of the above Union.

Gentlemen,

IN reply to your application dated the day of , touching the sale of certain property of the above parish, I now transmit to you by the

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(*a*) No. 5. (*b*) No. 6.

direction of the Poor Law Commissioners for England and Wales, the requisite consent of the rate-payers and owners of property in the said parish; and also an order directing you to proceed in such sale in such manner as you may deem most expedient, subject, however, to the conditions of sale therein referred to, among such others as the circumstances of the case may require.

Forms issued by the Poor Law Commissioners.

Such additional terms should, of course, protect the parish and yourselves from the burden of legal difficulties and costs, and ensure the benefit of the simplified modes of conveyance suggested by the recent act. On receipt of the draft conveyance, you will forward it to the Poor Law Commissioners for their approbation; but if, on its perusal, or on considering any other papers you may find necessary to submit to them, any professional expenses be incurred, they must be borne by the parish on whose behalf they will be incurred.

With reference to the application of any purchase money, in this or any other instance, or the disposal of any property taken in exchange, such further order for the permanent advantage of the parish or union entitled thereto, shall be hereafter made as the Commissioners may see fit: and until such order be issued, the amount must be paid into the hands of the treasurer, and be placed by him to an account intituled "The Guardians of the Poor of the Union, in the matter of the sale of certain Property belonging to the Parish of ."

I have the honour to be,
Gentlemen,
Your obedient Servant,

Secretary.

Form No. 9.—Order for Sale.

Parish of }
Union, }
County of . }

To the Guardians of the Poor of the above Union.

WE, the Poor Law Commissioners for England and Wales, having received a resolution duly passed at a meeting duly convened of rate-payers and owners of property in the above-named parish, entitled to vote, pursuant to the provisions of an act passed in the fourth and fifth years of the reign of his present Majesty King William IV. intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," do hereby order you the Guardians of the Union, in the county of , within thirty days from the receipt hereof, to proceed to the sale of the premises described in the margin hereof, under the provisions of an act passed in the fifth and sixth years of the reign of his said Majesty, intituled "An Act to facilitate the Conveyance of Workhouses and other Property of Parishes and of Incorporations or Unions of Parishes in England and Wales," in such manner as you the said Guardians may deem expedient, subject nevertheless to the conditions of sale hereunto annexed and to such other conditions as the circumstance of the case may appear to you to require. And we do hereby further order that the purchase monies to arise from such sale shall, after the payment of the expenses incidental thereto, such expenses to be allowed by you, be paid into the hands of the treasurer of the said union, and be placed to the credit of the guardians of the said union, to an account to be intituled "the Guardians of the Union, in the matter of the sale of certain Premises belonging to the Parish

Forms issued by the Poor Law Commissioners.

of ;" and that the said purchase monies shall be applied to such purposes, and in such manner as we shall by any order under our hands and seal of office direct.

Given under our hands and seal of office, this day of in the year of our Lord one thousand eight hundred and thirty.

(L. S.)

FORM No. 10.—Conditions of Sale.

1. *In case any purchaser shall be desirous of investigating the title, an abstract shall be prepared and furnished at his cost, and all expenses attending such investigation, or arising out of the same, or of completing the title, and the costs of procuring or making all official and other copies, or extracts, counterparts or duplicates of deeds, wills, or other documents, and of preparing, perusing, and approving deeds of covenant, and the like, shall be paid by the purchaser to the vendors previously to or as the same shall be incurred, and the purchaser shall not be entitled to require any further investigation or evidence, while any previous expenses of or connected with the investigation of the title or the evidence shall remain unsatisfied; nor shall the purchaser have any claim whatever for reimbursement, or be entitled to refuse or delay payment in respect of any expenses incurred in case the purchase shall not be completed; and the vendors shall not be required to do any act for completing the sale beyond obtaining the approbation by the Poor Law Commissioners and Guardians of the draft of conveyance, and the affixing of their respective seals to the conveyance when approved. But unless the purchaser shall, by writing under his hand or the hand of his solicitor, call for such abstract and state his intention of investigating the title within seven days from the day of sale, he shall be deemed to have waived his right to do so; and notwithstanding such abstract being called for, the purchaser shall be deemed to be satisfied with the title of the vendors, unless he shall have delivered to the vendors his objections to the title or requisition for completing the same, in writing, within fourteen days from the delivery of such abstract.*

2. *The purchase money shall be paid to the treasurer of the union, and the conveyance executed on or before the day of , and the purchaser, on the payment of the purchase money and the execution of such conveyance, shall be let into possession or become entitled to the receipt of the rents and profits, and the purchaser shall accept the receipt of such treasurer as a sufficient discharge.*

3. *In case the completion of the purchase shall from any reason whatever be delayed beyond the day of , the purchaser shall pay to the vendors interest after the rate of 5l. per cent. per annum on the amount of his purchase money unpaid, and shall not be entitled to any compensation on any pretext for his purchase money, or any part thereof, having been unproductive.*

4. *The seal of office of the Poor Law Commissioners for England and Wales affixed to any document shall be conclusive evidence as to all the facts therein stated or noticed, and as to the powers of the vendors as guardians of the union.*

5. *In case of sale or exchange, no other covenant shall be required of the conveying parties, except one, that they have done no act to incumber the property disposed of.*

6. *If the purchaser shall neglect or fail to comply with the above stipulations, or any of them, or any part thereof, the deposit paid by him and all other payments previously made by or due from the purchaser, under or in respect of the sale or of these conditions, shall be absolutely forfeited to the vendors, and they shall be at full liberty to resell the property either by public auction or private contract, on such conditions of sale and in such manner as they shall think fit; and the deficiency (if any) occasioned by such second sale, together with all expenses attending the same, shall immediately after the same sale be made good to the vendors, by the said purchaser at this sale, and in case of the non-payment of the same, the whole thereof shall be recoverable by the vendors as and for liquidated damages, and it shall not be necessary to previously tender a conveyance to the purchaser.*

I. Forms relating to Overseers, &c. &c.

1. *Forms relating to Overseers, &c. &c.*

[See Context, *ante*, page 29.]

1. Warrant for returning lists of overseers, under 43 Eliz. c. 2, and 54 Geo. III. c. 91

County of Middlesex, to wit. } To E. F., gentleman, High Constable of the hundred of within the said county [*or* "within the division of in the said county].

We, A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the county of Middlesex, one whereof is of the quorum, do hereby require you forthwith, upon your receipt hereof, to issue your warrants to all the petty constables within your said hundred,* [or, "*division,*"] *in the form or to the effect, according as upon this our warrant is indorsed* [or, "*hereunder written.*"]

Given under our hands and seals the day of in the year of our Lord one thousand eight hundred and forty-four.

A. B. (*L. S.*)
C. D. (*L. S.*)

[See Context, *ante*, page 29.]

The high constable's warrant to to the petty constable.

County of Middlesex, Hundred of } To the Constable of the parish of in the county of Middlesex.

By virtue of a precept from A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the said county of (one whereof was and is of the quorum) to me directed, you are hereby required, immediately upon sight hereof, to give notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders within their respective districts, and deliver in the same to the said justices, and others her said Majesty's justices of the peace for the said county, at a special sessions to be holden at in in the said county, on the day of* (a), *at the hour of in the forenoon of the same day, to the end that out of the said list the said justices may appoint other overseers of the poor for the year then next ensuing. And you are hereby also required to give notice to all justices of the peace for the said county, residing in your constablewick, of the time and place appointed for holding the said special sessions. And be you then and there to certify what you shall have done in the premises. Herein fail you not.*

Given under my hand the day of in the year of our Lord one thousand eight hundred and forty-four.

E. F., *High Constable.*

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3. Notice of holding a vestry for nomination of overseers.

The inhabitants of this parish [or township] *are requested to meet in public vestry, at the vestry-room on the day of next, at o'clock in the noon, to make out a list of persons fit and proper to serve the office of overseers of the poor for the year ensuing, to be returned to the justices of the peace for the division of* [or as the case may be.]

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4. The return or nomination to be made by the vestry to the magistrates.

At a public vestry, duly held in and for the parish of in the county of pursuant to notice on the day of in the year of our Lord one thousand eight hundred and forty-four, the following persons, whose names are subscribed, are returned to her Majesty's justices of the peace, acting in and for the hundred [or *division*] *of in the said county of as substantial householders within the said parish, and meet and proper persons to serve the office of overseers of the poor of the said parish* [or *township*, or *hamlet*,] *of in the said county of for the year ensuing.*

A. B. } *Churchwardens.*
C. D.
E. F. G. H. } *Overseers.*
I. K. L. M.
N. O. P. Q., } *Inhabitants.*
&c.

Names of persons above referred to.
R. S.
T. U., *&c. &c.*

(a) By 54 Geo. III. c. 91, this must be within fourteen days after 25th March in each year, *ante.*

1. *Forms relating to Overseers, &c. &c.*

5. The nomination by the vestry to the magistrates of non-resident persons to be overseers, under 59 Geo. III. c. 12, s. *ante*, p. 26.

At a public vestry, duly held in and for the parish of in the county of pursuant to notice on the day of in the year of our Lord one thousand eight hundred and forty-four, the following persons are nominated and returned to her Majesty's justices of the peace, acting in and for the hundred [or *division*] *of in the said county, as being assessed to the relief of the poor of the said parish, and being resident in the parish of in the said county, within two miles from the church of the said parish of* [or where there is no church or chapel "*resident within one mile from the boundary of the said parish*"] *and as being meet, fit, and proper persons to serve the office of overseers of the poor of the said parish for the present year, and who have respectively consented to be appointed to serve as such overseers.*

A. B.
C. D. } *Churchwardens.*
E. F. G. H.
I. K. L. M. } *Overseers.*
N. O. P. Q.
&c. } *Inhabitants.*

Names of persons above referred to.
R. S., resident as above.
T. U., resident as above.

Ante, p. 29.

6. Usual appointment of overseers for a parish, township, &c., p. 29.

County of } *We,* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the county of* (*one whereof is of the quorum*) *do hereby nominate and appoint* E. F. *and* G. H., *being substantial householders of and in the parish* [*township*, or *precinct*] *of in the said county,* to be overseers of the poor of the said parish,* [*township*, or *precinct*,] *together with the churchwardens thereof, for the present year, according to the directions of the statute* [or if a township, "*the statutes,*"] *in that case made and provided.*
to wit. }

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and forty-four.
A. B. (*L. S.*)
C. D. (*L. S.*)

This appointment must be signed, sealed, and delivered, either on, or within fourteen days after, the twenty-fifth day of March.

Ante, p. 26.

7. Appointment, where one of the overseers is a non-resident, under 59 Geo. III. c. 12, ss. 6, 7, *ante*. (*a*)

If one is resident, and one non-resident, then follow the former precedent to "overseer of the poor," and continue :—

We, the said justices being duly assembled at a special sessions for the appointment of the overseers of the poor, do also, upon the nomination and at the request of the inhabitants of the said parish in vestry duly assembled, appoint G. H. *duly assessed to the relief of the poor of the said parish, and who is a householder resident in the parish of within two miles from the church* (*b*) *of the said parish of and who hath consented to this appointment, to be one of the overseers of the poor of the said parish of together with the said* E. F. *and the churchwardens thereof for the present year, according to the statutes in that case made and provided.*

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and forty-four.
A. B. (*L. S.*)
C. D. (*L. S.*)

Ante, p. 36.

8. Form of nomination, by vestry, of an assistant overseer, under 59 Geo. III. c. 12, s. 7.

Suffolk, } To Her Majesty's Justices of the Peace acting in and for the said county of *Suffolk*, and to each and every of them.
to wit. }

We, the undersigned inhabitants of the parish of in the said county of Suffolk, *in vestry assembled in the said parish, pursuant to legal notice for that purpose given, do hereby declare that we have this day nominated and elected* E. F

(*a*) The 59 Geo. III. c. 12, s. 6, declares that it shall suffice to describe the person appointed by his name and residence, *ante*, p. 26, so that it is not absolutely necessary to state that he is assessed, &c.

(*b*) If there is no church, then, "within one mile of the boundary of the said parish."

of in the said county a discreet person, in our opinion, to be assistant overseer of the poor of the said parish, and did determine and specify that he should execute and perform the following duties relating to the office of overseer, (that is to say,) [specify duties fixed by vestry; if he is to discharge *all* the duties of an overseer, say "*all the duties.*"] *And that we have fixed the yearly sum of as and for the yearly salary of the said for the execution of his said office, to be paid quarterly out of the money to be raised for the relief of the poor of the said parish of Given under our hands, this day of A. D.* 18

A. B.
C. D. &c.

1. *Forms relating to Overseers, &c. &c.*

Ante, p. 37.

Know all men by these presents, that we, A. B., *of in the county of yeomen, and* C. D., *of the same place, yeomen, are jointly and severally held and firmly bound to* G. H., *and* I. K., *the churchwardens, and* L. M. *and* N. O., *the overseers of the poor of the said parish of in the sum of of good and lawful money of Great Britain, to be paid to the said churchwardens and overseers, and their successors for the time being: for which payment to be well and faithfully made we bind ourselves and each of us, our heirs, executors, and administrators, and each and every of them, and for ever by these presents sealed with our seals. Dated the day of in the year of the reign, &c.*

A. B. (*L. S.*)
C. D. (*L. S.*)

9. Bond from assistant overseer, under the 59 Geo. III. c. 12, s. 7. See form by the Poor Law Commissioners, *ante.*

Whereas the above-bounden A. B. *hath been duly nominated, elected, and appointed assistant overseer of the parish of under and by virtue of the powers of an act of parliament passed in the* 59 *Geo. III. intituled "An Act to amend the Laws relating to the Poor:" and the above-bounden* C. D. *hath agreed to be bound with him for the due execution of the said office, in manner as hereinafter mentioned. Now, therefore, the condition of the above-written obligation is such, that if the above-bounden* A. B. *shall, from time to time, and at all times during the continuance of his said appointment, or of any future appointment or appointments,* [reciting the words of the appointment,] *well and faithfully collect, and get in all such rates and other sums of money as he may be directed to demand and obtain, by virtue of his said office, and expend the same under the direction of the select vestry, when received by him, for and towards the relief of the poor of the said parish, according to the direction of the said act, or of any other act or acts of parliament therein referred to, and do from time to time, and at all times when required by the said select vestry, render a just and true account or accounts of all monies received or expended by him to the person or persons duly authorised to receive the same: and do also faithfully and diligently execute his said office of assistant overseer in every other respect, according to the several directions, provisoes, and regulations of the said recited act, or any other law or laws relating to the poor therein referred to, or since passed or enacted;* [insert any other conditions required by the select vestry;] *then the within written obligation shall be void, or else shall be and remain absolute.* (*a*)

Condition thereof.

Ante, p. 36.

County of to wit. *Whereas the inhabitants of the parish of in the county of in vestry assembled, in the said parish, on the day of last part, did nominate and elect of* [his addition] *to be an assistant overseer of the poor of the said parish, and did determine and specify that he should* [recite the substance of the appointment by the inhabitants; if he is to perform the general duties of an overseer, say,] *and did fix the yearly sum of as and for the yearly salary of the said for the execution of his said office: now we, two of her Majesty's justices of the peace in and for the said county, in pursuance of the statute in such case made and provided, do hereby appoint the said to be an assistant overseer of the poor of the said parish; and we do hereby authorise and empower him to execute and perform the said duties until he shall resign his said office, or until his appointment shall be revoked by the inhabi-*

10. Form of the appointment of assistant overseer, by two justices.

(*a*) It is optional with the parish to require a security.

1. *Forms relating to Overseers, &c. &c.*

tants of the said parish in vestry assembled, and to receive the said salary so as aforesaid fixed by the said inhabitants in their said vestry.

Given under our hands and seals, this day of in the year of our Lord one thousand eight hundred and

A. B. (*L. S.*)
C. D. (*L. S.*)

Ante, p. 33.

11. Mandamus to justices to appoint overseers of the poor.

Victoria, by the Grace of God, of the United Kingdom of *Great Britain* and *Ireland* Queen, Defender of the Faith.

To the Keepers of our Peace, and our Justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed within our county of and to every of them, greeting.

Whereas we have been informed in our court before us, upon the complaint of divers of the inhabitants of the parish of in our said county of that for divers years last past there have been, or ought to have been, and still, of right, ought to be, four, three, or two substantial householders (inhabiting within the parish aforesaid) nominated and appointed, yearly, and every year, under the hands and seals of two or more of you, the said keepers of our peace and justices, one whereof being of the quorum, to be overseers of the poor for the whole parish of And whereas we have further been given to understand in our court before us, that application hath been made to you, the said keepers of our peace, and justices assigned, as aforesaid, to nominate and appoint four, three, or two, substantial householders of the parish aforesaid, to be overseers of the poor for the whole parish aforesaid, for the present year; but that you, the said keepers of our peace, and justices assigned, as aforesaid, have wholly neglected and refused to nominate and appoint such overseers of the poor as aforesaid, for the whole parish aforesaid, and that no such nomination and appointment of overseers of the poor, for the whole parish aforesaid, for this present year, hath been at any time made, in contempt of us, and to the great damage and prejudice of the inhabitants of the parish aforesaid, and to the oppression of the poor thereof; we, therefore, being willing that due and speedy justice should be done in this behalf, as it is reasonable, do command you, the said keepers of our peace, and justices assigned, as aforesaid, and every of you, firmly enjoining you, that you, immediately after the receipt of this our writ, you, or two of you, one whereof to be of the quorum, do, without delay, nominate and appoint four, three, or two substantial householders, inhabiting within the parish aforesaid, to be overseers of the poor for the whole parish of aforesaid, for the remainder of the present year, or that you show us cause to the contrary thereof, lest, by your default, the same complaint should be repeated to us; and how you shall have executed this our writ make known to us at Westminster, *on* Tuesday *next after the morrow of All Souls, then returning to us this our said Writ, and this you are not to omit. Witness,* Thomas *Lord* Denman, *at* Westminster, *the twenty-eighth day of June, in the sixth year of our reign.*

By the Court,

By Rule of Court.

LUSHINGTON.

Ante, p. 32.

12. Notice of appeal to the sessions against an appointment of an overseer. (*a*)

To the Churchwardens and Overseers of the Poor of the parish of in the county of and to A. B. and C. D., Esquires, acting as (*b*) Justices of the Peace in and for the said county.

I do hereby give you notice that I intend to and shall appeal at the next general quarter sessions of the peace, to be holden at in and for the county of against a certain nomination and appointment made by you, the said A. B. *and* C. D., *on the day of in the year of our Lord one thousand eight hundred and forty-four, of me, the undersigned* E. F., *to be one of the overseers of the poor of the said parish for the present year: and*

(*a*) See 43 Eliz. c. 2, s. 6; 17 Geo. II. c. 38, s. 4. It is advisable to serve each of the magistrates and each of the parish officers with a copy of this notice. (See 15 *East*, 207; 1 *B. & Ald.* 210.)

(*b*) If *described* as *being* justices, that precludes the appellant from disputing their authority.

I further give you, and each and every of you, notice, that the grounds of my said appeal are as follow, that is to say, that, &c. [here state the grounds of appeal.] (*a*)

1. *Forms relating to Overseers, &c. &c.*

Dated this day of in the year above mentioned.

E. F.

II. Forms of Proceedings to recover Possession of Parish Houses or Lands, on stat. 59 Geo. III. c. 12, ss. 24, 25. (*b*)

Ante, p. 388.

To A. O. of the Parish of in the County of

13. Notice to quit, to be given by overseers of the poor, in order to recover possession of parish houses or lands; "to be delivered to the person in possession, or, in his absence, affixed on some notorious part of the premises."

Under and by virtue of the provisions of an act passed in the 59th year of King George *the Third, intituled "An Act to amend the Laws for the Relief of the Poor," we hereby give you notice to quit the house* [or *other tenement* or *dwelling,*] *belonging to* [or *provided by* or *at the charge of*] *the parish of in the county of for the habitation of the poor thereof, which you now occupy by permission of the said parish,* [or as the case may be, as, *into which you have unlawfully intruded yourself,*] *and which is situated at in the said parish,* [or *parish of in the county of* as the case may be,] *and we hereby require you to deliver up the possession thereof to us, the churchwardens and overseers of the poor of the said parish of within one month after this notice and demand in writing.*

Dated on day, the day of in the year of our Lord one thousand eight hundred and

A. B. } *Churchwardens.*
C. D. }
E. F. } *Overseers of the Poor.*
G. H. }

or the major part of them.

[A duplicate or copy of this notice should be made and kept by the person who is to prove the service of it.]

14. Information of an overseer of the poor against a person for refusing to quit possession within one month after the foregoing notice and demand.

County of } *The information and complaint of* O. P., *one of the overseers of the poor of the parish of in the said county, made on oath before me,* J. P., *esquire, one* (*c*) [or J. P. *and* K. P. *esquires, two*] *of her Majesty's justices of the peace in and for the said county, the day of in the year of our Lord one thousand eight hundred and who says that* A. O., *a poor person residing in the parish of in the said county, having been permitted to occupy* [or, *having unlawfully intruded himself into*] *a house* [or *tenement*, or *dwelling*] *belonging to* [or *provided by*, or *at the charge of*] *the said parish of situated at in the said parish,* [or *in the parish of in the county of* as the case may be,] *has refused* [or *neglected*] *to quit the same and deliver up the possession thereof to the churchwardens and overseers of the poor of the said parish of within one month after notice and demand in writing for that purpose signed by the said* [or *major part of the*] *churchwardens and overseers of the poor, and delivered to him personally:* [or, *in his absence affixed on the door*, or some other notorious part *of the said premises:*] *The said complainant therefore prays such redress in the premises as to law does appertain.*

O. P. *Overseer of the Poor.*

Sworn before me, [or *us.*]

(*a*) The 43 Eliz. c. 2, s. 6, does not require the notice of appeal to state the grounds; and the 41 Geo. III. c. 23, s. 4, (*ante,*) does not (*semble*) extend to notices of appeal against an appointment of an overseer, although it uses the comprehensive words "any act done by the justices." As the law therefore is doubtful, it would be discreet in an appellant to state the grounds of his appeal.

(*b*) In some former editions of this work, these forms are described as forms "*prescribed in a schedule to the act,*" but that was a mistake.

(*c*) By 3 Geo. IV. c. 23, s. 2, one justice is competent to receive the information, and issue the summons. See title, "Conviction," Vol. I.

2. *Forms relating to recover possession of Parish Houses, &c.*

Ante, p. 392.

(C.) Summons thereupon.

[" To be delivered to the party, or in his absence to be affixed on the premises seven days at the least before the time appointed for hearing of the complaint."]

15 Summons thereon.

County of } *To* A. O., *of the parish of* *in the said county of* [or, as the case may be.]

Whereas O. P., *one of the overseers of the poor of the parish of* *in the said county, has this day preferred an information and complaint upon oath against you, before me,* J. P., *esquire, one* [or *us,* J. P. *and* K. P. *esquires, two*] *of her Majesty's justices of the peace in and for the said county, for that you the said* A. O., *being a poor person residing in the aforesaid parish of* *and having been permitted to occupy* [or, *having unlawfully intruded yourself into*] *a house* [or *tenement,* or *dwelling,*] *belonging to* [or *provided by,* or *at the charge of*] *the said parish of* *situated at* *in the said parish,* [or *in the parish of* *in the county of* as the case may be,] *have refused* [or *neglected*] *to quit the same and deliver up the possession thereof to the churchwardens and overseers of the poor of the said parish of* *within one month after notice and demand in writing for that purpose, signed by the said* [or, *major part of the*] *churchwardens and overseers of the poor, and delivered to you personally:* [or, *in your absence affixed on the door,* or some other notorious part *of the said premises:*]

These are therefore to require you personally to appear before me [or *us*] *and such others of her Majesty's justices of the peace for the said county as shall be present at the* *in* *in the said county of* *on the* *day of* *next, at* *o'clock in the forenoon, then and there to answer the said complaint. Herein fail not. Given under my hand and seal* [or *our hands and seals*] *the* *day of* *in the year of our Lord one thousand eight hundred and*

N.B.—A copy should be taken of the summons, or, what is better, a duplicate granted, so that a proper return of service may be made and regularly proved on oath.

Ante, p. 392.

(D.) Warrant thereon, to cause possession to be given.

16. Warrant thereon.

County of } *To the chief constable of the hundred of* *to the petty constables of the parish of* *in the said hundred and county, and to each and every of them.*

Whereas O. P., *one of the overseers of the poor of the parish of* *in the said county, did, on the* *day of* *last, prefer an information and complaint upon oath before us,* J. P. *and* K. P. *esquires, two* [or *me,* J. P. *esquire, one,* according to *stat.* 3 *Geo. IV. c.* 23, *s.* 2,] *of her Majesty's justices of the peace in and for the said county, against* A. O., *a poor person residing in the said parish of* *for that he the said* A. O. *having been permitted to occupy* [or *having unlawfully intruded himself into*] *a house* [or *tenement,* or *dwelling*] *belonging to* [or *provided by,* or *at the charge of,*] *the said parish of* *situated at* *in the said parish of* [or *in the parish of* *in the county of* as the case may be,] *had refused* [or *neglected*] *to quit the same and deliver up the possession thereof to the churchwardens and overseers of the poor of the said parish of* *within one month after notice and demand in writing for that purpose, signed by the said* [or, *major part of the*] *churchwardens and overseers of the poor, and delivered to him the said* A. O. *personally:* [or, *in the absence of the said* A. O., *affixed on the door,* or some other notorious part *of the said premises*]: *And whereas, upon the appearance of the said* A. O. *this day before us, in pursuance of a summons for that purpose,* [or, *And whereas on the* *day of* *last, a summons was duly issued to require the said* A. O. *to appear before us this day at* *in the said county, to answer unto the said complaint, and it appears to us,* J. P. *and* K. P. *esquires, two of her Majesty's justices of the peace for the said county, upon the oath of* A. C. *constable of the parish of* *aforesaid, that he the said* A. C. *did duly deliver the said summons to the said* A. O., *on the* *day of* *instant:* or *that he the said* A. C. *did use his best endeavours to deliver the said summons to the said* A. O., *and that in the absence of the said*

A. O. *he the said* A. C. *did affix, or cause to be affixed, the said summons on the door of the said house or premises* (as the case may be), *seven days at the least before the time appointed for hearing the said complaint, but that he the said* A. O. *has neglected to appear according to the said summons;] we the said justices have proceeded to hear and determine the matter of the said complaint, and do find and adjudge the same to be true: we do therefore charge and command you that you without delay go to and cause possession of the premises in question to be delivered to the churchwardens and overseers of the poor of the said parish of or some or one of them, pursuant to and in compliance with the directions of an act passed in the fifty-ninth year of the reign of King* George *the Third, intituled, "An Act to amend the Laws for the Relief of the Poor." Herein fail not. Given under our hands and seals at in the said county of the day of in the year of our Lord one thousand eight hundred and*

J. P.
K. P.

2. *Forms relating to recover possession of Parish Houses, &c.*

N.B. These forms, with a little variation, may be adapted to the 25th sect. of the same act, which empowers the overseers to recover lands taken for the employment of the poor, and let to them, on which any person unlawfully may enter thereon.

They may also be adapted to the 5th sect. of 4 & 5 Will. IV. c. 76, substituting the "guardians" for "the churchwardens and overseers," and the words "houses and land vested in, or under the management or control," of the guardians for the "parish" property.

III. Forms relating to Poor Rates.

The form of the rate is prescribed by the Parochial Assessment Act, to which the commissioners have added some columns, see p. 319.

17. Certificate of guardians of the poor to magistrates of Bury, under local act, of the rate necessary to be made for the use of the poor of the parish of Bury St. Edmund's. (a)

To the Worshipful the Aldermen and Justices of the Peace of the burgh of *Bury St. Edmund's*, in the county of *Suffolk*.

Whereas by virtue of an act of parliament, made in the twenty-first year of the reign of his late Majesty, King George *the Second, intituled, "An Act for erecting Workhouses, for the better employing and maintaining the Poor, within the Burgh of* Bury Saint Edmund's, *in the County of* Suffolk, *and for the better repairing and paving the Streets and Highways there," the corporation and* guardians *of the poor, of the said burgh of* Bury Saint Edmund's, *have, at their court or assembly, this day held at the Guildhall of the said burgh, set down and ascertained the sum of pounds needful for the maintenance and employment of the poor within the care of the said corporation, for three calendar months from the date hereof; we, the guardians of the poor of the said burgh, pursuant to the power given us by the said act, and by authority of the same,* do hereby certify *unto you, the said aldermen and justices of the peace for the said burgh, that the sum needful for the maintenance and employment of the poor, within the care of the said corporation, for three calendar months from the date hereof, is so set down and ascertained by us, at pounds; and that we have ordered and directed that the same shall be raised and paid, without delay, by the respective parishes of* Saint Mary *and* Saint James, *within the said burgh, in such proportions, parts and shares, as are hereinafter mentioned; that is to say, the sum of pounds by the said parish of* Saint Mary *and the sum of pounds by the said parish of* Saint James.

And also that we have appointed the churchwardens and overseers of the poor of the said parish of Saint Mary, *to be assessors and collectors of the said sum of pounds for the said parish of* Saint Mary.

And also have appointed the churchwardens and overseers of the poor of the said parish of Saint James, *to be assessors and collectors of the said sum of pounds for the said parish of* Saint James.

In witness whereof we have hereunto affixed our common seal, the day of in the year of our Lord one thousand eight hundred and

(a) These forms are founded on a local act of parliament. In general the churchwardens and overseers make the rate without the intervention of any third person, either guardian of the poor, &c., or magistrates.

3. *Forms relating to Poor Rates.*

18. Justices' order thereupon to the churchwardens and overseers to make rate accordingly.

Borough of Bury St. Edmund's in the county of Suffolk. } To the Churchwardens and Overseers of the Poor of the parish of *Saint James*, in the said borough; and to collector, &c.

Whereas, in pursuance of an act of parliament made in the twenty-first year of the reign of his late Majesty, King George *the Second, intituled, "An Act for erecting Workhouses, for the better employing and maintaining the Poor, within the Burgh of* Bury Saint Edmund's, *in the County of* Suffolk, *and for the better repairing and paving the Streets and Highways there," the guardians of the poor of the said borough of* Bury Saint Edmund's *have, upon the day of by writing under their common seal, certified to the aldermen and justices of the peace for the said borough, that they the said guardians have set down and ascertained the sum needful for the maintenance and employment of the poor within their care, for three calendar months from the date thereof, at the sum of and have ordered and directed that the same shall be raised and paid without delay, by the respective parishes of* Saint Mary *and* Saint James, *within the said borough, in such proportions, parts and shares, as are therein mentioned; and that the sum of is the proportion, part, and share, set on your said parish of* Saint James. *We, therefore, whose hands and seals are hereunto set, being two of her Majesty's justices of the peace of and for the said borough, according to the power and authority given* us *in and by the said act, do hereby authorise and require you, the said churchwardens and overseers, to rate and assess the said sum of on all and every the inhabitants and occupiers of lands, houses, tenements, tithes impropriate, appropriation of tithes and hereditaments within your said parish of* Saint James; *and the money so rated and assessed, to demand, gather, and receive, and for non-payment thereof, being first lawfully demanded, to apply to us, the said justices, to issue our warrant to levy the same by distress and sale of the goods of such person and persons who are so assessed and rated, and ought to pay the same sums, and refuse or neglect to pay the same; and all such monies, as you shall receive as aforesaid, you are to pay unto the treasurer for the time being, appointed to receive the same by virtue of the said act.*

Given under our hands and seals, this day of in the year of our Lord one thousand eight hundred and

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19. Public notice in church of intention to make a poor rate. (a)

The churchwardens and overseers of the poor of this parish of do hereby give this public notice that they will meet in the vestry-room [or "*committee-room*"] *of this parish, at o'clock in the afternoon of the day of next, to make a rate for the relief of the poor of the said parish.*

TITLE OF RATE.

Ante, p. 318.

20. Title of a rate for the relief of poor. (b) Declaration of overseer to be signed, p. 320.

"An assessment for the relief of the poor of the parish of in the county of and for other purposes relating to the poor chargeable thereon according to law, made this day of one thousand eight hundred and after the rate of sixpence in the pound."

Ante, p. 324.

21. Notice of publication of a rate in the parish church, according to 17 Geo. II. c. 3, s. 1. (c)

Notice is hereby given, that a rate of [*sixpence*] *in the pound, was, on last, the day of instant, made by the churchwardens and overseers of the poor of the parish of in the county of for the relief of the poor of the said parish, and for other purposes chargeable thereon, and the said rate was, on the day of duly allowed* (d) *by* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace of, and acting in and for the division* [*county* or *hundred*] *of in the said county of pursuant to the statute in that case made and provided.*

L. M.
N. O. } *Churchwardens.*

(a) This notice is not absolutely essential, but it is usual.

(b) This is the title given in the Schedule to the Parochial Assessment Act.

(c) See the act and cases, *ante*. This notice must be affixed on the church doors on the Sunday next following the allowance of the rate by the justices.

(d) Form of allowance, p. 321. It need not state that the rate has been *allowed*, p. 325. See next form.

3. *Forms relating to Poor Rates.*

Ante, p. 326.

22. Demand of inspection of rate, and of a copy thereof, under stat. 17 Geo. II. c. 3, s. 2.

Whereas a rate or assessment for the relief of the poor in and for the parish of in the county of was made [or "*published*"] *on the day of last past: And whereas I am* [or "A. B. *of is*"] *an inhabitant of the said parish: Now, therefore, I do hereby demand and require of you, the churchwardens and overseers of the poor of the said parish, and each and every of you, permission to inspect the said rate at the hour of on next, or at any other seasonable time you may appoint, within days from the date hereof; and I hereby tender and offer to pay you one shilling for the same: And I hereby demand and require you forthwith to give me, so being such inhabitant as aforesaid, a copy of the said rate, and I am ready and willing, and hereby tender and offer, to pay for such copy at the rate of sixpence for every twenty-four names contained therein. Dated this day of in the year of our Lord one thousand eight hundred and forty-four.*

A. B.
An inhabitant of the said parish.

To the churchwardens and overseers of the poor of the said parish, and all other persons authorised in the said parish, according to the statute 17 Geo. II. c. 3.

[See the precedents, *Chitty on Pleading.*]

23. Declaration for the twenty pounds' penalty for not permitting inspection or giving copy of a rate.

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24. Notice of appeal against poor rates made under local acts, and directed to churchwardens and overseers, and several private individuals.

To the Churchwardens and Overseers of the Poor and Vestrymen of the parishes of *Saint Margaret* and *Saint John the Evangelist;* and to Messrs. *A. B* and *C. D.*, Messrs. *John Elliott*, Esq., and Company, *J. Goding*, &c. [*Here a great many persons were named.*]

I do hereby, on the part and behalf of the Gas Light *and* Coke Company, *and as their attorney, give you notice, that they intend at the next general quarter sessions of the peace to be holden at the* Guildhall, *in and for the city of Westminster and liberties thereof, on* Thursday *the twenty-first day of* October, *instant, to enter and prosecute an appeal against a rate or assessment, purporting to be made on the twenty-fifth day of* May, *in the year of our Lord one thousand eight hundred and thirty, pursuant to the directions of an act of parliament, made and passed in the twenty-fifth year of the reign of his late Majesty* George *the Second, intituled "An Act for the better Relief and Employment of the Poor in the Parishes of* Saint Margaret *and* Saint John *the* Evangelist, *in the City of* Westminster; *and for cleansing the Streets and repairing the Highways within the said parishes," and purporting to be an equal pound rate or assessment, for the relief of the poor, repair of the highways, and cleansing the streets in the said parishes of* Saint Margaret *and* Saint John *the* Evangelist, *in the city of* Westminster, *upon all and every the person and persons who inhabit, hold, occupy, or enjoy any land, house, shop, wharf, warehouse, or other building within the said parishes, or either of them, or any other person or persons who by law are chargeable and assessable for and towards the relief of the poor within the said parishes, pursuant to the before-mentioned act. And whereas the said* Gas Light *and* Coke Company, *in and by the said rate or assessment, are rated as occupiers in the following form:—*

The Gas Light *and* Coke Company *for land, house, warehouses, and buildings, situate in the* Horseferry Road, *in the said parish of* Saint John *the* Evangelist, *and the mains or pipes and other apparatus for the conveyance of gas belonging to the said company,* situate, being and fixed in the ground *in the said parishes of* Saint Margaret *and* Saint John *the* Evangelist, *at the annual value of five hundred pounds, each instalment two hundred and fifty pounds.*

And whereas the said Gas Light *and* Coke Company, *in pursuance of the provisions of the above-mentioned statute, paid the said rate or assessment of twenty-five pounds, on the twenty-first day of* July, *in the year of our Lord one thousand eight hundred and thirty, to the person duly authorised to receive the same: I, as the attorney of the said* Gas Light *and* Coke Company, *do further give you and each*

3. *Forms relating to Poor Rates.*

of you notice on their behalf, that they find themselves aggrieved by the said rate or assessment, and that the grounds and causes of their appeal are,—

1*st. That there is no* SEPARATE *assessment upon the land, house, warehouses, and buildings, situate in the* Horseferry Road, *distinct from the assessment on the said mains or pipes and other apparatus, so that they are unable to ascertain on what sum they are assessed for the said land, house, warehouses, and buildings, and on what sums they are assessed for the said mains or pipes, and other apparatus.*

2*nd. That they are not liable to be rated or assessed for the said mains or pipes and other apparatus, as being fixed in the ground in the said parishes of* Saint Margaret *and* Saint John *the* Evangelist, *inasmuch as they have no title or interest to, or in the said ground, otherwise than the privilege of laying their mains or pipes and other apparatus under the surface thereof.*

3*rd. That they are not liable to be rated or assessed for the said mains or pipes and other apparatus in the conveyance of gas, inasmuch as the said mains or pipes and other apparatus form part of their stock in trade, and the said* Gas Light *and* Coke Company *are not resident inhabitants of the said parishes of* Saint Margaret *and* Saint John *the* Evangelist, *or either of them.*

4*th. That they are not liable to be rated or assessed for the said mains or pipes and other apparatus, inasmuch as the said mains or pipes and other apparatus forming part of their stock in trade, they are rated for their stock in trade, and not for the profits arising therefrom.*

5*th. And further, that if the said rate or assessment of five thousand pounds is meant to be an assessment upon the value of the said land, house, warehouses, and buildings, and upon the* profits *arising from the said mains or pipes, and other apparatus for the conveyance of* Gas, *the said sum of five thousand pounds greatly exceeds the fair annual value of the same.*

6*th. And further, that if the said rate or assessment of five thousand pounds is meant to be an assessment upon the value of the said land, house, warehouses, and buildings, and in respect of the occupation of land by the said* Company, *by their said mains, pipes, and other apparatus for the conveyance of* Gas, *and also from the profits arising from the said mains, pipes, and other apparatus for the conveyance of* Gas, *the said sum of five thousand pounds greatly exceeds the fair annual value of the said house, land, warehouses, and buildings, and the occupation of the said land by the said company, by the said mains, pipes, and other apparatus for the conveyance of* Gas, *and the annual amount of the said profits added together.*

7*th. And further, that the said rate or assessment of five thousand pounds greatly exceeds the annual value of the said land, house, warehouses, and buildings, and of the said mains or pipes, and other apparatus.*

8*th. And further, that the inhabitants of the said several parishes of* Saint Margaret *and* Saint John *the* Evangelist, *exercising trades, businesses and other concerns, in the said parishes, and having stock in trade in the said parishes, and who derive a profit from such their several trades, businesses, and concerns, these are not rated and assessed in the said rate for and in respect of the profits of such their said trades, businesses, and concerns, and upon their several stocks in trade there.*

9*th. And further, that the following inhabitants of the said parishes of* Saint Margaret *and* Saint John *the* Evangelist, *are not rated and assessed in the said rate, for the profits of their trades, businesses, and concerns, carried on in the said parishes, and upon their several stocks in trade there,* [that is to say] Messrs. Seager, Evans and Stafford, distillers, *are rated in the said rate for their house and distillery, in the said parish of* Saint John *the* Evangelist, *of two hundred and fifty pounds, but are not rated in the said rate for and in respect of the profits made in their business or concerns of distillers, nor for their machinery, utensils, and other apparatus, nor for their stock in trade of their distillery, in the said parishes.* J. Elliot, *Esq.* & Company, brewers, *are rated in the said rate for their house, &c.,* [here the same description was repeated as to Seager & Co.] *and as to a great many other firms and individuals, in the terms stated respecting* Messrs. Seager & Co., *showing in substance that they were rated in respect of their buildings, but not in respect of their profits in trade.*

Then followed a numerous list of tradesmen and manufacturers, who alleged as objections to the rate, they were not rated in respect of their implements of trade, &c. *viz.*—G. Boys, coal-merchant, *&c. Also that the said* Gas Light *and* Coke Company *are in the said rate or assessment* over-rated, *in respect of the yearly value of the said land, house, warehouses, and buildings, mains or pipes, and other apparatus, according to the principle of rating adopted in the said parishes of* Saint Margaret *and* Saint John *the* Evangelist, *by assessing a certain proportion only of*

the real annual value of rateable property in those parishes. Also, that the said rate is in other respects partial, unjust, and illegal. And further take notice, that you are to produce at the time of hearing this appeal, the said rate, purporting to have been made on the 25th day of May, 1830, *as aforesaid. And also, all the rates or assessments made for the relief of the poor, repair of the highways, and cleansing the streets of the said several parishes, since the year* 1828. *Dated the 6th day of October,* 1830.

3. *Forms relating to Poor Rates.*

Yours, &c. A. B. C. D. *&c.*
Attorneys for the appellants, the Gas Light and Gas Company.

N. B. On hearing the appeal, the sessions confirmed the rate.

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25. Petition of appeal against a poor's rate. (a)

To the Worshipful Her Majesty's Justices of the Peace, in and for the county of in their general quarter sessions of the peace assembled.

The Petition and Appeal of A. B., an inhabitant, assessed to the poor's rate of the parish of in the said county.

Sheweth,

That a rate or assessment was made on or about the day of last past, and published [or *said to be published*] *in the church of the said parish on or about* Sunday, *the day of last past, by the churchwardens and overseers of the poor of the said parish, and for other the purposes therein mentioned, by virtue whereof your petitioner and other inhabitants of the said parish are charged and assessed in divers large sums of money for the purposes aforesaid.*

That your petitioner is in and by the said rate assessed for the rateable property occupied by him in the said parish, at a larger sum of money than he ought to be assessed at, in respect of the annual value of the same; and also that your petitioner [state the other causes of appeal, as in the notice].

That the names of E. F. *and* G. H., *persons occupying rateable property in the said parish, are omitted in the said rate or assessment, and are not charged or assessed in the said rate for two messuages, tenements, or dwelling-houses, which they respectively occupy within the said parish of*

Your petitioner, therefore, conceiving himself to be aggrieved by the said rate or assessment, doth hereby appeal to your worships against the same, and requests that a day may be appointed, in this present session, for the hearing and determining the said appeal, and that you will thereupon quash the said rate, or alter and amend the same in such manner, and grant to your petitioner such relief in the premises, as to you shall seem meet.

And your petitioner will pray, &c.

E. F., *Solicitor to the Petitioner.*

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26. Order for hearing appeal, appointing time, &c.

to wit. } *At the general quarter sessions of the peace of our lady the Queen, holden in and for the county of at the sessions-house for the said county, on the day of in the year of the reign of our sovereign lady Victoria, by the grace of God, of the United Kingdom of* Great Britain *and* Ireland *Queen, Defender of the Faith, and in the year of our Lord one thousand eight hundred and*

It is ordered by this court, that the churchwardens and overseers of the poor of the parish of in this county have notice of the within appeal, and that they and all persons concerned do attend this court at the sessions-house aforesaid, on next, the day of instant, at the hour of nine in the forenoon of the same day, to hear and abide the judgment and determination of the said court, touching the said appeal.

By the Court,
S——.

(a) This *petition* and the following order are required on an appeal in the county of Middlesex. In most counties the *petition* is dispensed with, the entry of the appeal with the clerk of the peace being deemed sufficient; and *semble*, that as an appeal is matter of right, there can be no ground, in any case, to require a *petition*.

3. *Forms relating to Poor Rates.*

27. Form of notice of trial of an appeal against a poor-rate.

Ante, p. 333.

To *J. M.*, Churchwarden, and to *H. A.*, and *W. P.*, Overseers of the Poor of the parish of *C.*, in the county of *N.*, and to each and every of them. To *A. B. C. D.*

I do hereby give you notice, that I, being a person aggrieved by the rate hereinafter mentioned, do intend at the next general quarter sessions of the peace, to be holden in and for the county of N., *at* N., *on* Thursday, *the thirtieth day of* April, *instant, to enter and try an appeal* [*or to try an appeal entered at the last general quarter sessions of the peace holden at* N. *aforesaid, in the county aforesaid,*] *against a certain rate or assessment, intituled* [copy the title of the rate,] *for the following, amongst other reasons:—*

Grounds of appeal, p. 342.

1*st. Because the said rate or assessment has not been made, published and allowed, in due course of law.*

2*nd. Because the rate is made for an illegal purpose*, p. 138.

3*rd. Because I am assessed at too large a sum, and in an unfair proportion in comparison with the sum and proportion assessed on* A. B. C. D., *or one of them.*

4*th. Because I am assessed at a greater sum than I ought to be assessed at.*

5*th. Because the persons hereinbefore named, or some of them, are assessed at less sums than they ought to be assessed at.*

6*th. Because the said persons are not assessed at all for lands and houses which were in their occupation when the said rate was made.*

7*th. Because the said persons, or some of them, are not assessed to the full value of their local visible property within the said parish.*

8*th. Because I am assessed for property which was not in my occupation at the time of making the said rate, and for other property which is not liable to be assessed to the relief of the poor, and for property not in your parish*, p. 355.

9*th. Because it does not sufficiently appear on the said rate what persons thereby assessed are charged.*

10*th. Because certain persons are assessed for parts of certain farms, houses, and lands, but such part is altogether uncertain and indefinite.*

11*th. Because it does not appear, whether the persons assessed are charged as occupiers of lands, &c. or as inhabitants.*

12*th. Because the profits of the property for which I am assessed are devoted to public purposes, and I am not a beneficial occupier.*

13*th. Because the property in respect of which I am rated is by law exempted from such rate*, pp. 142, 252.

14*th. Because I was an occupier of a house at the time the rate was made, and am not rated thereby*, p. 334.

15*th. Because the said rate is not made on the estimate of value prescribed by the "Act to regulate Parochial Assessments,"* p. 270.

16*th. Because the rate does not contain the declaration required by that statute.*

And, lastly, because the rate and assessment is, in other respects, illegal, unequal, partial, oppressive, and unjust.

And I do hereby give you, the said churchwarden and overseers, notice to produce, at the hearing of the said appeal, the said pretended rate or assessment, and all other rates and assessments made for the relief of the poor of the said parish, for the twenty years last preceding the date hereof: likewise certain valuations made by J. L., J. C., J. C., *and* T. B., *some or one of them, and every other valuation made by the direction of any vestry, or any churchwardens and overseers of the said parish, of all or any other rateable property in the said parish; and that you,* A. B. C. D. *respectively produce all deeds, leases, agreements, admissions, and other documents, respecting or concerning the premises for which you, and each of you, are jointly or severally rated or assessed, or appear so to be, in and by the said rate or assessment, or omitted to be therein rated or assessed. Given under my hand, this tenth day of* April, *one thousand eight hundred and forty-four.*

T. M., (*a*)
Of *in the said Parish.*

(*a*) The notice may be signed by the attorney on behalf of the appellant. The notice then should begin: "I as the attorney for and on behalf of *A. B.*, who is a party grieved by a certain rate," &c., and the reasons will be "Because *he*," &c.

3. *Forms relating to Poor Rates.*

In the matter of } Sir *R. B. B.*, Bart., appellant; and the Churchwardens and Overseers of the Poor of the parish of *C.*, in the county of *N.*, respondents.

30. Entry of proceeding on an appeal at sessions against a rate and order thereon, subject to a case for opinion of court of Queen's Bench.

Northampton, to wit. } *Whereas, on or about the seventh day of* November, *in the year of our Lord one thousand eight hundred and twenty-eight, an assessment or rate was made and assessed for the relief of the poor, and for other purposes relating to the poor of the parish of* C., *in the county of* N., *aforesaid, for the year of our Lord one thousand eight hundred and twenty-eight, entitled, "An assessment for the relief of the poor of the parish of* C., *in the county of* N., *and for other purposes chargeable therein according to law, made the seventh day of* November, *one thousand eight hundred and twenty-eight, after the rate of one shilling in the pound." And whereas the said Sir* R. B. B., *Bart, did, at the general quarter sessions of the peace, holden in and for the said county of* N., *on the day of aforesaid, by leave of that court, enter his appeal against the above rate or assessment, when, upon a full hearing of the said appeal, and what was alleged by counsel on both sides, the said court of the general quarter sessions of the peace did order that the said rate or assessment should be quashed and set aside, subject, nevertheless, to the opinion of the honourable the justices of her Majesty's Court of* Queen's Bench, *at Westminster, on the following case:—* See form of case, *post*, as to orders of removal.

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31. Information by overseer against *several* persons for not paying poor's rate, made before two justices.

Borough of *Bury Saint Edmund's*, in the county of *Suffolk*. } The information and complaint of one of the Overseers of the Poor of the parish of *Saint* within the said borough, taken on oath before us, two of her Majesty's justices of the peace in and for the said borough [one whereof is of the *quorum*], this day of one thousand eight hundred and

This informant, upon his oath saith, that the several persons hereunder named have refused to pay to him the several sums of money assessed upon them respectively, in and by a certain rate or assessment, made for the relief of the poor of the said parish of Saint *upon the day of last past, the same having been lawfully demanded of them respectively. He therefore prays redress against the said several persons hereunder named, so refusing to pay as aforesaid as the law requires.*

E. F.

G. H.

Taken upon oath, before us, } A. B. C. D.

Names of Defaulters.	Residence.	Amount of Rate.
		£ s. d.

3. *Forms relating to Poor Rates*

32. The like information against several persons in a printed form for non payment of several rates. (a)

Be it remembered, that on this day of in the year of our Lord one thousand eight hundred and at in the parish of in the said county of to wit. *one of the overseers of the poor of the parish of in the said county, cometh before me one of her Majesty's justices of the peace in and for the said county, and giveth to understand and be informed, that the persons hereinafter named, being inhabitants and occupiers of houses and lands in the said parish, were severally and respectively duly assessed for and towards the necessary relief of the poor of the said parish, by a rate or assessment made, assessed, allowed, and published, according to the statutes in that case made and provided, on the respective times inserted at the top of the several and respective money columns hereinafter following, in the several and respective sums of money set in figures in the several and respective money columns following, opposite to their several and respective names following; and that he hath demanded of and from the said several persons respectively, the said several and respective sums of money, and that they have severally and respectively refused and neglected, and still do refuse to pay the same. Wherefore the said informant humbly prays that the said several persons may be summoned to appear before two of her Majesty's justices of the peace, in and for the said county, to show cause why they severally and respectively refuse to pay the several and respective sums so demanded from them as aforesaid; and (if they can) to show cause why a warrant should not be granted to make distress for the same.*

Exhibited before the day and year first above written.

Rate made the Day of			Rate made the Day of			Rate made the Day of			Total.		

(a) N.B. The paper on which this form is printed, usually contains three or more sides ruled in like manner.

3. *Forms relating to Poor Rates.*

33. Information against one person for non-payment of a poor's rate, made before one justice, to summon before two others. (a)

Ante, p. 354.

to wit. } *The information and complaint of* G. H., *overseer of the poor of the parish of in the said county, made on his oath, before me,* A. B., *esquire, one of her Majesty's justices of the peace in and for the county of on the day of in the year of our Lord one thousand eight hundred and forty-four, who says, that in and by a rate and assessment made, assessed, and allowed and published, according to the statutes in that case made and provided,* E. F., *an inhabitant and occupier* [or occupier only, if such is the case], *of premises* [or as the case may be], *in the said parish of was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year* [or *the last year*, as the case may be,] *in the sum of and that the said sum hath been lawfully demanded of the said* E. F. *who hath refused and doth refuse to pay the same: Whereupon he, the said* G. H., *prayeth that he, the said* E. F., *may be summoned to answer the said complaint before two of her Majesty's justices of the peace for the said county.*

Before me, A. B.

Ante, p. 354.

34. Precept from the justices to summon several defaulters.

County of } To the Churchwardens and Overseers of the Poor of the parish of in the county of and to the Constables of the said
to wit. } parish.

Whereas complaint hath been made unto us, whose names and seals are hereunto set, two of her Majesty's justices of the peace for the said county of by the churchwardens and overseers of the poor of the parish of aforesaid, that the several persons hereunder named, inhabitants of the said parish, (being duly rated and assessed, the several sums of money to their respective names set, for and towards the necessary relief of the poor of the said parish,) have neglected or refused to pay the said several sums, notwithstanding the same have been duly and respectively demanded of them.

These are, therefore, to charge and command you, that you, or some of you, do forthwith summon and warn the said several persons, hereunder named, to be and appear before us, and other her Majesty's justices of the peace for the said county, on the day of at o'clock in the noon, to show cause why they refuse to pay the said several sums so assessed on them as aforesaid, otherwise warrants of distress for levying the same, as the law directs, will be made out against them.

Given under our hands and seals, this day of one thousand eight hundred and

A. B. (*L. S.*)
C. D. (*L. S.*)

Ante, p. 354.

35. Constable's summons thereon.

County of } To the parish of in the county of
to wit. }

By virtue of a warrant to me directed, under the hands and seals of A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the county of I do hereby summon you personally to be and appear before the said justices, and such other of her Majesty's justices of the peace for the said county as shall be assembled on the day of at by o'clock in the noon, to show cause why you refuse to pay the rate or assessment made for the relief of the poor of the said parish of for the year one thousand eight hundred and thirty-one* [or as it may be] *being the sum of otherwise a warrant of distress for levying the same, as the law directs, will be made out against you. Dated this day of in the year of our Lord one thousand eight hundred and forty-four.*

G. H.,
Constable of the said parish.

(a) See 43 Eliz. c. 2, s. 4; 17 Geo. II. c. 38, s. 7; 54 Geo. III. c. 170, s. 12; 3 Geo. IV. c. 233.

3. *Forms relating to Poor Rates.*

Ante, p. 352.

36. Warrant of distress against one person after the foregoing summons. (a)

County of } To the Churchwardens and Overseers of the Poor of the parish of
to wit. } in the said county, and to the Constables of the said parish aiding and assisting therein.

Whereas, in and by a rate and assessment, dated the day of made, assessed, allowed, and published according to the statutes in that case made and provided, E. F., *an inhabitant and occupier of a house in the said parish of was duly rated and assessed for and towards the necessary relief of the poor of this said parish for the present year, in the sum of : And whereas it duly appeareth unto us, two of her Majesty's justices of the peace in and for the said county* [one whereof is of the quorum], *as well upon the oath of* G. H., *overseer of the poor of the said parish, as otherwise, that the said sum of pounds hath been lawfully demanded of the said* E. F., *by the said* G. H., *and that he, the said* E. F., *hath refused, and doth refuse, to pay the same : And whereas the said* E. F., *having appeared before us* [or *me,*] *in pursuance of our summons for that purpose, hath not showed to us any sufficient cause why the same should not be paid* [or " *Whereas it hath been duly proved to us, upon the oath of one of the constables of the said parish, that the said* E. F *was personally served with the said summons requiring him to appear before us* [or *me,*] *the said justices, to show cause why the same should not be paid, but he, the said* E. F., *hath neglected to appear according to such summons, and hath not showed to us* [or *me,*] *any sufficient cause why the same should not be paid.*"] * *These are therefore to require you forthwith to make distress of the goods and chattels of him, the said* E. F. ; *And if, within the space of* [*five*] *days next after such distress, by you taken, the said sum, and also the further sum of being the costs incurred in the premises, making in the whole the sum of together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels, so by you distrained, and, out of the money arising by such sale, that you detain the said sum of and also your reasonable charges of taking, keeping, and selling the said distress, rendering to him, the said* E. F., *the overplus on demand ; and if no such distress can be made, that then you certify the same unto us to the end that such further proceedings may be had therein as to the law doth appertain.*

After appearance of party.

After summons and non-appearance.

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty-one.

A. B. (*L. S.*)
C. D. (*L. S.*)

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37. Usual form of a warrant of distress against several persons.

To the Churchwardens and Overseers of the Poor of the parish of in the said

to wit. } *Whereas, in and by a rate or assessment, dated the made, assessed, allowed, and published according to the statutes in that case made and provided, the several persons whose names are hereunder written, inhabitants and occupiers of lands and tenements in the parish of aforesaid, were duly rated and assessed for and towards the necessary relief of the poor of the said parish, in the several sums of money set against their respective names : And whereas, it duly appeareth unto us, two of her Majesty's justices of the peace in and for the said* [one of us being of the quorum] *upon the oath of one of the constables of the said parish, that the said several persons have been duly summoned to appear before us, by virtue of a warrant or summons under our hands and seals, directed to the constables of the said parish, to show cause respectively why the same should not be paid ; And whereas it also duly appeareth unto us, upon the oath of one of the overseers of the poor of the said parish, that the said several sums of money have been lawfully demanded of them respectively, and that they have severally refused to pay the same, and that the said several sums of money are still due and unpaid.*

These are, therefore, to require you forthwith to make distress of the respective goods and chattels of the said several persons under-named, and if within the space of four days next after such respective distress by you taken, the said several sums of money, together with the reasonable charges of taking and keeping the said distresses

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(*a*) One justice may *receive* the complaint, and *issue* a summons *returnable* before two, 3 Geo. IV. c. 29, s. 2.

respectively shall not be paid, that then you do sell the said goods and chattels so by you respectively distrained, and out of the money arising by such respective sales, that you detain the said respective sums of money, and also your reasonable charges of taking, keeping, and selling the said respective distresses, rendering to them respectively the overplus on demand; and where no such respective distress can be made, that then you certify the same to us, to the end that such further proceedings may be had therein as to the law doth appertain.

Given under our hands and seals, this day of one thousand eight hundred and

A. B. (*L. S.*)
C. D. (*L. S.*)

[*Then is subscribed a list of defaulters, with sums assessed in arrears.*]

3. *Forms relating to Poor Rates.*

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38. Distress warrant for poor's rate in London.

To the Churchwardens and Overseers of the Poor of the parish of in the city of *London*,* and to all Constables of the said city whom these may concern.

London to wit. } *Whereas, in and by certain rates or assessments, made, assessed, allowed, and published, according to the statutes in that case made and provided,*

being inhabitants and occupiers of in the said parish of in the said city,

rated and assessed for and towards the necessary relief of the poor *of the said parish, in the sum following, that is to say, the*

And whereas it appeareth unto me, Lord Mayor of the said city, that the said sum of money became so due at last; and as well upon oath as otherwise, that the said sum of money ha been demanded of and that ha refused, and do refuse to pay the same: And whereas it hath been proved to me, that the said

ha been summoned to show cause why the same should not be paid; but ha not showed sufficient cause why the same should not be paid: These are therefore to require you, the said churchwardens, with the assistance of a constable of the said city, to make distress of the *goods and chattels of the said and if, within the space of five days next after such distress by you taken, the said sum of together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels, so by you distrained, and out of the money arising by such sale of the goods and chattels of the said that you detain the said sums of money so due as aforesaid; and also your reasonable charges of taking, keeping, and selling the said distress, rendering to the overplus on demand; and if no such distress can be made, that then you certify the same unto me, to the end that such further proceedings may be had therein as to law doth appertain. Given under my hand and seal, the day of one thousand eight hundred and forty-four.*

A. B. (*L. S.*) (*a*)

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39. Justices' warrant to distrain for poor's rate, made by the guardians of the poor in Bury.

Borough of *Bury St. Edmund's*, in the County of *Suffolk*. } To the Churchwardens and Overseers of the Poor of the parish of *Saint* in the said borough.

Whereas, in and by a rate or assessment made on the day of last past, by the aforesaid churchwardens and overseers (by virtue of a warrant to them directed, under the hands and seals of two of her Majesty's justices of the peace in and for the said borough,) upon all and every the inhabitants and occupiers of lands, houses, tenements, tithes impropriate, appropriation of tithes, and hereditaments, within the said parish, for raising the sum of set on the said parish, by the guardians *of the poor of the said*

(*a*) One alderman in *London* may act in cases where, out of it, two justices must concur, 43 Eliz. c. 2, s. 8, *ante*, 12.

3. *Forms relating to Poor Rates.*

borough, towards the maintenance and employment of the poor within the care of the said guardians, for three calendar months from the day of last past; and allowed and published according to the several statutes in that case made and provided; being an inhabitant and occupier of within the said parish, was duly rated and assessed at the sum of to be by h paid for the purposes aforesaid. And whereas, it duly appeareth unto us, two of her Majesty's justices of the peace, in and for the said borough, as well upon the oath of one of the said overseers of the poor of the parish aforesaid, as otherwise, that the said sum of hath been lawfully demanded of the said and that the said hath refused and doth refuse to pay the same. And whereas, it hath been duly proved to us, upon oath, that the said hath been duly summoned to appear before us the said justices to show cause why the same should not be paid.

These are, therefore, to require you the said churchwardens and overseers, that you, some or one of you, do forthwith make distress of the goods and chattels of h the said And if within the space of four days next after such distress by you taken, the said sum, together with reasonable charges of the said summons, and of taking and keeping the said distress, shall not be paid, that then you, some or one of you, do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you, some or one of you, do detain the said sum of and also the charges aforesaid, and of selling the said distress; rendering to h the said the overplus, if any, on demand. And if no such distress can be made, that then you, some or one of you, do certify the same unto us, to the end that such further proceedings may be had therein, as to law doth appertain.

Given under our hands and seals, this day of in the year of our Lord, one thousand eight hundred and

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p. 352.

40. The indorsement to be written on the warrant of distress, if it is to be executed in another county.

County of Devon to wit. } *I, being one of her Majesty's justices of the peace in and for the county of Devon, do hereby certify that* A. B., *one of the persons to whom the written warrant is directed, came before me this day, and duly made oath, that sufficient goods of and belonging to* C. D., *the within named* [party rated], *could not be found in the within-named county of* Somerset, *on which a sufficient distress for the sum within named could be levied, and having further made oath before me that goods and chattels of the said* C. D. *can be found within the county of* Devon, *I do hereby authorise the said* A. B. *who bringeth to me the within warrant, and all other persons to whom the said warrant is directed, to execute the same within the county of* Devon.

Given under my hand and seal, the day of one thousand eight hundred and

J. P.

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41. The form of the overseers' return, where no sufficient distress is found, to be indorsed on the back of the warrant, under 43 Eliz. c. 2, s. 1.

County of to wit. } G. H., *one of the overseers of the poor of the within-named parish of* T. *maketh oath, this day of in the year of our Lord one thousand eight hundred and that he has used his best endeavours to levy the sum named in the within-mentioned warrant, on the goods and chattels of the said but that no sufficient distress can be found whereon to levy the same.*

Sworn before us, two [or *me, one*] *of his Majesty's justices of the peace in and for the county of*

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p. 352.

42. Commitment thereon under 43 Eliz. c. 2, s. 4; 3 Geo. IV. c. 23, s. 1.

County of to wit. } To the Constable of the parish of and to the Keeper of the Common Gaol, at in the said county.

Whereas, &c. [same as Form 36, *ante*, to the asterisk, and then], *and, whereas, on the said day of last, we* [or *they*] *did issue our* [or *their*] *warrant to the churchwardens and overseers of the poor of the said parish of*

to levy the said sum of by distress and sale of the goods and chattels of him, the said E. F., *and to apply the same, according to law; and, whereas, it duly appears unto us* [or *me*] *as well upon the oath of* G. H., *overseer of the poor of the parish of* T. *aforesaid, as otherwise, that he, the said overseer of the poor, has used his best endeavours to levy the said sum on the goods and chattels of him, the said* E. F. *as aforesaid, but that no sufficient distress can be had whereon to levy the same. These are, therefore, to command you, the said constable of the parish of* T., *aforesaid, to apprehend the body of the said* E. F., *and him safely to convey to the common gaol at in the said county, and there deliver him to the said keeper thereof, together with this precept: And we* [or *I*, as it may be] *do hereby command you, the said keeper of the said common gaol, to receive into your custody, in the said common gaol, the said* E. F., *there to remain, without bail or mainprize, until payment of the said sum.*

3. *Forms relating to Poor Rates.*

Given under our hands and seals, [or, *my hand and seal,*] *the day of in the year of our Lord one thousand eight hundred and thirty-one.*

A. B. (*L. S.*)
C. D. (L. S.)

IV. Forms relating to the Relief and Ordering of Poor.

p. 98.

To Mr. in the county of

43. Notice from overseers of poor to father of pauper, of intended application to petty sessions, for order of maintenance, under 59 Geo. III. c 12, s. 26, or 4 & 5 Will. IV. c. 76.

Take notice, that the overseers of the poor of the parish of in the county of do intend to make application to the next petty sessions of the peace to be holden on the day of at in and for the said county, for an order of on you to pay such weekly sum for and towards the relief of G. H. your son, *a poor person of the said parish of* T. *and unable to work, and now chargeable to the said parish, as the said petty sessions shall think fit.*

Dated, &c.

A. B.
One of the overseers of the parish of T. *in the county of*

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44. Overseers' complaint thereupon.

County of } *At a petty sessions of the peace of our lady the Queen, held at in the said county, the day of*
to wit. } *in the year of our Lord one thousand eight hundred and before the undersigned justices of our said lady the Queen, in and for the county aforesaid. An application is made to us the said justices, by the undersigned* E. F., *one of the overseers of the poor of the parish of in the county of on behalf of the churchwardens and overseers of the poor of the said parish, to have an order on* [*dwelling in the parish of in the county of for him to maintain his who is poor, impotent, and not able to work, and chargeable to the said parish of* T., *he the said being a person of sufficient ability to provide for his said son* [or, *daughter*, or, *grandson*].

E. F.
One of the overseers of the poor of the parish of T. *aforesaid.*

Exhibited before us,
A. B.
C. D.

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p. 103.

45. Order on a parent or child to give relief, &c.

County of Kent } *The order of* A. B. *and* C. D. *esquires, two of her Majesty's justices of the peace in and for the said county, one whereof is of the* quorum,
to wit. } *made at a petty sessions held at in the said county, the day of in the year of our Lord one thousand eight hundred and Upon an application to us the said justices, at the said petty sessions, by the churchwardens and overseers of the poor of the parish of* T., *in the county of to have an order made on* [or,] *dwelling at the parish of*

4. *Forms relating to the Relief and Ordering of Poor.*

in the said county of (a) *for him to maintain his son* [or, *daughter*, or, *grandson*] *who is poor (impotent, and not able) to work so as to maintain and support himself, and chargeable to the said parish of* T., *he the said* [or,] *being a person of sufficient ability to maintain and provide for his said son, &c. And the said* [or,] *having been duly summoned to appear before us the said justices, at the said petty sessions, to the end that we might examine into the cause and circumstance of the premises, and now appearing before us in pursuance of the said summons, but he has not shown any sufficient cause why such order should not be made, and we having heard the parties so complaining, and duly considered the circumstances of the said complaint, as well as the want of any adequate defence on the part of the said* [or,], *do adjudge and determine, that the said is poor, impotent, and unable to work so as to maintain and support himself, and actually chargeable to the said parish of* T., *and that the said dwelling in the said parish of in the said county of* Kent [or,] *is a person of sufficient ability to maintain and provide for his said son, &c. And therefore we do order that the said* [or,] *shall and do forthwith, upon notice of this our order, pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of* T. *for the time being, or to some or one of them, weekly and every week from this present time, the sum of for and towards the sustentation, relief, maintenance, and support of the said for and during so long time as the said shall continue poor, impotent, and not able to work, and shall be chargeable to the parish of* T., *or until the said shall be legally directed to the contrary.*

Given under our hands and seals, at aforesaid, the day and year first above written.

A. B. (*L. S.*)
C. D. (*L. S.*)

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p. 98.

46. Information of an overseer of the poor against a parent or child, for disobeying an order of maintenance, &c. (b)

County of } *The information and complaint of* E. F., *one of the overseers of the poor of the parish of* T., *in the county of made on oath before us,* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the county of at a petty sessions held at in the said county of the day of in the year of our Lord one thousand eight hundred and who on his oath aforesaid saith, that by an order under the hands and seals of us* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the said county of one whereof is of the quorum, made at a petty sessions held at in the said county of the day of in the year of our Lord one thousand eight hundred and upon an application to the said last-mentioned petty sessions by the churchwardens and overseers of the poor of the said parish of* T. *to have an order made on dwelling in the parish of in the said county of for him to maintain his who is poor and unable to work so as to maintain and support himself, and chargeable to the said parish of the said being a person of sufficient ability to provide for his said he the said was ordered, upon due notice thereof, to pay, or cause to be paid, to the churchwardens and overseers of the poor of the parish of* T., *for the time being, or to some or one of them, weekly and every week, from the date of the said order, the sum of for and towards the sustentation, relief, maintenance, and support of the said for and during so long time as the said shall be poor, impotent, and unable to work, and shall be chargeable to the said parish of* T. *or until the said shall be legally directed to the contrary; but that notwithstanding he, the said on the day of in the year of our Lord had due notice of the said order, and was then and there duly requested by the said* E. F. *to pay, &c.* [following the terms of the order] *yet he has not observed nor performed the said order for and during months; that is to say, from the day of in the year of our Lord one thousand eight hundred and to the day of*

(a) The county to which the justices belong, and where the party on whom it is made dwells, p. 98.

(b) One order for the maintenance of three children is bad. There should be an order for each, and so long as the child is unable to work *and* is chargeable. *Reg.* v. *Morten*, p. 1219.

following, and hath, during all that time, refused to pay, &c., [following the terms of the order,] *whereby the said has subjected himself to the penalty and forfeiture of twenty shillings for each month, to go and be employed to the use of the poor of the said parish of* T., *and towards a stock and habitation for them, and other necessary uses and relief.* (a) *And thereupon he, the said prays us, the said justices first before named, that the said penalty be levied by some or one of the churchwardens or overseers of the aforesaid parish of by warrant of distress, and that justice may be done in the premises.*

4. *Forms relating to the Relief and Ordering of Poor.*

Before us, A. B.
C. D.

E. F.

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p. 98.

County of } To the Churchwardens and Overseers of the Poor of the parish of
to wit. } *T.* in the county of .

47. Warrant of distress on a parent or child for disobeying an order of maintenance, &c.

Whereas, by an order under the hands and seals of A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the county of one whereof is of the quorum, made at a petty sessions held at in the said county of the day of in the year of our Lord one thousand eight hundred and thirty upon an application to the said petty sessions by the churchwardens and overseers of the poor of the parish of* T. *in the county of to have an order made on dwelling in the parish of in the county of for him to maintain his who is poor and unable to work, so as to maintain and support himself, and chargeable to the said parish of* T., *the said being a person of sufficient ability to provide for his said he, the said was ordered, upon due notice thereof, to pay, or cause to be paid, to the churchwardens and overseers of the poor of the said parish of* T., *for the time being, or to some one of them, weekly and every week, from the date of the said order, the sum of for and towards the sustentation, relief, maintenance, and support of the said for and during so long time as the said shall be poor, impotent, unable to work, and shall be chargeable to the said parish of* T., *or until the said shall be legally directed to the contrary. And whereas it appears unto us,* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the said county of at a petty sessions held at in and for the aforesaid county of this day of in the year of our Lord one thousand eight hundred and thirty on the oath of one of the overseers of the poor of the parish of* T. *aforesaid, that notwithstanding he, the said has had due notice of the said order, yet he has not observed nor performed the said order for and during months; that is to say, from the day of in the year of our Lord one thousand eight hundred and thirty to the day of following, whereby he, the said has subjected himself to the penalty and forfeiture of twenty shillings for each month. And whereas the said has been duly summoned to appear before us, at this present petty sessions, to answer unto the said complaint, but has not shown to us any sufficient cause why the said order has not been complied with, and why the said penalty of twenty shillings a month should not be levied by warrant of distress from us, or in default thereof, why he, the said should not be committed to the common gaol, there to remain, without bail or mainprize, till the said forfeitures shall be paid: These are, therefore, to require you forthwith to make distress of the goods and chattels of him, the said . And if, within the space of four days next after such distress by you taken, the said penalty, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the amount of the said penalty (being the sum of), to go and be employed to the use of the poor of your said parish of* T., *and also that you detain your reasonable charges of taking, keeping, and selling the said distress, rendering to him the said the overplus on demand. And if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings be had therein as to law doth appertain.*

Given under our hands and seals at aforesaid, this day of in the year of our Lord one thousand eight hundred and forty-four.

A. B. (*L. S.*)
C. D. (*L. S.*)

(a) The party is liable to be indicted for disobedience of the order, p. 101.

4. *Forms relating to the Relief and Ordering of Poor.*

48. Committment of a parent or child for disobeying an order of maintenance.

p. 98.

County of } To the Constable of the parish of in the said county, and to
to wit. } the Keeper of the Common Gaol of the said county of at

Whereas by an order under the hands and seals of A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the county of one whereof is of the quorum, made at a petty sessions held at in the said county of the day of in the year of our Lord one thousand eight hundred and thirty upon an application to the said petty sessions by the churchwardens and overseers of the poor of the parish of* T., *in the county of to have an order made on dwelling in the parish of in the said county of for him to maintain his who is poor and unable to work so as to maintain and support himself, and chargeable to the said parish of* T., *the said being a person of sufficient ability to provide for his said : He the said was ordered, upon due notice thereof, to pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of* T. *for the time being, or to some or one of them, weekly and every week, from the date of the said order, the sum of for and towards the sustentation, relief, maintenance, and support of the said for and during so long a time as the said shall be poor, impotent and unable to work, and shall be chargeable to the said parish of* T., *or until the said shall be legally directed to the contrary: which said order having been disobeyed and complaint thereof made to* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the said county of on the day of in the year of our Lord one thousand eight hundred and forty-four, at a petty sessions then held at in the said county of by and upon the oath of one of the overseers of the poor of the said parish of* T., *they the said last-mentioned justices did then and there issue their warrant to the churchwardens and overseers of the poor of the said parish of* T., *to levy the said penalty (being the sum of) by distress and sale of the goods and chattels of him the said and to apply the same according to law. And whereas it duly appears unto us,* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the said county of at a petty sessions held at in the said county of this day of in the year of our Lord one thousand eight hundred and thirty as well upon the oath of* E. F., *one of the overseers of the poor of the said parish of as otherwise, that he the said overseer of the poor has used his best endeavours to levy the said sum on the goods of him the said as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you, the said constable of aforesaid, to apprehend the body of the said and him safely to convey to the common gaol of the said county of at in the said county last-mentioned, and there deliver him to the said keeper thereof, together with this precept. And we do hereby command you, the said keeper of the said common gaol, to receive into your custody, in the said common gaol, the said and him there safely to keep without bail or mainprize, till the said forfeitures shall be paid: and for so doing this shall be your sufficient warrant.*

Given under our hands and seals at T. *aforesaid, the day of in the year of our Lord one thousand eight hundred and forty-four.*

A. B. (*L. S.*)
C. D. (*L. S.*)

Pensions

Form of minute of guardian to obtain pension, 86.

Of voluntary assignment, 88.

Form of order by two justices for the payment of the pension of "a *Pensioner* at Chelsea Hospital," in relief of his wife and family, p. 110.

Similar order as to a Greenwich out-pensioner, 110.

Similar order where any person is entitled to any naval pension or allowance, such person not being a Chelsea or Greenwich out-pensioner, 110.

4. *Forms relating to the Relief and Ordering of Poor.*

p. 109.

To the Commissioners of her Majesty's Navy.

56 Certificate by justices for the payment of the wages of a seaman, convicted of smuggling, for the relief of his wife.

County of } *Whereas complaint on oath hath been made to us, two justices of the peace acting in and for the county of by the churchwardens and overseers of the poor of the parish of in the county of aforesaid, that* C. B., *the wife of* A. B., *and their two children* [name and age] *have become chargeable to the said parish of . And whereas it hath been made to appear before us that the said* A. B. *is a seaman now serving in her Majesty's naval service, under and by virtue of the several acts made for the prevention of smuggling, and that the wages at which such seaman is rated in the ship's books are . We do therefore certify, that we deem it necessary that out of the wages of the said* A. B. *one-third* [or *one-half*] *of the same, amounting to shall be paid to the churchwardens and overseers of the said parish for the relief of the same.*

Given under our hands at in the said county, on the day of in the year of our Lord one thousand eight hundred and thirty

L. M.
N. O.

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p. 108.

To the acting Owner, Ship's Husband, or Agent of the Ship [*or* Vessel, *as it may be*].

57. Order by justices to overseers, &c. to receive seamen's wages for the indemnity of parishes.

County of } *Whereas complaint on oath hath been made before us, two of her Majesty's justices of the peace acting in and for the county of by the churchwardens and overseers of the poor of the parish of* T., *in the county of aforesaid, that* C. B., *the wife of* A. B., *and their two children, to wit,* [naming the children] *have become chargeable to the said parish of* T. *And whereas it hath been made appear to us, that the said* A. B. *is now employed in the merchants service, to wit in the actual service of* N. O., *on board the Ranger, on a voyage to the East Indies, and not in her Majesty's service, and that, during his absence on such employment, the overseers of the said parish of* T. *have necessarily laid out and expended, in the maintenance and relief of the wife and family of the said* A. B., *the sum of We do, therefore, order and direct you, the said* N. O. *being the acting owner* [as it may be] *and person liable to pay the wages of the said* A. B. *as such seaman* [as it may be,] *forthwith, on receipt hereof, to pay unto the churchwardens and overseers of the poor of the parish of* T. *aforesaid, or to such one of them as shall demand the same, the said sum of out of the wages which are, or shall become due to the said* A. B., *in discharge of the said money so expended in the maintenance and support of the said* C. B., *his said wife, and their said family; and the receipt of such churchwarden or overseer shall be to you a good and sufficient discharge for the said sum of hereby directed to be paid for the purpose aforesaid.*

Given under our hands and seals, this day of in the year of our Lord one thousand eight hundred and thirty

W. R. (*L. S.*)
E. R. M. (*L. S*)

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p. 103.

To all Constables, and others her Majesty's Officers of the Peace for the county of

58. Warrant to apprehend a person as a rogue and vagabond, having deserted his family.

County of } *Forasmuch as* A. B., *one of the overseers of the poor of the parish of in the said county, hath this day made information and complaint upon oath before me one* [or *us and two*] *of her Majesty's justices of the peace in and for the said county, that* C. D., *late of in the said county, shoemaker, hath run away and left his wife and children, whereby they are become chargeable to the said parish of and thereby committed an act of vagrancy: These are, therefore, to command you, in her said Majesty's name, forthwith to apprehend and bring before me the body of the said* C. D., *to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not.*

Given under my hand and seal [or *our hands and seals*], *the day of in the year of our Lord one thousand eight hundred and forty*

A. B. (*L. S.*)

4. *Forms relating to the Relief and Ordering of Poor.*

p. 104.

59. Conviction and commitment of a person as a rogue and vagabond, for having deserted his family.

County of } *Be it remembered, that on the day of in the year of the reign of our sovereign lady Queen Victoria, by the grace of God of the United Kingdom of* Great Britain *and* Ireland, *queen, defender of the faith, and in the year of our Lord one thousand eight hundred and* *to wit.*

A. B., *constable of the parish of in the county of bringeth before me* W. R., *esquire, one of the justices of our said lady the queen, assigned to keep the peace of our said lady the queen, in and for the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county, the body of* C. D., *and chargeth and accuseth him, the said* C. D., *before me, the said justice, of being a rogue and vagabond, within the intent and meaning of the several statutes made, relating to rogues, vagabonds, and other idle and disorderly persons, for that he, the said* C. D., *hath run away and left his wife and children, whereby they have become chargeable to the parish of in the county aforesaid, contrary to the form of the statute in such case made and provided, and thereupon he, the said* A. B., *prayeth of me, the said justice, that the said* C. D. *may be dealt with according to the law for his said offence; whereupon the said* C. D. *is now asked by me, the said justice, if he can say any thing for himself, why he, the said* C. D., *should not be convicted of the offence above charged upon him, in form aforesaid, who pleadeth that he is not guilty thereof: Whereupon I, the said justice, do now proceed to examine into the truth of the complaint so brought by the said* A. B. *against the said* C. D., *and thereupon, on the day and year first aforesaid, at the parish of in the county aforesaid,* E. F., *churchwarden of the parish of aforesaid, and* G. H., *one of the overseers of the poor of the said parish of credible witnesses in that behalf, on their corporal oath upon the holy Evangelists of God, now here duly administered to them respectively by me, the said justice, in the presence and hearing of the said* C. D., *depose and say, that the said* C. D. *hath run away and left his wife and children, whereby they have become chargeable to the parish of aforesaid, and he, the said* C. D., *having heard the said evidence, and being asked by me, the said justice, if he can say any thing for himself, or show any cause before me why he should not be convicted of the offence so charged upon him as aforesaid, doth not say any thing for himself, or offer any evidence to gainsay the same; therefore it manifestly appeareth to me, the said justice, that the said* C. D. *is guilty of the offence above charged upon him, in manner and form as in and by the said complaint is alleged, and that he is thereby a rogue and vagabond, within the true intent and meaning of the said statute. It is, therefore, adjudged by me, the said justice, that the said* C. D. *be convicted of the said offence, and he is hereby by me accordingly convicted of the said offence so charged upon him in and by the said complaint, and adjudged to be a rogue and vagabond within the intent and meaning of the statute aforesaid. And I do order the said* C. D. *to be sent, and the said* C. D. *is by me accordingly committed to the house of correction at in the said county, there to remain until the next general quarter sessions of the peace to be held in and for the said county, then and there to be further dealt with according to law, unless he be sooner discharged by due course of law, according to the form of the statute in such case made and provided. In testimony whereof, I, the said justice, to this record of conviction have put my hand and seal, at in the county aforesaid, on the day and year first above written.*

W. R. (*L. S.*)

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60. Commitment of a person as an incorrigible rogue for having deserted his family a second time.

To the Governor or Keeper of the House of Correction at

County of } *Receive into your custody the body of* A. B. *of in the county of herewith sent you, brought before me* W. R., *esquire, one of her Majesty's justices of the peace for the said county, and charged before me by* C. D., *overseer of the poor of the parish of upon oath with being an incorrigible rogue, for that he the said* A. B. *being adjudged a rogue and vagabond, and thereof convicted by me the said* W. R., *and committed to the house of correction for having deserted his wife and children, and leaving them chargeable to the said parish of hath since the said conviction and commitment again deserted his said wife and children, and left them chargeable to the said parish of by reason whereof he the said* A. B. *hath become an incorrigible rogue, within the intent and meaning of the statutes passed relating to rogues and vagabonds, and to other idle and disorderly persons, and to houses of correction, of which offence he the said* A. B. *hath been convicted by me the said* *to wit.*

justice, and him the said A. B. *safely keep in your custody until he shall be discharged by due course of law, and for so doing this shall be your sufficient warrant.*

Given under my hand and seal, this day of one thousand eight hundred and W. R. (*L. S.*)

4. *Forms relating to the Relief and Ordering of Poor.*

To all Constables, and others her Majesty's Justices of the Peace for the said county of whom these may concern.

61. Warrant to apprehend a person for not applying a proportion of his earnings towards the maintenance of his family.

County of } *These are in her Majesty's name to command you and every of you, upon sight hereof, to take and bring before me, or some other of her*
to wit. } *Majesty's justices of the peace in and for the said county, city, and liberty, the body of* A. B., *to answer to all such matters and things as on her Majesty's behalf are on oath objected against him by* E. B., *his wife, and also by* C. D., *one of the overseers of the poor of the parish of for permitting, by his wilful default and neglect, his said wife and children to become chargeable to the said parish, spending his money in ale-houses, and not employing a proper proportion of the money earned by him towards the maintenance of his said wife and children, against the statute in that case made and provided. Herein fail not at your peril.*

Given under my hand and seal at in the county aforesaid, this day of in the year of our Lord one thousand eight hundred and

W. R. (*L. S.*)

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p. 103.

62. Order to seize the goods and receive the rents of houses or lands, of persons deserting their families. (*a*)

County of } *Whereas it appears unto us whose names are hereunto set and seals affixed, two of her Majesty's justices of the peace for the said county, as*
to wit. } *well upon the complaint and application of the churchwardens and overseers of the poor of the parish of in the said county as otherwise, that* C. D., *late of the parish of aforesaid, yeoman, hath run away from his place of abode at in the parish aforesaid, into some other county or place, and hath left his wife* S. *and his two children,* M., *aged three years, and* P., *aged two years or thereabouts, chargeable to the said parish of the place of their last legal settlement* [or where the said children were born] ; *and that the said* C. D. *hath* [good and chattels, or lands and tenements, as the fact may be] *situate and being at consisting of two freehold dwellings* [or as it may be] : *whereby to ease the said parish of the said charge, in whole or in part, we do hereby authorise and command you, the said churchwardens and overseers of the poor of the said parish of to take and seize* [describe the property] *of his goods and chattels, and to receive so much of the sum of £ of the annual rents and profits of the lands and tenements of him the said* C. D. *at aforesaid,* [if the order is to receive the rents of land, say *until further order made*], *for and towards the discharge of the said parish for the providing for and bringing up of his said wife and children; and with this warrant you are to appear at the next quarter sessions of the peace to be holden for the said county, that this order may be then and there confirmed, according to the directions of the statute in that case made and provided.*

Given under our hands and seals at in the said county, the day of one thousand eight hundred and thirty

W. R. (*L. S.*)
E. R. M. (*L. S.*)

An Order by two Justices for out-door Relief, to a Person unable to work, under sec. 27 of 4 & 5 Will. IV. c. 76.

63. Order by two justices under sect. 27, p. 1246.

Whereas A. B., *a poor person, an adult, and from old age* [or "*infirmity of body*"] *wholly unable to work, and unable to maintain himself, and whereas the said* A. B. *is lawfully entitled to relief from, and is now chargeable to, the parish of Bampton, in the Tiverton Union, in the county of Devon, and whereas the said* A. B. *is desirous of receiving relief out of the workhouse of the said union, and hath applied to us to make an order for the same, we* J. B. *and* J. H., *being two of her Majesty's justices of the peace for the county of Devon, and usually acting for the district within which the said union is situate, having duly investigated the*

(*a*) Where the party is a lunatic. See *Reg.* v. *Pixley*, p. 131.

4. *Forms relating to the Relief and Ordering of Poor.*

above matters, do find and adjudge the same to be true, and we do hereby order and direct you the said guardians to provide proper and necessary relief henceforth for the said A. B., *so long as he shall continue poor and wholly unable to work as aforesaid, and so long as he shall continue chargeable to the said parish, without requiring the said* A. B. *to reside in the workhouse. And I the said* J. B. *do hereby certify of my own knowledge, that the said* A. B. *is wholly unable to work, from old age as aforesaid.*

Given under our hands and seals, this day of in the year of our Lord one thousand eight hundred and forty-four.

J. B. (*L. S.*)
J. H. (*L. S.*)

To the guardians of the Tiverton union officer.

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p. 1258, s. 54.

64. Order of one justice, in case of *urgent necessity*, for temporary relief.

County of } To the Churchwardens and Overseers of the Poor of the Parish of
to wit. } *T.*, in the County of

Whereas complaint hath been this day made unto me, A. B., *esquire, one of her Majesty's justices of the peace in and for the said county, upon oath by* G. H. *a poor impotent person in your parish, not settled* [or *usually residing*] *there, and who is labouring under an urgent and sudden necessity, and that he has under such circumstances applied to you for temporary relief, which you have neglected to give. I the undersigned having duly examined into the premises, do find and adjudge them to be true. And these are therefore to order and require you to grant to him the said* G. H. *temporary relief, not in money, but in articles of such absolute necessity as his case may require.*

Given under my hand and seal, this day of one thousand eight hundred and forty-four.

A. B. (*L. S.*)

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p. 1258, s. 54.

65. Order for medical relief only, in a case of sudden and dangerous illness.

County of } To the Churchwardens and Overseers of the Parish of *A.*, in the
to wit. } County of

Whereas complaint hath been made to me A. B., *one of the justices of the peace in and for the county of aforesaid, that* G. H., *of your parish* [or *whose place of settlement is in your parish, but who is dwelling now in the parish of* M.] *a poor and impotent man, and unable to provide for himself, is afflicted with a sudden and dangerous illness: These are therefore, this being a case of urgent necessity, to order and require you to provide proper and necessary medical relief for the said* G. H.

Given under my hand and seal, this day of one thousand eight hundred and forty-four.

A. B. (*L. S*)

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66. Common order of two justices on two overseers, to give relief to a poor person, where there is no select vestry under 59 Geo. III. c. 12, s. 5.

County of } To the Churchwardens and Overseers of the Poor of the Parish of
to wit. } *T.*, in the County of

Whereas A. B. *made oath before us,* L. M. *and* N. O., *esquires, two of her Majesty's justices of the peace in and for the said county, that he* [or *she*] *the said* A. B., *together with* C. *and* D., *his* [or *her*] *children, are inhabitants of* Orchard Street, *in the said parish, and that he is* [or *they are*] *poor and impotent and unable to work, and in distress and in need of relief, and that he* [or *she*] *applied to* E. F. *and* G. H., *two of the overseers of the said parish of* T., *and was by them refused to be relieved: And whereas the said* E. F. *and* G. H., *overseers of the said parish, having been duly summoned to appear before us at at of the clock, this day of to show cause why the said* A. B., *together with the said should not be relieved, as by law is provided, no where duly appear before us: and whereas we the said* L. M. *and* N. O., *two of his Majesty's said justices of the peace for the said county, having duly heard the said parties, do adjudge, as well upon the oath of the said* A. B. *as otherwise, that the said* A. B., *together with his* [or *her*] *said*

children, ought to be relieved by the churchwardens and overseers of the poor of the said parish, and that there is special cause for granting relief to the said A. B. *and the said children, to wit, that he, the said* A. B, *is very poor and impotent and not able to work or provide for himself or his said family, and has been refused adequate relief by the said* E. F. *and* G. H.; *and also that he, the said* A. B., *together with his* [or *her*] *children, are in such distress for want of other means of subsistence as to require relief from the said parish, we, the said* L. M. *and* N. O., *having also taken into consideration the character and conduct of the said* A. B., *do hereby order the churchwardens and overseers of the poor of the said parish, or some of them, to pay or cause to be paid, unto the said for and towards his* [or *her*] *support and maintenance, the weekly sum of for the space of weeks, now next ensuing, the first payment to be made forthwith on the service of this order, and the second payment on the first day of the said second week, unless you shall be ordered according to law to forbear such second weekly allowance.*

Given under our hands and seals at this day of one thousand eight hundred and forty-four.

L. M. (*L. S.*)
N. O. (*L. S.*)

4. Forms relating to the Relief and Ordering of Poor.

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p. 78.

County of } To the Constable of in the said County, and to every of them.
to wit. }

Whereas complaint hath been made to me, one of the justices of the peace for the county of by the guardians of Tiverton union, of which the parish of Bampton, in the county aforesaid, forms a part, and it hath been duly proved before me that C. B., *a poor person, in the service and employment of* F. G., *has received the sum of £ as relief, by way of loan from the said guardians, and that £ of the same remains due; these are to require you in her Majesty's name to cause the said* G. B. *and* F. G. *to appear before me and one other of her Majesty's justices of the said county, on the next, at the house of in in the said county, at the hour of forenoon of the same day, to show cause why the wages now due, or which may become due from the said* F. G. *to the said* C. B. *should not be paid to such guardians in satisfaction of the said sum so remaining due.*

Given under my hand, this day of

Justice.

67. Summons for master and servant, for repayment of loan, under 4 & 5 Will. IV. c. 76, s. 58.

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p. 78.

County of } To *C. D.* [*the pauper*] and *E. F.* [*the master*] of the parish of
to wit. }

Whereas the guardians of the poor of Tiverton union, of which the parish of Bampton, in the county aforesaid, forms a part, on the day of last, appeared before one of her Majesty's justices of the peace in and for the said county, and complained and duly proved that you C. D. *had received the sum of £ as relief by way of loan, from the said guardians, and that the sum of £ the same still remains due: that the said* C. D. *was in the employment of* E. F. *at certain weekly wages: and whereas the said* C. D. *and* E. F. *have been duly summoned, in pursuance of the statute in such case made and provided, to appear before us at o'clock this day, to show cause why the wages now due, or which may become due from the said* E. F. *to the said* C. D., *should not be paid to such guardian, in satisfaction of the said sum of £ so remaining due: and whereas we the being two of her Majesty's justices of the peace in and for the said county, having duly heard the said parties, in the presence and hearing of each other* [or *in the presence and hearing of the said* E. F., *the said* C. D., *although duly summoned, not appearing, or any one on his behalf*], *and it having now been duly proved to our satisfaction that the sum of £ was on the day of* 1844, *provided by the said guardians of to the said* C. D. *as relief by way of loan, and that the sum of £ now remains due and owing, and that the sum of £ is now due to the said* C. D. *from the said* E. F. *as wages* [or *that* C. D. *is in the employment of* E. F., *and entitled to the weekly sum of £ as wages*], *and having considered the circumstances of the said* C. D., *do, in pursuance of the statute in such case made and provided, adjudge, order, and direct that the said* E. F. *shall, out of the wages so due to the said* C. D. *pay unto*

68. Order for the repayment of loan.

4. *Forms relating to the Relief and Ordering of Poor.*

the said guardians the sum of £ and shall hereafter, on the Saturday in every week, out of the wages becoming due to the said C. D., *pay the sum of shillings, to the said guardians so long as the said* C. D. *shall be in the employ of the said* E. F., *and until the said sum of £ aforesaid, now due from the said* C. D., *shall be paid.*

Given under our hands this day of

L. M.
N. O.

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p. 44.

69. Appointment of select vestry, under 59 Geo. III. c. 12.

to wit. } *Whereas in and by the statute made and passed in the fifty-ninth year of the reign of his late Majesty King* George *the Third, intituled, "An Act to amend the Laws for the relief of the Poor," it is enacted, that it shall be lawful for the inhabitants of any parish, in vestry assembled, to establish a select vestry for the concerns of the poor of such parish, and to that end to nominate and elect in any vestry such and so many inhabitant householders or occupiers within such parish, not exceeding the number of twenty nor less than five, as shall in any such vestry be thought fit to be members of the select vestry (such inhabitants being first thereto appointed by writing under the hand and seal of one of her Majesty's justices of the peace, which appointment he is thereby authorised and required to make): And whereas information is made and given on this day of in the year of our Lord one thousand eight hundred and thirty unto us,* J. C. *and* S. P., *esquires, whose hands and seals are hereunto subscribed and set, being two of her Majesty's justices of the peace in and for the said county of that the inhabitants of the parish of in the said county, have nominated and elected, in manner aforesaid, twenty substantial householders and occupiers within the said parish, whose names are hereinafter mentioned, to be members of a select vestry for the concerns of the poor of the said parish, we therefore, by virtue and in pursuance of the authority and requisition aforesaid, do hereby appoint the following substantial householders and occupiers, that is to say,*

A. B. *Minister.*
C. D. } *Churchwardens,*
E. F. }
G. H. } *Overseers of the Poor.*
I. K. }
L. M.
N. O. &c. [not exceeding twenty-five]

to be and constitute a select vestry for the care and management of the concerns of the poor of the said parish of in the said county, to continue and be empowered to act therein from the time of this appointment until fourteen days after the next annual appointment of overseers of the poor of the said parish shall take place.

Given under our hands and seals at in the said county, the day and year above written.

J. C. (*L. S.*)
S. P. (*L. S.*)

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p. 9, n.

70. Form given by statute.

Form of Agreement at a Public Meeting, for a single Parish or Township to adopt the Provisions, Rules, and Regulations, of an Act, made in the twenty-second year of *King George* the *Third*, for the better Relief and Employment of the Poor.

It is agreed, at a public meeting duly holden this day of at in the county of pursuant to the directions of an Act made in the twenty-second year of King George *the Third*, for the better relief and employment of the poor, *that the parish* [or *township*] *of* [as the case shall be] *shall from henceforth adopt, in all respects, the provisions, rules, orders, and regulations, and comply with all the requisites, prescribed by the said Act; and that our workhouse* [if there is one] *shall be immediately fitted up and accommodated for the purposes mentioned in the said act.* [If there is none.] *We will forthwith provide a proper workhouse, either by erecting a new one, or hiring, altering, and fitting up buildings suitable to the purpose, at some convenient place, within our parish, et cetera. And we recommend to the consideration of the*

justices and as fit and proper persons for guardians of the poor; and and as fit and proper persons for governors of the poor-house, for the said parish, township, et cetera [as the case shall be].

Given under our hands, et cetera. (Schedule No. I.)

4. *Forms relating to the Relief and Ordering of Poor.*

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71. Form of consent and approbation of the justices. *By statute.*

We, A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the county of considering the parish of within the said county, to be of magnitude sufficient to have a workhouse provided within it for the reception and employment of the poor, and to adopt the provisions of the act "for the better relief and employment of the poor," passed in the twenty-second year of the reign of King* George *the Third, do hereby give our approbation and consent thereto, pursuant to the directions of the said act, and we do also agree to the salaries fixed by the said agreement to be paid to the guardian and governor.*

Given under our hands this day of one thousand eight hundred and (Schedule No. II.)

A. B.
C. D.

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p. 82.

72. Contract for maintenance, under 9 Geo. I. c. 7, s. 4.

At a public meeting of the inhabitants of the parish of T. *in the county of for that purpose assembled, upon usual notice thereof first given, it is contracted by and with the consent of the major part of the said inhabitants so assembled as aforesaid, between and churchwardens and and overseers of the poor of the parish of the one part, and of in the said parish, yeoman, of the other part, That he the said shall and will, during the space of one whole year, to commence from next ensuing, at his own proper costs and charges, in the house in which he now dwelleth, find, provide, and allow unto all such poor people as shall be lawfully entitled to relief and maintenance from the said parish, and shall be brought unto him by the churchwardens and overseers of the poor aforesaid, or any of them, or by their or any of their successors for the time being, sufficient lodging, meat, drink, clothing, employment, and other things necessary for their keeping and maintenance, and that, in consideration thereof, the said churchwardens and overseers of the poor and their successors respectively, shall pay or cause to be paid to the said the sum of in equal proportions, the said to have moreover and take unto himself the benefit of the said poor people's work, labour, and service during the said term.*

In witness whereof the parties to these presents have hereunto set their hands the day of

[If two parishes or townships joined in the contract, under 43d Geo. III. c. 54, it was necessary to insert in the contract the consent of the two justices, thus—"*by and with the consent of the major part of the said inhabitants so assembled as aforesaid respectively, and also by and with the consent of* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the said county, dwelling in the said parish of* [or *near to the said parishes or townships of* "]]

Justices' assent (a)

[The assent of the justices may be indorsed thereon as follows—"*We,* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the within mentioned county of and dwelling in the within mentioned parish of* [or *near to the within mentioned parishes or townships of*] *do consent unto, allow, and approve of the within written contract.*"

Given under our hands and seals, the day of A. B. (*L. S.*)
C. D. (*L. S.*)

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p. 9.

73. Agreement for two or more parishes, to unite in adopting Gilbert's Act. *By statute.*

It is agreed at a public meeting duly held this day of at in the county of pursuant to the directions of the said act, That the parish [or *township*] *of* [as the case may be] *shall, from henceforth, in conjunction with the parishes or townships of and* [as it may be] *adopt, in all respects, the provisions, rules, orders, and regulations, and comply with all the requisites prescribed by the said act, for parishes uniting for those purposes, and*

(a) The approbation of *two* justices is required, and all such contracts must be made according to the rules of the commissioners.

4. *Forms relating to the Relief and Ordering of Poor.*

that a convenient workhouse and other buildings and necessary conveniences shall be immediately provided at or near and properly fitted up and accommodated for the purposes mentioned in the said act. And we recommend to the consideration of the justices of the limit wherein such workhouse will be situate as fit and proper persons qualified for guardians of the poor, and as fit persons to be governors of the poor-house for the said parish [or *township*, as the case shall be] *and do agree to allow the person who shall be appointed guardian, a salary of per annum, for his trouble in executing that office, and to the person who shall be appointed governor of the workhouse, a salary of per annum, for his trouble in executing that office.* (Schedule, No. III.)

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74. Agreement for uniting the parishes [*or* townships, *as the case may be*] of and for the purpose of providing a house or houses, and for the better maintaining and employing their poor, pursuant to Gilbert's Act, 22 Geo. III. c. 83.

Given in schedule No. 4 & 5 of the same statute.

It is agreed this day of by and between the guardians of the poor of the parish of and and of the townships of and in the county of (which maintain their own poor separate and distinct from the other parts of their respective parishes), whose names are hereunto subscribed, pursuant to the opinion of two-thirds in number and value of the owners or occupiers of lands, tenements, and hereditaments assessed to the poor's rates within such respective parishes and townships, at meetings duly held for that purpose, qualified according to the directions of the act passed in the twenty-second year of the reign of his Majesty King George *the Third, and with the approbation of* W. R. *and* E. R. M., *two of her Majesty's justices of the peace, according to the directions of the said act, That the said respective parishes and townships shall be united for the better maintaining and employing their poor, and that a convenient house or houses, with proper buildings and accommodations thereto, and with land fit for gardens, orchards, and the keeping of a cow or cows, shall be built* ["*purchased* or *hired*," as shall be found most suitable,] *at or near for the reception and accommodation of the poor, as soon as conveniently may be, and if hired, the same shall be rented upon such terms as shall be agreed upon between the guardians of the poor of the said several parishes and townships, or the major part of them, and the person or persons owning or being authorized to let such building, lands, and premises, but no such agreement shall be made for any longer lease than twenty-one years, unless the guardian or guardians shall have an option to vacate it at the end of that term on giving twelve months' notice in writing of his or their intentions so to do, nor for a shorter term than three years; and such houses shall be fitted up and made convenient for the purposes aforesaid, at the expense of the landlords* [or *tenants*, as shall be agreed to by them]. *That the rents of the said houses, the expenses of fitting up, making additions or alterations* [where they shall be agreed to be paid by the tenants], *and of the furniture thereof, and also the utensils and materials to be used for the purpose of employing the poor, and the wages and allowances to be paid to the governor of the house, shall be paid by the said several guardians in their due proportions, according to the amount of the money raised by the poor's rate for their several parishes and townships, in respect of their poor, on a medium of three years preceding such agreement; and that such proportions shall be ascertained by and whom we have nominated for that purpose, and shall be paid by the guardians of the poor of the said respective parishes and townships to the persons who shall be authorized to receive the same, within seven days after the same shall be so ascertained, and that the money earned by the labour shall be brought to the credit of that account at the end of every year. That the expenses of victuals, beer, and firing for the poor, and the governor* [and for the assistants, when any shall be found necessary] *in every such house or houses, with all other small incidental expenses, shall be proportioned, at the end of every month, according to the number of poor which shall be sent from each of the said respective parishes, townships, and places, and for the term they shall have resided there within such month, that the guardians of the poor of any of the said parishes, townships or places, shall be at liberty to withdraw from this agreement at the end of the first three years, or any succeeding three years, on giving twelve months' notice of such their intentions, if it shall be so determined by* [three fourth parts] *of the owners or occupiers of lands, tenements, or hereditaments, assessed to the poor's rates, and qualified as aforesaid, at a public meeting summoned by due notice as aforesaid, specifying the occasion of such meeting; and in such case they shall receive one-half of their due proportion, to be ascertained by the persons last above-named, or such other persons as the parties shall agree upon for that purpose, of the value of the furniture, stock, utensils and implements, then remaining at such poor-house after paying their proportion of the rent, and of the salaries to the governor*

and other officers, to the end of the then growing year. And that the guardian of the poor of such parish, township, and place, shall provide suitable and convenient clothing for the poor, to be sent to the said house or houses from their respective parishes, townships, or places, and charge the expenses thereof in their accounts. And we recommend to the justices of the limit where such house is to be situated,

as persons duly qualified for the office of visitors of the said poor-house, and

as persons duly qualified for the office of governors of the said poor-house.

4. *Forms relating to the Relief and Ordering of Poor.*

We, A. B. *and* C. D., *the justices of the peace mentioned in the within written agreement, do hereby give our approbation to the parishes and places herein-named being united for the purposes of the act within-mentioned.*

Witness our hands, this day of A.D. 1831.

A. B.
C. D.

Be it remembered that on the day of A. B. *deposited in my hands a copy of the agreement made between the churchwardens and overseers of the poor, of the parishes or townships of and* [as the case shall be] *in the county, &c.* [as the case may be] *of for uniting in hiring, purchasing, or building houses at or near in the same county of and providing for the maintenance and employment of a certain description of poor persons belonging to the said parishes, townships, and places, pursuant to the statute made in the twenty-second year of the reign of his Majesty King* George *the Third.*

75. The entry to be made by the clerk of the peace or town clerk. *By statute.*

Notice is hereby given, that a public meeting to consult the owners or occupiers of lands, tenements, or hereditaments, assessed after the rate of five pounds per annum, about providing for the maintenance and employment of the poor, pursuant to the statute of the twenty-second year of the reign of King George *the Third, will be held in the vestry-room of this parish, on the day of at o'clock in the afternoon.*

76. Notice of the meeting to consult as to providing for the poor, under Gilbert's Act, No. 6. *By statute.*

We, A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the county of acting for the hundred of in the said county, do hereby appoint to execute the office of guardian of the poor, for the parish of in the said county, within the said hundred, for one year, to be computed from to which he has been recommended at a public meeting, holden on the day of pursuant to the directions of the act passed in the twenty-second year of the reign of his Majesty King* George *the Third, "for the better relief and employment of the poor."*

77. Appointment of a guardian of the poor, No. 7. *By statute.*

Given under our hands this day of one thousand eight hundred and thirty one.

A. B. (*L. S.*)
C. D. (*L. S.*)

We, A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the county of acting in the hundred of in the said county, do hereby appoint of to execute the office of visitor of the poor for the parish of in the said county, within the said hundred, for one year, to be computed from to which he has been recommended, at a public meeting holden on the day of pursuant to the directions of the act passed in the twenty-second year of the reign of King* George *the Third, "for the better relief and employment of the poor."*

78. Appointmen of a visitor of the poor, No. 7. *By statute.*

Given under our hands this day of one thousand eight hundred and thirty-one.

A. B.
C. D.

We, A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the county of acting in the hundred of in the said county, do hereby appoint of to execute the office of governor of the poor, for the parish of*

79. Appointment of a governor of the poor, No. 7. *By statute.*

4. *Forms relating to the Relief and Ordering of Poor.*

in the said county, within the said hundred, for one year, to be computed from to which he has been recommended at a public meeting, holden on the day of pursuant to the directions of the act passed in the twenty-second year of the reign of King George *the Third, "for the better relief and employment of the poor."*

Given under our hands this day of one thousand eight hundred and thirty-one.

A. B.
C. D.

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80. Appointment of a treasurer of the poor, No. 7. *By statute.*

We, A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace for the county of acting in the hundred of in the said county, do hereby appoint of to execute the office of treasurer of the poor for the parish of in the said county, within the said hundred, for one year, to be computed from to which he has been recommended by the guardians, pursuant to the directions of the act passed in the twenty-second year of the reign of King* George *the Third, "for the better relief and employment of the poor."*

Given under our hands this day of one thousand eight hundred and thirty-one

A. B.
C. D.

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81. Draft by the guardian, on the churchwardens and overseers appointed to collect the poor's rates, No. 8. *By statute.*

To *A. B.*, Collector of the poor's rates for the parish of in the county of

You are hereby authorized and directed to pay C. D. [describe what for] *and take his receipt for the same, which will be your discharge for such payment.*

Dated this day of

E. F. { *Guardian of the poor for the parish aforesaid.*

---

82. Appointment of a deputy visitor, No. 9. *By statute.*

I, A. B. *Visitor of the poor and poorhouse for the parish of in the county of do hereby nominate and appoint* C. D. *of to be my deputy-visitor and assistant during my will and pleasure, pursuant to the power given to me by an act passed in the twenty-second year of King* George *the Third, intituled "An Act for the better relief and employment of the poor," and authorize him to discharge the duty required of him by the said act.*

Witness my hand this day of one thousand eight hundred and thirty-one.

A. B.

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83. Certificate of serving the office of visitor of the poor, No. 10. *By statute.*

I, A. B., *one of her Majesty's justices of the peace for the county, &c.,* [as the case may be], *of do hereby certify that of in the said county, hath been appointed to and is now serving the office of visitor of the poor for the parish or township of* [or, *for the parishes and townships of*] *in the said county,* [as the case may be], *pursuant to directions of the act passed in the twenty-second year of the reign of his Majesty King* George *the Third.*

Dated this day of one thousand eight hundred and thirty-one.

A. B.

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84. Security for money borrowed for purchasing lands, &c., for the employment of the poor, No. 11. *By statute.*

By virtue of an act made in the twenty-second year of the reign of his Majesty King George *the Third, intituled "An Act for the better relief and employment of the poor," we visitor and guardian of the poor for the parish* [or *township*, as the case may be], *of in the county, city, &c., of in consideration of the sum of to us in hand paid by of for the purpose of purchasing lands, buildings, erecting, repairing, fitting up or furnishing, &c.,* [as the case may be], *a convenient house or building and offices for the reception, accommodation and employment of the poor of the said parish or township, and for providing suitable stock and utensils for that purpose, do hereby charge the poor's rates to be hereafter made, and the several sums of money to be raised thereupon within the said parish* [or *township*, as the case shall be], *with the payment*

of the said principal sum and interest, after the rate of per cent. per annum, half-yearly as the same shall become due.

Witness our hands this day of one thousand eight hundred and thirty-one.

4. *Forms relating to the Relief and Ordering of Poor.*

I do transfer this security, with all my right and title to the principal money hereby secured, and to all interest now due, or hereafter to be due, unto his executors, administrators, and assigns. Dated this day of

Witness, A. B.

E. F.

85. Transfer of security for the money advanced, No. 14. *By statute.*

County of } At a special session, held at in the county of this day of one thousand eight hundred and by justices
to wit. } of the peace for the said county, acting for the hundred of within the said county.

86. Workhouse governor's appointment.

Upon the application of the major part of the overseers of the poor of the parish of in the said county and hundred, to us whose hands and seals are hereunto affixed, being justices of the peace acting in and for the aforesaid county and hundred, we do hereby appoint keeper of the workhouse of the said parish of to be governor thereof; and so long as the said shall continue keeper of the said workhouse, until the justices, in any special sessions, shall revoke this appointment, he is hereby authorized to use and exercise the powers and perform the duties vested in and imposed upon governors of the poor, by an act passed in the twenty-second year of the reign of King George *the Third, according to an act passed in the fiftieth year of the reign of the same king.*

Given under our hands and seals, the day and year above written.

A. B. (*L. S.*)
C. D. (*L. S.*)

To the Governor of the Poorhouse at in the county of

You are hereby ordered and required to receive aged [state whether married or single] *a poor person belonging to the parish of in the county of into the poorhouse of and to accommodate and provide for such person in a proper manner, according to the rules and establishment of the said house.*

87. Order for the admission of a pauper into the poorhouse. 22 Geo. III. c. 83, No. 12. *By statute.*

Given under my hand this day of one thousand eight hundred and thirty one.

A. B. *Visitor,* [or *Guardian,* as the case may be].

I, A. B., *a justice of the peace for the county* [*riding, division, &c.,* as the case shall be,] *of having received proof upon oath before me, that a poor person receiving weekly relief from the parish, &c.* [as the case shall be,] *of is a person of very decent and orderly behaviour, do hereby direct the guardian* [or, *overseer,* if no guardian,] *of the said parish, &c. to omit putting the badge upon the coat,* [or, *gown,* if a female] *of the said and to excuse his* [or, *her*] *wearing the same as long as he* [or, *she*] *shall continue to behave orderly and decently.*

88. Justice's direction to excuse a poor person wearing the badge. Gilbert's Act, 22 Geo. III. c. 83, sched No. 13. (*a*) *By statute.*

Dated this day of

A. B.

[See also 15 and 16, printed in schedule, 22 Geo. III. c. 83, and *Chitty's Col. Stat.* 815, directing the modes of adjusting the parish accounts, and the orders and by-laws to be observed in poor-houses.]

(*a*) A subsequent act prohibits a badge in any case.

4. Forms relating to the Relief and Ordering of Poor.

89. Commitment of a pauper, maintained in a workhouse, for disorderly conduct, under 55 Geo. III. c. 137, s. 5.

County of } To the Governor or Keeper of the House of Correction at in
to wit. } the County of , or to his Deputy.

Receive into your custody the body of G. H., *herewith sent you, brought before me,* A. B., *esquire, one of her Majesty's justices of the peace in and for the said county, charged and convicted before me, the said justice, upon the oath of* C. D., *master or governor of the workhouse of the parish of of having been guilty of an offence against a certain act of parliament made and passed in the fifty-fifth year of his late Majesty King* George *the Third, intituled "An Act to prevent Poor Persons in Workhouses from embezzling certain Property provided for their Use," to alter and amend so much of an act of the thirty-sixth year of his present Majesty as restrains justices of the peace from ordering relief to poor persons in certain cases for a longer period than one month at a time, and for other purposes therein mentioned relating to the poor; that is to say, for that he, the said* A. B., *being a person maintained in a certain public workhouse established for the relief, maintenance, and employment of the poor, to wit, the workhouse of the parish of in the said county, did on the day of refuse to work at a certain work, occupation, or employment, suited to his age, strength, and capacity, to wit* [state the particular facts, or *that the said* G. H. *was on the day of guilty of drunkenness*], *against the statute in that case made and provided, and him therefore safely keep in your safe custody, without bail or mainprize, to hard labour for the space of* [any time not exceeding twenty-one days], *and for so doing this shall be your sufficient warrant.*

Given under my hand and seal, at in the county aforesaid, this day of in the year of our Lord one thousand eight hundred and forty-four.

A. B. (*L. S.*)

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90. Commitment of a person for misbehaviour in a workhouse, under 50 Geo. III. c. 50, s. 5.

County of } To the Governor of the House of Correction, Cold Bath Fields,
to wit. } or to his Deputy.

Receive into your custody the body of G. H., *herewith sent you, brought before me,* A. B., *esquire, one of her Majesty's justices of the peace in and for the said county, by and charged and convicted before me, the said justice, upon the oath of for that he the said* G. H., *being a person maintained in a public workhouse, to wit, the workhouse of and in the parish of in the said county of established for the relief, maintenance, and employment of the poor, was on the day of guilty of* [drunkenness] *and other misbehaviour in the said workhouse, against the statute, &c.: And the said* G. H. *having been thereof lawfully convicted before me, the said justice, of the said offence: Therefore the said* G. H. *safely keep in your said custody, there to remain, without bail or mainprize, for the space of* [any time not exceeding twenty-one days], *and during such time to be kept to hard labour, and for so doing this shall be your sufficient warrant.*

Given under my hand and seal, this day of one thousand eight hundred and forty-four.

A. B. (*L. S.*)

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5. Forms relating to Overseers' Accounts, &c.

91. Account book of *workhouse* poor.

V. Forms relating to Overseers' Accounts, &c.

An Account of all Paupers admitted into Workhouse.

Names.	Age.	When admitted.	Reason why.	By whose Order.	Discharged.	Why.	Discharged by whose Order.	Remarks.
Adkins, John.	51	21 Feb. 1836	Suddenly dangerously ill.	Overseer A. B.	17 Oct. 1836	Recovered	Overseer A. B.	Still weak and requires relief as an out-door pauper.
Armstrong, T.	44	8 Mar. 1836	Broke a leg by fall from horse.	Overseer C. D.	25 Sep. 1836	Recovered	Overseer C. D.	

5. *Forms relating to Overseers' Accounts, &c.*

92. Workhouse book.

Another Book called "Workhouse Book," kept in London.

Ward, No. 1.	Names of Paupers.	1830. Times of being in the house are denoted by the |				
		Jan. 1.	*Jan.* 2.	*Jan.* 3.	*Jan.* 4.	*&c. &c.*
	Adams, James	|	|	|	|	
	Alderson, Jno.	|	|	|		
	Annesley, Thos.	|	|			
	&c. &c. &c.					

Clerks' Hall, Wood-street, December, 1830.

To the Churchwardens and Overseers of the Poor, or Vestry Clerks.

93. Notice requiring churchwardens, &c. in London, to return lists of poor children, &c.

Whereas by an act of parliament passed in the second year of the reign of his late Majesty King George *the Third, intituled, "An Act for the keeping regular, uniform, and annual registers of all parish poor infants under a certain age within the bills of mortality;" and also by another act, passed in the seventh year of his late Majesty, intituled, "An Act for the better regulation of the parish poor children of the several parishes therein mentioned, within the bills of mortality," it is enacted, That the respective churchwardens and overseers of the poor of the said parishes shall keep a register book ruled and headed on each page, agreeable to the schedules annexed to the said acts, of all infants under their care, from their birth or time of admission into the workhouses or parish houses, until apprenticed out or otherwise discharged; and that, at the expiration of each year, the names of all such children as are then remaining under their care shall be transferred to the register of the next year, under their proper dates and description in which they stand in the preceding register, previous to any further entry; so that the register of each year shall contain a full and distinct account of the whole number of parish poor children under their care in the course of the year, without being intermixed with the deaths or discharges of any of the preceding years. And also, that exact copies of such registers, ending the thirty-first of* December *in every year, shall be transmitted to the master and wardens of the company of parish clerks, on or before the fifteenth day of* February *following.*

In order that such registers and copies of registers may be correctly made, the master, wardens, and court of assistants have directed that proper forms be printed agreeable to the schedules of the said acts, and sold only at their hall, in Wood-street, Cheapside, (*a*) *and that attendance be there given for such purpose, and for receipt of the returns on* Tuesday *afternoons from three to five o'clock, and on* Thursday *mornings till one o'clock.*

And whereas several parishes have neglected to make their returns within the time limited; and others have made returns not agreeable to the act, which has occasioned much delay in making up the general abstract, notice is hereby given, that the master and wardens of the said company are determined to put the penalties in force against such churchwardens and vestry clerks, who do not in future make their returns correctly by the fifteenth of February, *as required by the said acts. The penalty for neglecting is five pounds.*

J. F., *Clerk.*

[N.B.—By an order of a committee of the House of Commons, it is required that returns of parish apprentices be in future correctly made agreeable to schedule E. of the before-mentioned act of the seventh George the Third.]

(*a*) See the form.

5. *Forms relating to Overseers' Accounts, &c.*

94. Overseers' account of infant poor accordingly.

Annual Register of the Parish Poor Children until they are apprenticed out, from the 1st day of January to the 31st day of December, of the Parish of St. Dunstan in the West, London (where there is a Workhouse or Parish-house), according to the Acts of Parliament of the Second and Seventh of his Majesty King George the Third.

Year, 18 .

	Name of the Child. If a Foundling, mark . F. If a Bastard . . . . B. If a Casualty . . . . C. If the same child is taken in a second time, mark the second entry of the name . . . 2 If a third time . . 3, &c.
Y. M. D.	Age real or reputed at the time when received. Years . Y. Months . M. Days . . D.
	If born in the workhouse, when.
	If not born in the workhouse, when admitted.
£. s. d.	If money be received with any child, what sum, such sum not to be transferred from year to year.
	When died in the workhouse.
	When sent from the workhouse, and by whom nursed till sent.
	What work children past six years of age are employed in. If can read r If can say his or her prayers p If both r p
	When sent to the hospital for exposed and deserted young children.
	If discharged from the parish, to whom delivered and where living. If removed or passed, to what place.
	Nurse's name to whom delivered to be nursed. If a wet nurse, mark . W. If a dry nurse . . . D. If the nurse dies or is changed, write the name of the new nurse under the former. If nursed by the mother, mark M.
	Place where the nurse lives. In what place, or near what sign, so as to be found.
	Price of nursing each week.
£. s. d.	Reward given to nurses.
	If died at nurse, when.
	If past six years of age, and brought to the workhouse, mark W. If discharged, mention to whom, and where living. If apprenticed, mention folio of the register of apprentices.

N.B. These columns occupy a folio sheet under the titles as above. See form prescribed in schedule, 7 Geo. III.

[Name of Parish.]

A General Account or Balance Sheet kept and delivered by the Parochial Officers of a Parish in London.

An Account of the Receipts and Expenditure of Messrs. A. B. *and* C. D., *Overseers of the Poor, from Lady-day,* 1829, *to Lady-day,* 1830.

MESSRS. E. F. AND G. H'S. ARREARS.

	Assessments uncollected.	Serjeants' Inn uncollected.	Other Inhabitants uncollected.	Collected.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.
Ending at Midsummer, 1822	126 0 9	89 12 11	36 7 10	20 0 0
Michaelmas . .	150 9 2	89 12 11	60 16 3	13 13 7
Christmas . . .	149 4 0	82 15 0	66 9 0	32 12 0
Lady-day, 1832 .	247 3 0	82 15 0	164 8 0	128 16 0
£	672 16 11	344 15 10	328 1 1	195 1 7

The Amount collected, viz. £195 1s. 7*d.* paid to Mr. A., to Balance his Account.

MESSRS. A. B. AND C. D.'S RATES AND RECEIPTS.

	Assessments.	Serjeant's Inn uncollected.	Other inhabitants uncollected.	Collected.	Totals.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
1 Quarter to Midsummer, 1823	843 0 0	82 15 0	27 2 0	733 3 0	
1 ditto to Michaelmas . . .	843 0 0	82 15 0	48 16 0	711 9 0	
1 ditto to Christmas	841 14 0	82 15 0	60 9 0	698 10 0	
1 ditto to Lady-day, 1824 . .	838 9 0	82 15 0	80 4 0	675 10 0	
£	3366 3 0	331 0 0	216 11 0	2818 12 0	2818 12 0
To cash received for Illegitimate Children					41 4 0
for Maintenance of Paupers					42 13 11
of E. F. late Overseer, his Balance					0 15 1
of G. H.					7 17 9
from Guildhall, (a Fine)					0 8 0
£					2911 10 9

DISBURSEMENTS.

	£. s. d.	£. s. d.
To Mr. N. O., Maintenance of Poor in House, 12 Months		1100 13 9
The Out Door Poor (paid every Fortnight) .		798 1 3
Children at Nurse, at Whetstone		197 2 10
——— with their Friends		44 10 0
Insane Poor		146 2 10
Clothing for Out Door Poor .	63 15 1	85 12 9
Mr. N. O.	21 17 8	
Undertaker		5 12 6
Repairs: Bricklayer, Carpenter, Plumber, &c.		48 1 8
Apothecary, in London, 1½ years	47 5 0	52 10 0
——— in Country, 1 year .	5 5 0	
Law Expenses, Appeals		16 0 2
Salaries, Vestry Clerk		175 0 0
——— Collector		48 0 0
——— Beadle		26 10 0
Insurance, Rent, Rates, Water, Gas Company, &c.		22 14 6
Visitation to Whetstone		14 11 2
Printing, Stationery, Grocery, Coals, Candles, &c.		30 1 2
London Workhouse		27 5 0
		2838 9 7
Balance in hands of Mr. A. B.	25 19 8	73 1 2
" " Mr. C. D.	47 1 6	
Since paid to present Overseer		
		£2911 10 9

The foregoing Accounts were Audited the 30*th day of June,* 1824, *and allowed at a Vestry held on the* 8*th day of July following.*

Y. Z. Vestry Clerk.

5. *Forms relating to Overseers' Accounts, &c.*

96. The allowance of overseer's account, under 50 Geo. III. c. 49. (a)

p. 368.

County of } *Perused, allowed, and approved of, the above account, (the same having been first signed and verified on oath by* A. B. *and* C. D. *churchwardens, and* E. F. *and* G. H., *overseers of the poor of the*
to wit. }
said parish of) *by and before us, two of her Majesty's justices of the peace in and for the said county of the day of one thousand eight hundred and* (a)

L. M.
N. O.

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p. 367.

97. Summons to overseers of the poor to verify and pass their accounts before two justices, under the 17 Geo. II. c. 38.

To *A. B.* and *C. D.*, late Overseers of the Poor of the parish of *Barking*, in the county of *Essex*, for the year commencing one thousand eight hundred and forty-four, and ending one thousand eight hundred and forty-five.

County of Essex, *to wit.* } *We,* G. H. *and* I. K., *esquires, whose hands and seals are hereunto set and subscribed, two of her Majesty's justices of the peace, (one whereof is of the* quorum) *inhabiting in* [or *near*] *the said parish of* Barking, *in pursuance of the statutes made for the relief of the poor, and for obliging the overseers to pass their accounts, do will and require you forthwith, on sight hereof, to make up and perfect your annual accounts in writing of all sums of money received and disbursed in execution of your said offices as overseers of the poor aforesaid, for and towards the relief and maintenance of the poor of the said parish of* Barking: *and, being so perfected, that you do bring the same to us, the said justices, at on the day of next, at eleven of the clock in the fore* [or *after*] *noon of the same day, and verify the same on oath; and that, in the meantime, you present your said accounts to the inhabitants of your said parish hereunder named, whom, or any three of whom, we desire to meet together and examine the said accounts, and report their opinion thereof to us in writing at the time and place aforesaid.*

Given under our hands and seals the day of in the year of our Lord one thousand eight hundred and thirty-one.

G. H. (*L. S.*)
I. K. (*L. S.*)

Inhabitants above referred to.
O. P., Q. R., S. T., U. V., W. X., &c.

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p. 367.

98. Information against an overseer for refusing to account, &c. under 17 Geo. II. c. 38.

County of Essex, *to wit.* } *The information and complaint of* A. B., *overseer of the poor of the parish of* Barking, *in the county of* Essex, *made on oath before us,* C. D. *and* E. F., *esquires, two of her Majesty's justices of the peace in and for the said county, this day of in the year of our Lord one thousand eight hundred and thirty-one, who saith that* L. M., *now* [or *late*] *of the parish of* Barking *aforesaid, yeoman, was on the twenty-fifth of* March, *in the year of our Lord one thousand eight hundred and thirty-one, at the parish aforesaid, duly appointed one of the overseers of the poor for the said parish of* Barking, *and duly accepted and acted in the execution of his office, and that on the day of last past, he the said* A. B., *and one* G. H., *of the said parish of* Barking, *yeoman, were duly appointed to succeed the said* L. M., *and one other person, as overseers of the poor of the said parish of* Barking, *and that he, the said* L. M., *duly took upon himself and acted in pursuance of his said appointment; and that after the passing of the statute in that case made and provided, and after the said* L. M. *ceased to be an overseer of the poor of the said parish, and within fourteen days after he the said* A. B. *and* G. H. *were so nominated and appointed overseers to succeed the said* L. M. *and the said other person as overseer of the poor of the said parish, that is to say, on the day of* (A. D. *the said* A. B. *and* G. H. *requested the said* L. M. (*who then and there had notice of the premises*) *according to the statute in that case made and provided, to deliver in to the said* A. B. *and* G. H. *as such succeeding overseers, a just, true, and perfect account in writing, fairly entered in a book or books kept or to be kept for that purpose, and signed by the said* L. M. *under his hand, of all sums of money by him received, or rated and assessed, and not received, and also of all goods, chattels, stock and materials,*

(a) This allowance must be at the *foot* of the account.

that had been in the hands of the said L. M. *or in the hands of any of the poor, in order to be wrought, and of all monies paid by the said* L. M. *as such overseer, and of all things concerning his said office, during the year, and also to pay, &c.* [pursuing the duties in the 2d section]. *Yet the said* L. M. *then and there and from thence hitherto wholly refused and neglected to deliver unto the said* G. H. *his said successor, or to make or yield up to his said successors, or either of them, such account verified as aforesaid, within the time limited or appointed by the said statute; contrary to the statute in that case made and provided. And therefore he, the said* A. B., *prays that justice may be done in the premises.*

5. *Forms relating to Overseers' Accounts, &c.*

A. B.

Before us, C. D.
E. F.

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p. 367.

99. Commitment of an overseer for neglecting to account, founded on the foregoing information, and on 50 Geo. III. c. 49, s. 1.

To the Constables of the parish of *Barking*, in the said county, and to the Keeper of the Common Gaol at *Chelmsford*, in the said county of *Essex*.

County of Essex, *to wit.* } *Whereas information and complaint upon oath have been made before us,* C. D. *and* E. F., *esquires two of her Majesty's justices of the peace in and for the said county of* Essex, *by* A. B., *one of the overseers of the poor in the said parish of* Barking, *in the said county* [insert the whole of the information, and proceed as *suprà*, inserting the words, "contrary to the statute in such case made and provided" and then conclude thus:] *These are therefore to charge and command you, the said constable, forthwith to apprehend the said and him safely to convey to the common gaol of the said county of* Essex, *at* Chelmsford, *in the said county, and there deliver him to the keeper thereof, together with this precept; and we do hereby also command you, the said keeper of the said common gaol, to receive and him there safely keep until he shall have given such account, and shall have paid or yielded up such money, goods, chattels, and other things in his hands as aforesaid.*

Given under our hands and seals, at in the said county of Essex, *the day of in the year of our Lord one thousand eight hundred and forty-four.*

C. D. (*L. S.*)
E. F. (*L. S.*)

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p. 368.

100. Warrant of distress for balance found due from late overseers.

To *L. M.* and *N. O.*, Churchwardens, and *P. Q.* and *R. S.*, Overseers of the Poor of the parish of in the county of *Devon*.

County of Devon, *to wit.* } *Whereas at a special sessions holden at the parish of in the county of* Devon, *before* M. B. *and* J. B., *two of her Majesty's justices of the peace in and for the said county, and usually dwelling near the parish of in the said county, which said special sessions were holden for the purpose of enabling the churchwardens and overseers of the said parish of to submit their annual accounts to the said justices there assembled, and which said sessions were duly held within fourteen days after other overseers had been appointed to succeed* R. P. *the churchwardens, and* J. H. *and* J. P. *the late overseers of the said parish of they the said* R. P., J. H., *and* J. B. *did then and there produce and submit to the said justices their annual accounts, and the same were then duly allowed; and by the said accounts it appeared that there is a balance in their hands due to the said parish of . Now we the undersigned, being two of her Majesty's justices of the peace, acting in and for the said county having examined the said accounts, do adjudge, that there is still remaining in the hands of the said* R. P., J. H., *and* J. B., *on balance of their said accounts of money by them received for and towards the necessary relief of the poor of the said parish for the year ending over and above all the sums of money by them paid, the sum of which they, the said* R. P., J. H., *and* J. P. *have not, nor hath either of them, delivered or paid over to the churchwardens and overseers of the poor of the said parish for the present year, although more than ten days have elapsed since the same was so submitted and allowed, and that the sum of is due from them upon their said accounts: These are, therefore, in her Majesty's name, and by virtue of the statute in that case made and provided, to will and require you, the said* L. M. *and* N. O., *the present churchwardens, and* P. Q. *and* R. S., *the pre-*

5. *Forms relating to Overseers' Accounts, &c.*

sent overseers of the poor of the said parish of *or some or one of you, to levy the said sum of* *so due from the said* R. P., J. H., *and* J. P., *upon their said accounts, by distress and sale of the goods and chattels of the said* R. P., J. H. *and* J. P., *or either of them, rendering to them the overplus; and for want of such distress, that you, or some or one of you, do certify the same unto us, to the end there may be such further proceedings therein as by law is required.*

Given under our hands and seals, at *in the said county of* Devon, *the day of* *in the year of our Lord one thousand eight hundred and forty-four.*

A. B. (*L. S.*)
C. D. (*L. S.*)

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p. 385.

101. Notice of appeal against allowance of overseers' accounts(*a*).

To *A. B.* and *C. D.*, Churchwardens [or "*late Churchwardens*"], and *E. F.* and *G. H.*, Overseers [or, "*late Overseers*"] of the Poor of the parish of in the county of and to *I. K.* and *L. M.*, esquires, two of her Majesty's justices of the peace in and for the said county.

I, N. O, *an inhabitant of the said parish of* *in the said county of* *and rated and assessed in and by a rate or assessment, towards the relief of the poor of the said parish, for the year during which the said* A. B. *and* C. D. *and* E. F. *and* G. H. *acted as overseers of the poor of the said parish, do hereby give you, and each and every of you, notice that I intend to appeal, and shall appeal at the next general quarter sessions of the peace, to be holden at* *in and for the said county of* *against a certain account of you the said churchwardens and overseers of the poor of the said parish, and alleged to have been allowed by you the said* I. K. *and* L. M. *as such justices as aforesaid, on the* *day of* *in the year of our Lord one thousand eight hundred and thirty-one last past; and my causes and grounds of appeal, &c. against the said accounts and the said supposed allowance thereof are,* first, *that, &c.* [here state the objections to the accounts. See form as to Rate, p. 1344, and as to order of removal, *post.*]

Dated this *day of* *in the year of our Lord one thousand eight hundred and thirty-one.*

N. O.

After the usual recital (see *post*, Order of Removal.)

102. Order of sessions disallowing the accounts of overseers.

On hearing the appeal of T. S., *an inhabitant of* Bradford, *in the county of* W., *rated and assessed to the relief of the poor of the said parish, during the year ending on 26th day of* March *last, against the annual accounts of* C. S., *late one of the churchwardens,* E., D., F., *three of the late overseers of the said parish, which said accounts had been delivered to the succeeding overseers, pursuant to* 17 Geo. II. c. 38, *and submitted to* L., M., *and* M., *three of her Majesty's justices of the peace in and for the said county, at a special sessions held for that purpose, on the fifth day of* April *last, pursuant to the* 50 Geo. III. c. 49, *and on hearing the witnesses for the appellants and counsel on both sides, the respondents calling no witnesses, this court doth order that the following charges, entered by the said churchwardens and overseers in their said accounts, or payments by them, be wholly disallowed; that is to say—*

By W. T.'s *bill of costs as by order of sessions* - - -	£87	6*s.*	0
By J. B., *as per bill of costs for defending an appeal* -	103	16	10

which said charges amount together to the sum of 191*l.* 2*s.* 10*d.* *And this court doth order the said* C. S. *and* E. D. *and* F. *forthwith on notice of this order to pay the said sum of* 191*l.* 2*s.* 10*d.* *to the present churchwardens and overseers of the poor of the said parish, or some or one of them, to be by them carried to the account of the rate for the relief of the poor of the said parish, and paid, applied, and accounted for, according to law; and this court does further order the sum of* 74*l.* 7*s.* 9*d.* *shall be paid by the said respondents to the said appellant, for and towards his costs incurred in this appeal.* *By the Court.*

(*a*) See 41 Geo. III. c. 23, s 4, *ante*, 256.

VI. Forms relating to Apprentices.

6. *Forms relating to Apprentices.*

See forms prescribed by 28 Geo. III. c. 48, schedule, *ante*, 608.

103. Form of indenture of binding apprentice to a chimney-sweeper, and of approbation thereof by justices.

See form prescribed by 32 Geo. III. c. 57, schedule B., *ante*, 611.

104. Form, in parish indenture, of order of two justices, directing a parish apprentice to continue with widow of master.

See form prescribed by 32 Geo. III. c. 57, schedule C., *ante*, 611.

105. Form of like order by a separate instrument.

See form prescribed by 32 Geo. III. c. 57, schedule D., *ante*, 612.

106. Form of assignment of a parish apprentice with the consent of two justices by indorsement on the indenture or counterpart.

Idem, schedule E., *ante*, 612.

107. Form of like assignment by a separate instrument.

FORM FOR REGISTERING APPRENTICES, GIVEN BY STATUTE, *ante*, p. 612.

108. Form of register of every apprentice to be kept by overseers.

Number.	Date of Indenture.	Name of the Apprentice.	Sex.	Age.	His or her Parent's name.	Their residence.	Name of persons to whom bound or assigned, as the case may be.	His or her Trade.	His or her Residence.	Term of the Apprenticeship or Assignment	Apprentice or Assignment Fee.	Overseers, Parties to the Indenture or Assignment.	Magistrates assenting.
													(*To be signed by themselves.*)

p. 617.

109. Assignment of apprentice on removal of the master from the county, or forty miles from the parish.

County of Devon, *to wit.* } *Whereas the master of the apprentice in the within indenture mentioned, is about to quit his present residence at in the county of* Devon, *and to remove out of the same county of* [or, *forty miles from the place of residence*] *where the said was bound apprentice, and has given fourteen days' previous notice, in writing, to the churchwardens and overseers of the poor of the parish of* (*a*) *And whereas the said the apprentice, as also the said and the overseers of the poor of the said parish of did on the day of the date hereof appear before us, the justices aforesaid, and upon inquiry we*

(*a*) The parish in which the apprentice resides at the time of removal.

6. *Forms relating to Apprentices.*

do find (a) And we, the said justices, do hereby order that the said the apprentice aforesaid, may (b) And we do further order that the said the former master of the said do pay to the intended new master of the said the sum of as and for the expense of assigning or binding of the said apprentice to the said as aforesaid, being, in our judgment, a reasonable part and proportion of the original apprentice fee, paid to the said on h being bound an apprentice to the said

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty-six.

[To be signed by the churchwardens, overseers, and parties.]

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p. 616.

110. Justices' order to bind a poor apprentice within forty miles, under 56 Geo. III. c. 139.

County of to wit. } *Whereas* G. H. *and* I. K., *the overseers of the poor of the parish of* L. *in the county of have, on this day of in the sixth year of the reign of our sovereign Lady Queen Victoria, at the parish of in the said county, brought before us,* A. B. *and* C. D., *two of her Majesty's justices assigned to keep the peace in, and acting in and for the said county of* O. P., *a poor child of the age of (c) ten years and upwards, belonging to the said parish of in the said county, and whose parents,* M. P. *and* N. P., *are not able to maintain such child: and the said* G. H. *and* I. K., *as such overseers of the poor of the parish of aforesaid, have proposed to us, the said justices, to bind such child to be an apprentice to one* Y. Z., *of the parish of in the county of and residing within the distance of (d) miles from the parish and place to which the said child belongs, and as an apprentice with him the said* Y. Z. *to dwell and serve until the said* O. P. *shall attain the age of years (e) according to the statutes in such case made and provided: And whereas we, the said justices, having inquired into the propriety of binding such child apprentice to the said* Y. Z., *and having particularly inquired and considered whether such person doth reside or have his place of business within a reasonable distance from the place to which such child doth so belong as aforesaid, having regard to the means of communication between such places, and whether any circumstances make it fit in the judgment of us, the said justices, that such child should be placed apprentice at a greater distance. (f) And whereas the parents of the said* O. P. *reside at near to the parish of* L., *we have particularly inquired of them as to the distance of the residence and place of business of the said* Y. Z. *from the parish of* L., *and having also inquired into the circumstances and character of the said* Y. Z., *we, the said justices, upon such examination and inquiry, do think it proper that such child should be bound apprentice to the said* Y. Z. *Now therefore we, the said justices, do declare that the said* Y. Z. *is a fit person to whom the said* O. P. *may be properly bound apprentice as aforesaid; and we do, therefore, hereby order that the said* G. H. *and* I. K., *the overseers of the parish of aforesaid, are at liberty to bind such child apprentice accordingly.*

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty-one.

A. B. (*L. S.*)
C. D. (*L. S.*)

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p. 616.

111. Allowance of the indenture by justices (g.)

We, A. B. *and* C. D., *esquires, whose names are hereunder written, two of her Majesty's justices of the peace for the county of (whereof one is of the quo-*

(a) Here insert whether the apprentice is to continue with his master in another parish, or whether to be assigned or discharged.

(b) Here insert as above.

(c) The child's age must exceed nine years.

(d) If in another county, insert *forty*.

(e) Or, if a female, add, or *until the time of her marriage, which shall first happen.*

(f) If the father and mother be examined, state so; if dead, omit all that part which relates to the examination of the parents as to the distance of the intended master's residence.

(g) The clause within the brackets is necessary whenever the binding parish is different from that in which the apprentice is to be bound.

rum), *do consent to the putting forth* O. P., *of* *as an apprentice, according to the intent and meaning of this indenture;* [*it having been proved upon oath before us, that due notice, in writing, has been given by the overseers of the poor of the parish of* (*the parish binding such apprentice*), *to the overseers of the poor of the parish of* (*the parish in which such apprentice is to serve*), *of such binding being intended*] [or *it having been admitted by* A. B., *present before us, and one of the overseers of the parish of* *that he had received due notice, in writing, of the intended binding,*] *and do sign this our allowance of such apprenticeship before the same hath been executed by any of the other parties thereto, in pursuance of the statute in such case made and provided.* 6. *Forms relating to Apprentices.*

Dated this *day of* *in the year of our Lord one thousand eight hundred and thirty-one.*

Signed, sealed, and delivered, in the presence of } I. K. L M.

A. B.
C. D.

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112. Indenture of apprenticeship.

This indenture, made the *day of* *in the first year of the reign of our sovereign lord* William *the Fourth, by the grace of God of the United Kingdom of* Great Britain *and* Ireland, *King, defender of the faith, and in the year of our Lord one thousand eight hundred and thirty-one, Witnesseth, that* R. S. *and* T. V., *churchwardens of the parish of* *in the county of* *and* W. X. *and* Y. Z., *overseers of the poor of the said parish* (*by and with the consent of two of his Majesty's justices of the peace for the said county of* *whose names are in the margin of this indenture subscribed, and also by and with the consent of* *and* *two of his Majesty's justices of the peace for the county of* *whose names are also in the margin of this indenture subscribed, and by virtue and in pursuance of an order in writing hereon indorsed, made by and under the hands and seals of the said* *and* *justices of the peace of the said county of* *in pursuance of the statute in that case made and provided, bearing date the* *day of* *instant,* (*a*) *have put and placed, and by these presents do put and place* *aged fourteen years, or thereabouts, a poor child of the said parish of* *apprentice to* *of the parish of* *in the county of* *with him to dwell and serve, from the day of the date of these presents, until the said apprentice shall accomplish his full age of twenty-one years,* (*b*) *according to the statute in that case made and provided: During all which term the said apprentice his said master faithfully shall serve, in all lawful businesses, according to his power, wit, and ability, and honestly, orderly, and obediently, in all things demean himself towards his said master, and all his, during the said term; And the said* *for himself, his executors, and administrators, doth covenant and grant, to and with the said churchwardens and overseers of the poor, and every of them, their and every of their executors and administrators, and their and every of their successors for the time being, by these presents, that he the said* *the said apprentice in* *shall and will teach and instruct, or cause to be taught and instructed, in the best way and manner that he can; And shall and will, during all the term aforesaid, find, provide, and allow unto the said apprentice, competent and sufficient meat, drink, and apparel, lodging, washing, and all other things necessary and fit for an apprentice: Provided always,* (*c*) *that the said last-mentioned covenant on the part of the said* *h* *executors and administrators, to be done and performed, shall continue and be in force for no longer time than three calendar months next after the death of the said* *in case he the said* *shall happen to die during the apprenticeship, according to the provision of an act passed in the thirty-second year of the reign of King* George *the Third, intituled,* "*An Act for the further regulation of Parish Apprentices,*" *and also of another act passed in the fifty-sixth year of his late Majesty, intituled,* "*An Act to regulate the Binding of Parish Apprentices:*" *And also shall and will so provide for the said apprentice, that he be not any way a charge to the said* *or parishioners*

(*a*) An indenture in which the date of the order is omitted is void, p. 677.

(*b*) If the pauper intended to be bound be a female, the alternative of marriage must be inserted, in pursuance of 18 Geo. III. c. 47, viz. *or until she shall marry, as shall first happen.*

(*c*) This provision is prescribed by the schedule, p. 611.

6. Forms relating to Apprentices.

of the same; but of and from all charge shall and will save the parish of harmless and indemnified during the said term.

In witness whereof the parties abovesaid to the present indenture interchangeably have set their hands and seals the day and year above-written.

(*L. S.*)
(*L. S.*)
(*L. S.*)
(*L. S.*)

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113. Justices' order for binding apprentice at upwards of forty miles distance.

County of } *Whereas* G. H. *and* I. K., *the overseers of the poor of the parish of in the county of have, on this day of in the*
to wit. } *first year of the reign of our sovereign lord the now King* William *the Fourth, at the parish of in the said county, brought before us,* A. B. *and* C. D., *two of his Majesty's justices assigned to keep the peace, acting in and for the said county of and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county,* O. P. *a poor child of the age of ten* (*a*) *years and upwards, belonging to the said parish of in the said county, and whose parents* M. P. *and* N. P. *are not able to maintain such child; and the said* G. H. *and* I. K. *as such overseers of the poor of the parish of aforesaid, have proposed to us the said justices, to bind such child to be an apprentice to one* Y. Z. *of the parish of in the county of he the said* Y. Z. *residing* (*b*) *out of the same county of aforesaid, at a greater distance than forty miles from the parish of aforesaid, to which such child so belongs as aforesaid; and the said parish of to which such child so belongs as aforesaid, being also more than forty miles from the city of London, and as an apprentice with him the said* Y. Z. *to dwell and serve until the said* O. P. *shall come to the age of years* (*c*) *according to the statutes in such case made and provided: And whereas we, the said justices, having now here inquired into the propriety of binding such child apprentice to the said* Y. Z., *and having particularly inquired and considered whether the place of business* [or *residence*] *of the said* Y. Z. *is within a reasonable distance from the place to which such child doth so belong as aforesaid,* (*having regard to the means of communication between such places.*) (*d*) *And having particularly inquired of* G. H. *and* I. K., *the parents of the said child, as to the said distance of the residence* [or *place of business*] *of the said* Y. Z., *and the means of communication therewith; having also now here inquired into the circumstances and character of the said* Y. Z. *And whereas also we, the said justices, have now here particularly inquired into and considered the grounds for allowing of the apprenticing of such child to the said* Y. Z, *so residing and having an establishment in trade, at a greater distance than forty miles from the said parish and place to which such child so belongs as aforesaid, we do hereby find the grounds following; that is to say,* (*e*) *And whereas also, on such examination and inquiry, we, the said justices, think it proper that such child should be bound apprentice to the said* Y. Z., *notwithstanding he the said* Y. Z. *resides* (*f*) *Now, therefore, we the said justices do declare, that the said* Y. Z. *is a fit person to whom the said child may be properly bound as apprentice as aforesaid; and we do therefore hereby order and direct that the said* G. H. *and* I. K, *the overseers of the poor of the parish of aforesaid, being the place to which such child doth belong, shall be and are at liberty to bind such child apprentice accordingly.*

Given under our hands and seals, this day of in the year of our Lord one thousand eight hundred and thirty-one.

A. B. (*L. S.*)
C. D. (*L. S.*)

(*a*) The child's age must exceed nine years.

(*b*) Or according to the facts, *having an establishment in trade at which it is intended such child should be employed.*

(*c*) Or, if a female, add, or *until the time of her marriage, which shall first happen.*

(*d*) If father and mother examined, state this, or if dead, say so; if not examined, omit the passage.

(*e*) Here set out the reasons, according to the fact, thus: *because it appears to us, that there is no person within the said distance of forty miles, to whom such child may be properly bound apprentice, &c.*

(*f*) Or, according to the facts, *has an establishment in trade at a greater distance than forty miles from the said parish and place to which the said child belongs as aforesaid.*

This form it seems must be prescribed by the commissioners, and the following might be adopted :—

6. Forms relating to Apprentices.

Whereas, before the making of the above indenture, the Poor Law Commissioners for England and Wales have ordered the following rules to be observed in apprenticing the children of poor persons, that is to say [here set out the rules, &c.] *and which said rules are now in force; we the said* A. B. *and* C. D., *justices as aforesaid,* [or one justice] *having duly inquired, do hereby certify that the said rules have been in all respects duly complied with.*

114. Form of certificate by justices that the rules of the commissioners have been complied with.

Signed,

VII. Forms relating to Removals.

Page 121.

114a. Form of order of removal of Irishmen, &c. By Statute.

To the constable of the parish of in the county of

to wit. } *Whereas complaint hath been made by the churchwardens and overseers of the poor of the parish,* [*township, &c.*, as the case may be,] *in the said county of unto us, whose names are hereunto set and seals affixed, two of her Majesty's justices of the peace acting in and for the said county (one being of the quorum), that a person born in* Scotland [or Ireland, or *the* Isle of Man, or Scilly], *hath become and is now actually chargeable to the said parish,* [*township, &c.*, as the case may be] : *and whereas upon examination of the said taken upon oath before us (which examination is hereto annexed), it doth appear and we do adjudge, that the said hath not gained a settlement in* England, *and that he hath a wife named and children,* videlicet, *neither of which children have gained any settlement in* England.

These are therefore to require you the said constable of the aforesaid, in the county of aforesaid, to convey said his wife and family aforesaid, to Scotland [or Ireland, or *the* Isle of Man, or Scilly], *in the manner directed by the justices of the said county of in pursuance of the provisions of a certain act made and passed in the fourth year of the reign of king* William the Fourth, *intituled* [here set out the title of the act].

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and forty-

[Here copy the regulations, &c., of the justices at sessions, as applicable to the removal of the party.]

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115. Form of examination of Irish, &c. By Statute.

to wit. } *The examination of taken on oath before us, two of her Majesty's justices of the peace acting in and for the county,* [*riding, city, borough, town corporate, division,* or *liberty*] *aforesaid, this day of in the year of our Lord one thousand eight hundred and forty- who on oath said, that according to the best of his* [or *her*] *knowledge and belief he* [or *she*] *was born in in that part of the united kingdom called* Scotland, [or Ireland, or in *the* Isle of Man, or Scilly,] *which he* [or *she*] *left about years ago, and hath done no act whereby to gain a settlement in that part of the united kingdom called* England, *and hath actually become and is now chargeable to the* [*parish*] *of in the county,* [*township, &c.*, as the same may be] *of* [*and that he hath a wife named and children, neither of which children have gained a settlement in* England.]

Sworn the day and year first above written, before us, }

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116. Information of overseers in order to remove a pauper.

County of } *The information and complaint of* G. H. *and* I. K. *churchwardens, and* L. M. *and* O. P. *overseers of the poor of the parish of in the county of unto us, two of her Majesty's justices of the peace in and for the county of one being of the* quorum, *who say that* E. F., *late of the parish of in the county of labourer, hath lately come into their said parish of not having obtained any legal settlement there, and hath become chargeable thereto. And that the last legal settlement of the said* E. F. *is in the said parish of in the said county of and that he ought by law to be sent thereunto, and they pray that justice may be done in the premises.*

to wit. }

Dated this day of

L. M.
O. P.

7. *Forms relating to Removals.*

117. Summons to the overseers of the parish to which it is intended to remove a pauper, to show cause against the order of removal. (a)

To the Churchwardens and Overseers of the parish of and to each and every of them.

County of } *You are hereby required to appear (if you shall think fit) before such of her Majesty's justices of the peace, for the said county of*
to wit. } *as shall be at the house of in in the said county of known by the sign of the* Red Lion, *at the hour of in the noon of the same day, to show cause why* E. F., *a pauper, actually chargeable to the parish of in the said county, should not be removed from the said parish of to your said parish of in the county of*

Given under my hand and seal this day of in the year of our Lord one thousand eight hundred and forty-

A. B., *Justice of the said County.*

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118. Warrant of two justices to bring a pauper before them, and be examined as to his settlement. (b)

To the Constable of the parish of

to wit. } *Forasmuch as complaint hath been made before us,* A. B. *and* C. D., *two of her Majesty's justices of the peace in and for the said county, by the churchwardens and overseers of the poor of the said parish of in the county aforesaid, that* E. F., *now resident in the said parish of hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him* [or *her*] *to be settled elsewhere, and that the said* E. F. *hath become chargeable to the said parish of and that his* [or *her*] *last legal settlement is the parish of in the said county.*

These are therefore to require you to bring the said E. F. *before us to be examined concerning the place of his* [or *her*] *last legal settlement, and to be dealt with according to law. Herein fail you not.*

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and forty-

A. B. (*L. S.*)
C. D. (*L. S.*)

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119. Summons to the pauper, to show cause against his removal.

To in the parish of in the county of

County of } *This is to summon you to appear (if you think proper) before us and such other of her Majesty's justices of the peace for the said county of*
to wit. } *as shall be present at on the day of at the hour of in the noon of the same day, to show cause why you, the said who have come to inhabit in the parish of and have become chargeable to the same without having gained a legal settlement therein, or producing a certificate acknowledging yourself to be settled elsewhere, should not be removed from the said parish of in the said county, to your said parish of as the place of your last legal settlement.*

Given under our hands this day of in the year of our Lord one thousand eight hundred and

A. B.
C. D.

VIII. Forms of Examinations.

120. The heading of each examination.

Devonshire, } *The examination of* J. S., *labourer, taken before the undersigned* A. G. *and* L. T., *two of her majesty's justices of the peace in and for the said*
to wit. } *county of upon the complaint of the overseers of* B., *in the said county of* Devon, *touching the chargeability and settlement of* M. N. *and his family, who on his oath saith—*

J. S.

(*Signed*) A. G.
L. T.

(a) This summons is not necessary, but it is recommended in cases where the settlement is doubtful, by which the expense attending an appeal may be very often saved.

(b) This may be issued by one justice to bring the pauper before two.

8. *Forms of Examinations.*

CHARGEABILITY.

121. Examination of the relieving officer.

I am the relieving officer of the Union. I know the pauper. He has lately come to inhabit and settle in the parish of within the said union, on the day of . He applied to me as relieving officer of the parish to give him relief. I found that he was destitute, and I gave him four loaves of bread (a) for himself, his wife, and four children, viz., Anne, James, William *and* Mary. *Since that time they have continued to receive the same weekly, at the expense of and chargeable to the said parish.*

122. Examination of the master of the workhouse.

The parish of A. *is one of the united parishes within the* T. *Union. I am master of the workhouse of that union. I know the paupers. They are now supported by the parish of* A. *in the workhouse, and have been since the day of The said parish of* A. *is charged with and defrays the expenses of the relief so given to them.*

123. Certificate of chargeability, 5 & 6 Vic. c. 57, s. 7. P. 1287.

This is to certify, that on the day of became chargeable to the parish of Bampton, *in the* Tiverton *Union, in the county of* Devon. *In token whereof I, the presiding chairman of the board of guardians of the said union, by which board the laws for the relief of the poor were, and still are, administered in the said parish, have signed, and I the clerk of the said board, have countersigned this certificate, and we have affixed the common seal of the said board hereunto, at a meeting held this day of one thousand eight hundred and forty*

A. B. *Chairman.*

Clerk to the Guardians (b).

Witness.

124. Certificate of chargeability. By Statute. P. 1310.

The board of guardians of the poor of the union [or *parish of*] *do hereby certify, that on the day of* A. B. *and his wife* C. B., *and his child* E. B., *became chargeable to the parish of in the said union* [or *to the said union*].

In testimony whereof the common seal of the said guardians is hereunto affixed at a meeting of their board this day of , 18

Signed, W. J., *Presiding Chairman of the said board.*

Countersigned, C. D., *Clerk* [or, *acting as Clerk*] *to the board of guardians of*

(*L. S.*)

125. Form of examination when the settlement relied on is that of *Birth.*

I produce a copy of the register of births for the parish of A. *in the county of . I have examined the same with the original which I saw in the custody of the Rev.* W. B. *officiating minister of that parish. It is a true copy.* [Set it out verbatim.] *I know the pauper. He was the lawful son of* John *and* Mary , *who lived together as man and wife, and were always reported to be so. At the time stated in the register,* John *and* Mary *were resident in the said parish. They had been so for some time before and after, and I have no doubt, therefore, the pauper was born in the said parish.*

I am the father of the pauper. He was born in the parish of about twenty three years ago. I cannot tell where I was born. I have never received any parish pay except when resident in the parish that gave it to me. I never did any act to gain a settlement, and I do not know where my settlement is. I do not know where my wife was born.

126. Settlement by *Marriage.*

I know the pauper. She is the wife of John . *They lived together as man and wife, and were reputed to be such.* John *was legally settled in the parish of* A. [Then state his settlement].

[If the wife is deserted, and is about to be removed to her maiden settlement, after stating as above]

(*a*) *Reg.* v. *Bickington*, p. 1054.

(*b*) By 7 & 8 Vic. c. 101, s. 66, no proof of the signature or seal is required, nor of the official character of the persons signing.

8. *Forms of Examinations.*

"*The pauper previous to her marriage was called* Mary . *She was born in the parish of* A." [Then the evidence as before of a birth or other settlement.]

127. Examination of the wife.

I am the wife of John . *When I was a single woman I was married to him on or about the day of at the parish church of . I have by him children, viz.* M. *aged ten, &c. My husband left me about a year ago, and I have not heard of him since, nor do I know where he is. I am unable to support myself or my children. I do not know where my husband was born, nor do I know where his place of settlement is, nor if he has any. I received from the relieving officer on the day of one thousand eight hundred and forty-four loaves of bread for myself, having applied to him for the same.*

128. Derivative settlement, stating pauper not to have been emancipated.

I am the son of John *and* Mary Thomas. *My father occupied a farm in the parish of* M., *in the county of* D. *It was called* Combe, *and he rented it under* M. B. *for three years. His last year ended on* Lady-day, 1844. *He resided in the parish all the time.* [This must be proved strictly. See *Precedents*, "*Settlement*," *and* "*Tenement*."]

When I was sixteen years of age, I hired myself as a servant to Wm. Viccing, *of* B., *in the said county. I lived with him ten months, and then went back to my father, and staid there for one year. I then went as a servant to* Mrs. H., *of* T., *in the same county, and lived with her about eleven months. I worked about for other people for some time, and on the* 1st January 1844, *I went again to my father, and lived with him in the house until* 1st May 1844, *when I became of age. I was not, nor had ever been, married at that time. I have done no act to gain a settlement for myself. I am not aware of my father having at that time any other settlement.* (a)

129. Hiring and Service.

I am now years of age. When I was about twenty years old, I went to live as a servant with R. A., *a farmer living in the parish of in the county of I offered myself to him as a servant in husbandry, and he agreed to take me and give me seven shillings a-week, either party to be at liberty to quit on giving a month's notice. I went into his service on the day of and continued in the same for one whole year.*

* *When I was so hired, I was unmarried* [or *widower*], *without child or children. I served him, and resided in the parish of* [*all the time*, according to the fact], *and my year of service was completed before the* 14th August, 1834. (b)

General hiring.

I was hired for a year and served the year. At the time of the hiring nothing was said about Sundays, nor the hours I was to work. I was to work for my master generally, and without any exception.

Hiring on trial.

On the day after Christmas, I asked farmer John Hunter, *who resided at Gunner's farm, in the parish of* A., *in this county, if he wanted a servant; he said he wanted a carter, and inquired if I was accustomed to horses. I told him I was. He said I was young, but that I might come on trial for a month, and if he liked me, he would keep me for the year, and give me* 6*l.* *wages, meat, and board and lodging in his house. I agreed to this, and went into his service the same day, and remained with him till Christmas-day following, when he paid me my wages and I left. Nothing more passed between us, and at the end of the month nothing was said, and I went on. I resided in his house all the time.*

I went to live as a servant with J. B., *of at Christmas,* 1820. *I agreed to serve him till Lady-day following for* 2*l.*, *as a general servant. I lived with him till Lady-day. At Lady-day nothing was said between us, and I continued to live with him as a servant for two years, and he paid me wages,* 8*l.* *for each year.*

*I lived with him as a weekly servant for twenty weeks; at the end of that time, I agreed to serve him as before for a year from that time. I continued with him for thirty-two weeks under that hiring.**

130. As to the service. Absence for any time explained.

During the year I was absent from my master for many weeks. I became ill,

(a) As no settlement can now be acquired by service, if the child returns to his parents' home before he is twenty-one he follows the father's settlement, though having lived any length of time in service during his minority, but since August, 1834.

(b) This contract is made in such various ways, that it is impossible to furnish specimens adapted to all cases. But the form from the * must be used in every instance. It must be remembered, that whatever is essential to the settlement must appear on the examination.

and unable to work, and my master sent me to my father's house, in the parish of H. *He paid for my board and lodging there. I remained there* [*nearly two months*]. *When I was well, I went back to my master's house, in the parish of* I., *and did not leave him again till my year was up. I slept in my master's house for the last month* [or *day*] *of my year,* [or, *till my year was up*]. *I slept at my father's said house for more than forty days during my illness.* 8. *Forms of Examinations.*

I served him the whole year, except the three last days. My master gave me leave to go and see my friends, before I went into another service. He paid me all my wages.

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131. Apprenticeship.

When I was ten years of age, I was living with my father, in the parish of A. *My father was a poor man, and unable to maintain his family. About that time I went with him to the overseers of the said parish, and they informed me that I should be bound out as an apprentice. After this, I went before the magistrates at The overseers of the parish were there, and a paper was drawn out and signed. Shortly after this, I was sent by the overseers to* Thomas Ley, *who resided in that parish, and occupied a farm there called* Benbow. *I served him as his apprentice from that time until I was twenty-one years of age. I was always treated by him as his apprentice, and he often called me so. I received no wages, and never made any agreement with him for service. He found me in clothes, &c. I resided in his house almost the whole time, and I slept there on the last day before I came of age. I left him without any notice. My master and I talked on the subject, and he told me several times that I should be out of my time on the day I left him. I never, during my apprenticeship, slept for forty days in any other parish. I never had possession of the indenture of apprenticeship. The other farmers of the parish often spoke to me as Farmer* Ley's *apprentice.*

Settlement by apprenticeship.

If the deed is not produced, the examination must show the search made for it. If a parish apprenticeship :—

I am the overseer of the parish of Bampton. *I know* [pauper]. *I was present when he was bound out by an indenture by our parish as an apprentice to* J. L., *of our parish. I have searched the parish chest, and cannot find the indenture. All the parish deeds, books, and other papers, are kept in that chest. None of the churchwardens and overseers keep any of the parish books or papers. I have inquired of all my brother officers, and I can find no such indenture. I have not got it, though I have searched for it. The indenture was allowed by two justices of the peace.*

Search for Indenture.

The wife or executor of master to show a search for the indenture.

I am the wife of L. J., *of the parish of My husband died six years since. I have all his papers. I have searched among them for the indenture of* [pauper]. *I cannot find it; and if he ever had any, I believe it is lost. The pauper lived with my husband as an apprentice for many years, and always slept in our house at .*

Examination of the attesting witness.

The relation of master and apprentice must be created by DEED.

If the deed is produced, then the examination will be :—

I am the attesting witness to this indenture of apprenticeship, now produced, and bearing date the day of 1844. *On that day I saw* A., B., C., *and* D., *the churchwardens and overseers of* Bampton, *sign and deliver that deed; at the same time I also saw* E. *and* F., *two justices of the peace, allow the same under their hands and seals, as now appears in the indenture. The indenture is as follows:* [Set it out at length.]

His absence accounted for.

If the attesting witness is absent :—

I have made inquiry for A. B., *attesting witness to the indenture now produced. I have inquired at his late residence in and I hear that he has left this kingdom. I have made other inquiries for him, and I believe he is not within this county, and I am wholly unable to procure his attendance. * I am well acquainted with his writing, and I believe the words* 'John Souter,' *in the said indenture, to be his handwriting.*

If he is dead,

I knew A. C., *the attesting witness to the indenture now produced. He died on the* 1st May *last.* [Then state the *signature.*]*

8. *Forms of Examinations.*

132. In cases where the service has been with another master.

Before my time was out, when I was about fifteen years of age, my master agreed, in my presence, with M., *that I should serve him as an apprentice for the remainder of my time, and I did so; and during all that time I resided with* M. *in the parish of* N., *as his apprentice; and never returned to my former master, and slept in the parish of* A. *till after I was out of my time.*

133. If a parish apprentice serves with another master.

I was again taken before the justices at on The overseer of the parish of A., *my master, and* M., *were present, and my indentures, as I understood, were produced, and they all signed them, and I went and lived with* M. *as his apprentice from that time.*

134. By renting or occupying a tenement under 13 & 14 Car. II.

In the year 1818 *I took a house, No.* 1, Waterloo Place, *of* J. T. *It was in the parish of* A., *and of the yearly value of* 10*l.* *I occupied it for more than forty days. I resided in the said parish during all that time. In* 1818 *I took several tenements, and occupied them together; they were worth* 10*l. a year. One of them was situate on* Bampton Downs, *and belonged to* J. G, *value* 4*l.* *At the same time I occupied some potato ground of* J. G. *on his farm, which was of the yearly value of* 3*l.* *This was in the parish of* S. *I also agreed with him that he should find me a cow, which was to be fed exclusively on pasture land on his farm in the said parish, and that was of the yearly value of* 8*l.* *All these I occupied and held together, and for more than six months, and during that time I resided in the said parish. All this was before the year* 1819. *I have never lived since more than ten miles from the said tenements, or from the said parishes, or either of them.*

135. Coming to settle on a tenement under 59 Geo. III.

At Lady-day, 1840, *I bonâ fide* rented *of* James Thomas *of* Bampton, *in this county, a house and five acres of land,* situated *in the village of* Morebath, *in the said county.*

The house was a separate *and* distinct *house.*

I agreed to give the sum of 10*l.* *a year for the same,* and to pay all rates and taxes. (*a*)

I took it for the term of one whole year.

I held *the house, and* occupied *the land for the said year.*

On the day of one thousand eight hundred and forty-four, I paid *my landlord the whole rent of* 10*l.* *for the year.*

I resided *during all the time in the house in the parish.*

(*b*) *I* paid *the* poor rates *assessed on me, in respect of the house and land, for one year.*

I have never lived more than ten miles from the said house or land, or from the said parish since.

136. Renting a tenement under 6 Geo. IV. & 1 Will IV.

At Lady-day, 1840, *I bonâ fide* rented *of* J. T. *of* B., *in the county of* D., *a* house and three acres of land, situated *in the village of* M., *in the said county.*

The house was a separate and distinct *dwelling-house* [or *building*].

The rent I agreed (*c*) to give *was* 15*l.* *a year, and I* took it for one whole year [*actually occupied*].

Under such yearly renting I occupied (1 Will. IV.) *the house and land for a whole year.*

On the day of one thousand eight hundred and forty-four, I paid *the amount of* 10*l.* *of the said yearly rent.*

I resided *during all the time in the house in the parish.*

I paid *the poor rates assessed on me, in respect of the said house and land, for the whole year.*

I have never since ceased to inhabit within ten miles from the said house or land, or from the said parish.

137. Settlement by estate, not by purchase. By heir at law.

My father, H. B., *lived on an estate of his own in* Morebath *parish, in this county. It was a house and land called* Surridge. *I have seen him vote as a*

(*a*) This is not essential.

(*b*) This is required by the 4 & 5 Will. IV. c. 76, s. 66, and although that section is not applicable to a settlement by rating, in every settlement, by occupying a tenement, since that statute, it will be necessary to prove *some rating:* see, therefore, that head, *post.*

(*c*) If there is an agreement in writing, it must be produced, or its absence accounted for. See form, "Settlement by Apprenticeship."

freeholder for the county in respect thereof. He never paid any rent. Whilst still in possession thereof, on the day of 1844, *he died, and left no will.* [*I was his eldest son, and as such took possession of the said estate, and resided thereon for forty days, and for more than a year,*] *and I then sold it* [or, *within a month after I became possessed, I agreed to sell it*] *to* A. B., *but the conveyance was not executed till more than forty-one days after it was dated.* 8. *Forms of Examinations.*

I have never since ceased to inhabit within ten miles from the said house and land, or from the said parish.

I was one of his three daughters, his only children, and I and my husband, and one of my sisters, continued to reside on the estate for more than forty-days, even for five years. I claimed one-third of it as my own. By a co-heiress.

In January 1844, *my father died, possessed of a house and land as his own, in called He never paid any rent. He made his will, and gave the same to myself and two sisters, equally between us, and we continued to reside in the same for more than forty days after his death, even for several years. We then joined together and sold it, and each of us had one-third of the money. We never paid any rent.* 138. By devisee.

I have never since ceased to inhabit, within 10th July, *from the said house and land, or from the said parish of* .

If it is a devise of a freehold interest, not merely of a term of years, the original will must be produced, and execution proved. If it is a term of years, the probate is good evidence of that.

This is a most expensive process. It may be possibly obviated by giving the parish notice to produce the rate-book, and if the party is there rated as *owner*, this will be good evidence thereof against such parish. The form then might be :

I am overseer of the parish of Morebath. *I produce the poor rate-book of* 1814. *There is this entry in it :—*

Owner.	*Occupier.*	*Name of Farm.*
A. B.	C. D.	——

[Set out the rate as to him within the column, showing the payment.]

If the rate-book is not produced, proceed as follows :—

On the day of 1844, *I served* J. C., *one of the overseers of* Morebath, *with a copy of this notice.*

[Notice to produce the rate.]

Then call some one who has seen the rate :—

I have seen the poor-rate for the parish of M., *and* J. C. *is there described as the owner of* S. *estate for several years.*

The precedents respectively relating to the devisee or heir of a freehold may be used, with this addition :— 139. By devisee or heir of copyhold.

I am the steward of the manor of Chard, *in the county of* Somerset. *I produce the court rolls of the manor. In* 1820 S. L. *was admitted to a copyhold on the manor. The following is the entry* [copy it]. *In* 1840 S. L. *was admitted as son and customary heir, and the following is the entry as to his admission. The parish of* Winsham *is parcel of the said manor.*

I [the pauper] *am the person alluded to in that entry. I was present at the court, and admitted, and have since attended the manor courts in respect thereof, and served on the jury there. I resided for more than forty days,* i. e. *about ten years, in the parish of* Winsham, *in the said manor.*

G. T., *who was a distant relative of mine, was possessed of some land in the parish of M., in the county of at the time of his death in* 1844. *He made a will, and gave all his lands to* L. M., *in trust. The trust was, to pay the rents and profits of the land to me and my two sisters, until it was sold. I resided in the same parish after his death for more than forty days,* i. e. *for two years. At the end of the two years the trustee sold the land, and I received my share of the money, viz.* £ . A. B. *purchased it.* 140. By cestui que trust.

I am the attesting witness of the deed now produced. It is a release in fee by L. M., *as trustee under the will of* G. F. *It recites* [here recite the particulars relating to the trust], *and then conveys the whole in fee to* A. B. *I saw a portion of the money paid to the pauper in* 1844, *when the deed was executed.*

8. *Forms of Examinations.*

141. By a schoolmaster in respect of land attached to his office.

My father was for many years the schoolmaster of the parish of M. *in the county of* D. *As such he was entitled to* 10*l. a year for his life, charged upon and payable out of the lands called* Ashton Farm, *in that parish. He received the same every year whilst living in the parish.* M. B *is now the owner of the said farm, and I have inquired of him for the deed settling the money on the schoolmaster, and he informs me that it is a very old transaction, and that he has no papers relating to it. In the church is a painted board, fastened against the wall, signed by* J. K., *churchwarden,* 1824, *which is in these words* [ ]. (*a*)

142. By executor of a tenant for years.

My uncle, James Brown, *rented an estate from year to year of* L. B., *in the parish of in the county of . It was called* West Park. *His tenancy began and ended at Lady-day. On the* 12th August 1844, *he died, still in possession of the farm as such tenant. He made a will, and I was one of his executors; as such I took possession of the farm, the stock, and went to reside in the house, and continued there for more than forty days, viz. for four years. I paid the rent out of the funds left by my uncle.*

I have never ceased to inhabit within ten miles of the said house and land, or of the said parish of .

143. By marriage with the tenant from year to year.

I knew Ann Lovelace. *She was a tenant from year to year of a farm called* West Park, *in the parish of in the county of belonging to* W. C., esq. *I remember her marriage with* L. G., *the father of the pauper. They were married in* 1840, *whilst she was the tenant and occupier of the farm. He went to reside at the farm with her, and continued there more than forty days after the marriage, viz. for six years.*

144. Mortgagor.

A mortgagor, before he mortgaged his estate, must have acquired it by descent or purchase.

If by descent, state his title as heir or devisee, and if by purchase (in its legal sense) state the will, *ante.* If by purchase (in its ordinary sense) then as 150.

145. Mortgagee.

[He is a purchaser, and the consideration, therefore, must be more than 30*l.* State the purchase, as 150, *post.*]

Then add,

By the same deed it was covenanted that the money should be paid on the day of .

The money was not paid on that day, or since.

On the day of 1844, *I entered into possession of the said house, and resided in it more than forty days, that is, for three years, when I sold it again.*

I have not since ceased to inhabit within ten miles of the said tenement, or of the said parish of

146. By marriage with a purchaser under 30*l.*

In August 1844, *I married my present wife,* Mary Ley. *She was then called* Mary Barber. *Before our marriage, she purchased a small tenement in the parish of* M., *in the county of* D. *I produce the conveyance thereof. It was called by the name of and was* No. 7, *in* Vere-street, *in that parish.*

The attesting witness.

I am the attesting witness to the deed. I saw it executed by the pauper, his wife, and [the purchaser]. *It recited the purchase by* N. B. *for fifteen pounds, the marriage with the pauper, and then they both convey in fee simple to* C. D. *I saw the consideration money, ten pounds, paid at the same time to the pauper, and he signed the receipt on the back.*

147. Guardian or ward's estate.

My father, J. L., *was possessed of a freehold tenement, in the parish of* M., *in the county of at the time of his death, which happened in* 1844. *My mother as his widow continued to reside in it and occupy it for more than forty days after my father's death My father left six children besides myself, and my father left no will. My mother acted as guardian for me. She is now dead. My*

(*a*) Such a recognition of the gift is often found in the church, and would be secondary evidence.

eldest brother was under fourteen years of age, i. e. *he was about ten, when my father died.*

8. *Forms of Examinations.*

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148. By twenty years' possession.

In the year 1820, *I inclosed a piece of waste land on the common in the parish of in the county of I built a small cottage on it in* 1821, *and resided in it till last year, when I became very poor, and sold it for ten pounds to* A. B. *I have never paid any rent for the same, nor made any acknowledgment thereof. It was my own until I sold it.*

I have never ceased since to inhabit within ten miles of the said tenement and of the said parish.

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149. An equitable estate.

On the day of 1844, *I made an agreement with* J. T., *of for the purchase of a tenement, consisting of a cottage and three acres of land, in the parish of in the said county. The agreement was in writing. This is it.* [Copy.]

I took possession of it soon after the agreement, and paid him all the money. I kept it for several years, and always resided in it, until I sold it last year.

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150. By purchase for pecuniary consideration.

In 1830 *I purchased a cottage and one acre of land of* J. T. *It is near the church.* [Local situation.]

I paid him thirty pounds as the consideration of such purchase [or, *I paid him ten pounds for it, and agreed to pay twenty pounds, for which the premises were at that time mortgaged. I have not paid the mortgage money, but I have paid the interest on the same every year.*]

This is the deed by which it was conveyed to me.

[Then call the attesting witness; if there is no deed, the payment and possession may be relied on.]

There were no papers between us, but after I paid the ten pounds, I took possession of the cottage, and resided in it for more than forty days afterwards. Indeed I resided in it till I sold it to J. H. *on the day of* 1844, *when I left it, and he took possession, and since paid all the interest on the mortgage.*

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151. Examination as to relief given.

I am now resident in T., *in the county of* Somerset, *within the* W. *Union. I have always considered I belonged to the parish of* M., *in the county of* Devon, *and about four years since I applied to them for some support. I understood they consented to the same, and for a long time, whilst resident in* T., *I have received relief, in provisions and money, from* A. B., *the relieving officer of the parish of* T.

Relieving officer.

I am one of the relieving officers of the W. *Union.* M. *is within that union and my district. About four years since, the pauper requested some relief. I inquired into his settlement, and reported the application and statement to the board of guardians. About a fortnight after, I was ordered by the board to give the pauper four shillings a week, and three loaves of bread, as long as he was ill, and to charge the same to the parish of* M. *I did this for several years. At the end of every quarter, I sent the account to* A., *the relieving-officer of the* T. *Union, and he remitted the amount to me.*

I am one of the relieving officers of the T. *union, and* M. *is within the union and my district. I produce the accounts sent to me by* R. O. *I paid them, and charged the same regularly to the parish of* M., *and the same has been duly paid by the said parish.*

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152. Settlement by office.

On the day of one thousand eight hundred and thirty, I lived in the parish of M. *in the county of* D. *In that year I was duly appointed assistant overseer of the said parish. I produce the appointment. The signatures are those of the rate payers of that parish, and the names of* A. B. *and* C. D., *signed thereto, are two signatures of the justices of the peace in and for the said county.*

I did for myself, and on my own account, execute the duties of such assistant overseer, in the said parish, during a whole year, from the day of one thousand eight hundred and thirty, to the day of one thousand eight hundred and thirty-one.

For forty days of that year, and after my said appointment, I resided in the said parish.

8. *Forms of Examinations.*

At the manor court, held in and for the manor and parish of M. *in the county of* D., *I was appointed as constable of the manor and parish, by the steward of the said court, and the residents of the manor attending the said court. This is the only book in which the appointment is entered.* [Set out the entry].

[Then state the execution of the office and residence as above.]

153. Examination as to a former order of removal.

In 1840 *I was the overseer of the parish of* M. *in the county of* D. *The pauper* J. E. *was then an inhabitant of our parish, and received relief therefrom in bread and money. Whilst he was so chargeable, I complained to the magistrates thereof, and obtained an order of removal. This is a duplicate original of the same. The signatures are those of* A. *and* C., *two justices of the peace for the county of* D. *Two days after it was signed I took the pauper, his wife* Mary, *his six children, viz.* John, *aged six, &c., and delivered them to* L., *one of the then overseers of the parish of* T. *At the same time I delivered them an original order of removal, signed by the said justices.*

There never was any appeal against the said order.

154. Examination of pauper.

I have heard what the overseer has said. I was the person removed, as he has stated. The overseer of T. *received me, and put me into a house for a short time. The relieving officer of the parish then came to me, and, for three months, gave me weekly relief in money and provisions. I then got well, and after having staid in* T. *two years, I returned to my old place at* M. *to work, where I have resided ever since, and am now unable again to maintain myself, and have applied to the parish for relief.*

155. Settlement by being rated.

In the year 1844 *I occupied a house and acres of land, in the parish of* A. *in the county of* B. *Mr.* B. *was my landlord. It is near the turnpike road. During that time I was several times called on by the overseers of the parish for the payment of poor rates in respect of the tenement, and I paid them. At each collection I paid* 13*s.* 7*d. At the time I paid it, the overseer told me it was for the poor rate made on me as the occupier. He had what I supposed was the rate-book in his hand. I did not examine it, but took his word for it.*

I resided in the parish more than forty days after each of the said payments.

The above applies when the rate is not produced. Here add :—

I am the overseer of D. *On the day of one thousand eight hundred and forty-four, I called on* L. *the overseer of* A. *I told him we were about to apply for an order of removal of the pauper to his parish. I asked him if he would allow me to look at the poor rate, and he said he could not. I asked him if he would produce it before the magistrates on this day; he said he could give me no answer to it.*

[Then set out a copy of a notice to produce the rate.]

I also produce the overseer's accounts of our parish for the same year. The signature to them is that of the parish officers for that year. The total sum which they charge themselves as having received is 300*l.*, *and this includes the sum charged to the pauper, and entered in the book as received.*

The overseer who collected this rate is dead.

If the rate is produced :—

I am one of the parish officers of A. *This is the poor rate of that parish for the year* 1844. *In it is the following entry.*

[Set out]

The word "PAID" *shows it was paid at the date mentioned.*

There is a declaration at the foot of the rate signed A., B., C., D., who were the parish overseers in that year. It is as follows :—

The names H. *and* G., *allowing the said rate, are the names and signatures of two justices acting in and for the county of* Devon. (*a*)

156. Notice of chargeability.

This is required to be in writing, and must be signed by a majority of the parish officers ; and the fact of such persons being a majority ought, perhaps, to appear on the face of the notice. *Reg.* v. *Westbury*, 1 *C. H. & A.* 33.

(*a*) The formalities as to the rate are not material, as the payment of a rate, irregularly made, is sufficient. Some evidence must be given of the *payment*. If the overseer who received it is dead, the rate may be sufficient.

8. *Forms of Examinations.*

To the overseers of W. *in the county of* W. *We the undersigned, being the majority of the churchwardens and overseers of the parish of* M. *in the county of* D., *do hereby give you notice, that* R. H. *&c. has become chargeable to our parish, and relieved by us, and that an order of two justices of peace for the said county of* D. *has been duly obtained on our complaint, for their removal to your parish, as the place of their settlement. A duplicate original of the said order, a copy of the examination on which the same was made, and a certificate of their chargeability, are herewith sent. Dated this day of one thousand eight hundred and forty-*

E. M.
R. W. } *Churchwardens,*
J. B.
L. M. } *Overseers,* } *of* M. *aforesaid.*
C. N.

157. Lunatic order.

The following was an order made in *Reg.* v. *Holdsworth, ante,* 133, 1127.

W. R. of Yorkshire, *to wit.* } *Whereas on* 16*th* September, A.D. 1837, Mary Frances Heaton, *spinster, a poor person chargeable to the township of* Doncaster *in the West Riding of the County of* York, *was deemed to be insane; and whereas the overseers of the said township of* Doncaster *did bring the said* M. F. Heaton *before* Edmund Denison *and* William Battie Wrightson, Esqs., *two of her Majesty's justices of the peace in and for the said* West Riding, *and the said* E. Denison *and* W. B. Wrightson, *so being such justices as aforesaid, did thereupon then and there call to their assistance* Edward Scholefield, Esq., *Doctor of Medicine, and, upon due examination of the said* M. F. Heaton, *the said* E. Denison *and* W. B. Wrightson, *so being such justices as aforesaid, were then and there satisfied that the said* M. F. Heaton *was insane, but the place of the legal settlement of the said* M. F. Heaton *could not be then and there ascertained: And whereas the said* E. Denison *and* W. B. Wrightson, *so being such justices as aforesaid, by an order under their hands and seals bearing date the said* 16*th* September, A. D. 1837, *directed to the overseers of the poor of the said township of* Doncaster, *did direct the said overseers to cause the said* M. F. Heaton *to be conveyed to the* Riding Lunatic Asylum *established in the township of* Stanley-cum-Wrenthorpe, *in the parish of* Wakefield, *in the said riding, the said* Pauper Lunatic Asylum *being a house duly licensed for the reception of insane persons; and the treasurer of the said* West Riding *was thereby ordered to pay to the treasurer of the said* Asylum *such weekly sum for the maintenance and care of the said* M. F. Heaton, *according to the* 9 George IV. c. 40, *as should from time to time be fixed upon by the visiting justices of the said* Asylum: *And whereas the said* M. F. Heaton *was under and by virtue of the said last-mentioned order conveyed by the overseers of the poor of the said township of* Doncaster *to and placed in the said* Pauper Lunatic Asylum, *established at the township of* Stanley-cum-Wrenthorpe *aforesaid, on the said* 16*th* September, A.D. 1837, *and from thenceforth has been and now is confined therein under the said last-mentioned order; and a certificate from the said* E. Scholefield, *bearing date* 16*th* September 1837, *that he had personally examined the said* M. F. Heaton, *and that she appeared to be of insane mind, was duly delivered by the overseers of the said township of* Doncaster *to* Charles Cæsar Corsellis, *the superintendant of the said* Pauper Lunatic Asylum, *at the time the said* M. F. Heaton *was placed therein: And whereas we,* Joseph Holdsworth *and* Francis Maude, Esqs., *two of her Majesty's justices of the peace acting in and for the said* West Riding, *did upon the* 5*th* December, instant, *duly inquire into the last legal settlement of the said* M. F. Heaton, *and satisfactory evidence was obtained as to such settlement: And whereas the visiting justices of the said* Pauper Lunatic Asylum *did on the* 8*th* January 1838, *fix upon the weekly sum of six shillings for the maintenance, clothing, medicine, and care of the said* M. F. Heaton, *and the same has been paid by the treasurer of the said* West Riding: *We, the said* J. Holdsworth *and* F. Maude, Esqs., *so being such justices as aforesaid, do therefore, upon due proof made before us upon oath, and upon due consideration had of the premises, adjudge that the last legal settlement of the said* M. F. Heaton *is in the township, parish or place of* Doncaster *aforesaid: And we do order and direct that the churchwardens and overseers of the poor of the township, parish and place of* Doncaster *aforesaid, shall and do, upon notice of this our order, repay unto* Ellis Hodgson, *the treasurer of the said* West Riding, *the sum of* 19*l.* 4*s. for the maintenance, medicine, clothing and care of the said* M. F. Heaton, *in the said* Pauper

9. *Forms relating to Removals.*

Lunatic Asylum, *from* 16*th* September 1837, *to the date hereof, at and after the said rate of six shillings for each and every week: And we do further order and direct that the churchwardens and overseers of the said township, parish or place of* Doncaster *aforesaid, shall and do pay to* C. C. Corsellis, *the treasurer of the said* Pauper Lunatic Asylum, *from the date of this our order, the weekly sum of six shillings for the future maintenance, medicine, clothing and care of the said* M. F. Heaton, *during her continuance in the said* Pauper Lunatic Asylum, *or until otherwise ordered according to law.*

Given under our hands and seals this 6*th of* December 1838.

J. Holdsworth, (*L. S.*)
Fran. Maude, (*L. S.*)

W. R. of Yorkshire. } To the Overseers of the Poor of the Township of *Doncaster*, in the said Riding.

Whereas it appears to us, Edmund Denison *and* William Battie Wrightson, *two of her Majesty's justices of the peace acting in and for the said riding, having called to our assistance* Edward Scholefield, Esq. M.D., *a physician or surgeon, that* Mary Frances Heaton, *chargeable to the township of* Doncaster, *in the said riding, is a lunatic insane or a dangerous idiot, you are hereby directed to cause the said* M. F. Heaton *to be conveyed to the* Riding Lunatic Asylum, *established in the township of* Stanley-cum-Wrenthorpe, *in the parish of* Wakefield, *in the said riding, the said* Pauper Lunatic Asylum *being a house duly licensed for the reception of insane persons, and you are hereby ordered to pay to the treasurer of the said* Asylum *such weekly sum for the maintenance and care of the said* M. F. Heaton *as shall from time to time be fixed upon by the visiting justices of the said* Asylum.

Given under our hands and seals this 16*th day of* September, A.D. 1837.

Edward Denison, (*L. S.*)
W. B. Wrightson, (*L. S.*)

The expenses to be charged to the Riding *in consequence of Miss* Heaton's *settlement being unknown.*

E. Denison,
W. B. Wrightson.

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158. General order of removal under 13 & 14 Car. 2 (*a*).

To the Churchwardens and Overseers of the Poor of the parish of in the county of and to the Churchwardens and Overseers of the Poor of the parish of in the county of and to each and every of them.

County of } *Upon the complaint of the churchwardens and overseers of the poor of the parish of aforesaid, in the said county of* unto us
to wit. } *whose names are hereunto set, and seals affixed, being two of her Majesty's justices of the peace in and for the said county of and one of us of the* quorum, *that his wife their son, aged eight years, and their daughter, aged four years, have come to inhabit in the said parish of not having gained a legal settlement there, and that the said his wife, and and their children, are actually chargeable to the said parish of* [or *that the said (viz. the pauper) hath been convicted of larceny,* or other felony, *or is a rogue, vagabond, &c.* as it may be]: *We, the said justices, upon due proof made thereof, as well upon examination of the said upon oath, as otherwise upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge that the lawful settlement of them the said his wife, and and their children, is in the said parish of in the county of . We do, therefore, require you, the churchwardens and overseers of the said parish of or some one of you, to convey the said his wife, and and their children, from and out of the said parish of to the said parish of and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time showing to them the original; and we do also hereby*

(*a*) For the form of an order of removal of a certificated person, see *post*, 1390, form 163.

require you, the said churchwardens and overseers of the poor of the said parish of to receive and provide for them according to law.

Given under our hands and seals this day of in the year of the reign of her Majesty Queen Victoria.

A. B. (*L. S.*)
C. D. (*L. S.*)

9. *Forms relating to Removals.*

To the Churchwardens and Overseers of the Poor of the Parish of in the City of *London*, and the Churchwardens and Overseers of the Poor of the Parish of and to every of them.

159. The like in another form in London.

London, } *Whereas complaint hath been made unto us, two of her Majesty's jus-*
to wit. } *tices of the peace in and for the city of* London *and liberties thereof (one being of the* quorum), *by the churchwardens and overseers of the poor of the said parish of in the city of* London, *that* E. F., *of the parish of in the county of and there legally settled, hath lately come to reside in their said parish, not having obtained any legal settlement there, and hath become chargeable thereto, which complaint we, the said justices, upon due proof made thereof, as well upon the oath of the said* E. F. *as otherwise, do adjudge to be true; and we do also adjudge the last legal settlement of the said* E. F. *to be in the said parish of in the county of and that thitherto he ought by law to be sent.*

These are therefore in her Majesty's name to will and require you, the churchwardens and overseers of the poor of the said parish of in the city of London, *forthwith to remove and convey the said* E. F. *from and out of your said parish of unto the said parish of in the said county of and him deliver unto the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, who is and are hereby required to receive and provide for him according to law.*

Given under our hands and seals, this day of one thousand eight hundred and forty-

A. B. (*L. S.*)
C. D. (*L. S.*)

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p. 1084.

Whereas it doth appear unto us and the justices within named, that the pauper [or *the husband*, or *wife*, or *children*] *within ordered to be removed, is at present unable to travel by reason of sickness and infirmity* [or *that it would be dangerous for him so to do*, as the facts may be]: *We do therefore hereby suspend the execution of the within order of removal, until it shall be made appear unto us that the same may safely be executed without danger.*

161. Indorsement suspending an order of removal, to be indorsed on the back thereof, as in ordinary cases.

Given under our hands, the day of in the year of our Lord one thousand eight hundred and forty-

A. B.
C. D.

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p. 1084.

Whereas it hath been now made appear unto us A. B. *and* C. D. *the justices aforesaid, and we are fully satisfied that the within order of removal may be executed without danger: We do therefore hereby order the same to be forthwith put in execution accordingly: And whereas it is duly proved to us upon oath* [if the parties have died, say, *that the said the pauper above mentioned is dead, and*] *that the sum of hath been necessarily incurred by the suspension of the within order of removal, we do therefore order and direct the churchwardens or overseers of the poor of the parish of to which parish the said is* [*was*, if the pauper is dead] *ordered to be removed, to pay the said sum of to* N. P. *upon demand.*

162. Form of a subsequent permission to execute the order of removal, to be indorsed thereon, and order of payment of the expenses incurred by such suspension. (*a*)

Given under our hands, the day of in the year of our Lord one thousand eight hundred and forty-

A. B.
C. D.

(*a*) This is the same form that received the approbation of *Le Blanc*, J., *ante*, 1086.

9. *Forms relating to Removals.*

To the Churchwardens and Overseers of the poor of the Parish of in the County of and to the Churchwardens and Overseers of the Poor of the Parish of in the County of

163. Order of removal of a certificated person back to the certifying parish, he having become chargeable, and to pay costs of removal back.

County of } *Whereas complai made by the churchwardens and overseers of the poor of the parish of aforesaid, in the said county of*
to wit. } *unto us whose names are hereunto set and seals affixed, being two of her Majesty's justices of the peace in and for the said county of (and one of us of the* quorum), *that* A. B., C. B. *his wife,* E. B. *their son, aged eight years, and* G. B. *their daughter, aged four years, having for some time last past dwelt in the parish of aforesaid, being allowed so to do by reason of a certificate bearing date the day of in the year of our Lord one thousand eight hundred and under the hands and seals of and churchwardens and and overseers of the poor of the said parish of attested by* I. K. *and* L. M., *two credible witnesses, and allowed by* N. O. *and* P. Q., *esquires, two of his Majesty's justices of the peace for the said county of according to the directions of the several acts of parliament in such case made and provided, are become chargeable to the said parish: And whereas it appears to us, as well upon the oath of the said* A. B. *as otherwise, that neither they the said* A. B., C. B. *his wife,* E. B. *and* G. B. *their children, nor any of them, have gained any legal settlement since the date of the said certificate; whereby and upon due consideration had of the premises it appears to us, and we do hereby adjudge, that the said* A. B., C. B. *his wife, and* E. B. *and* G. B. *their children, are become chargeable to the parish of and that the place of the last legal settlement of them, and every of them, is in the said parish of in the said county of : These are therefore to require you, the said churchwardens and overseers of the poor of the said parish of or some or one of you, to convey the said* A. B., C. B. *his wife, and* E. B. *and* G. B. *their children, from and out of your said parish of to the said parish of and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time showing to them the original: And we do also hereby require you, the said churchwardens and overseers of the poor of the said parish of to receive and provide for them as inhabitants of your parish: And we do also hereby order and direct you, the said churchwardens and overseers of the poor of the said parish of to reimburse and pay unto the said churchwardens and overseers of the poor of the parish of the sum of being the amount of the reasonable charges that they, the said churchwardens and overseers of the poor of the parish of have been put unto, in maintaining and removing the said ascertained and allowed by us, the said justices.*

Given under our hands and seals, at and in the county aforesaid, this day of in the year of our Lord one thousand eight hundred and

R. S. (*L. S.*)
T. U. (*L. S.*)

Ante, p. 1093.

164. Record of an order of removal to be filed at the quarter sessions (*a*).

to wit. } *Be it remembered, that on the day of in the year of the reign of our sovereign lord* George *the Fourth, of the United Kingdom of* Great Britain *and* Ireland *King, Defender of the Faith, at in the county of* R. T., *overseer of the poor of the parish of aforesaid, in the county aforesaid, cometh before us,* J. C. *and* S. P., *esquires, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king within the said county, and also to hear and determine divers felonies, trespasses and other misdemeanors in the said county committed, and of the* quorum, *and complaineth to us, the said justices, and giveth us to understand and be informed that* S. C., *son of* A. C., *aged years, hath come to inhabit and doth inhabit in the said parish of in the county aforesaid, and is become chargeable to the said parish; and that the said* S. C. *hath not gained any legal settlement within the parish, nor hath produced any certificate owning him the said* S. C. *to be settled elsewhere, and thereupon he, the said* R. T., *prayeth our warrant to remove and convey the said* S. C. *to the parish or place where he, the said* S. C., *was last legally settled.*

And on the said day of in the year aforesaid, at aforesaid, in the county aforesaid, M. C., *grandmother of the said* S. C., *cometh before us,*

(*a*) See the law and observations, *ante*, 1093.

the justices aforesaid, and upon oath on the holy gospel to her then and there by us the said justices aforesaid administered, deposeth and sweareth, that she the said M. C. *had a daughter whose name was* A. C., *which* A. C. *was never married, and is now dead, and that she the said* A. C. *did bear the said* S., *her son, at the parish of in the county aforesaid, and that the said* S. *hath been carried and gone about the country ever since in a state of vagrancy, that is to say, wandering and begging, and doth now inhabit in the said parish of with* W. C., *grandfather of him the said* S.

9. *Forms relating to Removals.*

Whereupon, and on due consideration had of the premises, we the justices aforesaid, on the said day of in the year aforesaid, at aforesaid, in the county aforesaid, do make our warrant under our hands and seals, in the form and words following, that is to say [here set forth the warrant of removal]. *And, afterwards, on the day of in the year aforesaid, at aforesaid, in the county aforesaid, the said* R. T., *overseer of the poor aforesaid, cometh before us, the justices aforesaid, and upon his oath on the holy gospel, to him by the said justices administered, deposeth and sweareth, that on the day of in the year aforesaid, he, the said* R. T., *did remove and convey the said* S. C. *from and out of the said parish of to the said parish of and him the said* S. C., *together with a true copy of our warrant aforesaid, did deliver to* O. P., *overseer of the poor of the parish of aforesaid, at the parish of aforesaid, in the county aforesaid.*

In witness whereof we, the said justices, at aforesaid, in this county aforesaid, the day of in the year aforesaid, to this present record do set our hands and seals.

J. C.
S. P.

[To this record should be annexed the order of removal, confirmed at the sessions, on appeal or not appealed against. And it may be proper to have duplicates, one filed at the sessions, and the other kept by the parish.]

To *Y. Z.* Constable (or state the occupation of the person appointed) of the parish of in the said county.

165. Deputation of a person to remove a pauper

County of } *Whereas, by an order under the hands and seals of* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the said county, bearing date the day of instant, the following persons, viz.* E. F., Mary *his wife,* Thomas *their son, aged eight years, and* Agnes *their daughter, aged four years, are ordered to be removed from the parish of in the county of as the place of their last legal settlement. Now we, the undersigned churchwardens and overseers of the poor of the said parish of do hereby depute you, the said* Y. Z., *to convey the persons so ordered to be removed as aforesaid, to the said parish of and them to deliver to some one of the churchwardens or overseers of the poor there, together with the accompanying order of removal.*
to wit. }

Given under our hands at aforesaid, the day of in the year of our Lord one thousand eight hundred and forty-

N. O. } *Churchwardens.*
P. Q. }
G. H. }
I. K. } *Overseers.*
L. M. }

} To the Constable of the parish of in the county of and
to wit. } to the Treasurer of the said county.

166. A justice's order to constable to remove a vagrant to his place of settlement in days, and that he be allowed only

Whereas by a pass under the hands and seals of two of her Majesty's justices of the peace for the county of E. F. *was ordered to be removed from the parish above-named to as the place of his last legal settlement.*

I do therefore hereby order and direct the said person to be conveyed in days' time from the parish of aforesaid, in the county of to the town of in the county of in the way to aforesaid, for which the con-

9. *Forms relating to Removals.*

stable is to be allowed the sum of pounds shillings, and pence, and no more.

Given under my hand this day of one thousand eight hundred and forty-

A. B.

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167. Receipt of the vagrant by the constable of the parish to which removed, and statement of amount of expenses.

Received of the constable of the parish of in the county of the within mentioned E. F. *with his examination and pass, the day of one thousand eight hundred and forty-*

By me, G. H., *Constable of the parish of*

Conveyance of E. F. *in a cart miles at per mile . .*
Subsistence days, at per day . . . . . .
Lodging nights, at per night . . . . . .
Constable going before a justice for certificate . . . . . .
Certificate . . . . . .
Toll . . . . . .

Total expense . . . . £

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168 Information of an overseer of the poor, that the expenses directed to be paid, on taking off the suspension from an order of removal, have been refused, or neglected to be discharged, under 35 Geo. III. c. 11, s. 2.

County of } *The information and complaint of* G. H., *one of the overseers of the poor of the parish of in the said county, made on oath before*
to wit. } *me,* A. B., *esquire, one of her Majesty's justices of the peace in and for the said county, the day of in the year of our Lord one thousand eight hundred and forty- ;*

Who says that by an order under the hands and seals of A. B., *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the said county of and bearing date the day of in the year of our Lord one thousand eight hundred and forty-* E. F., *a pauper then actually chargeable to the said parish of was ordered to be removed from the said parish of to the parish of in the county of as the place of his last legal settlement, but the execution of which order of removal was by the said two justices, by indorsement on the said order, suspended for the reason therein expressed; and further, that by a subsequent indorsement on the said order of removal, under the hands of* A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the said county of bearing date the day of in the year of our Lord one thousand eight hundred and forty- the said suspension was removed with a permission to execute the said order, and also that it appeared unto them, the said last-mentioned justices, that the sum of had been incurred by the suspension of the said order of removal, and that they, the said last mentioned justices, did therefore order and direct the churchwardens and overseers of the poor of the parish of to which parish the said was ordered to be removed, to pay the said sum of to upon demand, which said order of removal has since been carried into execution, and the original order hath been duly served on the said and the said sum demanded of and from him the said one of the overseers of the poor of the parish of aforesaid, by him the said on the day of last, but which was then refused, and has been and still is neglected to be paid, and that no notice of appeal has been given against the said order within three days from the time of making such demand as aforesaid, nor at any time since. The said complainant therefore prays such redress in the premises as to law doth appertain.*

Before me, A. B.

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169. Summons on the foregoing information.

To the Constable of

County of } *Whereas information and complaint hath been made before me,* A. B, *esquire, one of her Majesty's justices of the peace for the said county, on*
to wit. } *the oath of of one of the overseers of the poor of the parish of in the said county, that by an order* [set forth as in the information]. *These are therefore to require you forthwith to summon the said to appear before me,* A. B., *esquire, at in the said county, on the day of at the hour of in the noon of the same day, to answer to the said information and complaint, and to be further dealt with according to law. And be you then there to certify what you shall have done in the premises: Herein fail you not.*

Given, &c. A. B.

9. *Forms relating to Removals.*

170. Warrant of distress thereupon.

To the Churchwardens and Overseers of the Poor of the parish of in the said county of

County of } *Whereas it has been duly made appear unto me,* J. P. *esquire, one of her Majesty's justices of the peace in and for the said county of as well upon the oath of* O. P., *overseer of the poor of the said parish of as otherwise, that by an order under the hands and seals of* J. P. *and* K. P., *esquires, two of her Majesty's justices of the peace in and for the said county of and bearing date the day of in the year of our Lord one thousand eight hundred and* A. P., *a pauper, then actually chargeable to the said parish of was ordered to be removed from the said parish of to the parish of in the county of as the place of his last legal settlement, but the execution of which order of removal was by the said justices by indorsement on the said order, suspended for the reason therein expressed: And further, that by a subsequent indorsement on the said order of removal under the hands of* J. P. *and* K. P., *esquires, two of her Majesty's justices of the peace in and for the said county of bearing date the day of in the year of our Lord one thousand eight hundred and the said suspension was removed with permission to execute the said order: and also that it appeared unto them, the said last-mentioned justices, that the sum of had been necessarily incurred by the suspension of the said order of removal, and that they, the said last-mentioned justices, did therefore order and direct the churchwardens and overseers of the poor of the parish of to which parish the said* A. P. *was ordered to be removed, to pay the sum of to* O. P., *upon demand, which said order of removal has since been carried into execution, and the said sum duly demanded of and from* N. O., *one of the overseers of the poor of the parish of aforesaid, by him the said* O. P., *on the day of last, but which was then refused, and has been and still is neglected to be paid, and that no notice of appeal has been given against the said order within three days from the time of making such demand as aforesaid, nor at any time since: I do therefore hereby require you to levy the money mentioned in the said order, by distress and sale of the goods and chattels of the said* N. O., *the person refusing or neglecting payment of the same, and also the further sum of* [this sum not to exceed forty shillings, according to stat. 35 Geo. III. c. 101, s. 2,] *being the costs attending the same. And if within the space of four days next after such distress by you taken, the said respective sums of and shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you detain the said respective sums, rendering to the said* N. O. *the overplus on demand.*

Given under my hand and seal the day of in the year of our Lord one thousand eight hundred and

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171. Notice of appeal with notice to produce rate-books, &c.

To the Churchwardens and Overseers of the Poor of the parish of in the county of and to each and every of them.

We whose names are hereto subscribed, being the majority of the churchwardens and overseers of the poor of the parish of in the county of do hereby give notice to you and every of you, that we do intend at the next general quarter sessions of the peace to be holden at in and for the said county of on the day of instant, to commence and prosecute an appeal against a certain order of A. B. *and* C. D., *two of her Majesty's justices of the peace acting in and for the said county of bearing date on the day of instant, for and concerning the removal of his wife and their son, aged from the parish of aforesaid, to the said parish of*

And the following are the grounds of our appeal.

[It may be advisable, *where the question of settlement arises from a renting in the respondent's parish,* to have the poor's rate book produced to the court: if so, after the words "parish of " add, *And we hereby further give you notice to produce, at the hearing of the said appeal at the time aforesaid, all and every the rate book or books belonging to the said parish of wherein are entered and kept the rates paid or payable for the year one thousand eight hundred and thirty up to and including the year one thousand eight hun-*

9. *Forms relating to Removals.*

dred and thirty and all other papers and writings, relating to or concerning the said rates, during the above years, or any of them, and also the overseer's accounts of the same year.]

Notice and Grounds of Appeal.

The objections may be classed under five heads:

1. *Those arising on the making and service of the order.*
2. *Those arising from the examination.*
3. *A pauper may be settled in the appellant parish and not removable.*
4. *A subsequent settlement.*
5. *Former order.*

Objections arising on the making and service of the order:—

Because no notice in writing of the pauper having been chargeable to or relieved by you, and no copy of the order or examinations upon which such order was made have been sent by you to us, or any of us.

Because the pauper was not chargeable to your parish at the time of your complaint to the justice who made the said order, nor at the time that it was made, nor was any proof given thereof before the said justices.

Because A. B., *who is now alive, and is the mother of ten children named in the order, was married to me,* M. B., *on the day of* 1844, *and he is now chargeable with the same, and able to relieve them, and such children at the time of making the order, were under the age of sixteen, and were therefore not chargeable to your parish.*

Because there is no such parish *as that of* W., *as described in your said order.*

Because the said place mentioned in the said order is extra-parochial.

Because the persons named in the said order as the churchwardens and overseers of your parish were not, nor was either of them, duly appointed churchwarden and overseer respectively.

Because the churchwardens and overseers of your parish have no power to interfere in the removal of persons chargeable to your parish.

Because L. H., *one of the justices who signed the said order, was one of the churchwardens or overseers of your parish at the time of the said complaint, and could not legally, therefore, make the said order.*

Because the said justices had no jurisdiction to make the said order.

Because the justices who signed the said order were not together at the time of making the same, but acted separately therein.

Because the order of removal was not served on our parish within a reasonable time after it was made.

Objections arising from the examination:—

Because the examinations on which the order was made are bad and defective, inasmuch as it does not appear from them that the pauper acquired a settlement in our parish.

Because evidence was given before the justices who made the said order, which is not set out in the copy of the examinations sent to us.

[Because it is not stated in the examinations, or is it true in fact. (*a*)]

Because it appears by the examination, and was so in fact, that the order was made upon evidence which was not legally admissible for that purpose, inasmuch as A. B., *one of the witnesses, was at the time a convicted felon, and that fact was known to the justices; also, that parol evidence was received of a lease* [a poor-rate, an indenture, &c.] *and the non-production of the written instrument not properly accounted for.*

Because the said lease was received in evidence without calling the attesting witness, or accounting for his absence, and without legal proof that it was signed by any of the parties.

Because it does not appear on the face of the said examinations that they were taken or sworn before the two justices who signed the order of removal.

Because the said A. B. *was not born in our parish, nor was any legal evidence given thereof before the justices, or set out in the examination.*

(*a*) Many objections to the examination will be similar to those taken to the facts, and, therefore, as to those statements which are imperfect in the examination, and are not true in fact, this general form may be used.

Because, shortly before the birth of the pauper in our parish, her mother had been removed by an order of justices to our parish, which order was afterwards and after the birth of the pauper, quashed on appeal. 9. *Forms relating to Removals.*

Because the pauper was the child of a person born in Ireland, &c., and who had acquired no settlement in England.

Because the children named in the order are not the lawful children of the said C. *and* D.

Because the pauper was the lawful child of C. *and his wife* Sarah, *and the said* C. *was born in the parish of* L., *in or about the year* 1820, *and the said* Sarah *was born in the parish of* M., *in the county of in or about the year* 1830, *and because both the said father is lawfully settled in the parish of in the county of whilst the said pauper continued one of his family, and the mother's maiden settlement is in the parish of*

Because the said pauper was the illegitimate child of A. B., *whose place of settlement is in the parish of and such pauper was born about the* 14th August, 1834, *and was at the time of making the order, under the age of sixteen, and had acquired no settlement for himself.*

Because the pauper had ceased to be a part of his father's family, at the time when his father acquired the settlement stated in his examination.

Because the pauper was not bound as an apprentice by an indenture duly executed by all the parties, nor by any legal instrument. (a) 172. Apprenticeship.

Because no legal evidence was given of the execution of any indenture before the justices who made the said order.

Because, at the time the indenture was made, the pauper was an infant, and before he became of age; and before he resided in our parish for forty days, he elected to abandon the said indenture, the same being for his benefit. (b)

Because the said pauper did not reside in our parish for forty days as an apprentice.

Because the master to whom the pauper was so bound as stated in the examination was resident [has his establishment of business] *at the time in the parish of* B., *and not in the parish of* M., *in the county of and in a different jurisdiction from that in which the parish of* L. [the *binding* parish] *is situate, and the allowance of such indenture was not signed by two justices of the said other jurisdiction, nor was any notice given to the overseers of the said parish of* B. *of the intention to bind such apprentice, and no proof was given before the justices who signed such indenture of any such notice, nor did any overseer of* B. *attend such justices and admit such notice.*

Because the said master was engaged in the business of a manufacturer of cloth, and A. B., *one of the justices who signed the indenture, was at the time engaged in the same business.*

Because, before the said justices signed the indenture, they did not inquire into the place of residence, and the circumstances and the character of the said master, nor did they make any order for the binding of such apprentice, nor is such order referred to in the indenture by its real date, or the names of the justices, p. 616.

Because the said child was at the time of making the indenture and the said order under the age of nine years.

Because the said master was a seaman (c) [a fisherman, p. 621, a chimney-sweeper, and such child was under the age of sixteen, p. 620] *was a collector of turnpike tolls,* 619.

Because part of the expenses of making the said indenture were incurred out of the public parochial funds, and the indenture was not under the seal of any justices, p. 669, 675.

Because the same was not executed by a majority of the churchwardens and overseers of the parish of B

Because the said pauper did not serve the said L. M. *with the consent of* B., *his original master.*

Because the service of the said pauper with A. B. *was without the consent of two justices,* p. 617, 718—720.

(a) This will embrace the objection arising on the stamp, as the indenture cannot be received as evidence on the appeal, unless it is duly stamped.

(b) This objection would probably be well sustained by the next ground of appeal, which embraces most of the objections of the service.

(c) These will not apply unless it appear that the indenture to the seaman was made after August, 1834, and that of the chimney-sweeper after August, 1840.

9. *Forms relating to Removals.*

Because, in fact, the pauper did not acquire a settlement in our parish by the hiring and service stated in the examination, or in any other way, as he was not hired for a year (a), *nor did he reside in the same service a year.*

Because at the time of the alleged hiring, the pauper was not a person unmarried and without a child.

172 a. Hiring and service.

Because, at the time of the alleged hiring, the pauper was not capable of making a contract for service, inasmuch as he was then an apprentice (p. 478) *to* J. B., *of* M., *in the county of* *and* [*a soldier in her Majesty's service*, p. 478] [*or, liable to serve in the militia* [*local or general*] p. 480, *and did not communicate his liability to his said master.*]

Because the pauper was not hired as a servant. (b)

Because in fact he was not hired by A. B. *as his servant.* (c)

Because the hiring was retrospective.

Because he did not reside as such servant in our parish on the last day of the year, nor for forty days during his service.

Because the said pauper did not reside in our parish for forty days as such servant, and within the compass of any one year mentioned in the examination.

173. Marriage.

Because the said A. B. *is not the lawful wife of* C. D.

Because, at the time the said A. B. *rented the tenement as stated in the examination, she was the lawful wife of* C. D., *and could acquire no settlement for herself.*

174. Children.

Because none of the said children are settled in our parish, as they are not the lawful children of A. B. *and* C. D, *and have acquired no settlement for themselves in our parish, nor is any such settlement disclosed in the examination.*

Because the said pauper, at the time that his father acquired the settlement, stated in the examination, had ceased to be a part of his father's family, and was then emancipated.

175. Tenement (d).

Because the said A. B. *did not hire the tenement in the examination mentioned for the term mentioned in the examination, nor for any term of one whole year.*

Because he did not hold the house or occupy the land for one year.

Because he did not pay the rent for the said tenement, nor did he pay to the amount of 10*l.* *of the said rent.*

Because the whole of the said tenement was not situated in our parish.

Because the said tenement did not consist of a separate and distinct house or building, or land, or of both.

Because he did not reside in our parish for forty days during his tenancy.

Because he was not assessed to the poor-rates of the said parish, nor did he pay poor-rates in respect thereof for any one year that he occupied the tenement.

176. Estate.

Because the said A. B. *did not reside in our parish, having at the time any legal or equitable interest in any estate therein, which would confer a settlement.*

Because the said A. B. *was not the next of kin, or the sole next of kin, of* C. D., *who died possessed of the said estate in* 1844, *and to whom the said* A. B. *succeeds.*

Because the said A. B. *had in* 1842 *mortgaged the estate in fee to one* C. D., *who took possession of the same and rents thereof in* 1844; *and before the said* A. B. *had resided forty days in the said parish.*

Because the said A. B. *did not possess the said estate for twenty years in his own right, but he paid rent for the same to* C. D., *the lord of the manor of* B., *and did in* 1844 *sign a written acknowledgment that he was a tenant of the same.*

Because the said A. B., *after he had acquired a settlement in our parish, as stated in the examination, ceased to reside within ten miles thereof, inasmuch as in* 1844 *and subsequent years he resided in the parish of* L., *in the county of* D.

Because the pauper acquired the estate mentioned in the examination by a purchase, and for which he did not bonâ fide *pay the price of* 30*l.* p. 901.

177. Office.

Because the office mentioned in the examination was not a public annual office.

Because the said A. B. *did not serve the office for himself, but as a deputy.*

Because the said A. B. *did not serve the office for one whole year.*

Because he did not reside for forty days in our parish during his year of office.

Because he was not duly appointed to the said office.

178. Rates.

Because the said A. B. *was not charged with, nor did he pay, any public taxes in our parish.*

(a) This will embrace an *exceptive* hearing.

(b) This will embrace an agreement for cohabitation, an employment by a person out of charity, &c., as a relative, an agreement to learn rather than to serve.

(c) This refers to a hiring by a gaoler. *R.* v. *Sparsholt*, p. 490.

(d) These remarks will generally apply to the settlement by payment of rates since 1819.

Because he was not charged with any taxes in respect of any tenement above the value of 10*l.*

Because the said A. B. *was rated and charged to the said rates since the passing of the* 59 Geo. III. c. 50, *and was not rated in respect of a house and land of the value of* 10*l. &c. &c.* (See Forms under TENEMENT.)

9. *Forms relating to Removals.*

Objections arising to the removal, independent of the settlement.

Because the pauper ought not to have been removed, as we gave you due notice of appeal against the said order, within twenty-one days after notice in writing of such order, and the chargeability of the pauper, were sent to us.

Because the pauper was removed by you to our parish within twenty-one days after such notice in writing had been sent to us, and without any agreement in writing under our hands to submit to such order.

Because, at the time of making the said order, the pauper had not come to settle in your parish, but had met with an accident therein in his passage through the same, and ought not to have been removed.

Because, at the time of making the said order, the pauper was resident in a cottage situated in the village and your parish, and which the said pauper bonâ fide *claimed as his own, and to which in fact he was entitled in law or equity.*

Because, at the time of making the said order, he was the bonâ fide *tenant of a farm called* Hayre, *in your parish, and was resident therein, and such tenancy still continues.* [Qy. Any objection *Reg.* v. *Ampthill*, p. 1016.]

Because, at the time of making the said order, the pauper resided with A. B. *of* Hayne Farm, *in your parish, as his hired servant, and which contract of service had not then expired, nor had it been dissolved by the mutual consent of the master and servant.*

Because, at the time of making the said order, the pauper was a child of tender years, viz. *under the age of seven, and was then resident with her mother in your parish, and ought not to have been removed from her.*

Because, at the time of making the said order, the pauper was a married woman, and her husband at that time resident in your parish, and such removal was made without their mutual consent; and because the consent of the wife to be removed without her husband does not appear on the examination.

Because the pauper is the wife of A. B. *who was born in Ireland* [Scotland, Isle of Man, Jersey, &c.] *who has acquired no settlement in our parish, nor in England, nor has the said wife, or any of the children mentioned in the said order gained any settlement in England.*

Because at the time of the said order the paupers were not, nor were either of them liable by law to be removed.

A settlement acquired subsequent to that disclosed in the examination.

Because the said pauper after he had acquired a settlement in our parish in the manner stated in the examination, acquired a subsequent settlement in the parish of in the county of inasmuch as the said pauper did on the day f bonâ fide *rent a house, &c.*

[Whatever be the settlement relied, it must be stated with the same precision and accuracy as is required in the examination. See therefore the *precedents*, (*ante*), on the respective heads.]

Because the said pauper since he acquired a settlement in respect of an interest in an estate in our parish as stated in the examination, did cease to reside within ten miles of the same, inasmuch as he went to reside in the parish of in the county in the month of June, one thousand eight hundred and forty-four, and resided there for many weeks.

Because the said pauper served the last forty days of his apprenticeship in the parish of B , *and thereby acquired a settlement.*

Because the said pauper, in the year one thousand eight hundred and forty-four, and after his service as an apprentice in our parish, by the consent of his master served H. Y., *of the parish of* B., *in the county of for more than forty days, and did not afterwards and during his apprenticeship reside in our parish.*

Because the said pauper A. B. *was by virtue of an order* [*of two justices on the day of one thousand eight hundred and forty-four, removed to your parish as the place of his last settlement, such order was not appealed against, nor has the said* A. B. *or any of the said paupers acquired a settlement in our parish since the said order.*]

9. *Forms relating to Removals.*

Because the said paupers are the children of A. B. *who by virtue of an order, &c. as above* [ ] *and at the time of the said order the said paupers were, and each of them was, part of the said* A. B.'s *family.*

Former order.

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179. Notice of trial of a respited appeal against an order of removal.

To the Churchwardens and Overseers of the Poor of the parish of the county of and to each and every of them.

Whereas at the last general quarter sessions of the peace holden at [if by adjournment state so] *in and for the said county of on the day of last, we whose names are hereto subscribed, being the churchwardens and overseers of the poor of the parish of in the county of did enter an appeal against a certain order of and two of her Majesty's justices of the peace acting in and for the said county of bearing date on the day of for the removal of from the parish of aforesaid, to the said parish of and the hearing of such appeal was by the said court of quarter sessions respited until the next general quarter sessions of the peace to be holden at aforesaid, on the day of instant. Now we, the said churchwardens and overseers of aforesaid, do hereby give you notice that we do intend to prosecute and try the said appeal at the said next general quarter sessions of the peace to be holden at aforesaid, for the said county of on the said day of instant.*

And the following are the grounds of our appeal. [State the grounds of appeal as in the above precedent.]

A. B.
C. D. } *Churchwardens.*
E. F.
G. H. } *Overseers.*

Or any Three Guardians.

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180. Countermand of notice of appeal.

To the Churchwardens &c.

Gentlemen,

I do hereby, as the attorney of and for the churchwardens and overseers, of the poor of the parish of in the county of countermand the notice of appeal lately given to you, against an order of removal of A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the said county of for and concerning the removal of* E. F. *to the parish of in the county of*

Dated this day of in the year of our Lord one thousand eight hundred and thirty-one.

L. M., *Attorney, &c.*

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81. Petition of appeal against removal.

To the Worshipful her Majesty's Justices of the Peace in and for the county of in their general quarter sessions of the peace assembled.

The humble Petition and Appeal of the Churchwardens and Overseers of the Poor of the parish of in the county of

Sheweth,

That, by virtue of an order or pass warrant under the hands and seals of A. B. *and* C. D., *esquires, two of her Majesty's justices of the peace in and for the said county of bearing date, &c.,* E. B, *and her four children, named, &c.* [follow the words of the order] *were removed from the parish of in the said county of to the parish of in the county aforesaid, alleging the said parish of to be the place of the legal settlement of the said* E. B. *and her said children.*

That your petitioners conceive themselves to be aggrieved by the said order or pass warrant, and do appeal to your worships therefrom.

Your petitioners, therefore, humbly pray that your worships will be pleased to hear them in the premises, and to order that the churchwardens and overseers of the

poor of the said parish of may appear before your worships at a certain day, to be appointed for that purpose, to hear and abide by your judgment and determination touching the said appeal. 9. *Forms relating to Removals.*

And your petitioners will ever pray, &c.

A. B. } *Churchwardens of the*
C. D. } *said parish of*
E. F. } *Overseers of, &c.*
G. H. }

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182. Order for hearing thereupon.

to wit. } *At the general quarter sessions of the peace of our Lady the Queen, holden in and for the county of at the sessions house for the said county, on the day of in the year, &c.*

It is ordered that the churchwardens and overseers of the poor of the parish of have notice of the within appeal, and that they and all persons concerned do attend the court at the sessions house aforesaid, on next the day of instant, at nine of the clock in the forenoon, to hear and abide the judgment and determination of the said court touching the said appeal.

183. Notice to produce pauper (*a*).

The Churchwardens, &c. } *Appellants.*
and
The Churchwardens, &c. } *Respondents.*

Gentlemen,

I hereby give you notice to produce the pauper, E F., *at the hearing of the appeal, that he may be examined by the court touching his settlement.*

Dated the day of in the year of our Lord

X. Y.,
Solicitor for the Respondents.

To the Churchwardens, &c.

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184. Notice of abandonment of order after removal of pauper.

To the Churchwardens and Overseers of the Poor of the parish of

to wit. } *Whereas, under and by virtue of an order of removal under the hands and seals of* J. C. *and* S. P., *esquires, two of her Majesty's justices of the peace in and for the county of bearing date the day of eighteen hundred and* A. B. *and her child* E., *aged years, were removed from the parish of in the said county of to the parish of in the county of as the place of their last legal settlement And whereas, since the said removal, we have discovered and are satisfied that the said parish of is not the place of the last legal settlement of the said paupers, and we have accordingly consented to take back the said paupers, and abandon the said order of removal. Now we, the undersigned, being the major part of the churchwardens and overseers of the poor of the said parish of do hereby give you notice that we have abandoned, and do hereby abandon, the said order of removal, and do agree to take back the said paupers, and do also consent and agree to pay the said parish of and the churchwardens and overseers thereof, all costs, charges, and expenses attending the said removal and order, or incident thereto.*

Dated the day of in the year of our Lord eighteen hundred and

A. B. } *Churchwardens.*
C. D. }
E. F. } *Overseers, &c.*
G. H. }

[*This notice may be given before appeal preferred, but if appeal entered, it is advisable to get it allowed by consent at the sessions.*]

(*a*) It is a common, but we apprehend a useless, practice, to serve this notice. The appellants are not bound under such notice to produce the pauper, as they have only the maintenance and not the custody of him. The proper mode is to serve the pauper with a *subpœna*.

9. *Forms relating to Removals.*

185. *Supersedeas* of the order of removal.

to wit. } *Whereas, in and by order of removal or pass warrant under the hands and seals of us* J. C. *and* S. P., *esquires, whose names are hereunto set, and seals affixed, being two of her Majesty's justices of the peace in and for the county of bearing date the day of now last past, made upon the complaint of the churchwardens and overseers of the poor of the parish of in the said county, that* A. B., *single woman, had then lately come to inhabit in the said parish, not having gained a legal settlement there, nor produced any certificate owning herself to be settled elsewhere, and that the said* A. B. *was actually chargeable to the said parish: We, the said justices, upon proof then made thereof before us, and upon the examination of the said* A. B. *upon oath and due consideration had of the premises, did adjudge that the lawful settlement of the said* A. B. *was in the parish of in the county of and therefore we required the said churchwardens and overseers of the poor of the said parish of or some or one of them, to convey the said* A. B. *from and out of their said parish to the said parish of and her to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with our said order, or a true copy thereof, who were thereby required to receive and provide for her as an inhabitant of their said parish. And whereas the said* A. B. *was accordingly removed and conveyed from the said parish of to the parish of and delivered to the churchwardens and overseers of the poor there, together with a copy of our said order, pursuant to the directions therein contained. And whereas, it has been since represented, and duly made to appear unto us, the said justices, by the churchwardens and overseers of the poor of the said parish of that the examinations taken upon the making of the said order as aforesaid, are insufficient and informal. Therefore we, the said justices, upon the application, and at the request of the said churchwardens and overseers of the poor of the parish of do hereby supersede, annul, vacate and set aside the said order, and do command the churchwardens and overseers of the poor of the said parishes respectively, to give up and return the said order, and the copy thereof, to us, that the same may be cancelled and made void to all intents and purposes whatsoever. And we do also require the said churchwardens and overseers of the poor of the said parish of to receive back the said* A. B., *and maintain and provide for her until they can free themselves from the charge thereof by due course of law.*

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and

J. L.
S. P.

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187. Order that the appeal be allowed, and justices' order vacated.

to wit. } *At the general sessions of the peace of our Lady the Queen, holden in and for the county of at the sessions house for the said county, on the day of in the year of the reign of our sovereign Lady* Victoria, *by the grace of God of the United Kingdom of Great Britain and Ireland Queen, defender of the faith, before* A. B., C. D., *&c. esquires, and others their fellows, justices of our said Lady the Queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the same county.*

Whereas, the churchwardens and overseers of the poor of the parish of in the county of did at the last general quarter sessions of the peace held in and for this county, exhibit their petition and appeal, setting forth, that by virtue of a warrant or order of removal, under the hands and seals of J. C. *esquire, and the Rev.* J. B., *Doctor in Divinity, two of her Majesty's justices of the peace acting in and for the county of one whereof being of the quorum, bearing date the day of* 18 A. B., *single woman, big with child, was removed from the parish of in the county of to the said parish of as the place of the last legal settlement of the said* A. B, *whereby the petitioners conceived themselves aggrieved, which said appeal stood duly adjourned until this sessions. Now upon hearing the said appeal, in the presence and hearing of the churchwardens and overseers of the poor of the said parish of and they consenting by their counsel to the allowing the said appeal, it is ordered that the said appeal be and the same is hereby allowed, and the said order of the said two justices is hereby vacated and set aside. And it is further ordered, that the churchwardens and overseers of the poor of the said parish of do forthwith convey and deliver back the said* A. B, *single woman, (together with a copy of this order), unto the churchwardens and overseers of the poor of the said parish of who are hereby required to receive and provide for the said* A. B., *single*

woman, until they can free themselves from the charge hereof by due course of law. And it is further ordered that the churchwardens and overseers of the poor of the said parish of do forthwith pay or cause to be paid unto the churchwardens and overseers of the poor of the parish of the sum of for their charges and expenses in relieving and maintaining the said A. B, *single woman, since her said removal.*

9. *Forms relating to Removals.*

By the Court,
S.

Victoria, *by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, defender of the faith, to the Keeper of our Peace, and our justices assigned to hear and determine divers felonies, trespasses, and other misdemeanors committed within our county of* Hereford, *and to every of them greeting:*

188. Certiorari to remove an order of removal, &c., into Queen's Bench.

We being willing, for certain reasons, that all and singular orders made by you or some of you, between the inhabitants of St. Peter *in our city of* Hereford, *appellants, and the inhabitants of* Kington, *in our said county of* Hereford, *respondents, touching the settlement of* Charlotte Stephens, *single woman, be sent by you before us, do command you and every of you, that you, or one of you, do send under your seals, or the seal of one of you, before us on the morrow of All Souls, wheresoever we shall then be in* England, *all and singular the said orders, with all things touching the same, as fully and perfectly as they have been taken or made by and before you or some of you, and now remain in your custody or power, together with this our writ, that we may cause further to be done thereon, what of right and according to the law and custom of* England *we shall see fit to be done. Witness,* Thomas Lord Denman, *at* Westminster, *the* 30*th day of June, in the* 1*st year of our reign.*

By the Court,
ROBINSON.

Herefordshire, *Easter sessions,* 1840.

189. Case stated for opinion of court of Queen's Bench. (*a*)

Saint Peter *in the city of* Hereford, *and* Kington *in the county of* Hereford.

This was an appeal against an order of two magistrates of the county of Hereford, *dated the* 1*st of March,* 1830, *for the removal of* Charlotte Stephens, *single woman, from the parish of* Kington, *in the county of* Hereford, *to the parish of* Saint Peter *in the city of* Hereford. *The order was confirmed, subject to the opinion of the Court of Queen's Bench, on the following case:*

The pauper, Charlotte Stephens [here state the facts of the case]. *It was contended by the appellant parish, that the indenture was void for want of the consent of two magistrates, part of the premium having been paid out of the parochial funds, but the court confirmed the order, considering that the indenture was not a binding by any overseer or overseers, but by* Doctor Lye, *who was not overseer of either of the parishes. The court also considered that the payments by the several parishes were voluntary, and not paid under any legal obligation; and though charged to the parish account, no evidence being produced that the pauper belonged to either parish, there was no occasion to have the consent of magistrates, under* 56 Geo. III. *c.* 139, *to the binding.*

The question for the opinion of the court is, Whether the indenture was valid without the consent of the magistrates? If it was not so, the pauper is improperly removed to the parish of Saint Peter.

J. T. Justice.
R. J. Powell.

Edward Poole, *Chairman.*
Thos. Bird, *Clerk of the Peace for the County of* Hereford.

(*a*) The sessions should find the facts, and not detail the evidence; as specimens of cases neatly drawn, and worthy of imitation, we would refer on a question of apprenticeship to *R.* v. *St. Paul's, Exeter,* p. 521.

9. *Forms relating to Removals.*

In the *Queen's Bench.* } The Queen *against* the Inhabitants of Y.
Hilary Term, 9 Victoria.

190. Entry of quashing order of justices after special case.

Northamptonshire. } *Be it remembered, that at the general quarter sessions of the peace of our said sovereign Lady the Queen, holden at* N., *in and for the said county of* N., *on* Thursday *in the first week next after the feast of the* Epiphany *of our Lord Christ, (to wit) the fifteenth day of* January, *in the ninth year of the reign of our sovereign Lady* Victoria, *by the grace of God of the United Kingdom of* Great Britain *and* Ireland, *Queen, defender of the faith, and in the year of our Lord one thousand eight hundred and twenty-nine, before* J. C. Viscount, A. Chairman, *the* Rev. H. B. H., *doctor in divinity.* W. R. C., *esquire,* T. C., *esquire,* T. S., W. S., *esquires, the* Rev. J. Clerk, *and others their fellow justices of our said Lady the Queen, assigned to keep the peace in the county aforesaid, and also to hear and determine divers felonies, trespasses, and other misdeeds done and committed within the same county. It was ordered by the court in manner following* [that is to say], *Whereas the* Rev. W. L. M, *clerk, and the* Rev. H. K. B., *doctor in divinity, two of her Majesty's justices of the peace in and for the said county of* N., *and one of them of the* quorum, *did make their order, under their hands and seals, bearing date the twenty-sixth day of July, now last past, for the removal of* T. J., S. *his wife, and their two children,* E. *aged nineteen, and* G. *aged fourteen years, from and out of the said parish of* Y. *in the said county of* N., *to the parish of* S. *in the county of* H., *in which said parish of* S. *the said justices did adjudge the lawful settlement of them, the said* T. J. S. *his wife, and their said two children, to be; which said order was in all things duly executed, according to the commands thereof. And whereas the inhabitants of the said parish of* S. *did, at the last general quarter sessions of the peace for our said Lady the Queen, holden in and for the said county of* N., *by leave of the court, enter their appeal against the above-recited order to the judgment of this court, to be tried at the then next and now present general quarter sessions of the peace, holden for the said county. Now, upon a full hearing of the said appeal, and what was alleged by counsel on both sides, this court doth order that the said recited order be quashed, set aside, and discharged; subject nevertheless to the opinion of the honourable the justices of her Majesty's Court of* Queen's Bench *at* Westminster, *on a special case now stated and agreed upon between the parties appellant and respondent, and their counsel, if the respondents shall think proper to remove the same by writ of certiorari into that court; but if the said respondents shall not remove the same, then the said order to remain quashed, and which case is as follows;* [here state the case as agreed on between the parties.]

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191. Order of sessions on hearing appeal against an order of removal quashing same with costs.

County of } *At the court of general quarter sessions of the peace of our sovereign Lady the Queen, holden at in and for the said county of in the first week after the* Epiphany, *to wit, on* Thursday, *the fourteenth day of* January, *in the year of the reign of our sovereign Lady* Victoria, *Queen over the United Kingdom of* Great Britain *and* Ireland, *and so forth, and in the year of our Lord one thousand eight hundred and thirty, before* F. R. P., *esquire, chairman,* J. D., *esquire, and others, justices of our said Lady the Queen, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors in the said county committed, and of the* quorum, *and so forth, Whereas an appeal against an order for the removal of* S. W. B., *his wife, and their children, namely,* J., *aged about years,* E., *aged about years, and* D, *aged about months, from the parish of in the county of aforesaid, to the parish of* L., *in the county of* D, *stands adjourned to the present quarter sessions. It is now ordered that the said order be and the same is* hereby quashed *with costs, and also the costs of maintaining the paupers.*

Certificate of taxing the costs.

And we said justices do hereby certify that the appellants are entitled for their costs in this appeal to the sum of pounds, shillings, and pence, and the further sum of pounds, shillings, and pence, for the maintenance of the paupers, making together the sum of pounds, shillings, and pence.

By the Court.

[When the sessions quash or confirm the order, they have the power to award costs to the respondents or appellants, if they think any of the grounds

of appeal, or the grounds of removal, are frivolous and vexatious. *We do further adjudge, that the several following grounds of appeal stated in the notice of the appellants, that is to say,* [here recite the particular ones,] *are frivolous and vexatious, and we do order that the appellant shall pay all such costs as the respondent hath incurred in disputing such grounds. And we do adjudge and certify that the same amount to the sum of pounds, and all other the costs of the said appeal, as well as the costs of maintaining the paupers, be paid by the respondents; and we certify and adjudge that the costs of the said appeal amount to pounds, and the costs of maintenance to pounds.*

By the Court.

9. *Forms relating to Removals.*

192 The like that the grounds of appeal were frivolous and vexatious and appellant to pay all costs.

N. *to wit.* } To the Constable of D., and to all other constables in the said county duly to execute, and T. J., our Special Constable, duly sworn to execute this our warrant.

193. Warrant to levy by distress on goods of overseers the costs of appeal against order of removal adjudged at the quarter sessions.

Whereas it hath this day been duly made to appear unto us, J. W., *clerk, and* W. R., *esquire, two of her Majesty's justices of the peace for the said county of* N., *as well upon the oath of* W. P., *one of the churchwardens of the parish of* K., *in the said county of* N., *as otherwise, that upon a certain appeal against our order for the removal of* W. M. *and* H. *his wife, and* W. *their child, from the parish of* D. *in the said county of* N., *to the said parish of* K. *in the said county—the court of quarter sessions for the county aforesaid, by the order dated the seventh day of January now last past, did amongst other things order that the churchwardens and overseers of the poor of the said parish of* D., *should, upon notice to them, or any of them, given of the said order, pay to the churchwardens and overseers of the poor of the said parish of* K., *or to some one of them, the sum of pounds for their just and reasonable costs and charges upon the determination of the said appeal by the said court. And that the said sum of pounds so ordered to be paid as aforesaid, was on the day of instant, duly demanded of and from* E. L., *esquire, and* R. B., *esquire, the overseers of the poor of the said parish of* D., *by the said* W. P., *and that the said order was at the same time shown to the said* E. L., *and* R. B., *who respectively looked at the same, but they did not, nor did either of them, then or at any time since pay the said sum of pounds, or any part thereof, to the said* W. P., *but therein hath made default; whereby and by virtue of the said statute in such case made and provided, the said sum of pounds may be levied of the said goods and chattels of the said* E. L. *and* R. B., *as overseers of the parish of* D. *aforesaid. These are, therefore, to command you to make distress of the goods and chattels of the said* E. L. *and* R. B., *and if within the space of eight days next after the making of such distress the said sums, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the monies arising by such sale you do pay the sum of pounds to the churchwardens and overseers of the poor of the parish of* K. *aforesaid, or to one of them, rendering the overplus, if any, on demand, unto the said* E. L. *or* R. B., *the reasonable charges of making and keeping and selling the said distress being first deducted; and if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein as to the law doth appertain.*

Given under our hands and seals this day of in the year of our Lord one thousand eight hundred and thirty-five.

J. W.
W. R.

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[N. B. When a reference is made to another title, and a *figure* annexed, the figure denotes the *division* of that title in which the subject matter will be found; *e. g.* under the title "DIRECTION," there is a reference to "CERTIFICATE, (3.)" By looking to title "CERTIFICATE," the Index refers to the *third* division of the subject "CERTIFICATE."]

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